

Trying Breach of Contract Cases

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Review of the Basics

- Is there a contract?
- Who are the parties to the contract?
- What are the terms of the contract?
- Was the contract breached?
- Is there a defense to the claim?
- What damages should be awarded?

Private School v. Mr. & Ms. Parents

Case #1

Motion to Dismiss
Motion for Judgment on Pleadings

Motions to Dismiss – 12(b)

- (1) Lack of subject matter jurisdiction
- (2) Lack of personal jurisdiction
- (3) Improper venue
- (4) Insufficiency of process
- (5) Insufficiency of service of process
- (6) Failure to state a claim upon which relief can be granted.
- (7) Failure to join a necessary party.



12(b)(6)

Motion to Dismiss
for Failure to
State a Claim
(12(b)(6))

- Only tests whether complaint states a claim “upon which relief can be granted”
- Assumes allegations of complaint are true; does not look beyond complaint (and incorporated attachments)

12(b)(6)

Motion to Dismiss for Failure to State a Claim (12(b)(6))

- Only tests whether complaint states a claim "upon which relief can be granted"
- Assumes allegations of complaint are true; does not look beyond complaint (and incorporated attachments)

Narrow exception: Court may consider an unattached copy of an "instrument [contract] upon which plaintiffs are suing" if referenced in the complaint. -Coley, 41 N.C. App. 121 (1979); Oberlin, 147 N.C. App. 52 (2001).

12(b)(6) and 12(c)

Motion to Dismiss for Failure to State a Claim (12(b)(6))

- Only tests whether complaint states a claim "upon which relief can be granted"
- Assumes allegations of complaint are true; does not look beyond complaint (and incorporated attachments)

Motion for judgment "on the pleadings" (12(c))

- Like 12(b)(6), but after pleadings are closed. So court considers all the pleadings, not just the complaint.

Elements for Breach of Contract Claim

- Existence of a valid contract with defendants, and
- Material breach of the contract

Plaintiff's breach a defense?

- "The general rule is that if either party to a bilateral contract commits a **material breach** of the contract, the non-breaching party is excused from the obligation to perform further."

- *Lake Mary Ltd. Part. v. Johnston*, 145 N.C. App. 525 (2001)

- However, the failure to perform an **independent promise** does not excuse nonperformance on the part of the other party.

- *Id.*, *Coleman v. Shirlen*, 53 N.C. App. 573 (1981)

To excuse breach.....

- Plaintiff's breach must be:

- A material breach
 - Of a term that was dependent on the term breached by defendant

Material breach

- One that "substantially defeat[s] the purpose of the contract or [can] be characterized as a substantial failure to perform."

- *Long v. Long*, 160 NC App 664 (2003)

- Breach must "go to the very heart of the agreement"

- *Fletcher v. Fletcher*, 123 NC App 744 (1996)

- A breach of a term "that is essential to the transaction, that is, a term which, if omitted or modified, would cause one of the parties to withhold consent or to bargain for a substantially different term."

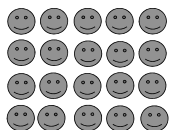
- N.C.P.I.-Civil 502.00

N.C.P.I. – Civil 502.00.

- “In determining whether a term is material, you may consider the following factors:
 - The subject matter and purpose of the contract;
 - The intentions of the parties;
 - The scope of performance reasonably expected by each party;
 - The prior dealings of the parties;
 - Any custom, practice or usage so commonly known to other reasonable persons, in similar situations, that the parties knew or should have known of its existence; and
 - Any other factors established by the evidence.”

Private School vs. Mr. And Ms. Parents

- Class size no more than 20



- **Material term??**

- Actual class size 23



Interdependent terms

- “Whether covenants are dependent or independent, and whether they are concurrent on the one hand or precedent and subsequent on the other, depends entirely upon the intention of the parties shown by the entire contract as construed in the light of the circumstances of the case, the nature of the contract, the relation of the parties thereto, and other evidence which is admissible to aid the court in determining the intention of the parties.”

- Harris & Harris Const. Co. v. Crain & Denbo, Inc., 256 N.C. 110, 117, 123 S.E.2d 590, 595 (1962)

Dependent vs Independent

- Independent:
 - *Williams v. Habul*, 219 NC App 281 (2012)(terms of settlement not dependent upon dismissal of case with prejudice).
 - *Smith v. Smith*, 225 NC 189 (1945)(husband’s obligation to pay alimony was not dependent on wife’s agreement not to molest or interfere with husband)
- Dependent:
 - *Wheeler v. Wheeler*, 299 N.C. 633 (1980)(agreement stated husband would pay “as long as” wife performed her part)
 - *McClure Lumber v. Helmsman Construction*, 160 NC App 190 (2003)(parties testified that they would not have entered into settlement agreement without provision that was breached)

Private School vs. Mr. and Ms. Parents

- **Independent or dependent?**
 - Class size
 - Obligation to pay tuition

Did plaintiff promise 20 member class?

- What are the terms of the contract?
 - “[T]he purport of a written instrument is to be gathered from its four corners.”
 - *Ussery v. Branch Banking & Trust Co.*, 368 N.C. 325, 336, 777 S.E.2d 272, 279 (2015)
 - “When the language of the contract is clear and unambiguous, construction of the agreement is a matter of law for the court and the court cannot look beyond the terms of the contract to determine the intentions of the parties.”
 - *Lynn v. Lynn*, 202 N.C.App. 423, 431, 689 S.E.2d 198, 205 (2010).

Can the court consider the ads/ website?

Terms can be incorporated.....

- *Montessori Children’s House of Durham v. Blizzard*, 244 NC App 633 (2016)(family handbook was not incorporated into contract so provisions in handbook were not a part of the contract)
- *Supplee v. Miller-Motte Business College*, 239 NC App 208 (2015)(provisions in student handbook that was incorporated into enrollment agreement were provisions of the contract).

Parol Evidence Rule

- Prohibits the trial court from considering evidence that varies, adds to, or contradicts a written contract.
 - *Robbins v. C.W. Myers Trading Post*, 253 NC 474 (1960).
- When the parties execute a writing intended to reflect the final agreement of the parties, the written document becomes the exclusive source of the parties’ rights and obligations with respect to the transaction or agreement.
 - *Rowe v. Rowe*, 305 NC 177 (1982); *Borden, Inc. v. Brower*, 284 NC 54 (1973).
- Evidence of conversations between the parties is admissible to show the intent of the parties only if the court determines the agreement is ambiguous.
 - *Root v. Allstate Insurance Co.*, 272 NC 580 (1968).

Motion for summary judgment

Summary Judgment

Motion to Dismiss for Failure to State a Claim (12(b)(6))

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Motion for Summary Judgment (56)

- Looks to all the materials before the court to determine if there "is any issue of material fact." (Will there be anything for a jury to decide?)
- Examines the evidence in light most favorable to non-movant

Summary Judgment

- Motion served at least 10 days before hearing
 - Typically supported by affidavits
- Adverse party allowed to serve opposing affidavits 2 days before hearing
 - If not, court may continue hearing.

Damages

- Injured party entitled to:
 - Recover for losses reasonably contemplated at time of contracting
 - An amount to fully compensate loss
 - Be placed as near as possible to condition he would occupy if no breach occurred
 - Recover for losses actually incurred that were reasonably foreseeable at time of contracting
 - An amount that is proven with sufficient certainty

Breach of contract

- **Types of damages**
 - Direct damages
 - Incidental damages
 - Consequential damages
 - Interest
 - Attorney fees

Specific Performance??

- Only authorized when:
 - Remedy at law is inadequate,
 - Party seeking the remedy has complied with the contract, and
 - Party ordered to perform has ability to comply
- Clause in contract
 - Enforceable if a UCC contract
 - GS 25-2-719; *Martin v. Sheffer*, 102 NC App 802 (1991)
 - Not enforceable in common law contract
 - *Reeder v. Carter*, 226 NC App 270 (2013)

Summary judgment *against* moving party?

Summary Judgment

Yes, allowed.

- Court may grant summary judgment against the party that moved for summary judgment when the evidence supports it.
-Rule 56(c)

Who is a party to a contract?

- **Spouses**
 - Not responsible for contacts of the other
 - No presumption of agency generally
 - Doctrine of necessities
- **Agency**
 - Actual
 - Apparent
 - Ratification
- **Business entities**
 - See Contract Module 3 in class materials

Homeowner v. Sam's Heating & Air
Case #2

Default and Default Judgment

Default Judgment – Rule 55

Two-step process:

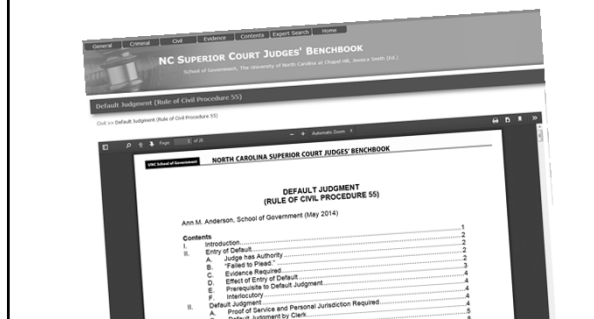
- 1. *Entry of default* –
 - On motion, clerk “enters” on the record that defendant failed to plead
- 2. *Default judgment*
 - Judgment entered by the court

Effect of “entry” of default:

- Factual allegations are deemed admitted
- But, Defendant may still:
 - Show that those allegations are insufficient to state a claim
 - Present evidence as to *damages* (if complaint does not establish a “sum certain”).

Default Judgment – Rule 55

<http://benchbook.sog.unc.edu/>



Breach of contract

- **Types of damages**
 - Direct damages
 - Incidental damages
 - Consequential damages
 - Interest
 - Attorney fees

UCC Damages


- GS 25-2-601, et. seq.
 - Nonconforming goods and repudiation
- GS 25-2-701, et. seq.
 - Remedies
- See NC Pattern Jury Instructions
 - Civil 504.00 through 504.54 (UCC remedies)
 - Civil 741.00 through 741.72 (breach of warranty)

Motion to Dismiss

Motions to Dismiss – 12(b)

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If **complaint** reveals that the statute of limitations has run, dismissal under 12(b)(6) is appropriate.



Statute of Limitations

- Limitation period
 - Most common law contracts have 3 years
 - Contracts under seal have 10 years
 - UCC contracts 4 years
 - May agree to shorter term but not longer
- Begins to run at time of breach

What are the terms?

- GS 25-2-202: UCC Parol Evidence Rule
 - Terms ...set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented
 - (a) by course of dealing or usage of trade (G.S. 25-1-205) or by course of performance (G.S. 25-2-208); and
 - (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Terms Implied in UCC Contracts

- Warranties
 - Express
 - GS 25-2-313
 - Merchantability
 - GS 25-2-314
 - Fitness for a Particular Purpose
 - GS 25-2-315
- Contract can limit warranties
 - Limit on merchantability must use word "merchantability"
 - GS 25-2-316

Limitation on damages

- Common law contracts
 - Parties can contract to exclude certain damages unless the limitation is unconscionable. The contract must allow "minimum adequate remedies."
 - *Stan Bowles Distributing v. Pabst Brewing Company*, 69 NC App 341 (1984)
- UCC contracts
 - Can limit or provide additional damages
 - Can limit consequential damages
 - Can limit to repair or replacement of defective parts
 - Unless remedy "fails at its essential purpose"
 - GS 25-2-719

Liquidated damages

- Common Law

- "It is well established that a sum specified in the contract as the measure of recovery in the event of a breach will be enforced if the court determines it to be a provision for liquidated damages, but not enforced if it is determined to be a penalty."

- *Brenner v. Little Red School House*, 302 NC 207 (1981)

- UCC

- "Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty."

- GS 25-2-718
