



The Murky Waters between Small Claims and Civil District Court



Presenters:
School of Government Professor Dona Lewandowski &
District Court Judge Becky Tin, District 26



Small Claims Subject Matter Jurisdiction

...[A] small claim action is a civil action wherein:

1. The amount in controversy...does not exceed ten thousand dollars (\$10,000); and
2. The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and
3. The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

NCGS Section 7A-210.

NCGS Section 7A-211 Small claim actions assignable to magistrates.

In the interest of speedy and convenient determination, the chief district judge may, in his discretion, by specific order or general rule, assign to any magistrate of his district any small claim action pending in his district if the defendant is a resident of the county in which the magistrate resides. If there is more than one defendant, at least one of them must be a bona fide resident of the county in which the magistrate resides.

A Fish Just Jumped Into Your Boat.



Do you throw the fish back or keep it?

HYPOTHETICAL #1

Case transferred by magistrate

Plaintiff files Small Claims Complaint for and seeks damages in the amount of \$12,500. Magistrate enters a Continuance Order, stating that the amount sought by Plaintiff exceeds the \$10,000 small claims threshold and orders that the case be transferred to district court. The case is given a CVD number by the clerk's office and the parties were noticed for hearing in civil district court but the clerk's office did not issue a new summons to initiate an action in the general district court division.

Can the District Court Judge hear this case?

- a. YES - Keep the fish!
- b. NO - Throw it back!



There is no statutory authority for a magistrate to "transfer" a case to general civil district court.



A small claims action is initiated by a

Small Claims Summons

To the above-named Defendant: You are hereby summoned to appear before a Magistrate of the District Court, at 9:00 am June 23, 2016 to defend against proof of the claim stated in the complaint filed in this action. ***You may file written answer making defense to the claim in the office of the Clerk of Superior Court not later than the time set for trial. If you do not file answer, plaintiff must nevertheless prove his/her claim before the Magistrate. But if you fail to appear, judgment for the relief demanded in the complaint may be rendered against you.***

A district court action is initiated by a

District Court Summons

A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows: In The General Court Of Justice District Court Division... ***Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served.*** You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 1. 2. File the original of the written answer with the Clerk of Superior Court of the county named above. ***If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.***

If a magistrate "transfers" a case to civil district court, the judge should (a) dismiss the case for lack of subject matter jurisdiction or (b) return the case to the Clerk of Superior Court with instructions that the clerk's office should treat the case as "nonassigned";

Throw that fish out!



NCGS 7A-215 Procedure upon nonassignment of small claim action

... Upon nonassignment, the clerk immediately issues summons in the manner and form provided for commencement of civil actions generally, whereupon process is served, return made, and pleadings are required to be filed in the manner provided for civil actions generally.... Upon the joining of the issue, the clerk places the action upon the civil issue docket for trial in the district court division.

HYPOTHETICAL #2

Motion objecting to venue

The defendant in a small claims action raised an oral objection to venue at trial before the magistrate. Defendant argues that the rental property at issue is located in an adjoining county and the matter should be heard in that county. The magistrate suspends the small claims action pending a district court judge's ruling on the motion and directs that the matter be placed on a civil district court calendar.

How should the district court judge proceed?

- Keep the fish and hear the oral motion challenging venue:
- Throw it back and return the case to small claims for trial.



NCGS 7A-221 Objections to venue and jurisdiction over person.

By motion prior to filing answer, or in the answer, the defendant may object [to venue or personal jurisdiction]. These motions...are heard on notice by the chief district judge or a [designated] district judge... Assignment to the magistrate is suspended pending determination... **All these objections are waived if not made prior to the date set for trial.** If venue is determined to be improper, or is ordered changed, the action is transferred to the district court of the new venue, and is not thereafter assigned to a magistrate, but proceeds as in the case of civil actions generally.

Fishing in Protected Waters: the Landlord-Tenant Relationship in Summary Ejection Proceedings



HYPOTHETICAL #3

Plaintiff filed a Complaint for Summary Ejectment in small claims court; the magistrate finds that the parties lack a landlord tenant relationship and dismisses the Complaint; Plaintiff appeals to Civil District Court.

Hypothetical #3 cont'd

Upon appeal for trial de novo, the district court judge finds that:

Defendant is a squatter who entered the premises owned by Plaintiff which were vacant at the time. Defendant never entered into a lease agreement, oral or written, with the Plaintiff. Plaintiff wants Defendant out of the premises; Defendant refuses to leave.

Hypothetical #3 cont'd

What should the Court do?

- a. **Grant** Plaintiff's Complaint for Summary Ejectment;
i.e., keep the fish.
- b. **Dismiss** Plaintiff's Complaint for Summary Ejectment for lack of subject matter jurisdiction;
i.e., throw it back.



A landlord-tenant relationship is an essential element of a summary ejectment action; the burden of proof is on landlord to establish the existence of such a relationship in order to avail itself of the specialized procedure and remedy established by NCGS 42-26.

See, e.g., *Credle v Gibbs*, 65 N.C. 192 (1871); *McCombs v Wallace*, 66 N.C. 482 (1872); *Hughes v Mason*, 84 N.C. 472, 474 (1881);

In appeal for trial de novo from small claims judgment in summary ejectment action, the district court should determine whether a landlord-tenant relationship exists between the parties *regardless of whether either side raises the issue*; if such a relationship is not established, the district court should dismiss the case for lack of subject matter jurisdiction.



See, e.g. Hayes v Turner, 98 N.C.App. 451, 454, 391 S.E.2d 513, 515 (1990);

Where the evidence fails to establish the existence of a landlord-tenant relationship, then the district court judge -- whether hearing a summary ejectment action on appeal or hearing the action as an initial matter because it was filed in district court -- shall dismiss the claim for summary ejectment for lack of subject matter jurisdiction.



Throw that fish out!

Not your usual fishing hole?



How starting off in Small Claims changes what happens in District Court.

HYPOTHETICAL #4

Plaintiff appeals from a small claims judgment denying summary ejectment. The parties appear in district court for trial de novo and plaintiff asks the judge to grant her properly filed motion for default judgment based on defendant's failure to file a written answer. You should

- a. Allow plaintiff's motion.
- b. Deny plaintiff's motion, and proceed to trial.

NCGS 7A-218 Answer of defendant

At any time prior to time set for trial, the defendant *may* file a written answer admitting or denying all or any of the allegations in the complaint or pleading new matter in avoidance...Failure of defendant to file a written answer after being subjected to the jurisdiction of the court over his person constitutes a general denial. (italics added)

"The district judge before whom the [appeal] is tried may order repleading or further pleading by some or all of the parties; may try the action on stipulation as to the issue; or may try it on the pleadings as filed." NCGS 7A-229.

HYPOTHETICAL #5

Defendant appeals from a judgment in favor of plaintiff in a summary ejection action. Having filed no answer or counterclaim, defendant testifies during trial de novo that any rent he allegedly owes should be offset by the poor condition of the rental property that he is leasing.

Plaintiff objects to this evidence, arguing that defendant waived the defense of offset by failing to file an answer.

Defendant responds that he did not think he needed to file an answer, like the summons said, so he went out fishing.

Hypothetical #5 cont'd



Hypothetical #5 cont'd

Should the judge consider defendant's evidence as an offset to the rent allegedly owed at the time of breach?

- a. Yes
- b. No



Where no defenses are required to be pled in small claims court, and where a district court judge can try the case on the pleadings as filed in the small claims action, then tenants do not waive defenses by failing to plead them and can raise such defenses orally during trial.

See, Don Setliff & Associates, Inc. v Subway Real Estate Corp., 178 N.C. App. 385, 387, 631 S.E.2d 526, 528 (2006), aff'd, 361 N.C. 586, 650 S.E.2d 593 (2007), holding that tenant did not have to file an answer in small claims court to preserve the affirmative defense of estoppel for the de novo trial in district court, and the district court did not err in considering the estoppel defense.

HYPOTHETICAL #6

Defendant did not file an Answer in the small claims summary ejection action. Upon appeal for trial de novo, defendant files an Answer and Counterclaims for breach of the NC Residential Rental Agreements Act and Unfair and Deceptive Trade Practices, requesting \$20,000 in treble damages and attorney fees. If Defendant's counterclaims have been properly served and neither party requests a continuance, do you proceed to trial on Plaintiff's Complaint and Defendant's counterclaims?

- a. Yes
- b. No

"On appeal from the judgment of the magistrate for trial de novo before a district judge, the judge shall allow appropriate counterclaims, cross claims, third party claims, replies and answers to cross claims..." NCGS 7A-220.



Scaling the fish



Post trial motions in small claims cases

HYPOTHETICAL #7

Landlord files Complaint for Summary Ejectment against Tenant, alleging \$650 in rent arrears. Landlord and tenant orally agree if tenant pays the arrears plus court costs prior to trial, then tenant need not appear before the magistrate because landlord will dismiss the action.

Hypothetical #7 cont'd

Tenant pays landlord the agreed upon amount, leaves town to care for her ailing mother and does not appear for trial. Landlord nevertheless appears before the magistrate and moves for summary ejectment, falsely alleging that Tenant is still \$650 in arrears. Magistrate enters judgment of possession in favor of landlord.



Hypothetical #7 cont'd

When Tenant returns to the premises, she finds the Judgment and Notice that the Writ of Possession will be executed in three days. Tenant files a Motion alleging that the magistrate's judgment should be set aside on the basis that landlord procured tenant's absence from trial by fraud and presented fraudulent evidence that tenant owed a rent arrearage; on the basis of common law waiver and/or any other reason justifying relief under Rule 60(b)(3), (5) & (6).

Hypothetical #7 cont'd

Which judicial officer is authorized to hear this Rule 60(b)(3),(5)&(6) motion?

- The magistrate, if the Chief District Court Judge has delegated authority to hear such motions;
- A district court judge;
- Both a & b.



NCGS section 7A-228 New trial before magistrate...

- The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. [This] exercise of authority...shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate...

TROs/Preliminary Injunctions stemming from Rule 60(b) motions to set aside and Rule 65

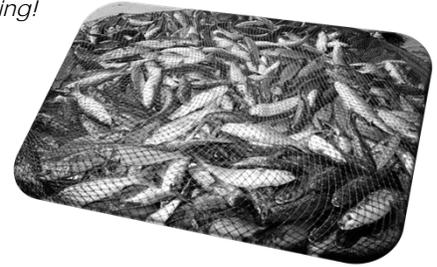
A tenant who alleges cognizable grounds to set aside a magistrate's judgment pursuant to Rule 60(b)(1)-(6) may also seek a TRO & a Preliminary Injunction to stay execution of the writ of possession pursuant to NC Rule of Civil Procedure Rule 65. These motions are properly heard by a district court judge.



NC Rule of Civil Procedure 65

- A temporary restraining order may be granted without notice if it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party...can be heard in opposition...
- Judge shall set a security bond: in summary ejection cases, the bond is usually the amount of pro-rated rent for the 10-day period that the TRO is in effect prior to the hearing on the preliminary injunction where both sides are present.

The more I know about fishing, the more I realize how much I need to learn about fishing!



When fishing is over and the day is done, retreat from the murky waters until the rising sun.