You Ain't the Boss of Me!

The (Lack of) Authority of a Small Claims Magistrate to Order a Person to Perform an Act

During the last few weeks, several magistrates have called with questions about widely-varying fact situations that have one thing in common: in each case, the plaintiff wants a court order directing someone to do something. This request is a trap for the unwary magistrate, who may almost immediately be faced with what to do when the order is defied. Imagine, for example, that you direct the tenant in a summary ejectment action to clean the apartment and hand in the keys. The tenant does move out, but he takes the key with him, and leaves the apartment filthy. The landlord asks you what happens now. The fact that you have no satisfactory answer for him reflects one of the reasons you should not award such a remedy. The most significant reason, though, is that you have no legal authority to do so.

At common law, courts were frequently called upon to issue what is sometimes called a *coercive order*: an order directing a party to follow the court's direction or else face the contempt power of the court. District and superior court judges today frequently issue such orders. Whether it is ordering a company to reinstate an employee, a doctor to remove a feeding tube, or a nightclub to turn down the music after midnight, the availability of this remedy is well-established. In the case of actions based on contract, the law even has a special name for the remedy: a party who wishes to force the defendant to carry out her obligations under a contract is said to be seeking an order of "specific performance." Defendants who defy a coercive order may be imprisoned until they comply, under the civil contempt power of the court, or fined and imprisoned as punishment for defying an order of the court, under the criminal contempt power of the court. *See* G.S. Ch. 5A.

The statutes that identify the cases a small claims magistrate is authorized to hear are G.S. 7A-210 and G.S. 7A-211.1. It is interesting to note that the former identifies those cases in terms of the remedy the plaintiff is seeking: A small claims action is an action in which "[t]he only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing. . . ." G.S. 7A-211.1 authorizes magistrates to hear actions "to enforce motor vehicle mechanic and storage liens." Conspicuously absent from this list are the remedies of specific performance and injunctive relief —orders directing a party to perform, or cease to perform, a particular act.

In some ways, this list of available remedies is very broad indeed. The statute allows a magistrate to hear any civil action in which the plaintiff is seeking monetary damages, so long as the amount is $5000 or less. Theoretically, you may hear cases involving unfair trade practices, medical malpractice, slander, breach of warranty, false imprisonment, complex commercial contract cases—the type of case is not limited, so long as it falls within the allowable monetary limit. The result is that magistrates often hear cases involving an extremely wide range of challenging legal concepts as well as complex fact situations (thus, the name of this publication: *Big Law*). Similarly, a magistrate may hear any case for summary ejectment -- even if the underlying contract is a commercial lease involving millions of dollars -- so long as the remedy sought is possession only (or damages within the $5,000 limit).

I imagine some of you are thinking, "Wait a minute. When we hear some of these cases, we ARE ordering someone to do something. We're ordering the tenant to move out, or the defendant to hand over personal property, or DMV to transfer title." Certainly, the effect of your judgment is often to force a party to do something he'd rather not do. But if you look closely at the language of the judgment you enter, you'll notice that it does not contain such mandatory language. It doesn't say "Defendant, you must pay plaintiff $5,000," or "Defendant, you must give plaintiff the washing machine." There is instead a small, but extremely significant, difference, at least from a legal point of view. The judgment says instead something like, "It is ordered that the plaintiff recover possession," or "It is ordered that the plaintiff recover the following principal sum," or "that the defendant be removed from and the plaintiff be put in possession of the premises at. . . ." Orders containing language such as this require additional proceedings before the defendant is forced to comply. As you know, the usual process is that a clerk issues a writ (either of execution or of possession) based upon the judgment, and that writ actually directs not the defendant, *but the sheriff*, to take certain steps.

Contrast this situation with an order issued by a judge ordering a defendant to sign a particular document. In this case, no writs issue, and no sheriff is involved in implementing the court's order. Instead, a defendant who fails to comply will be ordered to appear and show cause why he or she should not be held in contempt. As you know, a magistrate has no such contempt power, aside from the power to punish direct criminal contempt committed while the court is sitting for business.

This distinction is a relatively subtle one, and it is not surprising that plaintiffs don't always observe it in deciding what remedy to request in a small claims action. One area in which the issue often arises involves motor vehicle sales. Let's look at some examples:

> Example 1: Billie and Sam agree that Billie will buy an old Mazda from Sam, paying $200/month until the total purchase price of $1800 has been paid. After Billie pays the full amount, Sam refuses to hand over the title. Can Billie obtain a judgment in small claims court ordering Sam to hand over the title? Can Billie obtain a judgment in small claims court ordering DMV to transfer title to Billie? The answer is no. While Billie may be able to obtain an order in district court requiring Sam to perform his part of the contract, that remedy is not one that a small claims judge is authorized to grant.
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> Example 2: First National Bank brings an action against Danny Debtor seeking a money judgment in the amount of $2,000. After proving that Danny owes the money, First National asks that you enter an order authorizing the bank to seize funds in Danny's savings account to satisfy the judgment. Do you have authority to do so? Again, the answer is no. While First National may actually have the right to seize the funds pursuant to its contractual agreement with Danny, a small claims magistrate has no authority to order such seizure. At first glance, this remedy may not appear to be a coercive order—after all, you're not ORDERING First National to seize the funds. By authorizing the seizure, however, you are effectively forcing Danny to satisfy the judgment without the protections offered by the usual procedure First National must use to enforce a judgment.
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> Example 3: Larry Landowner brings an action for money owed based on the presence of Ernie Encroacher's livestock on his property. Larry contends that Ernie continues to allow two cows and a horse to roam and graze on his property, even after Larry informed Ernie that the animals were wandering on to his land. Larry asks that you

> award him $5000 as rent for Ernie's use of the property and order Ernie to remove the animals. Can you order Ernie to do so? No. Again, you have no authority to enter a coercive order requiring Ernie to remove his livestock. Larry must seek this remedy in district or superior court. [1]

What should you do when you are confronted with a case in which the plaintiff is seeking a coercive order? It is entirely appropriate in this situation to provide the plaintiff not with advice, but rather with information. Explain to the plaintiff that while he or she may be entitled to the requested relief, it is not available in small claims court. If a coercive order is a relatively minor aspect of what the plaintiff wants, the plaintiff may agree to drop that request and proceed with the remainder of the lawsuit. If, on the other hand, what plaintiff really wants is to put an end, once and for all, to Ernie's continual, bothersome trespassing animals for example, it makes more sense for the plaintiff to take a voluntary dismissal without prejudice and re-file his action in a court authorized to grant the relief he wants.

[1] Just for curiosity's sake, what about Larry's claim for back rent? Assuming, as the facts indicate, that there was never any sort of rental agreement between Larry and Ernie, there is no legal basis for Larry to collect rent. Larry's claim is actually a misnamed effort to collect damages for a tort—a civil wrong—called "trespass to property." The law provides that Larry is entitled to nominal damages—say, $1—if Ernie knowingly allows his animals to trespass on Larry's land. In addition, Larry is entitled to any actual damages caused by the trespass. For example, if the animals consume most of Larry's sunflower crop, he would be entitled to recover lost profits as well.