SMALL CLAIMS TRAINING FOR MAGISTRATES ADVANCED 1

MAY 10-12, 2011

Dona Lewandowski

UNC SCHOOL OF GOVERNMENT

It is the daily; it is the small; it is the cumulative injuries of little people that we are here to protect....If we are able to keep our democracy, there must be one commandment: THOU SHALT NOT RATION JUSTICE.

-~Judge Learned Hand

In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same.

~Albert Einstein

Course Objectives

1. To provide magistrates experienced in conducting small claims court with an opportunity to talk with other similarly experienced magistrates in order to share ideas and information about holding small claims court.

2. To give students ample opportunity to find answers to questions about small claims law, whether simple or complex.

3. To facilitate students' exploration of ways to improve performance in a respectful positive atmosphere.

4. To provide specific instruction and resources about legal issues identified by the students as difficult or in need of clarification or review.

5. To offer an opportunity to students to step back from day-to-day concerns and become participants in "the great conversation" about the function and purpose of small claims court in our State and to identify best practices consistent with those aspirations.

6. To offer magistrates a chance to observe in a thoughtful, analytical way both other magistrates and themselves in the role of a small claims judge conducting court, and to give and receive constructive feedback on their performance.

7. To invite these public servants, who spend their professional lives in highly stressful demanding circumstances, often with little recognition or reward, to make use of their time in Chapel Hill to rest and replenish themselves, and to acknowledge and celebrate with each other the importance of their contributions and the significance of their achievements in performing the duties of the Office of Magistrate.

Course Schedule

Tuesday, May 10, 2011

9:00	Welcome & Introductions
9:30	Do You Look at the Pictures? The Rules of Evidence in Small Claims Court
10:30	Break
10:50	Evidence, Burden of Proof, and the Legal Process
12:15	Lunch at the SOG
1:00	What in the World is an LLC? What You Need to Know About Business Law
2:15	Break
2:30	Procedural Issues Related to Businesses
3:20	Stump the Teacher & Trial of the Day
4:15	Recess

Wednesday, May 11, 2011

9:00	Check-In
9:15	AM Trial
9:45	"I Stopped Paying Rent Because the Toilet Won't Flush"---The RRAA
10:45	Break
11:00	Other Defenses in Summary-Ejectment Actions
12:00	Lunch at the SOG
12:50	Landlord-Tenant Leftovers
1:45	Break
2:00	Small Group Discussion: Small Claims Practically Speaking
2:50	Stump the Teacher & Trial of the Day
4:00	Recess

Thursday, May 12, 2011

9:00	Check-In
9:15	*Ubi Jus Ibi Remedium* ["There is no Right Without a Remedy"---But What Should The Remedy Be?]
10:20	AM Trial
11:00	Open Forum: What's Left to Talk About?
11:30	Evaluations & Presentation of Certificates
12:00	Adjourn

Class Roster

Tab:

Day 1

Schedule for Today

9:00	Welcome & Introductions
9:30	Do You Look at the Pictures? The Rules of Evidence in Small Claims Court
10:30	Break
10:50	Evidence, Burden of Proof, and the Legal Process
12:15	Lunch at the SOG
1:00	What in the World is an LLC? What You Need to Know About Business Law
2:15	Break
2:30	Procedural Issues Related to Businesses
3:20	Stump the Teacher & Trial of the Day
4:15	Recess

Objectives for Today

By the end of our time together today, you will

1. Have met and had an opportunity to discuss small claims issues with other small claims judges;
2. Have developed a draft written policy for handling evidence in your court based on the underlying goals and purposes of the law of evidence;
3. Be aware of the law pertaining to the Rules of Civil Procedure in small claims court;
4. Be acquainted with current law regarding errors in naming parties, and in the choice of parties themselves;
5. Become familiar with basic principles and vocabulary related to participation by business entities in small claims court;
6. Have observed another magistrate hear a mock small claims case and participated in an analysis of both the case and issues connected to the manner in which it was heard;
7. Leave class early enough to have time to rest, play, and read Small Claims Law.

♫ ♫ "Getting to Know You . . . Getting to Know All About You" ♫ ♫

Introduce yourself to the other magistrates sitting at your table, and write their names down below:

_____ _____

_____ _____

_____ _____

Think back to the first time you held small claims court. What was it like? How did you feel? Spend three minutes sharing something of that experience with your tablemates. Before you begin, select one person to make a brief report to the class as a whole.

Notes:

Pre-Test:

T F

1. In an action for money owed, the defendant claims to have paid the plaintiff, but is unable to produce a receipt. The magistrate must find for the plaintiff:

T F

2. In an action for money owed, the parties agree that defendant paid some portion of the debt, but they disagree about the amount of payment. Defendant is unable to produce a receipt, saying that he probably has it at home somewhere. The magistrate must find for the plaintiff:

T F

3. In an action for money owed, the defendant is not present. The plaintiff is present and testifies that he lent the defendant $500 and has not been paid back. That is all of the evidence produced by the plaintiff. The magistrate must find for the plaintiff:

T F

4. In an action for conversion, the plaintiff testifies that he did not give defendant permission to take his car, and defendant testifies that plaintiff did give permission. There is no other evidence. The magistrate must find for defendant.

T F

5. When an attorney objects to evidence being introduced, the magistrate is not required to rule either way on the objection.

T F

6. If a plaintiff is able to establish a prima facie case on each essential element of a claim, the plaintiff is entitled to a judgment (unless a defense changes the picture).

T F

7. The belief that deception can be reliably detected by observing the direction of eye movement is a myth.

Rules of Evidence in Small Claims Court

"The rules of evidence applicable in the trial of civil actions generally are observed."

NCGS 7A-222

"In a trial before the judge, sitting without a jury, the ordinary rules as to the competency of evidence applied in a trial before a jury are to some extent relaxed, for the reason that the judge with knowledge of the law is able to eliminate from the testimony he hears that which is immaterial and incompetent and consider that only which tends properly to prove the facts to be found."
Muirhead Const. Co. v. Housing Authority of Durham, 1 N.C.App. 181, 60 S.E.2d 542 (1968)

General Principles

Evidence may be admissible or inadmissible. Generally, evidence is admitted unless objected to by a party. Evidence deemed inadmissible must be ignored by the judge, and a party lacking any other proof of an essential element of the case will lose.

The general rule is that evidence is admissible if it is relevant, unless that evidence is excluded from consideration by a specific rule.

When a rule of evidence provides that evidence of a certain type is not admissible, the reason is usually that surrounding circumstances render the reliability of the evidence questionable.

A magistrate must consider the reliability of all evidence presented in a case. Thus even in a case in which evidence is admitted which might have been excluded had an objection been raised, a magistrate may deem that evidence unreliable and refuse to consider it.

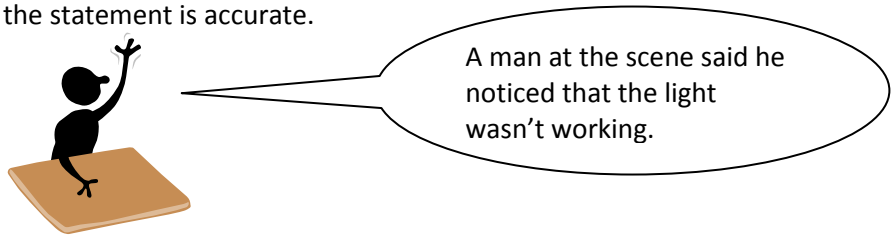
Evidence is relevant if it tends to prove that an important fact in a case is more or less likely. Small claims cases typically involve significant amounts of irrelevant evidence due to the parties' unfamiliarity with the law. For the purpose of making a decision, a magistrate merely ignores the surplus information provided by the parties. Frequent attempts to confine the testimony of a witness to material which is relevant often causes witnesses to feel intimidated and frustrated. It is generally more efficient to allow a

witness to present all the information s/he has to offer, and then for the magistrate to separate out the wheat from the chaff.

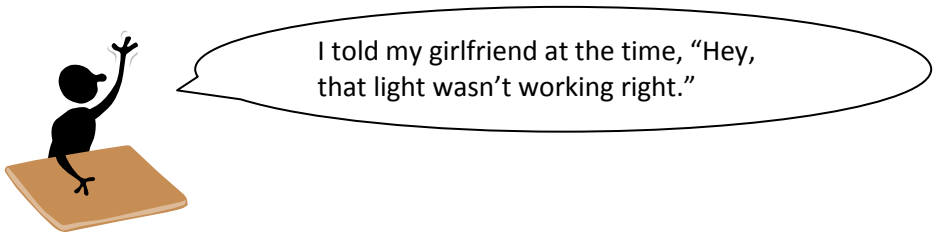
The following sorts of information may be of doubtful reliability. If a party objects to the admission of such evidence, a magistrate may choose to refuse to admit the evidence, or may instead assure the objecting party that the magistrate will accord unreliable evidence appropriate weight.

Hearsay Evidence

Hearsay is defined as a statement made outside of court which is offered to prove that the content of the statement is accurate.

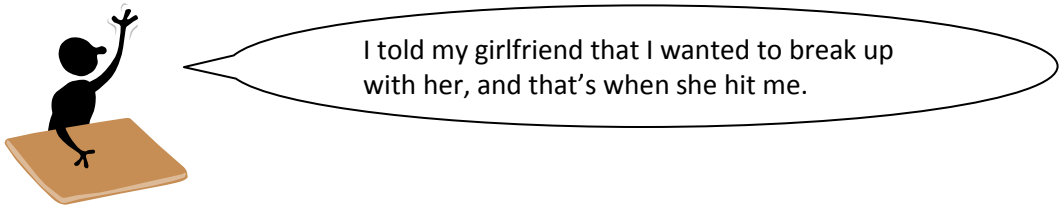


A statement doesn't have to be made by someone other than the witness to be hearsay.

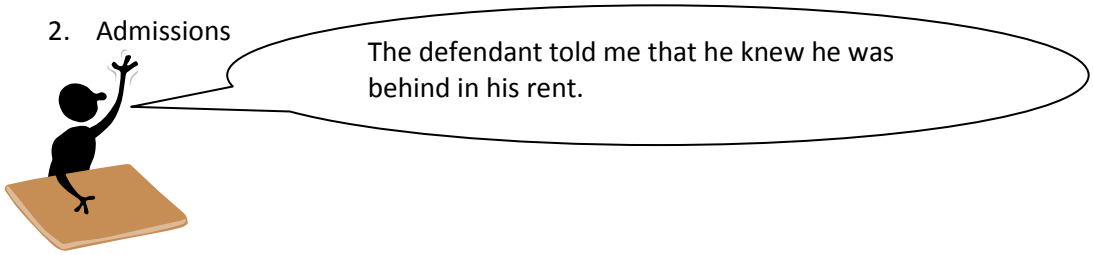


Exceptions to the hearsay rule:

1. A statement offered to prove something other than the truth of the statement itself is not hearsay.



2. Admissions



3. Excited utterances

Right after the accident, my girlfriend said,"My god, how fast was that guy going?"

4. Business records rule

I'd like to offer into evidence a copy of the police report, in which the officer states that the defendant was at fault.

Writings or records of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge are admissible if kept in the regular course of business and if it was the regular course of business to make that record, unless the source of information or circumstances of preparation indicate a lack of trustworthiness.

Best Evidence Rule

"To prove the content of a writing, recording, or photograph, the original writing, recording or photograph is required, except as otherwise provided in these rules or by statute." The Best Evidence Rule merely requires the exclusion of secondary evidence offered to prove the contents of a document whenever the original document itself is available. *See generally* N.C.Gen.Stat. § 8C-1, Rules 1002-1004 (1988)." Investors Title Ins. Co. v. Herzig, 413 S.E.2d 268, 275, 330 N.C. 681, 693 (N.C. Jan 27, 1992).

When the content of a writing is evidence of an essential element of plaintiff's case or defendant's defense, that writing is the best evidence of the content and must be produced or its absence adequately explained. Contrast the situation in which the writing itself is evidence of an act by one of the parties; in that case, the writing stands on the same footing as other evidence of the act, and the requirement does not apply.

_____

_____

_____

_____

Example: Plaintiff-landlord seeks summary ejectment based on breach of a condition of a lease for which forfeiture is specified. In this case, we are concerned with *what the lease says—its content*—and the lease is the best evidence of that.

On the other hand, if summary ejectment is based on failure to pay rent, the existence of a written lease is evidence of a landlord-tenant relationship between the parties, but no better evidence than testimony to that effect. For the same reason, a number of cases hold that a receipt is not required to prove payment by a party. If the fact of payment is undisputed, but the amount of payment IS disputed, then once again we are interested in the content of the writing, and it must be produced.

Question: What implications does the Best Evidence Rule have for your decisions in summary ejectment actions in which a written lease exists but is not offered into evidence by the landlord?

_____

_____

_____

_____

_____

_____

_____

_____

G.S. 8-45: Verified statement of account

In an action on an account for goods sold, rents, services rendered, or labor performed, or any oral contract for money loaded, a verified itemized statement of the account is admissible into evidence and is deemed correct unless disputed by the defendant.

"Itemized": describes each item with price and item number, if there is one.
"Verified": Accompanied by an affidavit from a person who (1) would be competent to testify at trial; (2) has personal knowledge of the particular account, or of the books and records of the business in general; and (3) swears that the account is correct and presently is owed by defendant to plaintiff.

Suggested Best Practices in Ruling on Evidentiary Issues in Small Claims Court

1. Unless evidence is objected to, admit all offered evidence, giving it appropriate weight in your decision based on its reliability.

2. If an objection is made to the admission of evidence, one of two responses is appropriate, depending on the circumstances:

    - If an attorney makes an evidentiary objection, and it seems likely that more will follow, consider instructing the attorney to hold all objections until the end of the evidentiary phase, indicating that you will hear and consider his or her arguments at that time.

Sample statement: *As you know, we are about to conduct a trial before the judge without a jury, and one of the parties is not represented, which is frequently true in this court. My policy in such situations is to be lenient in allowing evidence to be offered, so that parties may testify without interruption. At the close of the evidence, I will hear any argument the parties would like to offer concerning evidence that you believe I should not consider. After hearing your argument, I will carefully consider all of the relevant admissible evidence and determine what weight I believe it deserves before arriving at my decision.*

    - When an objection to the admission of evidence is vigorous and appears to relate to an important or decisive issue in the case, you might choose to rule on the objection immediately.

3. It is always appropriate, if desired, to request a copy of the rule of evidence forming the basis of the objection, and to insist that the objecting party in the argument for exclusion address specifically the way in which THIS RULE applies to THIS EVIDENCE.

4. The Rules of Evidence are technical and complex, and few attorneys are thoroughly conversant with this area of the law. If you believe that evidence is relevant to the issues before you and you are satisfied with your grasp of its reliability, be extremely reluctant to exclude it for technical reasons.

"I object, Your Honor. This trial is a travesty of a mockery of a sham of a travesty of two mockeries of a sham! "
Woody Allen as Fielding Mellish
Bananas (1971)

5. Do not hesitate to take the position that the standard for admission of evidence is relaxed in small claims court, and that as the judge, you are capable of properly evaluating the reliability of evidence and the weight it should be given, in light of all circumstances, including factors argued by the attorney(s). This position is well supported by North Carolina law.

Evidence and the Burden of Proof

In order to be successful in a civil action, a plaintiff must meet two standards of proof.

First: the plaintiff must meet the *burden of production*: s/he must introduce sufficient evidence on each element of the claim *to permit but not require* a judgment in favor of the plaintiff. This is sometimes called a *prima facie* case.

In the space below, write an example of a fact situation in which plaintiff has failed to meet the burden of production:

_____

_____

_____

_____

GS 7A-222 provides "At the conclusion of plaintiff's evidence the magistrate may render judgment of dismissal if plaintiff has failed to establish a prima facie case." This rule means that defendant is not required to put on any evidence until plaintiff has introduced some evidence on every essential element of his claim.

Second: the plaintiff must meet *the burden of persuasion*: s/he must introduce sufficient evidence to persuade the magistrate that *each element of plaintiff's claim is probably true.*

In an action for conversion, the plaintiff must introduce evidence 1) that s/he is the owner or legal possessor of the property; 2) that the defendant either wrongfully took or wrongfully retained the property; and 3) of the fair market value of the property at the time and place of conversion. In the space below, briefly describe a "close-but-no-cigar" situation:

_____

_____

_____

_____

The Legal Process

Small claims judgments are typically recorded on AOC forms, and those forms don't spell out the court's findings and conclusions because appeal is *de novo* (and thus no reviewing court will examine them). The PROCESS of deciding a civil case, however, is exactly the same in same claims court:

First, the court determines the facts (called *findings of fact*).
Next, the court applies the relevant legal principles to the facts as determined by the court (called *conclusions of law*).
Finally, the court awards a remedy based on the findings and conclusions ("*the court hereby orders, adjudges, and decrees . . .*").

Assessing Credibility

It's easy to see that when the evidence in a case consists solely of the contradictory testimony of the plaintiff and defendant, the magistrate's findings of fact will depend on which party s/he finds to be credible. Contrary to what some magistrates think, a judgment for plaintiff is permissible—but not mandatory—even in a "he-said/she-said" if the magistrate determines the plaintiff to be a credible witness. Probably even less well-understood is the fact that a judgment for plaintiff is not required even when the evidence is uncontradicted and establishes a *prima facie* case. If the magistrate finds the plaintiff's credibility to be weak and simply is not persuaded that the facts are PROBABLY as plaintiff says, a judgment for the plaintiff is not appropriate.

Assessing Credibility: Consider
Motive to lie
Opportunity to observe
Ability to provide details
Demeanor (careful here!)
Which version seems more believable?

Putting it All Together

Evidence: Polly has brought this action to recover personal property against Larry. She testifies that she and Larry lived together for almost a year, but decided to split up. When Larry left, he took Abe-the-Dog with him. Polly says that Larry gave her Abe for their 6-month anniversary, and that he has refused to return the dog despite her many requests that he do so.
Larry testifies that he never intended to make a gift of Abe-the-Dog to Polly. Because they were living together in the belief that they would stay together, it didn't occur to him to make a point of emphasizing that Abe was <u>his</u> dog. It's true that Abe was acquired on their anniversary, but he never told Polly Abe was a gift from him to her—in fact, to the extent Abe was a gift at all, the dog was a gift to himself! Larry wants to show you the bill of sale, showing that he paid $650 for Abe, as well as his scrapbook with Abe's name engraved on it. Larry also offers into evidence his four other scrapbooks, each engraved with one of his pugs' names on them.

The Law: The essential elements of Polly's action to recover personal property are 1) that she is the lawful owner of the property; 2) that the property was wrongfully taken or wrongfully detained; and 3) that defendant is in possession of the property.

Your Rulings: Assume that Polly objects to the bill of sale, Abe's scrapbook, and the scrapbooks of the other dogs being admitted into evidence. She doesn't know what rule to cite, but essentially makes relevance argument: "That stuff doesn't have anything to do with him giving me Abe for our anniversary!" What do you do or say about her objections to each item?

Bill of sale?

_____

_____

Abe's Scrapbook?

_____

_____

Friends' Scrapbook?

_____

_____

_____

Abe-the-Dog & Friends

The Nightmare: Imagine you woke up and found yourself a district court judge (which means no more AOC judgment forms for you!). Remember that you have to make findings of fact, and there are three factual questions that must be resolved in Polly's favor if she is to win (although it only takes one for her to lose). What would your judgment form look like? (Remember: no law! Just facts!) Take a shot:

The Court makes the following findings of fact:

1. _____

2. _____

3. _____

Time for conclusions of law (in which you state what all these facts add up to when you apply the law). Here's a hint: conclusions of law almost always involve an abstract legal term. "Mr. Smith did not make a rent payment on July 1" is a finding of fact. "Mr. Smith's failure to pay rent was a breach of the lease for which forfeiture was specified" is a conclusion of law.

Based on these findings [of fact], the Court makes the following conclusions of law:

1. _____

2. _____

3. _____

The Rule of Evidence That's Not Really A Rule of Evidence

The parol evidence rule is not so much about evidence as it is about contract law.
Contract law, of course, is focused for the most part on enforcing the intention of the parties as expressed through their agreement.
Most contracts are not required to be written, but if they ARE written, we accord that writing a great deal of weight as a formal expression of the parties' agreement.
When a party attempts to introduce evidence that contradicts or adds a term to the written agreement, that evidence is generally excluded from the court's consideration. The reasoning is that the parties would have incorporated that into the written contract if they had in fact agreed to it.

There are two exceptions to this general rule:

- Evidence is admissible to explain an ambiguous term in the written agreement, and
- Evidence of elaborations or modifications agreed to subsequent to execution of the written contract may be considered.

Evidence Policy

Every small claims judge should have a standard policy for admitting and considering evidence, so that the judge's rulings are consistent. If at all possible, small claims magistrates within a county should agree on a standard policy, because as much as possible the outcome of a case should not depend upon the particular judge who hears the case.

Your evidence policy should address the following issues:

What is your "default" position on allowing parties to present evidence to the court?

Does evidence come in unless objected to?

Does evidence come in even IF objected to?

Do you do your best to enforce the rules of evidence (and thus refuse to look at or listen to) evidence you believe is inadmissible even if there is no objection? Even if only the plaintiff appears for trial?

Are you generally lenient in admitting evidence, subject to a few specific kinds of evidence, which you exclude? If so, what kinds?

What is your specific policy, if any, about the following kinds of evidence?

☐ photographs to prove damage ☐ affidavits to prove damage

☐ written estimates for repair ☐ letters or emails to prove notice

☐ affidavits from witnesses to prove elements other than damages

☐ web pages (e.g., Sec'y of State's Office) ☐ Wikipedia

☐ itemized bills prepared in the regular course of business

☐ medical records ☐ police reports

Other: _____

_____

_____

_____

How do you deal with attorneys who make numerous objections?

Do you rule on each objection as it is made?

Do you instruct the attorney to hold objections until the end, and then allow argument in support of the contention that you should not consider the challenged evidence?

Do you tell the attorney that the rules of evidence are not strictly observed in small claims court and that you are capable of discerning the reliability of evidence and according it proper weight?

Do you either speak with attorneys beforehand, or make a statement in open court, explaining your evidence policy before trial begins?

Other: _____

_____

_____

_____

Addressing evidence questions in your judgment:

When evidence has been admitted over objection, do you address the relevance of that evidence to your decision when you announce your judgment?

For example: *My judgment is for Mr. Smith, the plaintiff, in the amount of $500. In determining the amount of damages, I considered the estimates provided by both parties, giving greatest weight to the estimate by Joe's Garage, based on its actual examination of the vehicle.*

When you announce your judgment in a case in which a critical issue turns on which party you believe, do you directly address how you resolved the question of credibility?

For example: *This case involved a sharp dispute in the evidence, with Plaintiff Polly contending that the defendant gave her the dog, and Defendant Larry testifying to the contrary. After listening carefully to the testimony, while I found both parties believable, I have concluded that the defendant's testimony is more credible than the plaintiff's testimony and I am thus ruling in favor of the defendant in this matter.*

What in the World is an LLC? What You Need to Know About Businesses & Law

There are many reasons why people choose to create a corporation, partnership, or other business entity, and one of them is to limit risk of losing personal assets. In North Carolina, as in other states, there are several different kinds of business entities, and knowing what they are is a good place to start.

Corporation	GS Ch. 55	(Incorporated, Corporation, Limited, Company)
Professional corporation	GS Ch. 55B	(P.A., P.C.)
Non-profit corporation	GS Ch. 55A	(Incorporated, Corporation, Limited, Company)
Limited liability company	GS Ch. 57C	**(LLC)**
Limited liability limited partnership	GS Ch. 59	**(LLLP, RLLLP)**
Limited partnership	GS Ch. 59	**(LP)**

_____

_____

_____

_____

_____

All of these entities are "artificial persons" under the law, meaning that they have the ability to contract, sue, and be sued (through their agents, of course). People who own part or all of these entities are not personally liable for debts incurred by the entity (with one exception, explained below).

All of them are required to register with the Secretary of State's Office, and to maintain a registered agent for the purpose of receiving service.

If service of process is not accomplished by serving the registered agent, it must satisfy the alternative requirements set out in Rule 4(j) (6), (7), or (8). For entities other than partnerships, this means serving one of the following:

1. An officer of the company
2. A director of the company
3. A managing agent of the company

OR by leaving a copy in their office with a person apparently in charge of the office.

NOTE: GS 7A-217, which specifies specific rules for service of process in small claims actions, does not apply to artificial persons. The rules for serving them are set out in GS 1A-1, Rule 4. One significant difference is that service by Fed Ex or a similar delivery service is available as a means of serving these business entities.

_____

_____

_____

Much useful information is available about business entities on the Secretary of State's website, located at www.secretary.state.nc.us.

Why do you need to know this?

_____

_____

_____

_____

Tom

Dick

Carl Corporation

Three things you need to know about corporations

1. *Corporations may represent themselves in small claims court.*

And in Woods v. Billy's Automotive, 174 N.C. App. 808 (2005), the appearance and participation at trial of the primary owner of Billy's Automotive Inc. was held to constitute a general appearance by the corporation and thus cure defects in service of process arising out of serving Billy—the owner—despite the fact that he was neither officer, director, or managing or registered agent!

2. *Corporations remain liable for their debts and the actions of their agents even if they are dissolved.*

GS Ch. 55 sets out a procedure by which creditors may assert claims against corporations even when the corporation is dissolved (whether voluntarily or administratively).

In the instance of known creditors, the corporation is required to notify them of the pending dissolution and the procedure and deadline for asserting claims. A creditor who receives notice and fails to assert a claim in a timely manner forfeits the right to collect on the debt. GS 55-14-06.

What if a creditor does not receive this notice or his properly-filed claim was never acted upon? What if the liability in question arose after the corporation was dissolved? GS 55-14-07 answers these questions; if a corporation publishes notice of its dissolution in accordance with the statute, claims not asserted within five years from date of publication are barred. GS 55-14-08 provides that undistributed corporate assets (including proceeds of insurance coverage relating to such claims) are available to pay claims against the dissolved corporation. In some situations, a claimant may be able to recover some portion of liquidated assets from a shareholder as well.

_____

_____

_____

3. *It is sometimes possible for a plaintiff in tort to demonstrate that the owner of a corporation should be personally liable for an obligation.*

It is important to remember that "piercing the corporate veil" is an equitable doctrine, similar to unconscionability. The presence of three elements supports application of the doctrine:

a. Control by the defendant of the corporate entity to such an extent as to amount to the entity having no independent will or existence of its own; complete domination of not only finances, but also of policy and business practices;
b. This control was used by defendant to commit fraud or wrong, to violate a statutory or positive duty, or a dishonest and unjust act;
c. This control and breach of duty proximately caused the injury or unjust loss complained of.

As an equitable doctrine, the decision whether to pierce the corporate veil varies with the circumstances of each case. Significant factors identified by the courts include: 1) undercapitalization of the corporation; 2) non-compliance with corporate formalities; 3) absence of corporate records; 4) non-payment of dividends; 5) siphoning of corporate funds by dominant shareholder; and 6) non-functioning of other officers and directors. Glenn v. Wagner, 313 N.C. 450 (1985).

_____

_____

_____

_____

Procedural Issues Related to Businesses

Service of process

As we have seen already, some special rules govern service of process on artificial persons. For the most part, small claims magistrates are somewhat removed from ruling on whether there were errors in serving the defendant, because of GS 7A-221's provision that objections to jurisdiction over the person (which is the essence of the argument that service of process was improper) be heard by a district court judge. The same statute also provides that the objection is waived if not made by motion or in the defendant's answer prior to date of trial. Nevertheless, there are times when a magistrate, in ruling on another issue, must have some understanding of whether proper service was accomplished. This typically comes up when it appears that plaintiff may not have properly named the defendant in the complaint and summons. See the discussion below, under *Amendments.*

Venue

GS 7A-221 also provides that objections to venue must be made before trial or waived, but magistrates nevertheless must make this determination because of the limited authority of the chief district court judge to assign cases to small claims court under GS 7A-211 (requiring at least one defendant to be a resident of the county). Even if no objection is made by the defendant to venue, a magistrate who hears a case not meeting the residency requirement has no authority to enter judgment.

_____

_____

_____

What is the residency of a corporation?

A corporation either formed in North Carolina or formed elsewhere but maintaining a registered office in NC is a legal resident of the county in which

a. its registered or principal office is located; or
b. it maintains a place of business.

The "registered office" of a corporation is merely the office of the registered agent.

The “principal office” of a corporation is “the office (in or out of this State) where the principal executive offices of a domestic or foreign corporation are located, as designated in its most recent annual report filed with the Secretary of State.” GS 55-1-40(17).

If a corporation has no registered office, no principal office, and no place of business, its residence is any county in which it is regularly engaged in carrying on business.

Motions to amend

Amending the summons

GS 1A-1, Rule 4, provides that the court may allow “any process or proof of service thereof to be amended” . . . “[a]t any time, before or after judgment,” on whatever terms or conditions the court finds is just “unless it clearly appears that material prejudice would result to substantial rights of the [defendant].”

The key to solving the puzzle presented by many of these cases is determining whether plaintiff (1) sued and served the correct defendant, using the wrong name, or (2) sued the wrong defendant.

Notes for Stump-the-Teacher & Afternoon Trial

Tab:

Day 2

The Schedule for Today

9:00	Check-In
9:15	AM Trial
9:45	"I Stopped Paying Rent Because the Toilet Won't Flush"---The RRAA
10:45	Break
11:00	Other Defenses in Summary-Ejectment Actions
12:00	Lunch at the SOG
12:50	Landlord-Tenant Leftovers
1:45	Break
2:00	Small Group Discussion: Small Claims Practically Speaking
2:50	Stump the Teacher & PM Trial
4:00	Recess

Objectives for Today

By the end of our time together today, you will

1. Be able to respond appropriately to the various procedures with which tenants may present for consideration allegations of their landlord's violations of the RRAA.
2. Recognize the relevance of and correctly apply the law regarding violations of the RRAA to related legal issues such as tender and calculations connected to appeal bonds in SE cases.
3. Have examined some leases to identify provisions that are void or unenforceable based on consumer protection legislation and public policy.
4. Determine what facts may constitute the legal defense of waiver in SE cases.
5. Have studied and discussed a significant line of appellate cases concerning ejectment based on breach of lease conditions.
6. Identify what modifications, if any, are required in the manner in which you conduct hearings in public housing cases so as to be consistent with current law.
7. Have reviewed common trouble spots in conducting SE hearings.
8. Have discussed with other magistrates some of the most common practical challenges in conducting court.
9. Have had ample opportunity to ask questions about any area of small claims law.
10. Have observed, analyzed, and discussed with others at least two mock trials.

Checking In

Discuss with your tablemates what struck you most about our time together yesterday. Do you have questions about any of the material? Did you come across anything that prompted you to consider modifying your approach to conducting court or deciding cases?

_____

_____

_____

_____

_____

_____

The Residential Rental Agreements Act (and Other Tenants' Rights Statutes)

The Residential Rental Agreements Act is set out in G.S. Chapter 42, Sections 38 to 44. This law, which was passed in 1977, re-wrote the common law to provide that landlords must maintain residential rental premises to be fit to live in, and to make clear that a tenant's right to such housing cannot be waived. Prior law had followed the rule of *caveat emptor* ("let the buyer beware").

What Does the Law Provide?

The law imposes 8 distinct obligations on a landlord:

1. He must comply with building and housing codes.
2. He must keep premises in a fit and habitable condition.
3. He must keep common areas in safe condition
4. He must maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances.
5. He must install a smoke detector and keep it in good repair.
6. He must install a carbon monoxide detector and keep it in good repair.
7. He must notify the tenant if water the landlord charges to provide exceeds a certain contaminant level.
8. He must repair within a reasonable time any "imminently dangerous condition" listed in the statute:
    a. Unsafe wiring.
    b. Unsafe flooring or steps.
    c. Unsafe ceilings or roofs.
    d. Unsafe chimneys or flues.
    e. Lack of potable water.
    f. Lack of operable locks on all doors leading to the outside.
    g. Broken windows or lack of operable locks on all windows on the ground level.
    h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
    i. Lack of an operable toilet.
    j. Lack of an operable bathtub or shower.
    k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
    l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold.

There is something a little confusing about this: some of these overlap. Rental premises might, for example, have a broken furnace that violates obligation #4 above, but the fact that it's below-freezing in the house also means the premises are not habitable. The reason it matters is that different rules apply as far as the notice that's required. Let's look at that more closely.

Notice Requirements

Only one of the obligations has a notice requirement written specifically into the statute: a landlord's obligations with regard to electrical, plumbing, and other "facilities and appliances" arise only if he has written notice that repair or maintenance is necessary. After receiving notice, the landlord is entitled to a "reasonable time" to make repairs. The exception to this requirement is when there is an emergency. If the shower handle breaks off and water is pouring out of the tub onto the floor, the law will not require the tenant to notify the landlord in writing and then wait a few days before imposing an obligation on the landlord to make a repair.

A common-sense rule applies to the other obligations: the tenant must give whatever notice is necessary to reasonably permit the landlord to fulfill his obligations. If there's a leak in the roof, for example, the tenant must notify the landlord before it's reasonable to expect the landlord to repair it. In that case, however, oral notice is acceptable. It may be that in some cases, no notice at all is required, when the evidence demonstrates that the landlord actually knew of the problem (for example, there were holes in the floor before the tenant moved in).

Waiver

The RRAA is a consumer-protection statute. Like other consumer protection legislation, the rights of the parties are not created by contract—or agreement—in these cases. Instead, the obligations of the landlord are imposed by law—even if the contract says nothing about them, **or even if the lease says the tenant waives those rights.** The statute is clear that a tenant doesn't waive his rights by signing a lease providing for waiver; nor does a tenant waive his rights to fit and habitable housing by agreeing to rent a place with obvious defects, even if the landlord specifically tells him about them. If a tenant rents a house without air conditioning, that's fine. But if a tenant rents a house with air conditioning and then the air conditioning tears up, the landlord has a statutory obligation to repair the air conditioning, even if the lease says otherwise.

Sometimes a landlord will say, "I know the house wasn't up to code, but that's why the rent was so low. I agreed to let him live in the house for low rent, and he agreed that he would do some work on the house for me." The RRAA anticipated this, and sets out the following rule: An agreement between the landlord and tenant that the tenant will work on the house and be paid by the landlord is fine, so long as the agreement is entered into AFTER the lease agreement is complete, and the arrangement for payment by the landlord for the tenant's work is separate from the rent payment.

Sometimes a landlord will say, "The reason the house isn't up to code is that the tenant himself keeps damaging it." This allegation, if true, is a valid defense to the landlord's violation of the Act. The tenant also has obligations under the Act, including refraining from deliberately or negligently damaging any part of the premises. The obligations of the landlord and tenant are "mutually dependent"—that is, each of them is obligated only if the other keeps his part of the bargain. If a tenant violates his obligation to avoid damaging property, it relieves the landlord of his obligation to keep the property in good repair. Obviously, this rule makes good sense, but is a potential swamp, since each party may be in flagrant violation of the Act and point to the other's violation as excusing their own.

Remedies: What Happens When a Landlord Fails to Meet His Responsibilities Under the Act?

At the outset, you are confronted with two apparently contradictory provisions of the Act that have worried commentators. On the one hand, the obligations of the landlord and the tenant under the Act are "mutually dependent"—that is, each of them is obligated only if the other keeps his part of the bargain. Based just on this provision, one might reasonably conclude that a tenant's obligation to pay rent "depends" on the landlord's provision of fit and habitable premises. But another section of the Act specifically says that a tenant may not "unilaterally withhold rent prior to a judicial determination of the tenant's right to do so." What does this mean?

No one is absolutely certain, because there have actually been only a few appellate cases interpreting the RRAA. It seems clear, though, that a tenant who withholds rent because the landlord violates the RRAA risks being evicted for failure to pay rent. A much safer course would be to pay rent and then bring an action in rent abatement; a tenant who prevails in this action will recover damages for the landlord's past violation of the Act and may well also secure a "judicial determination of [his] right" to withhold future rent until the landlord complies with the law.

_____

_____

_____

If a tenant does not adopt this safer course, but instead withholds rent, one leading commentator suggests the following approach:

First, determine the actual amount of rent owed, after factoring in the amount of offset to which the tenant is entitled due to the landlord's breach of the RRAA. If that amount is zero, dismiss the action. If the amount is greater than zero, the next step depends on the specific basis for the action:

If the action is based on breach of a lease condition for which forfeiture is specified, the landlord is entitled to possession upon making the usual showing.
If the action is based on failure to pay rent, however, the tenant may successfully defend by tendering the amount which the magistrate has determined is actually owed.

Repair & Deduct?

Can a tenant hire someone to fix the roof, pay for it out of his own pocket, and then take that amount out of the rent? We don't know, and the commentators are divided in their predictions. Until North Carolina courts clarify the law, it seems likely that many courts will cautiously allow tenants to do this, with the facts of the individual case being important (a tenant who gives notice, waits a long time, and then spends a small amount of money being much more likely to prevail than a tenant who fails to give notice and makes major repairs, such as replacing a roof).

Other Questions About the RRAA

Who is responsible? Clearly, the owner of the property is subject to the Act, but in a surprising case, the Court of Appeals found that a property manager (who had authority to make repairs) was also subject to liability under the Act. Surrat v. Newton, 99 NC App 396 (1990).

What is the statute of limitations applicable to actions based on violations of the RRAA? 3 years.

Procedure:

The Act states that a tenant may enforce his rights under the Act by civil action, including "recoupment, counterclaim, defense, setoff, and any other proceeding, including an action for possession." Thus, a magistrate may be confronted with applying the Act in any of the following circumstances:

1. The landlord brings an action for possession and/or money damages, and the tenant defends by contending that the landlord violated the Act.

2. The landlord brings an action for possession and/or money damages, and the tenant brings a counterclaim for rent abatement based on the landlord's violation of the Act.

3. The landlord brings an action for money damages, and the tenant responds by arguing that the landlord's damages should be reduced ("set-off") because of his violation of the Act.

4. The tenant files an action for rent abatement.

Damages

The tenant is entitled to the difference between the FRV (fair rental value) of the property as warranted and the FRV of the property as it actually is, plus any incidental damages (for example, the tenant had to buy a space heater when the furnace stopped working). NOTE: A tenant may only recover up to the amount of rent he actually paid. If he lived in the property and paid no rent, for example, he is not entitled to also recover money damages.

How are damages proven? No expert testimony is required. Witnesses may offer their opinon about the FRV of property, and the magistrate may also rely on his own experience in determining reasonable damages.

Are punitive damages allowed? No, punitive damages are not authorized in actions for breach of contract. Treble damages under G.S. 75-1.1 (prohibiting unfair or deceptive acts or practices affecting commerce) are available, however, if the tenant is able to demonstrate the essential elements of that claim.

_____

_____

_____

_____

_____

_____

Retaliatory Eviction

G.S. 42-37.1 to 42-37.3: North Carolina has a strong public policy protecting tenants who exercise their rights to safe housing. When a landlord files an action for summary ejectment, a tenant may *defend* against ejectment by proving by the *greater weight of the evidence* that the landlord's action is *substantially in response* to one of several listed events that has occurred within the last 12 months.

What are those events?

1. Asking landlord to make repairs;
2. Complaining to government agency about violation of law;
3. Formal complaint lodged against landlord by government agency;
4. Attempting to exercise legal rights under law or as provided in lease;
5. Organizing or participating in tenants' rights organization.

_____

_____

_____

Remedy

If a tenant successfully demonstrates retaliatory eviction, the magistrate must deny the landlord's request for possession (although the landlord is entitled to back rent in any case). Furthermore, a tenant may have an independent action for an unfair or deceptive act or practice (with treble damages) under G.S. 75-1.1.

Note that this law is based on public policy. It won't surprise you, then, to learn that the statute specifically provides that any attempted waiver by the tenant of his rights under this law is void. What's the obvious concern here? That a tenant will seek the protection of this law without really deserving it—in bad faith. If my lease has a forfeiture clause related to keep pets, and I get caught with my dog when the landlord drops by, I might quickly begin to organize a tenant's rights organization. That way, I think, if the landlord tries to evict me, I'll be able to claim it was because of my organizational efforts, and not the real reason—that I have a dog.

_____

_____

_____

Rebuttal by the Landlord

When a tenant defends in an action for summary ejectment by asserting that the landlord is actually retaliating against him or her for an action protected under the statute, the landlord may rebut that argument by showing one of the following things:

1. Tenant failed to pay rent or otherwise broke the lease in a manner that allows eviction, and the violation of the lease is the reason for the eviction.
2. Tenant is holding over after termination of lease for definite period with no option to renew.
3. The violations the tenant complained about were caused by willful or negligent act of tenant.

4. Displacement of tenant is required in order to comply with housing code.
5. Landlord had given tenant a good-faith notice of termination before protected conduct occurred
6. Landlord plans in good faith to do one of the following after terminating tenancy:
    1) Live there himself;
    2) Demolish the premises, or make major alterations;
    3) Terminate use of premises as a dwelling for at least 6 months.

_____

_____

_____

Note that all of these grounds actually relate to the showing required of the tenant: that he is being evicted "substantially in response" to his participation in one of the protected acts. If the landlord is able to demonstrate one of the above reasons for seeking summary ejectment, the conclusion must be that the action is not "substantially in response" to one of the prohibited reasons.

One question that has not yet been answered by North Carolina courts is whether, instead of seeking to evict a tenant, the landlord may retaliate for protected activity by increasing the rent. Other states have applied the same rationale to retaliatory rent increases as to retaliatory eviction, refusing to permit it on public policy grounds. This appears to be a permissible reading of the North Carolina statute, which provides:" It is the public policy of the State . . . to protect tenants and other persons . . . who seek to exercise their rights to decent, safe, and sanitary housing. Therefore, the following activities of such persons are protected by law. . . "The argument then would be that in raising the rent to a punitively high level, the landlord is accomplishing indirectly the same end as he would directly by eviction: termination of the tenancy. It seems probable that NC courts would refuse to allow this, but we don't know for sure.

_____

_____

_____

Self-Help Eviction

Back in the old days, a landlord who wished to evict a tenant simply changed the locks, or put their property out on the sidewalk. In 1981 the North Carolina General Assembly put G.S. 42-25.6 on the statute books:

> "It is the public policy of the State of North Carolina, in order to maintain the public peace, that a residential tenant shall be evicted, dispossessed, or otherwise constructively or actually removed from his dwelling unit only in accordance with the procedure prescribed in [the remaining provisions of the statute]."

--Note: This rule applies only to *residential tenancies*. Self-help eviction is perfectly permissible in commercial lease situations.

--Note also the reference to "constructively . . . removed." The law applies not only to actual removal of a tenant from rental premises, but also to actions taken by a landlord to make continued occupancy unpleasant: turning off utilities would be the most common example.

_____

_____

_____

The General Assembly took aim at another common practice in 1981:

> "It is the public policy of the State of North Carolina that distress and distraint are prohibited, and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with [other provisions of the statute]."

This law put an end to the practice of some landlords of either seizing property owned by the tenant to compensate for unpaid rent or refusing to release a tenant's property until that tenant paid past-due rent. As you well know (since you get hundreds of questions a year about it), landlords are now required to comply with specific legal requirements in dealing with property left behind by tenants.

As is typical of laws based on public policy, the statute provides that any attempted waiver of the legal prohibition against self-help eviction is void.

_____

_____

_____

Tenant's Remedies

What remedies does a tenant have when a landlord violates the prohibition against self-help eviction? The law provides that a tenant in this circumstance is

> "entitled to recover possession or to terminate his lease and the . . . landlord. . . . shall be liable to the tenant for damages caused by the tenant's removal or attempted removal."

Further, if a landlord takes possession of a tenant's personal property, or interferes with a tenant's access to his personal property, the statute provides that a tenant is entitled to recover possession of the property, or compensation for its value (as in an action for conversion). In addition, a landlord is liable for actual damages caused by his wrongful interference.

In addition to the actions authorized by this statute, our courts have held that a tenant may bring an action for unfair or deceptive acts or practices when a landlord violates these provisions.

Exercise: Let's Look at Some Leases

Lease #1:

Document is titled "Application for Apartment" and asks for information about residence and employment history, as well as bank, credit, and personal references. At bottom of document, in capital letters, it says:
THIS APPLICATION IS PRELIMINARY ONLY AND DOES NOT OBLIGATE OWNER AND/OR OWNER'S REPRESENTATIVE TO EXECUTE A LEASE OR DELIVER POSSESSION OF THE PROPOSED PREMISES. APPLICANT REPRESENTS AND WARRANTS THAT ALL OF THE ABOVE STATEMENTS ARE TRUE AND COMPLETE AND HEREWITH AUTHORIZES VERIFICATION OF ABOVE INFORMATION, REFERENCES, AND CREDIT RECORDS. APPLICANT ACKNOWLEDGES THAT THE INCLUSION OF ANY FALSE INFORMATION HEREIN SHALL CONSTITUTE GROUNDS FOR REJECTION OF THIS APPLICATION, TERMINATION OFANY RENTAL AGREEMENT AND RIGHT OF OCCUPANCY, AND/OR FORFEITURE OF THE GOOD FAITH DEPOSIT.
The applicant applies for and offers to execute a lease at a monthly rental rate of $899. . . A good faith deposit in the amount of $200 is submitted with this application. When application is approved, this good faith deposit will be applied toward payment of applicant's security deposit of $200, and this deposit after the applicant has been approved becomes non-refundable. If applicant fails to execute a lease agreement or refuses to occupy the premises on the assigned date, the applicant will be responsible for damages in the amount equal to the one month's rent stated above.
Applicant may cancel this application within 24 hours and receive a full refund of the good faith deposit. In addition to the good faith deposit, an application fee of $190.00 is submitted to cover Lessor's cost of procuring a consumer credit report, Landlord references . . . (etc.) This fee is not refundable under any circumstances.
Charges: $190 application fee, $300 pet deposit, $125 miscellaneous administration fee, $200 security deposit (rolled over from $200 good faith deposit).

Fact situation: Tommy Tenant filled out the application and paid the $190 application fee and the $200 "good faith deposit." After Laurie Landlord approved the application, Tommy Tenant notified her that he did not want to enter into a lease agreement. Laurie brought this action for $699 (one month's rent in the amount of $899 less the $200 good faith deposit).

Legal issue: Tommy Tenant argues that his application was merely the first step in negotiations between the parties about whether to enter into a lease. He points out that the clear terms of the application make it plain that Laurie was not obligating herself to do anything other than accept and consider his application ("This application is preliminary only and does not obligate owner . . . to execute a lease or deliver possession of the proposed premises.") Because the parties never actually entered into a lease agreement, he argues, he can't be held responsible for breach and made to pay damages.

_____

_____

_____

_____

Fact situation: Tommy Tenant was approved as a tenant and moved in. At the end of his tenancy, he brings an action to recover his security deposit. Laurie Landlord defends, arguing that the Application

plainly says that the $200 good faith deposit "will be applied toward payment of applicant's security deposit of $200, and this deposit after the applicant has been approved becomes non-refundable."

Legal issue: Are Tommy's rights to the security deposit limited by the plain language of the contract?

_____

Lease #2:

This is a nine-page lease with a five-page addendum. It is captioned "Standard Real Estate Rental Agreement". It is a one-year lease.

Relevant Provisions:

Rents must be received at the office of the Management or posted at the depository institution before 5 O'clock P.M. on the DUE DATE of each week/month to be considered paid. Monies received are applied first to any lost rental discount; second to any outstanding additional rent, including judgments and past due amounts of any kind; third to any unpaid fees or charges, then fourth to any current rent or rent to become due. This could result in unpaid rent, which would be subject to additional rent as contained herein. Cash will not be accepted.

Legal Issue: Is the provision about the order of application of money permitted under the law?

_____

Discount for prompt payment and maintenance: Time is of the essence of this Agreement. If the rent, and any previous balance due, is received and accepted on or before (the due date described above) and Resident complies with the maintenance requirements contained herein, a _____ Dollar discount will be credited to the rental payment.

Legal Issue: Is this discount for prompt payment and maintenance a late fee in disguise?

_____

If Management elects to receive rent after _____, resident agrees to pay $5.00 for each day after the Due Date as additional rent.

In the event collection of past due rent must be made by the Management at the Property location, the Resident agrees to pay a $30.00 collection fee as liquidated damages for each such attempted collection. The additional rent shall continue to accrue at the rate of $5.00 a day until all rents, lost discounts, and any other amounts owing under this Agreement are paid in full.

In the event any check given by Resident to Management is returned by the bank unpaid, Resident agrees to pay to Management $50.00 as liquidated damages, forfeit the rental discount for that week, and agrees to pay additional rent of $5.00 per day after the Due Date until Resident's account is brought current.

Legal Issue: Are these additional charges allowed by law?

_____

Resident agrees to pay a performance fee of $475.00 to Management after taking possession of the property to secure the Resident's faithful performance of the conditions of this agreement. A promotional discount may be made based on tenant's good faith performance after one year. Resident will be paid for cleaning and repairs pursuant to agreement as offered by Management, payment shall be made within thirty days after all occupants have vacated property, provided:

a) Lease term has expired or agreement has been terminated by both parties, and
b) All monies due Management by Resident have been paid; no late payments have been made during the initial term.
c) Written notice to vacate has been given Management at least 60 days prior to vacating.

Legal Issue: Are the provisions regarding the performance fee legally enforceable?

Resident agrees to pay Management 18% per annum on the unpaid balance of any charges for rent, repairs, or other damages sustained by Management under the terms of this Agreement that are not covered by the performance fee and that are not paid within 7 days after vacating premises.

Legal Issue: Is this provision requiring payment of annual interest at 18% in case of breach enforceable?

Resident may be released from the obligation to pay the rents contained herein, as of the last day of a rental month, before the expiration of the initial term by

a) Giving Management a minimum of 60 days written notice, plus
b) Paying all monies due through date of release, plus
c) Paying an amount equal to one month's rent as a release fee.

Legal Issue: Is this provision allowing early release enforceable?

Resident accepts Property in its present "AS-IS" condition . . .
Resident shall at his own expense and at all times maintain the premises in a clean and sanitary manner, including all equipment and appliances therein. . . Resident expressly stipulates and agrees that Management is granting a rental discount in exchange for Resident's agreeing to perform and bear the expense of, or have performed, minor maintenance and repairs on the dwelling, therefore Management shall NOT be responsible for maintenance and repairs of the premises during the term of this Agreement. If Resident repair responsibilities conflict with any state laws to the contrary, Resident expressly agrees to fully waive and relinquish any protections so provided.
All appliances of any kind including window air conditioners are specifically excluded from this Agreement. Such appliances remain as a convenience to Resident and Management assumes no responsibility for their operation. No part of the monthly rent is attributable to them.

Legal Issue: Does the law allow the landlord to do what this landlord is trying to do: rent residential property "as-is"? What about the provision that the resident is responsible for minor maintenance and

repairs? What about the exclusion of appliances? (Assume that the rental dwelling actually comes with a fully-equipped kitchen, as well as heat and air-conditioning.)

_____

_____

_____

_____

Occupancy by guests staying over 14 days will be considered in violation of this agreement, and additional monthly rent of $100.00 per person shall be due chargeable from the beginning date of this agreement, unless prior written consent is given by Management. Acts of guests in violation of this agreement or Management's rules and regulations may be deemed by Management to be a breach by Resident.

Legal Issue: May a landlord legally restrict a tenant's right to have guests? Is this restriction enforceable? May a landlord hold a tenant responsible for the acts of a guest?

_____

_____

No goods or materials of any kind or description which are combustible or would increase fire risk shall be stored on the Property. Any storage shall be at Resident's risk and expense. Management shall not be responsible for any loss or damage.
Non-operative vehicles are not permitted on Property. Management, at expense of Resident, may remove any such non-operative vehicle for storage for public or private sale at management's option and Resident shall have no right of recourse against Management thereafter.

Legal Issue: May a landlord restrict what property a tenant stores on the property? Are these particular provisions enforceable?

_____

No pets, birds, fish, or other animals of any kind, permanent or visiting, indoor or outdoor, shall be permitted on the property without prior written consent of Management. Any such pets, if allowed, requires the payment of a non-refundable pet fee of $125.00 per pet plus additional rent of $4.00 per pet per week. If an unauthorized pet is found on the premises, additional rent of $4.00 per pet per week shall be due, chargeable from the beginning date of this Agreement, plus the non-refundable pet fee listed above.

Fact Situation: Landlord informs tenant that a cat has been observed sleeping on the warm hood of his car on several occasions and charges him $125.00 plus $64 ($4/week for the 16 weeks since the tenancy began). When tenant refused to pay, landlord brought this action. Tenant energetically argues that the cat is not his, but landlord points to the contract language specifying "visiting, outdoor" pets and says

tenant voluntarily signed the contract. How do you rule? If you rule for the tenant, would your answer be different if the animal were a fish kept by the tenant inside the rental unit?

_____

Should Resident fail to pay any rent or other charges as and when due, or if Resident abandons the property or fails to perform any of its obligations hereunder, Management, at its option, may terminate all rights of Resident hereunder, unless Resident, within 24 hours after notice thereof, shall cure such default. If Resident abandons or vacates the Property, while in default of the payment of rent, Management may consider any property left on the Property to be abandoned and may dispose of same in any manner allowed by law, without responsibility or liability therefore.
Anytime the Property is left unoccupied for more than 14 days while rent remains unpaid without notice to Management, Management may consider the property abandoned and this agreement terminated. Management shall have the right to remove, store or dispose of any of Resident's personal property remaining on the premises after the termination of this agreement. Any such personal property shall be considered Management's property and title thereto shall vest in Management.

Legal Issue: Is this provision declaring property abandoned and giving the landlord ownership upon termination of the lease enforceable?

_____
_____

The tenant waives the 10-day right-to-appeal period in case of eviction and ejectment from the property and instead agrees that 3 days is sufficient for an appeal.

Legal Issue: Is this provision reducing the period allowed by law for giving notice of appeal enforceable?

_____

Lease #3:

Document labeled "Trailer Park Rules"

Contains 17 short provisions, including the following:

1. No pets in park.
2. Garbage to be put in plastic bags for pick up.
3. No motorcycles (neither yours nor friends) in park. . . .
4. No second-party live-in's.
5. If rent is not paid, renter is to move willingly. Owner of park has the right to cut off water and disconnect power to trailer.
6. No selling or taking of dope, alcohol, drugs, or any type of amphetamines on trailer park grounds. . .
7. No loud music or wild parties.
8. Lot rent subject to be changed.
9. If renter cannot get along with park owner, and will not obey the rules, then rule five of this agreement will be in effect.
10. Rent on each spot is by month only.
11. All property damage will be paid by renter.

12. I, _____ do hereby state that I have read and understand fully the above rules. I promise to abide and carry out the above agreement as long as I am living in [X's] trailer park.

Legal Issue: Are the above provisions enforceable as part of the lease? Assuming that they became incorporated into the lease agreement, are any of the provisions unenforceable?

_____

_____

Other Defenses in Summary Ejectment Actions

Waiver

"It is the settled law, no doubt, that the landlord who, with knowledge of the breach of the condition of a lease for which he has a right of reentry, receives rent which accrues subsequently, waives the breach, and cannot afterwards insist on the forfeiture." Winder v. Martin, 183 N.C. 410 (1922).

Most recent case is Woodridge Homes Lmtd. Partnership v. Gregory (filed July 20, 2010).
Facts: One-year written lease of apartment completely subsidized (both rent and utilities) by the Rural Development Service of the USDA. Lease provided that the landlord's failure to terminate the lease when s/he would have a right to do so due to tenant's breach "shall not destroy the right of the landlord to do so later for similar or other causes." The lease also provided that nothing in the lease "shall be construed as waiving any of landlord's or tenant's rights" under state law.

The landlord notified the tenant on 26 December of its decision to terminate the lease due to tenant's "repeated minor violations" of the agreement. The landlord received one check each month from the USDA for all of the subsidized rental units in the complex. In light of its intention to terminate defendant's lease, the landlord placed the amount of rent received on behalf of defendant in a separate escrow account.

The first legal issue addressed by the court was the point at which defendant's "repeated minor violations" amounted to breach authorizing termination. The Court rejected the argument that the landlord had waived the right to terminate the lease by accepting rent along the way, citing the anti-waiver clause in the lease.

A more serious argument involved acceptance of rent payments after sending the Notice-to-Terminate letter in December. The Court found that the subsidies paid by the USDA constituted "rent' for purposes of the waiver rule, but struggled with whether the landlord could be said to have accepted those payments, noting that quite possibly there is no mechanism for giving money back to the US government. If, said the court, a refund process was readily available, the plaintiff should have taken advantage of it. Because the evidence in the record was inadequate for the Court to make that determination, it remanded the case back to the trial court to take additional evidence on that point.

The general rule about waiver is stated in numerous appellate cases. In no case that I have found, however, has the fact situation involved acceptance by the landlord of rent paid after the complaint has

been filed. Nor have any of the cases directly presented the typical case, in which the tenant pays and the landlord accepts rent not clearly intended to be either past due or future rent. If a general rule is to be extracted from the cases, it may be that payments made by a tenant are presumed to have been made with the belief that the tenant's ability to continue residence in the rental property will be advanced—thus supporting the application of the waiver principle in ambiguous circumstances.

NOTES:

_____

_____

_____

Special Rule for Breach-of-Lease-Condition Cases

"[T] he settled principle of both law and equity that contractual provisions for forfeitures are looked upon with disfavor applies with full force to stipulations for forfeitures found in leases; such stipulations are not looked upon with favor by the court, but on the contrary are strictly construed against the party seeking to invoke them. As has been said, the right to declare a forfeiture of a lease must be distinctly reserved; the proof of the happening of the event on which the right is to be exercised must be clear; the party entitled to do so must exercise his right promptly; and the result of enforcing the forfeiture must not be unconscionable."
Morris v. Austraw, 269 N.C. 218, 223, 152 S.E.2d 155, 159 (1967)

A number of North Carolina appellate cases have cited Morris in support of the rule that plaintiff is "put to his proof" in order to persuade a court to treat a lease as forfeited. A line of cases involving this issue—and also public housing law, although that factor varies in its importance in each case—are contained immediately following this page. For each case, spend a little bit of time becoming familiar with the facts and then read the court's legal analysis. What rule do you think each case stands for?

Stanley v. Harvey:

_____

_____

_____

_____

_____

_____

_____

_____

Charlotte Housing Authority v. Fleming

Lincoln Terrace v. Kelly

Timber Ridge v. Caldwell

Norman K. STANLEY and Evelyn B. Stanley
v.
Eliza HARVEY.

90 N.C.App. 535, 369 S.E.2d 382
No. 8710DC703.
June 21, 1988.

Landlords brought suit for summary ejectment. Magistrate granted judgment for landlords, and tenant appealed. The District Court, Wake County, William A. Creech, J., granted landlords possession of the property and ordered clerk to pay landlords all rent monies collected while action was pending, and tenant appealed. The Court of Appeals, Greene, J., held that: (1) there was no basis for summary ejectment, and (2) tenant was not liable for any increased rent demanded by landlords.

Vacated and remanded.

Lawrence F. Mazer, Raleigh, for plaintiffs-appellees.
East Central Community Legal Services by Augustus S. Anderson Jr., Raleigh, for defendant-appellant.

GREENE, Judge.

Defendant-lessee appeals from an order ejecting her from properties she leased from plaintiff-lessors and awarding lessors certain bond monies. The evidence tends to show lessors and lessee executed a written lease agreement on 25 January 1980. Although the original term of the lease expired on 24 January 1981, the lease provided that the terms and conditions of the lease would "automatically" continue after the original term on a month-to-month basis. Other than allowing lessors to modify the rent or other provisions should lessee offer to renew the lease for a longer term, the lease did not provide for any unilateral modification of the lease during the automatic extension period. The lease did provide that either party could terminate the lease during the extension period upon thirty days' notice. Furthermore, if lessee breached the lease during this period, lessors could terminate the lease upon one days' notice.

After the original term ended, lessors notified lessee in July 1981 that the rent would increase from the original $239.00 per month to $282.00; however, lessee continued to pay, and lessors accepted, the original rental amount for almost one year thereafter. On 12 January 1982, lessors also notified lessee that she had violated the lease since she allegedly had more occupants living with her on the premises than were permitted under the lease. Lessee denied any default as she contended that the occupancy provision had been expressly waived by lessors. Despite the 12 January 1982 letter, lessors continued to accept the original rental amount provided by the original lease until 16 July 1982 when lessors notified lessee in writing that:

Due to your default and failure to abide by the terms of your lease [the lessors] have elected to request that you vacate the premises by the 24th day of July 1982. Please take this as formal notice that [lessors] desire to take possession of the premises on July 25, 1982.

Lessee refused to vacate the premises and lessors filed a summary ejectment complaint requesting possession of the leased properties and past due rent. The magistrate granted judgment for lessors and

lessee appealed to the district court. As allowed under N.C.G.S. Sec. 42-34(b) (1984), the Clerk permitted lessee to stay execution so long as she paid into court the disputed rental amount of $282.00 each month the matter was pending. In district court, lessors again requested past due rent and ejectment of lessee from the premises based on nonpayment of the increased rent and violation of the provision limiting the number of occupants. Lessee again alleged lessors had waived any default under the lease and asserted lessors were in any event estopped because the lessors' attempted eviction was retaliatory in nature. Lessee also contended lessors' 16 July 1982 notice to "vacate" did not terminate the lease as required before lessors could retake possession under the lease.

The trial court granted lessors possession of the property and ordered the clerk to pay lessors all rent monies collected while the action was pending. However, the court denied lessors' claim for any other past due rent arising from lessors' July 1981 demand for increased rent. Lessee appeals.

The issues presented are: I) as the relevant provisions of the summary ejectment statute allow ejectment only when the lessee's estate has first "ceased," whether lessors' 16 July 1982 letter requesting lessee to "vacate" terminated lessee's leasehold estate; and II) whether lessee is entitled to a refund of rent paid into court in excess of the rent required under the original lease.

I

Section 42-26 allows the remedy of summary ejectment in only the following cases: "(1) When a tenant in possession of real estate holds over after his term has expired; (2) when the tenant ... has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased; (3) when any tenant or lessee of lands [who owes rent or has granted a lien on his crop] deserts the demised premises ..." N.C.G.S. Sec. 42-26 (1984). Under Sub-section (2), a breach of the lease cannot be made the basis of summary ejectment unless the lease itself provides for termination by such breach or reserves a right of reentry for such breach. *Morris v. Austraw,* 269 N.C. 218, 222, 152 S.E.2d 155, 159 (1967). Conversely, statutory forfeitures under Section 42-3 are not implied where the lease itself provides for termination upon non-payment of rent. *Compare* N.C.G.S. Sec. 42-3 (1984) (implying forfeiture upon failure to pay rent within ten days after demand) *with Morris,* 269 N.C. at 222, 152 S.E.2d at 158-59 (Section 42-3 implies forfeiture only where lease is "silent" on forfeiture for nonpayment of rent). Furthermore, the parties' lease may require a notice of termination that differs both in type and extent from that allowed under Section 42-14. *Compare* N.C.G.S. Sec. 42-14 (1984) (month-to-month tenancy may be terminated by seven days' "notice to quit") *with Cherry v. Whitehurst,* 216 N.C. 340, 343, 4 S.E.2d 900, 902 (1939) (Section 42-14 does not prevent agreement for different notice since provisions are permissive).

The instant lessee was not holding over after the expiration of her term but instead remained in possession under the automatic extension provisions of the original lease; furthermore, this is not an agricultural lease. Thus, this is not a case for summary ejectment under either sub-sections (1) or (3) of Section 42-26. Instead, lessors could bring this action for summary ejectment only if lessee's estate had "ceased" under Section 42-26(2). The dispositive provision of the lease reads:

If the Lessee shall fail to pay any installment of rent when due and payable or to perform any of the other conditions as herein provided, such failure shall at the option of the Lessor, terminate this lease and upon one days notice to the Lessee the Lessor may without further notice or demand reenter upon and take possession of said premises without prejudice to other remedies, the Lessee hereby expressly waiving all the legal formalities. If Lessee defaults on lease conditions herein or is evicted for non-

payment of rent, this action shall not void this lease and Lessee shall be held liable and agrees to pay any lost rent, late payment charges, bad check charges, damages, and cost of advertising house or apartment at one dollar ($1.00) per day. [emphasis added]

Lessee argues the exercise of lessors' "option" to terminate required lessors to notify lessee that the lease had terminated before lessors could "without further notice or demand" re-take possession. Lessee contends the 16 July 1982 notice did not terminate the lease as required but merely requested lessee to "vacate" the premises. As lessee's leasehold interest did not automatically terminate upon lessee's breach and as lessors allegedly did not properly terminate the lease, lessee contends there is no basis for summary ejectment under Section 42-26(2).

We agree. Our courts do not look with favor on lease forfeitures. *Couch v. ADC Realty Corp.,* 48 N.C.App. 108, 114, 268 S.E.2d 237, 242 (1980). When termination of a lease depends upon notice, the notice must be given in strict compliance with the contract as to both time and contents. *See* 49 Am Jur 2d *Landlord and Tenant* Sec. 1048 (1970) (where lessor must exercise option to terminate, lessor's declaration of forfeiture must be unequivocal and decisive). The lease here provided that lessee's breach would not automatically "void" the lease: lessee's breach would instead give lessors the option to "terminate" the lease. However, lessors' written notice merely stated lessors "elected to request that [lessee] vacate the premises" on 24 July 1982. While Section 42-17 permits termination of month-to-month tenancies upon a seven-day "notice to quit", lessors and lessee agreed to a different type of notice and a different period of notice. Aside from the arguably less-than-unequivocal "request" that lessee vacate, nowhere does the notice state that lessors have elected to "terminate" the lease as required under the contract. This was not a clear and unequivocal notice that the lease was terminated since lessee could reasonably believe lessors were requesting that she vacate without terminating the lease. Lessee could have arguably refused such a request since the lease did not provide for any automatic right of re-entry.

Accordingly, lessors' letter requesting lessee to vacate was insufficient to comply with the terms of the lease allowing lessors to terminate lessee's estate. As no statutory forfeiture under Section 42-3 was otherwise implied under these circumstances, we conclude lessors had not terminated lessee's estate before commencing this summary ejectment action. As the summary ejectment remedy is restricted to those cases expressly covered by Section 42-26, *Morris,* 269 N.C. at 223, 152 S.E.2d at 159, we hold the court should have denied lessors' claim for summary ejectment.

As we have determined that lessors had no authority under the lease to proceed with this summary ejectment action, we find it unnecessary to address any other assignment of error raised by lessee other than that stated below.

Lessee next argues that the court should have ordered the Clerk to refund to her all rent paid to the court in excess of the original rent of $239.00 per month. At the time lessors allegedly notified lessee the rent was being increased to $282.00 per month, the lease had automatically converted to a month-to-month tenancy with the same terms and conditions as during the original lease term. Neither before or after the institution of the summary ejection action did lessee agree to any rent increase. Instead, she merely paid the increased rent as a condition of her appeal. Since the lease expressly provided that its terms and conditions-including rent-would automatically continue during the extension period and as lessee had not offered to renew the lease for a longer period, the lease did not permit lessors' unilateral modification of any provision of the lease during the automatic extension period. Accordingly, lessee was not liable for any increased rent demanded by lessors. If lessee would not agree to a modification of

the rent provisions of the lease agreement, lessors' only recourse was to terminate the lease. As we have noted, they did not do this.

Therefore, as respects the bond posted by lessee with the clerk during the pendency of this action, lessors were only entitled to receive from that fund outstanding rent based on the original rental rate. The balance of lessee's bond in excess of that amount was due and payable to lessee. Thus, we vacate the court's judgment insofar as it awarded lessors possession of the leased premises and the entire bond fund posted by lessee. We remand the case for further proceedings consistent with this opinion.

Vacated and remanded.

PARKER and COZORT, JJ., concur.

CHARLOTTE HOUSING AUTHORITY, Plaintiff-Appellee,
v.
Martha FLEMING, Defendant-Appellant.

123 N.C.App. 511, 473 S.E.2d 373
No. COA95-712.
Aug. 6, 1996.

Based on alleged criminal activity of tenant's nonresident son, city housing authority filed summary ejectment action. The Mecklenburg County Small Claims dismissed, but the Mecklenburg County District Court, H. William Constangy, J., entered judgment for authority on de novo review. Tenant appealed. The Court of Appeals, Wynn, J., held that evidence did not establish that son was "guest" on evening of underlying incident such that ejectment based on his alleged conduct was authorized under lease.
Reversed.

Appeal by defendant from order entered 23 February 1995 by Judge H. William Constangy in Mecklenburg County District Court. Heard in the Court of Appeals 4 June 1996.

Robinson, Bradshaw & Hinson, P.A. by A. Todd Capitano, Charlotte, for plaintiff-appellee.
Legal Services of Southern Piedmont, Inc. by Theodore O. Fillette, III, and Deborah A. Nance, Charlotte, for defendant-appellant.

WYNN, Judge.

Since early 1983, defendant Martha Fleming has rented an apartment in the Savannah Woods complex from the Charlotte Housing Authority ("CHA"). This matter arises from an action started in October 1994 by CHA to evict Ms. Fleming because of the alleged criminal activities of her adult son, Arthur, who did not live with her.

During the evening of 3 October 1994, Officers J.L. Jennings and J.K. Patina observed Arthur and a group of other men standing in the Savannah Woods complex near Ms. Fleming's apartment. Two of the men noticed the police car and attempted to flee. Officer Jennings chased the two men on foot into a wooded area off of the premises of the apartment complex where he saw one of the men throw something into the bushes. A short time thereafter, Officer Jennings apprehended Arthur and charged him with resisting a public official and possession of cocaine with intent to distribute. The record does not indicate that Arthur was ever convicted on any charges stemming from this arrest.

Ms. Fleming testified that during the evening of 3 October, she observed a car light through her window, looked out of that window, and saw Arthur exiting a car. Later, her nephew came into her apartment and informed her that the police were chasing someone. Ms. Fleming then left her apartment and observed her son, already under arrest, being placed in a police car.

Based on the alleged criminal activity of Arthur Fleming, CHA filed a summary ejectment action against Ms. Fleming in Mecklenburg County Small Claims Court, relying on two provisions of her lease which allowed for her eviction if her guests or visitors engaged in criminal activity. The small claims court dismissed the action, finding that CHA had not proved by a preponderance of the evidence that it

had grounds to evict Ms. Fleming. CHA appealed for a trial *de novo* to the Mecklenburg County District Court. In an order dated 23 February 1995, Judge William Constangy found for the CHA, and ordered Ms. Fleming to vacate the premises. From this order, Ms. Fleming appeals.

The issue on appeal is whether CHA failed to present sufficient evidence to show that: (I) Arthur was a guest in Ms. Fleming's apartment at the time of his alleged criminal activity, or (II) Arthur was engaged in criminal activity. We reverse on the basis that Arthur was not a guest of Ms. Fleming and therefore do not reach the alternative issue of whether the evidence showed he was engaged in criminal activity.

In order to evict a tenant in North Carolina, a landlord must prove: (1) That it distinctly reserved in the lease a right to declare a forfeiture for the alleged act or event; (2) that there is clear proof of the happening of an act or event for which the landlord reserved the right to declare a forfeiture; (3) that the landlord promptly exercised its right to declare a forfeiture, and (4) that the result of enforcing the forfeiture is not unconscionable. *See, Morris v. Austraw,* 269 N.C. 218, 223, 152 S.E.2d 155, 159 (1967) (*quoting,* 32 Am.Jur., Landlord and Tenant, § 848). In addition, "Our courts do not look with favor on lease forfeitures." *Stanley v. Harvey,* 90 N.C.App. 535, 539, 369 S.E.2d 382, 385 (1988).

In the instant case, CHA relied on two provisions of Ms. Fleming's lease which allowed CHA to evict her if her guests engaged in criminal activity. Paragraph 16(f) of the lease states:

> *I, all members of my household, our guests or visitors and other persons under control of household members, shall not engage in criminal activity, ... on or near CHA property, while I am a resident in public housing, and such criminal activity shall be cause for termination of the lease....*(emphasis supplied).

Paragraph 20(b) states:

> *[I]f I, members of my household, our guests or visitors, and other persons under our control, engage in criminal activity, including drug-related activities, on or near CHA property, the CHA may end my lease.*

Since CHA sought to evict Ms. Fleming due to the alleged criminal activity of a guest, CHA must show that Arthur was a guest of Ms. Fleming's on 3 October 1994. This it failed to do.

The word "guest" is not defined in Ms. Fleming's lease; accordingly, it should be given its natural and ordinary meaning. *See, Martin v. Ray Lackey Enterprises,* 100 N.C.App. 349, 354, 396 S.E.2d 327, 331 (1990) (holding that the rules governing interpretation of a lease are the same as those governing interpretation of a contract); *E.L. Scott Roofing Co. v. State of N.C.,* 82 N.C.App. 216, 223, 346 S.E.2d 515, 520 (1986) (holding that when a term is not defined in a contract, the presumption is that the term is to be given its ordinary meaning and significance); *Silvers v. Horace Mann Ins. Co.,* 324 N.C. 289, 295, 378 S.E.2d 21, 25 (1989) (holding that contracts are construed against the drafter). Webster's Third New International Dictionary defines "guest" as follows: "a person entertained in one's house, ... a person to whom *hospitality is extended,* ... one invited to participate in some activity at the expense of another ...." (emphasis supplied).

The uncontroverted evidence in the instant case is that Ms. Fleming was not aware of Arthur's presence in front of her apartment until after he arrived, had not invited him to her apartment in advance, did not extend him any hospitality after becoming aware of his arrival, and did not invite him to participate in any activity. Instead, the evidence shows that Arthur came to Savannah Woods of his own volition, met with Lenon Smith, and possibly others, and did not speak with Ms. Fleming until after

he was arrested. In addition, there was uncontroverted evidence that Arthur often visited Savannah Woods without stopping to see Ms. Fleming.

CHA nonetheless contends that the trial court properly labeled Arthur as a guest because there was evidence that: (1) Ms. Fleming had on a past occasion allowed her apartment to be used as a refuge for those suspected of criminal activity; (2) Lenon Smith, the man arrested with Arthur on 3 October 1994, was arrested in front of Ms. Fleming's apartment in the prior week, and retrieved his identification from Ms. Fleming's apartment; (3) Ms. Fleming had previously interfered with the Police Department's efforts to alleviate the drug problem in Savannah Woods; (4) following his arrest, Arthur called Ms. Fleming to ensure that she looked after his car; and (5) Ms. Fleming is Arthur's mother, a close relative.

We find that this evidence is not relevant in determining whether Arthur was a guest of Ms. Fleming's on 3 October 1994. Instead, the relevant question is whether Arthur met the definition of a guest of Ms. Fleming when he visited Savannah Woods on that date. The evidence in this case fails to show that Ms. Fleming either invited Arthur to Savannah Woods on 3 October, or acted in any way to extend him hospitality once he arrived. Accordingly, we conclude that the record does not support the conclusion that Arthur was a guest of Ms. Fleming's on that date.

For the foregoing reasons, the order of the trial court is,

Reversed.

EAGLES and SMITH, JJ., concur.

LINCOLN TERRACE ASSOCIATES, LTD., Plaintiff
v.
Sharanza KELLY & All Occupants, Defendant.

179 N.C.App. 621, 635 S.E.2d 434

No. COA05-1563.
Oct. 3, 2006.

Appeal by defendant from judgment entered 19 April 2005 by Judge Thomas G. Taylor in Gaston County District Court. Heard in the Court of Appeals 21 August 2006.

No brief for plaintiff-appellee.
Robinson, Bradshaw & Hinson, P.A., by Julian H. Wright, Jr., Charlotte; Legal Aid of North Carolina, Inc., by Sharon S. Dove, for defendant-appellants.

HUNTER, Judge.

Sharanza Kelly ("appellant") appeals on behalf of herself and her family from a judgment entered 19 April 2005. For the reasons stated herein, we reverse this order.

The trial court made findings that appellant, her husband, Franklin Kelly ("Franklin"), and their two children entered into a lease for an apartment at Lincoln Terrace Apartments on 21 October 2003. The apartment rent was subsidized by the United States Department of Housing and Urban Development ("HUD"), requiring compliance with applicable federal rules and regulations related to the program.

In October of 2004, Franklin damaged the unit in which appellant and Franklin lived by kicking in the door. The door was repaired shortly thereafter by appellee. No charges were billed to appellant and Franklin at the time the repair was completed.

On 21 December 2004, a verbal altercation occurred in the common area of the Lincoln Terrace Apartments between Franklin and other tenants. The manager of the Lincoln Terrace Apartments, Barbara White ("White"), summoned police. The police directed residents and guests to return to their residences. Approximately twenty minutes later, after the police had left, White testified she saw a fist fight between Franklin and another resident, Adam Randolph, in the parking lot. White testified that she saw both men swinging at one another, but did not see how the altercation began. The trial court found that on 27 December 2004, appellant was served with a HUD Notice of Infraction regarding the fight on 21 December 2004, and that on 28 December 2004, appellant was served with a Notice of Termination.

On 28 January 2005, appellee filed a complaint in summary ejectment against appellant and the occupants of her apartment, alleging as lease infractions that members of the household had disturbed and harassed other tenants, had assaulted other tenants, and had damaged property by kicking in the front door.

A trial was conducted before the magistrate on 22 February 2005 and judgment was awarded to appellee. Appellant appealed to district court and both parties waived their right to a jury trial. The trial court awarded judgment in appellee's favor and damages of $144.58 and the cost of the appeal. Appellant appeals.

I.

Appellant contends the trial court erred in awarding appellee judgment when appellee failed to show that appellant was properly served with a termination notice which strictly complied with the lease agreement. As we find no evidence to support the trial court's finding after careful review of the record, we agree.

"[A] trial court's findings of fact in a bench trial have the force of a jury verdict and are conclusive on appeal if there is competent evidence to support them, even though there may be evidence that would support findings to the contrary." *Biemann & Rowell Co. v. Donohoe Cos.,* 147 N.C.App. 239, 242, 556 S.E.2d 1, 4 (2001). "However, conclusions of law reached by the trial court are reviewable de novo." *Id.*

In order to evict a tenant in North Carolina, a landlord must prove: (1) That it distinctly reserved in the lease a right to declare a forfeiture for the alleged act or event; (2) that there is clear proof of the happening of an act or event for which the landlord reserved the right to declare a forfeiture; (3) that the landlord promptly exercised its right to declare a forfeiture, and (4) that the result of enforcing the forfeiture is not unconscionable.

Charlotte Housing Authority v. Fleming, 123 N.C.App. 511, 513, 473 S.E.2d 373, 375 (1996). "Our courts do not look with favor on lease forfeitures." *Stanley v. Harvey,* 90 N.C.App. 535, 539, 369 S.E.2d 382, 385 (1988). "When termination of a lease depends upon notice, the notice must be given in strict compliance with the contract as to both time and contents." *Id.* (holding that when notice to vacate was insufficient to comply with the terms of the lease, lease was not properly terminated before commencement of summary ejectment action).

Here, the relevant portion of the governing lease, Paragraph 23, Termination of Tenancy, states that:

e. *If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice and the grounds for the proposed termination.... Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law. All termination notices must:*

- *specify the date this Agreement will be terminated;*
- *state the grounds for termination with enough detail for the tenant to prepare a defense;*
- *advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and*
- *advise the Tenant of his/her right to defend the action in court.*

f. If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by paragraph e.

A review of the record shows that no Notice of Termination was entered into evidence. In closing arguments during the bench trial, appellee's counsel stated:

My client testified on the notice of termination, in fact, she testified on cross, [appellant] asked her, and she testified that she had served them with notice of termination because it's a four or five-page document, the last page of which had the bill for the damages.

In [appellant]'s closing she stated and she was arguing about the waiver on the door, she said on December 28th after the notice of termination had been served on the 27th. So, it's very clear that notice of termination was served. My client testified to it. We did not introduce it, but we did in fact testify to it which is sufficient.

A review of the trial transcript reveals that the sole evidence presented to the trial court regarding the Notice of Termination was in the form of testimony by White. On direct examination, White did not testify regarding a notice of termination or eviction. On cross-examination, White testified that she sent out a Notice of Termination to appellant on 27 December 2004. (T.p.72) White stated that the Notice of Termination did not include the damage to the door, but did include the incident on 21 December 2004. When asked if she was reading the Notice of Termination, White responded that she was. The following exchange then occurred:

BY THE COURT: We have it as an exhibit if you would like [to] show it to her so that-

BY [APPELLANT]: That would be good.

BY THE COURT: I believe its exhibit number-

BY [APPELLEE]: The notice of infraction?

BY THE COURT: Two, notice of infraction, is that what you're talking about?

BY [APPELLANT]: That was not what I was talking about.

BY THE COURT: Oh, okay. All right. Then if you have something you want to show her so that we're on the same page.

BY [APPELLANT]: Ms. White, if you could look through your materials and find the notice of termination or, no, I guess it's called notice of eviction.

A: Are you talking about the notice that advises them the tenancy will be terminated?

Q : That's correct.

A: I have it in my hand, ma'am.

Q: If I can take a look at it. May I approach, your Honor?

BY THE COURT: Yes.

BY [APPELLANT]: Ms. White, I think, if you could take a look at that, that notice that you've got in front of you, that December 27th, '04 notice. That does not say anything about a door, does it?

A : No, it does not.

Q: Doesn't say anything about damages to a door either, does it?

A: No, it does not.

Q: Okay. And you sent out a notice of eviction on the same date, on December 27th, '04, correct? Titled "Eviction Notice" at the top.

A: Are you talking about the company eviction notice?

Q: I believe it's the company eviction notice.

A: Yes, ma'am.

Q: Okay. And that eviction notice does not say anything about the door, correct?

A : No, it does not.

No further questions were asked regarding the Notice of Termination or eviction on cross-examination. On re-direct, appellee questioned White regarding the Notice of Termination as follows:

Q: [Appellant] asked you about the notice of termination that you sent?

A: Yes.

Q: Eviction notice and she also asked you about the notice of termination. Do you remember that?

A: Yes, I do.

Q : Now, you have your copies with you?

A : Yes, I do.

Q: Looking at the last page of the December 27th documents, it's about the date December 28th, 2004. Do you see them? Let me approach and show you what I'm-and we can move along more quickly. I'm showing you-just refresh your memory and state what that document is.

A: Okay. I know what that is.

Q: Okay. Did Ms. Kelly get a copy-sign saying that she had gotten a copy of the eviction letter on 12/27 for five pages of the thirty-day notice?

A : *Yes.*

Q : *Did she also sign challenging the four infractions, four, five, six and seven?*

A : *Yes, she did.*

Q: *Did she also sign acknowledging the charges, the account charges, for the damages?*

A: *Yes, she did.*

No further questions regarding the Notice of Termination or eviction were asked by either party. Based on White's testimony, the trial court made findings that:

18. On December 28, 2004 the plaintiff served the defendants with a HUD Notice of Termination.
19. The defendants signed a form acknowledging receipt of the Notice of Termination which included the reasons for the termination, the fight, and the damages for the door cited below.
36. The plaintiff complied with all State and HUD requirements pertaining to notice, termination and procedure in filing the action in summary ejectment.

As set out *supra,* White testified that the Notice of Termination was sent out on 27 December 2004 and that appellant signed for the notice. White further stated the Notice of Termination mentioned the fighting incident on 21 December 2004, but did not include as one of the grounds for termination the damages to the door. White did not testify as to any further contents of the Notice of Termination.

No further evidence was offered as to the Notice of Termination. The only document submitted into evidence dated 27 December 2004 was the Notice of Infraction, which did not fully comply with the lease requirements for termination of the lease agreement. No evidence was offered to show that Notice of Termination specified the date the agreement would be terminated, or included an advisement that the tenant had ten days to discuss the proposed termination with the landlord and the right to defend the action in court, as specifically required by both the terms of the lease and the applicable HUD regulations. Further, White's testimony established that one of the grounds listed in the complaint for summary ejectment, the destruction of the door, was not included in the Notice of Termination, depriving appellant of notice to prepare a defense as to that ground.

Competent evidence does not support the trial court's finding of fact 19 that the Notice of Termination included damage to the door as a reason for the termination. Competent evidence also does not support finding of fact 36 that appellee complied with all State and HUD requirements pertaining to notice and termination. We therefore find the trial court erred in these findings.

Appellant specifically raised the issue to the trial court that appellee failed to provide proof that proper Notice of Termination in compliance with the requirements of the lease was given. Although sufficient evidence was offered to support the trial court's findings and conclusions as to one of the grounds for summary ejectment of which appellant had proper notice, criminal activity, the record is devoid of evidence to support findings that appellant was provided with notice of the other lease requirements for termination of the agreement. As the findings of fact do not support the conclusion that appellee properly complied with the requirements of the notice provision of the parties' lease agreement, we find the trial court erred in granting summary ejectment against appellant, as appellee failed to show that the termination notice strictly complied with the terms of the lease. *Stanley,* 90

N.C.App. at 539, 369 S.E.2d at 385. We reverse the judgment and do not reach appellant's remaining assignments of error.

As the evidence of record does not support the trial court's findings as to proper Notice of Termination, the trial court's grant of summary ejectment is reversed.

Reversed.

Chief Judge MARTIN and Judge McCULLOUGH concur.

TIMBER RIDGE, Plaintiff,
v.
Yumeka CALDWELL, Defendant.
195 N.C.App. 452, 672 S.E.2d 735
No. COA08-689.
Feb. 17, 2009.

Caudle & Spears, P.A., by Natalie D. Potter and Christopher J. Loebsack, Charlotte, for plaintiff-appellee.
Legal Aid of North Carolina, Inc., by Chad Crockford, Theodore O. Fillette, and Linda S. Johnson, Charlotte, for defendant-appellant.

BRYANT, Judge.

Yumeka Caldwell (defendant) appeals from an order entered 18 February 2008 removing defendant and placing Timber Ridge Apartments (plaintiff) in possession of an apartment located at 7203B Barrington Drive, Charlotte, North Carolina. We reverse.

Facts

Defendant and her two children began residing in an apartment owned by plaintiff on 17 April 2007. On 30 August 2007, Officer Fishbeck was dispatched to defendant's apartment because of drug complaints by the apartment manager. Upon arrival, Officer Fishbeck knocked on the door and when defendant answered the door, advised defendant of the reason he was there and requested defendant's consent to search the apartment. Defendant consented.

Plaintiff filed a Complaint in Summary Ejectment on 21 November 2007 and a judgment was announced in favor of plaintiff on that date. Defendant filed a written notice of appeal to district court on 17 December 2007.

At the district court hearing on 18 December 2007, Officer Fishbeck testified multiple clear plastic baggies that had the corners torn off of them were located in defendant's apartment on 30 August 2007. Also located in the apartment was a torn plastic baggie containing traces of marijuana. Officer Fishbeck stated he issued defendant a citation for possession of drug paraphernalia and notified the management of Timber Ridge Apartments of the citation. However, at the time of the hearing, defendant had not been convicted of possession of drug paraphernalia.

Defendant offered testimony in opposition to plaintiff's evidence and stated the plastic baggie the officer showed her after searching the apartment on 30 August 2007 did not contain any traces of marijuana. Defendant also denied having multiple plastic baggies in her apartment, and stated that she had not been convicted of possession of drug paraphernalia.

On 18 February 2008, the district court entered judgment requiring defendant be removed from and plaintiff put into possession of the premises described in the complaint. Defendant appeals.

On appeal, defendant argues the trial court erred by: (I) failing to require plaintiff to prove defendant was provided adequate termination notice in compliance with applicable federal law; (II) failing to

require that plaintiff prove defendant breached the lease agreement or was holding over beyond the end of the lease agreement; and (III) denying defendant's motion to dismiss at the close of plaintiff's evidence.

I

Defendant argues the trial court erred by failing to require plaintiff to prove defendant was provided adequate termination notice as required by 24 C.F.R. § 247.4. We agree.

Pursuant to 24 C.F.R. § 247.4(a) (2008), prior to terminating the lease agreement of a tenant in a federally subsidized housing project, a landlord must provide notice to the tenant in the following manner:

(a) Requisites of Termination Notice. The landlord's determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated on a date specified therein; (2) state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense; (3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense; and (4) be served on the tenant in the manner prescribed by paragraph (b) of this section.

Id.

"[A] tenant in a federally subsidized low-income housing project enjoys substantial procedural due process rights under the Fifth and Fourteenth Amendments." *Goler Metropolitan Apartments, Inc. v. Williams,* 43 N.C.App. 648, 650, 260 S.E.2d 146, 148 (1979). The tenant has an entitlement to continued occupancy and cannot be evicted until certain procedural protections, such as notice, have been given to the tenant. *Id.* "Our courts do not look with favor on lease forfeitures." *Stanley v. Harvey,* 90 N.C.App. 535, 539, 369 S.E.2d 382, 385 (1988). "When termination of a lease depends upon notice, the notice must be given in strict compliance with the contract as to both time and contents." *Lincoln Terrace Assocs., Ltd. v. Kelly,* 179 N.C.App. 621, 623, 635 S.E.2d 434, 436 (2006) (quotations omitted).

Here, no copy of the lease agreement was submitted into evidence. Plaintiff contends no evidence was submitted by either party that defendant's lease was federally subsidized and therefore entitled to the protections afforded tenants of federally subsidized housing. However, a review of plaintiff's Complaint in Summary Ejectment reveals plaintiff indicated by checking a box on the pre-printed form that defendant's lease was subsidized by the Section 8 housing program [FN1]. Thus we conclude defendant's lease was entitled to the protections afforded tenants of federally subsidized housing. As such, plaintiff was required to comply with 24 C.F.R. § 247.4.

FN1. Section 8 of the United States Housing Act of 1937, as amended in 1974, establishes the federally subsidized housing assistance payments program commonly referred to as the Section 8 program. *See* 42 U.S.C.A. § 1437f (2008).

In *Lincoln Terrace,* the plaintiff failed to submit a copy of the Notice of Termination. 179 N.C.App. at 624, 635 S.E.2d at 436. The only evidence presented that a Notice of Termination had been issued to the defendant was testimony presented on behalf of the plaintiff by the apartment manager. *Id.* Although the trial court had granted summary ejectment on the plaintiff's behalf, this Court reversed the

judgment of the trial court because there was no evidence in the record to support a finding that a Notice of Termination had been properly issued. *Id.* at 628, 635 S.E.2d at 438.

In the present case, defendant argued during the hearing that plaintiff failed to provide a notice of lease termination in compliance with the requirements of 24 C.F.R. § 247.4. Specifically, defendant argued the notice of lease termination did not provide defendant with sufficient detail to enable defendant to prepare a defense. A review of the transcript indicates no notice of termination was entered into the record. Also, no copy of plaintiff and defendant's lease agreement was entered into the record. The only indication that a termination notice had been issued was the testimony of Ms. English, the property manager, that a termination notice was issued to defendant.

As in *Lincoln Terrace,* there is no evidence in the record in the present case that plaintiff complied with the requirements of 24 C.F.R. § 247.4 by providing a proper Notice of Termination. Therefore, the trial court's grant of summary ejectment was in error and must be reversed. Because of our holding, we need not address defendant's remaining assignments of error. *See Lincoln Terrace,* 179 N.C.App. at 628, 635 S.E.2d at 438 (declining to reach appellant's remaining arguments when grant of summary ejectment held in error and reversed because evidence was insufficient to establish a proper Notice of Termination had been issued).

Reversed.

Judges McGEE and GEER concur.

Getting Organized document

Notes on Stump-the-Teacher

_____

_____

_____

_____

_____

_____

Notes on PM Trial

_____

_____

_____

Tab:

Day 3

Schedule for Today

9:00	Check-In
9:15	*Ubi Jus Ibi Remedium* ["There is no Right Without a Remedy"---But What Should The Remedy Be?]
10:30	Break
10:45	AM Trial
11:15	Open Forum: What's Left to Talk About?
11:45	Evaluations & Presentation of Certificates
12:00	Adjourn

Objectives for Today

By the time you finish today, you will

1. Be familiar with the remedies and measures of damages most often used in small claims court.
2. Have had an opportunity to consider some of the theoretical underpinnings of choice of remedies, and thus be able to articulate why a particular measure of damages is more or less appropriate in a given case.
3. Be able to identify a liquidated damages clause and perform the correct legal analysis to determine whether to enforce the clause as written.
4. Have an opportunity to ask any remaining questions about small claims law and procedure.
5. Have a final opportunity to observe (or conduct) and analyze the legal issues presented in a breach of warranty action in a mock trial.

Checking In

Discuss with your tablemates what struck you most about our time together yesterday. Do you have questions about any of the material? Did you come across anything that prompted you to consider modifying your approach to conducting court or deciding cases?

_____
_____
_____

Damages: Case study

Paul was mowing the lawn, using his brand new riding lawnmower, when he mowed over a rake carelessly left in the tall grass by his next door neighbor, Debbie. The rake ruined the lawnmower blades, broke a headlight, and scratched up the finish on the underside of the mower. It also punctured one of the tires, and put a hole in his oil tank, It also scared Paul almost to death—he didn't know what that awful grinding noise could be, and he thought for a moment that he'd run over someone's pet or something. When he jumped off the mower, his sleeve caught in the cup-holder and broke it. He sued in small claims court, filing his complaint on May 1. The accident actually occurred on April 1, but Paul spent some time trying to work things out with Debbie. Then he had problems getting her served, and once had a conflict at work and so had to ask for a continuance. All in all, Paul didn't actually succeed in having the case heard until July 15. He seeks the following damages:

$2000 cost to replace the mower (FMV of new mower less FMV of trashed mower, which Paul says is $0.

$750 pain & suffering (for putting Paul through such a startling experience on what would otherwise have been a great day with the new lawnmower, plus having to spend the intervening time without that pleasure, and now summer's almost over)

$500 cost of lawn service between April 1 and Sept. 1 (Paul has counted up to determine the earliest he could possibly enforce the judgment if he's successful today)

$750 punitive damages. Paul testifies that he had talked with Debbie twice before about leaving her tools on his side of the fence, and she recklessly ignored his warning. He also points out that the accident never would have happened if she hadn't been trespassing.

$500 attorneys' fees

$100 incidental fees associated with having to come to court to enforce his rights (lost wages, cost of gas and parking, missing the Employee's Appreciation Day free lunch at work today, etc.)

$107 pre-judgment interest due on entire amount outlined above, calculated at 8%, for 3.5 months

Notes: _____

_____

_____

_____

_____

_____

_____

Debbie makes the following specific arguments in addition to the more general one that these damages are out of all proportion in light of the minor negligence—if it can even be called that—involved in forgetting to pick up a rake:

1. She produces an expert lawnmower repair person who testifies that the mower could be restored to like-new condition for $1500. (Paul says the mower will never again feel "like new" to him.)

2. She points out that Paul introduced no evidence, aside from his unsupported opinion, that the FMV of the mower after the incident was $0. Because Paul failed to produce any (competent) evidence on this point, Debbie contends that he has failed to prove that he is entitled to any compensatory damages.

3. Debbie forces Paul to admit during his testimony that he has already received $1200 as payment on a claim he filed with his homeowner's insurance. She points out that allowing him compensatory damages would amount to double recovery—a windfall for Paul.

4. She indignantly denies that she was trespassing, saying that they "visited back and forth as neighbors all the time."

5. Debbie argues that she made no attempt to evade service, nor was she the party who sought the continuance, and so any pretrial delay was Paul's own fault. Besides that, she's never heard of anybody "having to pay interest on an accident!"

6. See #5 above, related to cost of lawn service for 3.5 months.

Assume that you believe the facts to be as stated by the parties (not necessarily their contentions—just the facts)
Discuss each of these arguments and damage items with your tablemates. Feel free to consult your book as well as the legal resources set out in the following pages. Be prepared to render your judgment and explain your reasoning for each item.
Notes: _____

_____

_____

_____

_____

_____

_____

_____

Notes on Morning Trial

Notes: _____

_____

_____

_____

_____

_____

_____

_____

Tab:

Forms

Small Claims Forms

(These and other forms can be found at the www.nccourts.org webpage)

AOC-CVM-100	Magistrate Summons
AOC-CVM-200	Complaint for Money Owed
AOC-CVM-201	Complaint in Summary Ejectment
AOC-CVM-202	Complaint to Recover Possession of Personal Property
AOC-CVM-203	Complaint To Enforce Possessory Lien On Motor Vehicle
AOC-CVM-400	Judgment In Action To Recover Money Or Personal Property
AOC-CVM-401	Judgment In Action For Summary Ejectment
AOC-CVM-402	Judgment In Action On Possessory Lien On Motor
AOC-G-108	Order

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division - Small Claims

Plaintiff(s)

VERSUS

Defendant(s)

MAGISTRATE SUMMONS

☐ **ALIAS AND PLURIES SUMMONS**

G.S. 7A-217, -232; 1A-1, Rule 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

TO:

Name And Address Of Defendant 1

TO:

Name And Address Of Defendant 2

A Small Claim Action Has Been Commenced Against You!

You are notified to appear before the magistrate at the specified date, time and location of trial listed below. You will have the opportunity at the trial to defend yourself against the claim stated in the attached complaint.

You may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court at any time before the time set for trial. Whether or not you file an answer, the plaintiff must prove the claim before the magistrate.

If you fail to appear and defend against the proof offered, the magistrate may enter a judgment against you.

Date of Trial

Time Of Trial ☐ AM ☐ PM

Location Of Court

Name And Address Of Plaintiff Or Plaintiff's Attorney

Date Issued

Signature

☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

AOC-CVM-100, Rev. 4/01

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	*Time Served*	*Name Of Defendant*
	☐ AM ☐ PM	

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copy Left (If Corporation, Give Title Of Person Copy Left With)

☐ Other manner of service: *(specify).*

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	*Time Served*	*Name Of Defendant*
	☐ AM ☐ PM	

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copy Left (If Corporation, Give Title Of Person Copy Left With)

☐ Other manner of service: *(specify).*

☐ Defendant WAS NOT served for the following reason:

FOR USE IN SUMMARY EJECTMENT CASES ONLY

☐ Service was made by mailing by first class mail a copy of the summons and complaint to the defendant(s) and by posting a copy of the summons and complaint at the following premises.

Date Served	*Name(s) Of The Defendant(s) Served By Posting*
Address Of Premises Where Posted	
Service Fee $	*Signature Of Deputy Sheriff Making Return*
Date Received	*Name Of Sheriff (Type Or Print)*
Date Of Return	*County Of Sheriff*

AOC-CVM-100, Side Two, Rev. 4/01

File No.

COMPLAINT FOR MONEY OWED

G.S. 7A-216, 7A-232

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

1. The defendant is a resident of the county named above.
2. The defendant owes me the amount listed for the following reason:

Principal Amount Owed	$
Interest Owed *(if any)*	$
Total Amount Owed	$ 0.00

(check one below)

☐ On An Account *(attach a copy of the account)*	*Date From Which Interest Due*		*Interest Rate*
☐ For Goods Sold And Delivered Between	*Beginning Date*	*Ending Date*	*Interest Rate*
☐ For Money Lent	*Date From Which Interest Due*		*Interest Rate*
☐ On a Promissory Note *(attach copy)*	*Date Of Note*	*Date From Which Interest Due*	*Interest Rate*

☐ For a Worthless Check *(attach a copy of the check)*

☐ For conversion *(describe property)*

☐ Other: *(specify)*

I demand to recover the total amount listed above, plus interest and reimbursement for court costs.

Date	*Signature Of Plaintiff Or Attorney*

Name And Address Of Plaintiff

County	*Telephone No.*

VERSUS

Name And Address Of Defendant 1 ☐ *Individual* ☐ *Corporation*

County	*Telephone No.*

Name And Address Of Defendant 2 ☐ *Individual* ☐ *Corporation*

County	*Telephone No.*

Name And Address Of Plaintiff's Attorney

Forms-Pg 5

(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.

2. The PLAINTIFF cannot sue in small claims court for more than $5,000.00 excluding interest and costs.

3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.

4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.

5. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is entered in favor of the plaintiff, court costs may be charged against the defendant.

6. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.

7. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.

8. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is rendered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is rendered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is rendered.

9. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.

10. **The Clerk or magistrate cannot advise you about your case or assist you in completing this form. If you have any questions, you should consult an attorney.**

AOC-CVM-200, Rev. 2/06

File No.

COMPLAINT IN SUMMARY EJECTMENT

G.S. 7A-216, 7A-232; Ch. 42, Art. 3 and 7

Name And Address Of Plaintiff

County | Telephone No.

VERSUS

Name And Address Of Defendant 1 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Defendant 2 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Plaintiff's Attorney Or Agent

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

1. The defendant is a resident of the county named above.
2. The defendant entered into possession of premises described below as a lessee of plaintiff.

Description Of Premises (Include Location) | ☐ Conventional ☐ Public Housing ☐ Section 8

Rate Of Rent $ per ☐ Month ☐ Week | Date Rent Due | Date Lease Ended | Type Of Lease ☐ Oral ☐ Written

3. ☐ The defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the 10-day grace period before filing the complaint.
   ☐ The lease period ended on the above date and the defendant is holding over after the end of the lease period.
   ☐ The defendant breached the condition of the lease described below for which re-entry is specified.
   ☐ Criminal activity or other activity has occurred in violation of G.S. 42-63 as specified below.

Description Of Breach/Criminal Activity (give names, dates, places and illegal activity)

4. The plaintiff has demanded possession of the premises from the defendant, who has refused to surrender it, and the plaintiff is entitled to immediate possession.
5. The defendant owes the plaintiff the following:

Description Of Any Property Damage

Amount Of Damage (If Known) $ | Amount Of Rent Past Due $ | Total Amount Due $ 0.00

6. I demand to be put in possession of the premises and to recover the total amount listed above and daily rental until entry of judgment plus interest and reimbursement for court costs.

Date | Signature Of Plaintiff/Attorney/Agent

CERTIFICATION WHEN COMPLAINT SIGNED BY AGENT OF PLAINTIFF

I certify that I am an agent of the plaintiff and have actual knowledge of the facts alleged in this Complaint.

Date | Signature

Forms-Pg 7

AOC-CVM-201, Rev. 2/06

(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.

2. The PLAINTIFF cannot sue in small claims court for more than $5,000.00 excluding interest and costs.

3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.

4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.

5. In filling out number 3 in the complaint, if the landlord is seeking to remove the tenant for failure to pay rent when there is no written lease, the first block should be checked. (Defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the ten (10) day grace period before filing the complaint.) If the landlord is seeking to remove the tenant for failure to pay rent when there is a written lease with an automatic forfeiture clause, the third block should be checked. (The defendant breached the condition of the lease described below for which re-entry is specified.) And "failure to pay rent" should be placed in the space for description of the breach. If the landlord is seeking to evict tenant for violating some other condition in the lease, the third block should also be checked. If the landlord is claiming that the term of the lease has ended and the tenant refuses to leave, the second block should be checked. If the landlord is claiming that criminal activity occurred, the fourth block should be checked and the conduct must be described in space provided.

6. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.

7. The PLAINTIFF must appear before the magistrate to prove his/her claim.

8. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.

9. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is entered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is entered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is entered.

10. If the defendant appeals and wishes to remain on the premises the defendant must also post a stay of execution bond within ten (10) days after the judgment is entered.

11. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.

12. **The Clerk or magistrate cannot advise you about your case or assist you in completing this form. If you have any questions, you should consult an attorney.**

AOC-CVM-201, Side Two, Rev. 2/06

File No.

COMPLAINT TO RECOVER POSSESSION OF PERSONAL PROPERTY

☐ PLAINTIFF A SECURED PARTY

☐ PLAINTIFF NOT A SECURED PARTY

G.S. 7A-232; 25-9-609

Name And Address Of Plaintiff

Social Security No./Taxpayer ID No.

County | Telephone No.

VERSUS

Name And Address Of Defendant 1 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Defendant 2 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

WHEN PLAINTIFF IS A SECURED PARTY

The defendant is a resident of the county named above. I have a security interest in the personal property described in the attached security agreement. The total current value of this property is as shown below. The defendant has defaulted in the payment of the debt which the property secures or has otherwise breached the terms of the security agreement giving me the right to claim immediate possession of the property described below. I demand recovery of this property and reimbursement for court costs.

Description Of Personal Property In Which You Have a Secured Interest (Attach Copy Of Security Agreement) | Total Value Of Property To Be Recovered $

Date | Signature Of Plaintiff Or Attorney

WHEN PLAINTIFF IS NOT A SECURED PARTY

The defendant is a resident of the county named above. The defendant has in his/her possession the personal property described below which belongs to me. I am entitled to immediate possession of the property, but the defendant has refused on demand to deliver it to me. The defendant has unlawfully kept possession of this property since the date listed below and has therefore deprived me of its use. The damage due me for the loss of use and physical damage to the property is set out below. I demand recovery of this property and damages in the total amount set out below, plus interest and reimbursement for court costs.

Description Of Personal Property You Own Which Is In Possession Of Defendant | Total Value Of Property To Be Recovered $

Date Defendant Wrongfully Took Or Kept Property

Damage Due For Loss Of Use $

Physical Damage To Property $

Total Amount Of Damages $ 0.00

Date | Signature Of Plaintiff Or Attorney

Forms-Pg 9

Original-File Copy-Each Defendant Copy-Attorney/Plaintiff
(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.

2. The PLAINTIFF cannot sue to recover property worth more than $5,000.00.

3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.

4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.

5. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.

6. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.

7. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.

8. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is entered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is entered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is entered. A defendant who appeals also must post a bond to stay execution of the judgment within ten (10) days after the judgement is entered.

9. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.

10. The Clerk or magistrate cannot advise you about your case or assist you in completing this form. If you have any questions, you should consult an attorney.

AOC-CVM-202, Rev. 10/04

File No.

COMPLAINT TO ENFORCE POSSESSORY LIEN ON MOTOR VEHICLE

G.S. 7A-211.1; 20-77(d), 44A-2(d), 44A-4(b)(e)

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

Name And Address Of Plaintiff

County	Telephone No.

VERSUS

Name And Address Of Defendant 1

County	Telephone No.

Name And Address Of Defendant 2

County	Telephone No.

Name And Address Of Plaintiff's Attorney

1. The lien claimed arose in the county named above.

2a. ☐ I repair, service, tow or store motor vehicles in the ordinary course of business.

b. ☐ I am an operator of a place of business for garaging or parking motor vehicles for the public and the motor vehicle listed below has remained unclaimed for at least 10 days.

c. ☐ I am a landowner on whose property the motor vehicle listed below has been abandoned for at least 30 days. The property was not left by a tenant. [G.S. 42-25.9(g); 44A-2(e2)]

3. I came into possession of the motor vehicle described on the date shown below, am in possession of the vehicle, and claim a possessory lien on this vehicle for the amounts indicated below plus storage at the rate indicated from this date until the lien is satisfied.

Make/Year Of Vehicle

ID Number	Repairs	$
Date Of Possession	Towing	$
Date Storage Began	Storage Cost to Date	$
Date Notice Of Unclaimed Vehicle Given	Vehicle Rental	$
(Plus Storage @ $ _____ Per Day Until Sold)	**Total Lien Claimed To Date**	$ 0.00

4. The defendants are the registered owner of the vehicle and the known secured party(ies).

5. I gave notice of an unclaimed vehicle to the Division of Motor Vehicles on the date listed above.

6. I have given notice to the North Carolina Division of Motor Vehicles that a lien is asserted, and sale is proposed for the above described motor vehicle.

I demand that this Court declare the lien valid and enforceable by sale and order that the North Carolina Division of Motor Vehicles transfer title to the person who purchases at the sale upon proof that proper notice of sale has been given.

Date	Signature Of Plaintiff Or Attorney

AOC-CVM-203, Rev. 3/05

(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. Before filing this Complaint, you must have filed certain forms with the Division of Motor Vehicles. Contact your local Division of Motor Vehicles office.

2. The PLAINTIFF must file a small claim action in the county where the claim arose (i.e. where the motor vehicle was repaired, towed or stored).

3. The PLAINTIFF cannot sue in small claims court if the lien is for more than $5,000.00.

4. The registered owner of the vehicle and any secured parties listed with the Division of Motor Vehicles must be made defendants in the case. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name.
   If the business is not a corporation, the plaintiff must determine the owner's name and sue him/her.

5. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted. If the name or address of the vehicle owner cannot be determined, service by publication is authorized. In that case plaintiff may want to consult an attorney.

6. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.

7. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.

8. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.

9. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is rendered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is rendered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is rendered.

   This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims. Questions about the adequacy of this form or whether it is the appropriate form to be used should be addressed to an attorney.

AOC-CVM-203, Side Two, Rev. 3/05

File No.

Film No.

Judgment Docket Book And Page No.

JUDGMENT IN ACTION TO RECOVER MONEY OR PERSONAL PROPERTY

G.S. 7A-210(2), 7A-224

Name And Address Of Plaintiff

County	Telephone No.

VERSUS

Name And Address Of Defendant 1

County	Telephone No.

Name And Address Of Defendant 2

County	Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

This action was tried before the undersigned on the cause stated in the complaint. The record shows that the defendant was given proper notice of the nature of the action and the date, time and location of trial.

FINDINGS

The Court finds:

☐ that the plaintiff has proved the case by the greater weight of the evidence.

☐ that the plaintiff has failed to prove the case by the greater weight of the evidence.

that the defendant(s) ☐ was ☐ was not present at trial.

☐ Other:

ORDER

It is ORDERED that:

☐ the plaintiff recover possession of the personal property described in the complaint.

☐ the plaintiff recover possession of the personal property listed below:

☐ the plaintiff recover nothing of the defendant(s) and that this action be dismissed with prejudice.

☐ *(for breach of contract cases)* the plaintiff recover of the defendant(s) the following principal sum and interest accrued to the date of the judgment, plus interest at the legal rate on the principal sum from this day until judgment is satisfied.

☐ *(for tort cases)* the plaintiff recover of the defendant(s) the following principal sum, plus interest at the legal rate from the date the action was instituted until judgment is satisfied.

☐ Other: *(specify)*

☐ Costs of this action are taxed to the ☐ plaintiff. ☐ defendant.

Principal Sum Of Judgment	$	Name Of Judgment Debtor(s) From Whom Amount Recovered
Amount Of Interest Not Included In Principal	$	☐ Judgment Announced And Signed In Open Court
Attorney's Fees Or Other Damages *(when appropriate)*	$	Date / Signature Of Magistrate
TOTAL AMOUNT	$ 0.00	Name Of Party Announcing Appeal In Open Court

CERTIFICATION

(**NOTE:** *To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.*)
I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date	Signature Of Magistrate

AOC-CVM-400, Rev. 2/06

File No.	Abstract No.
Film No.	
Judgment Docket Book And Page No.	

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

This action was tried before the undersigned on the cause stated in the complaint. The record shows that the defendant was given proper notice of the nature of the action and the date, time and location of trial.

JUDGMENT IN ACTION FOR SUMMARY EJECTMENT

G.S. 7A-210(2), 7A-224; 42-30

Name And Address Of Plaintiff

County	Telephone No.

VERSUS

Name And Address Of Defendant 1

County	Telephone No.

Name And Address Of Defendant 2

County	Telephone No.

Name And Address Of Plaintiff's Attorney

FINDINGS

The Court finds that:

1. ☐ a. the plaintiff has proved the case by the greater weight of the evidence.
   ☐ b. the plaintiff has failed to prove the case by the greater weight of the evidence.
   ☐ c. the plaintiff requested and was entitled to a judgment for possession based on the pleading.
2. the defendant(s) ☐ was ☐ was not present. ☐ The defendant was served by postings.
3. ☐ a. there is no dispute as to the amount of rent in arrears, and the amount is $ _____ .
   ☐ b. there is an actual dispute as to the amount of rent in arrears. The defendant(s) claims the amount of rent in arrears is $ _____, and this amount is the undisputed amount of rent in arrears.
4. other:

ORDER

It is ORDERED that:

☐ 1. the defendant(s) be removed from and the plaintiff be put in possession of the premises described in the complaint.
☐ 2. this action be dismissed with prejudice.
☐ 3. this action be dismissed with prejudice because the defendant tendered the rent due and the court costs of this action.
☐ 4. the plaintiff recover rent of the defendant(s) in the amount and at the rate listed below, plus other damages in the amount indicated. The plaintiff is also entitled to interest on the total principal sum from this date until the judgment is paid.
☐ 5. other: *(specify)*

☐ 6. costs of this action are taxed to the ☐ plaintiff. ☐ defendant.

Rate Of Rent	Amt. Of Rent In Arrears (Owed To Date)	
$ per ☐ Mo. ☐ Wk.	$	☐ Judgment Announced And Signed In Open Court
Amount Of Other Damages $	Date	Signature Of Magistrate
TOTAL AMOUNT $ 0.00	Name Of Party Announcing Appeal In Open Court	

CERTIFICATION

(**NOTE:** *To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.)*
I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date	Signature Of Magistrate

AOC-CVM-401, Rev. 2/06

File No.

Film No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

JUDGMENT IN ACTION ON POSSESSORY LIEN ON MOTOR VEHICLE

G.S. 44A-4

This action was tried before the undersigned on the cause stated in the complaint. The record shows that the defendant was given proper notice of the nature of the action and the date, time and location of trial.

FINDINGS

The Court finds that:

☐ 1. the plaintiff has failed to prove the case by the greater weight of the evidence.

☐ 2. the plaintiff ☐ repairs, services, tows or stores motor vehicles in the ordinary course of business ☐ is the operator of a place of business for garaging or parking vehicles ☐ is a landowner on whose property the vehicle listed was abandoned and the plaintiff came into possession of the motor vehicle on the date shown below, is still in possession, and has a valid enforceable lien against the motor vehicle for the amount indicated, plus storage at the rate below from the date of this Judgment until the lien is satisfied.

3. the defendant(s) ☐ was ☐ was not present at trial.

4. The lienor has given proper notice to the North Carolina Division of Motor Vehicles that a lien is asserted and sale is proposed for the vehicle.

Name And Address Of Plaintiff

County | *Telephone No.*

VERSUS

Name And Address Of First Defendant

County | *Telephone No.*

Name And Address Of Second Defendant

County | *Telephone No.*

Name And Address Of Plaintiff's Attorney

Make/Year Of Vehicle

ID Number

Date Of Possession

(Plus Storage @ $ Per Day Until Sold)

Repairs	$
Towing	$
Storage Cost to Date	$
Vehicle Rental	$
Total Lien Claimed To Date	$ 0.00

ORDER

It is ORDERED that:

☐ the plaintiff recover nothing of the defendant and that this action be dismissed with prejudice.

☐ the lien is valid and enforceable by sale and the Division of Motor Vehicles shall transfer title to the person who purchases at the sale upon proof that proper notice of sale has been given.

☐ Judgment Announced And Signed In Open Court

Name Of Party Announcing Appeal In Open Court | *Date* | *Signature Of Magistrate*

CERTIFICATION

(**NOTE:** *To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.*)
I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date | *Signature Of Magistrate*

STATE OF NORTH CAROLINA

_____ County

File No.

Film No.

In The General Court Of Justice

☐ District ☐ Superior Court Division ☐ Small Claims

Name Of Plaintiff/Petitioner	**ORDER**
VERSUS	
Name Of Defendant/Respondent	

☐ DISMISSAL ☐ With Prejudice ☐ Without Prejudice

This action is dismissed for the following reason:

☐ The plaintiff elected not to prosecute this action and has moved for dismissal.

☐ Neither the plaintiff, nor the defendant appeared on the scheduled trial date.

☐ The plaintiff failed to appear on the scheduled trial date; the defendant did appear on that date and has moved to dismiss this action.

☐ Other:

☐ DISCONTINUANCE [G.S. 1A-1, Rule 4(e)]

The defendant has never been served in this action, and more than ninety (90) days have elapsed since the last summons was issued.

☐ CONTINUANCE

The trial of this action is continued to the following date and time on motion of the

☐ Plaintiff

☐ Defendant

☐ Judge or Magistrate

☐ Other: *(specify)*

Date Of New Trial	*Time Of New Trial* ☐ AM ☐ PM	*Location Of New Trial*

☐ BANKRUPTCY

It is ordered that this action be removed from the active calendar and placed on inactive status because a petition for bankruptcy has been filed staying this proceeding. This action may be reinstated if the claim is not resolved in the U.S. Bankruptcy or District Courts.

Date	*Signature*	☐ *Judge* ☐ *Magistrate* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

AOC-G-108, Rev. 11/02