

ON YOUR OWN

# **NORTH CAROLINA SMALL CLAIMS COURT**

A Debt Collection Guide  
For North Carolina Businesses

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Attorney at Law  
Member, North Carolina Bar

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1998

**ON YOUR OWN  
NORTH CAROLINA SMALL CLAIMS COURT**

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# DEDICATION

To my loving mother who said, when  
told I was going to go to law school,

***“Don’t you know nice people don’t sue!”***

Mary S. Fritz  
1920 - 1997

***This book, Mom, is for  
when other people aren’t  
being “nice!”***



# FOREWORD

Dear Reader:

If you are interested in representing yourself or your business in Small Claims Court in North Carolina in order to collect your debts or settle disputes, ***ON YOUR OWN - NORTH CAROLINA SMALL CLAIMS COURT*** is the book for you! Employing an attorney to represent you or your business may or may not make economic sense. The debt you are seeking to recover may be less than the fee charged by an attorney. While it may be economically desirable for an attorney to represent you or your business in Small Claims Court in some situations, you may find it more advantageous to represent yourself or your business ON YOUR OWN. An individual or business with a small claim may wish to pursue the indebtedness without an attorney, but may not possess sufficient knowledge about the way the court operates to feel competent to do so. If the debt is too small to justify employing an attorney or if the case never gets to court because the plaintiff does not have an adequate amount of knowledge of his or her interests, the debt goes unpaid. The plaintiff loses either way, because the debt is still not paid.

There is an alternative -- representing yourself or your business ON YOUR OWN. The North Carolina Small Claims Courts are designed to be courts where large numbers of individuals may represent their own interests without attorneys. In North Carolina, the Small Claims Court is Magistrate Court. Throughout this book, the terms -- Magistrate Court and Small Claims Court -- are used interchangeably. ***ON YOUR OWN - NORTH CAROLINA SMALL CLAIMS COURT*** takes you step-by-step through the court proceedings and acquaints you with how to obtain a judgment and how to collect the judgment.

By reading and studying this book, you will gain knowledge to assist you in maintaining more control over your bottom line. Larger net profits are important for any business enterprise. The materials contained on the pages of this book will show you how to better manage your company's small claim

debt collection efforts by effectively using the Small Claims Court. You should be able to significantly increase your odds of collecting your judgment in Small Claims Court -- a court specifically designed by state law for the litigant with multiple small claims.

Like any book, this one does not contain all the answers -- it was not meant to. **THIS BOOK DOES NOT GUARANTEE SUCCESS.** It was written to provide the reader with a basic "plain English" of small claim actions using Magistrate Court. This book is only a guide. Questions may arise in your case that are not covered in this book. If this occurs, I recommend obtaining the advice of an attorney. When dealing with the law and what the law means, there is always room for disagreement and different interpretations. Attorneys disagree and judges disagree about what the law means. Clear, definitive answers are not always possible to legal questions, and you must realize this when you use this book. The law changes and, therefore, the law in this book will change. Courts and legislatures change the law frequently. One should be certain to rely on the current law when dealing with any type of legal problem. Failure to do so invites disaster and failure. When in doubt, seek the assistance of an attorney.

**ON YOUR OWN - NORTH CAROLINA SMALL CLAIMS COURT** is a book that offers basic guidance to the individual who has never been to Small Claims Court, yet provides material that should be of assistance to the individual who has represented himself or his business on a regular basis. I cannot over-emphasize methodical study and understanding of the law. If this book is read with care and understood, it will be helpful to you in the collection of small claims and the settlement of disputes.

**CAN YOU TAKE CHARGE OF YOUR OWN DEBT  
COLLECTIONS  
AND DISPUTE RESOLUTIONS THROUGH SMALL CLAIMS  
COURT?**

Is the North Carolina Small Claims Court for you and/or your business? Will it allow you to take charge of your company's debt collection efforts? Does it afford you with a forum to resolve your disputes quickly and conveniently, thereby saving time, money and frustration? Can you train your employees to handle Small Claims Court cases on their own? Can you really dramatically increase your odds of collection using this system? And most importantly, can you put dollars in your

pocket and not the pockets of others by learning to use the court to your advantage? This book addresses the answer to these questions and others.

North Carolina Small Claims Court is truly the "court of the people", available to citizens and businesses in North Carolina. Businesses are increasingly using this court to handle their own collection efforts. Using this convenient forum in North Carolina empowers you, the business, to do much more than to write letters to debtors requesting payment. It puts the court and the law enforcement behind your request. This gets the debtor's attention.

The issue of whether any case fits within the types of cases heard by Small Claims Court is often perplexing. This issue of jurisdiction is methodically and exhaustively covered in Chapter 2. Indeed you may find that your debt collection situations fall squarely within the power of the court, making North Carolina's Small Claims Court a viable place for you and your business.

Where should you file your case? Venue rules are not overly complex; however, you must know these rules in order to determine the location of your case. Quite often, you will find that you can resolve your debt collection and contract dispute in a Small Claims Court in your own neighborhood. Chapter 3 of this book details the venue rules for North Carolina.

Many times businesses and individuals are concerned with what to expect in court and often wonder whether they can do a competent job in representing a business or themselves on small claims. Experience will settle many of these fears. Chapter 4 gives guidance on what to expect in court and helps you get your "feet wet". Taking Chapter 4's pointers coupled with the observation of a few Small Claims Court sessions will position you to take advantage of the court system yourself. If at any time during the trial you deem it necessary, you may request a continuance and seek legal advice from an attorney.

Determining what kind of case you have is important because each type of case has different facts that must be proven. For instance, the elements of proof of an open account are certainly different from the elements of proving negligence. Understanding the elements that must be proven increases your chances of covering each and every important point in case

preparation and presentation. This substantially increases your chances of winning. Chapter 5 covers the types of actions you will likely be involved with in Magistrate Court in North Carolina. Understanding these is essential to your success in court.

Often we hear "I am not a lawyer, I don't understand all of those technical rules. Can I really learn enough about these rules (e.g. the rules of evidence) to win my case?" Most businesses in debt collection cases have the facts and law in their favor. This advantage, coupled with the fact that Small Claims Courts are designed for you to represent yourself if you wish, puts the odds of winning in your favor. Learning the basics of the technical rules of evidence as set forth in Chapter 6 will sharpen your edge.

It is often said that preparation is a key to winning your case in court. Chapter 7 has taken this point seriously. The "Trial Outline" found in Appendix D, if followed, will guide you step-by-step in the preparation of your case. It conveniently assists you in identifying potential witnesses and evidence and causes you to reflect on what each witness will say. It also leads you to consider what the opposing party might do and say. With this much preparation, you will be well on the road to success.

How do you determine how much you can recover in Small Claims Court? Although determining how much is recoverable is not extremely difficult, there are some rules to follow. Determining your compensatory (money) damages that result from a debtor's default requires careful consideration of what North Carolina courts consider appropriate damages. Are attorney fees collectable? Again, the answer depends on North Carolina law and the facts of your particular case. These issues are addressed in detail in Chapter 8. With this information, you can maximize your monetary recovery against the debtor.

The nuts and bolts question of how do you initiate and present your case in court is often treated lightly by authors writing about using the court system. I feel that this issue is extremely important. Chapter 9 covers such procedural issues as the statute of limitations (within what time frame must you file your case?) and the statute of frauds (must your contract be in writing to be enforceable?). Additionally, such points as, can you represent yourself, do you have a right to a trial by jury, what happens to your case on appeal, and how do you present the testimony and evidence to put your case in a favorable light, are addressed in detail in Chapters 9 and 10. With the presentation



techniques outlined in these chapters, you should feel confident of your ability to present yourself and your case in North Carolina Small Claims Court.

The whole purpose of becoming proficient in using Magistrate Court in North Carolina is to increase your and your company's bottom line. That is, this book would serve no useful purpose if it were to simply describe the process of obtaining a judgment without empowering the business to collect that judgment. The ultimate goal is to increase the money that goes into your pockets, not the pockets of other people. Chapter 11 provides a formula for determining whether or not the debtor is worth pursuing. Whether the debtor is "judgment proof" can only be determined after a deliberate analysis of the debtor's assets and their worth, the debtor's liabilities, the state exemptions available to the debtors, and the number of other creditors who may have a priority position over you, the judgment creditor. Once you determine that the debtor has the present ability to pay, you then must have a command of the tools of collection sanctioned by the court. Using these tools effectively can put the court and the law enforcement behind you and improve your collection performance.

Chapter 12 deals exhaustively with the powers available to you, the judgment creditor, to beef up your collection bite. Such things as seizure and sale of personal property, and seizure and sale of real property, put you in the driver's seat and in control of your collection efforts. Quite often the fact that you and your company have a reputation of aggressively exercising your legal rights will prompt delinquent debtors to settle up instead of facing the inevitable lawsuit.

Many businesses feel that a debtor's bankruptcy means that the debt should be simply written off. A few creditors "in the know" realize that this line of reasoning is not necessarily right. Certainly, bankruptcy does have an impact on a judgment. However, there are strategies to reduce bankruptcy's impact on your judgment and ultimately on your recovery. Chapter 14 covers the categories of bankruptcies, their impact on judgments and strategies useful to you and your business in increasing the dollars you collect.

Are collection professionals or Magistrate Court your only alternatives? No, there is a growing trend toward avoiding litigation by using independent third parties, in a private

contractual agreement, to render a decision for parties in dispute. Alternative Dispute Resolution (ADR) offers both advantages and disadvantages over litigation. Chapter 15 covers the types of ADR and describes the factors a business should consider in determining if ADR is more advantageous than litigation. Only after careful consideration of the points made in Chapter 15 should a business make that choice.

With the proper information and understanding, you and your business can gain the confidence and ability necessary to take charge of your debt collection and dispute resolution needs. This worthy goal has real meaning to you and your business - it puts the dollars where they belong, in your pockets and not in the pockets of others.

Mary Anne Nixon, Attorney at Law

# CHAPTER 1

## SMALL CLAIMS COURT

### WILL IT WORK FOR ME?

**S**mall Claims Courts in North Carolina provide a convenient court where parties can resolve their small claim disputes quickly and without significant expense. Small Claims Courts (formally known as Magistrate Courts in North Carolina) provide a forum for people with small-dollar claims who wish to avoid paying high court costs and attorney fees. Consider the predicament of a business owner who has a customer with an unpaid bill of \$450. This amount is not worth suing for in a regular court because the fee to file a complaint plus the attorney fees will likely be as much as the claim. Small Claims Courts offer a genuine solution to the problem. Whether one sues for \$45 or \$945, the Small Claims Court is the proper place to bring a case for a speedy, efficient resolution of the dispute.

Will the Small Claims Court work in your business? **YES!** Thousands of businesses use Small Claims Courts annually to take charge of their own debt collection problems. Quite often the owner of the business can have an administrative assistant handle the firm's small claims. These individuals often pay for themselves many times over in the amount of claims they collect for the benefit of their companies. With a proper understanding of the collection process, your business can be

empowered to use the court system and the law enforcement agencies to assist you in the collection of your debts.

There are three types of debtors:

- a) The debtor with the ability to pay but who simply refuses to do so;
- b) The debtor with no present ability to pay, but with a future potential to pay; and
- c) The debtor with no apparent present or future ability to pay.

Obviously, you may not want to waste your time on the third type of debtor. Refer that difficult debtor to the professionals, such as lawyers and collection agencies, and let them earn their fees. But, just as importantly, don't give your money away to someone else to collect debts you can easily handle on your own. This guide will assist you in determining which cases you should handle yourself and which case you should refer to others. By retaining only the cases with higher probabilities of success, you will be keeping more money in your pocket and improving your bottom line. Since judgments can be renewed, get a judgment against a type-two debtor, who has the future ability to pay. Let your judgment accrue interest and collect in a few years when the debtor has appropriate financial resources. It's similar to having a savings account at a bank! With a type-one debtor, you can proceed aggressively with your lawsuit and collection efforts. This debtor has the present ability to pay and you will have all the tools of the judicial system at your disposal to force him to do so.

This book will provide you with a formula for successful debt collection. Not only will it help you prepare and present your case in a professional manner, it will also give you the confidence to aggressively pursue collection of your judgment. This practical, hands-on guide will put the odds in your favor, and you will be able to take charge of your collection efforts. So, will the Small Claims Court help you in your business? Absolutely yes!

## **NORTH CAROLINA'S SMALL CLAIMS COURT - THE MAGISTRATE COURT**

The name of the Small Claims Court in North Carolina is the Magistrate Court. Every county in North Carolina has a Magistrate Court, usually located at the County Seat. Magistrate Court is designed to be convenient for the public to use and has the capacity to handle large numbers of small claim cases.

Magistrate Court is commonly referred to as the *Court of the People* because it is truly a court that seeks to serve the legal needs of the people of the community. Small Claims Courts are used more than any other court in the state. Most Small Claims Courts hold court sessions on a weekly basis to promote a speedy resolution of disputes.

Small Claims Courts can be an effective tool to recover money and/or property for the individual who knows how the court operates. Small Claims Court proceedings are not usually as formal as other types of court proceedings. Trials can take place in a more relaxed atmosphere with less stress and strain on the parties involved in the lawsuit. This environment is conducive for claimants with lawsuits involving small amounts of money who desire to represent themselves without the benefit of an attorney.

### **LAWSUITS -- DOLLARS IN WHOSE POCKET?**

Small Claims Courts in North Carolina have jurisdiction to render judgments in favor of the plaintiff up to \$3,000.<sup>1</sup> The court also can order the return of property whose value does not exceed \$3,000.<sup>2</sup> Most people who sue in Small Claims Court have a claim they cannot otherwise collect.

Some examples of cases appropriate for Small Claims Court are:

- a. A business with an overdue open account;
- b. A customer who refuses to pay a bill;
- c. A customer who has given a bad check;<sup>3</sup>

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<sup>3</sup> NC. GEN. STAT. § 14-107 makes presenting a check which the account holder knows there are insufficient funds to cover a misdemeanor. This often is a further resolution (with no cost

- d. A business which has been damaged by breach of contract;
- e. An individual injured or a business receiving property damage from an intentional or negligent act;
- f. A business or individual whose property is unlawfully possessed by another;
- g. A business or individual unable to collect debts.

### **CAN I ACT AS MY OWN ATTORNEY?**

One great advantage of using the Small Claims Court is being able to represent yourself and avoid the expense of hiring an attorney. When one acts as one's own attorney, this is called *PRO SE* representation. You may represent yourself in Small Claims Court in North Carolina even though an attorney represents the opposing side. An owner or employee may represent the partnership, corporation or other business entity so long as the judge does not disapprove.

Many attorneys do not practice extensively in Small Claims Court. Often, normal attorney fees may be greater than the amount of the small claim. In these cases, you lose money, even if you are successful in court, because of the additional expense of the attorney's fee. On the other hand, if you don't hire an attorney and you don't want to represent yourself, your claim still goes unpaid. Either way, you have lost. Frequently the individual who owes money is aware that most people are reluctant to represent themselves in court, and know it will cost you more money to hire an attorney than the claim is worth. This encourages some unscrupulous individuals to refuse to pay their just debts. If you know how to use the court system, you can encourage "professional" debtors to pay.

The claimant may recover attorney fees from the debtor if such fees are specifically provided for in the contract, lease, or business account. In cases where attorney fees are not provided, however, many people prefer to represent themselves

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to the aggrieved party). If found guilty the check writer is usually ordered to pay restitution, through the clerk of court, as a condition of probation, or serve jail time.

in Small Claims Court. In many cases, employing an attorney is simply not economical, but in other cases, better educated people are representing themselves in an arena which encourages this type of dispute settlement.

### **CAN I COMPETENTLY ACT AS MY OWN ATTORNEY?**

An average person should be able to competently represent himself or herself in Small Claims Court after an adequate amount of training and experience. Small Claims Court procedures are simplified and the documents that must be filed are easily understood. A good starting point would be to attend an actual court proceeding and get "the feel" of being in court. Many court clerks will furnish forms necessary for filing a lawsuit merely by being asked. Become familiar with the procedure in the particular court to be used. Procedure is merely the step-by-step process by which a case progresses through the court. One step logically follows another step.

Knowledge of procedure, which papers to file in court, how to present the case in court, how to question witnesses, the elements of proving a case in court, how to obtain a judgment against the defendant, and most importantly, how to collect the judgment from the defendant, are essential to be successful in Small Claims Court.

These steps are covered in detail in this book. With proper training, study and experience, a person can represent himself or herself competently in Small Claims Court. Some states do not even allow licensed attorneys to practice in the Small Claims Court. While lawyers may practice in the Magistrate Court of North Carolina, procedures have been simplified so that the average person may represent his or her own interests.

### **SHOULD I SUE?**

A cartoon by John Caldwell portrays a stern-looking gentleman behind a desk with a sign on the wall: *"Stop and Sue the Roses"*. This cartoon pokes fun at lawyers and the belief that the courts can answer every problem. They can't. But for those who are truly wronged and can find no relief outside the legal system, the courts are open for use. Do not hesitate to use them.

Courts are the last resort after all other efforts fail. Abraham Lincoln, who was a lawyer before he became President, once stated, "Avoid lawsuits." Lincoln's advice is good advice because lawsuits are often expensive, and frustrating, and the outcome may not be satisfactory. However, Lincoln lived in a time before modern-day Small Claims Courts. Today's courts are designed to assist you in resolving your disputes quickly and inexpensively.

A number of factors need to be considered in answering the question of "Should I sue?"

- a. Is the amount of money being sued for worth my effort?
- b. What are my odds of winning the case in court?
- c. Can I represent myself? If I do, are my chances of winning as good as they would have been, had I been represented by an attorney?
- d. If I represent myself, can I do so competently?
- e. How do I collect my judgment?

These questions, and others, are answered in the pages that follow.

## **THE BOTTOM LINE -- COLLECTION OF THE MONEY JUDGMENT**

Most people sue to recover money. For example, John Doe owes the ABC Appliance Store, Inc. \$975.00. John Doe refuses to pay his debt and ABC Appliance Store, Inc. files a lawsuit to recover the \$975.00. Assuming that ABC Appliance Store, Inc. wins the lawsuit, does this mean it will collect the \$975.00 owed on the open account? Not necessarily. Obtaining the judgment is only part of the process. Some defendants will pay the judgment, but most of them probably will continue refusing to pay.

What must the plaintiff do to collect his judgment? Although a number of collection strategies are at the disposal of the plaintiff, many plaintiffs use seizure and sale of the defendant's property. These two collection alternatives are discussed in later chapters along with other helpful suggestions.



With the approaches we will discuss, you can increase the odds dramatically for the successful collection of your judgment.



# CHAPTER 2

## JURISDICTION

### WHO CAN I SUE? HOW MUCH CAN I COLLECT? WHAT KINDS OF CASES CAN I TAKE TO COURT?

**P**laintiffs desiring to use Magistrate Court need a basic knowledge of legal terminology, a general understanding of how the court operates, and a familiarity with the different roles of court personnel. This chapter deals with jurisdiction and the types of cases that can be brought to the North Carolina Magistrate Court.

The jurisdiction of the court is the power or authority of the court to hear and to dispose of a particular type of case. Small Claims Courts are courts of limited jurisdiction. Jurisdiction is limited to a specific geographic area, or to matters involving certain persons, property, or types of cases (subject matter). *In personam* jurisdiction is the power over a person and it is necessary before a court can enter a judgment against a party. *In rem* jurisdiction is a proceeding against property taken within a state to help satisfy a general debt.

In civil cases, the types of cases businesses use to collect debts, the Small Claims Court can award only up to a certain amount of money. Our discussion is limited to the

recovery of money or property through Small Claims Court proceedings. As we previously mentioned, these types of cases involve the most common debt collection efforts faced by businesses.

## **MAGISTRATE COURT JURISDICTION - THE NORTH CAROLINA STATUTE**

State law establishes the jurisdiction of the court. Section 7A-211, General Statutes of North Carolina, 1989, (as amended) sets forth the jurisdiction of the Magistrate Court as follows:

*In the interest of speedy and convenient determination, the chief justice may, in his discretion, by specific order or general rule, assign to any magistrate of his district any small claims 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 (emphasis added).*

Section 7A-210, General Statutes of North Carolina, 1993 (as amended) confers jurisdiction in three situations:

- a. The amount in controversy does not exceed \$3,000;
- b. The only relief requested is
  1. money
  2. recovery of specific personal property
  3. immediate eviction of a tenant or
  4. any combination of these and,
- c. The plaintiff has requested assignment of a Magistrate.

## **AMOUNT IN CONTROVERSY**

The jurisdiction of the Magistrate Court is determined by the amount of money demanded in good faith in the complaint. "Good faith" means the amount of money the plaintiff honestly believes he is entitled to recover from the defendant. The jurisdictional amount contested in the lawsuit is determined at the time the lawsuit is filed with the court clerk. If the amount demanded in the complaint of the plaintiff exceeds \$3,000, then

Magistrate Court has no jurisdiction. Court costs are excluded from a determination of the principal amount in controversy.<sup>1</sup> Attorney fees are also excluded unless the attorney fees were a part of the principal amount in controversy in the contract between the parties. For example, when a promissory note calls for 10% added for attorney's fees, the attorney's fees then become a part of the lawsuit in calculating the total amount of the lawsuit for jurisdiction determination. Chapter 8 covers court costs, damages and attorney fees.

Nothing prevents a plaintiff from making a unilateral reduction of the amount of a claim in order to confer jurisdiction on the Small Claims Court. For instance, a plaintiff has a claim for \$3,100. Clearly, the court would not have jurisdiction over the lawsuit if the plaintiff filed a lawsuit for the \$3,100. However, the plaintiff decides that the cost of employing an attorney to take this case to either county or district court is too high. The plaintiff feels he cannot represent himself competently in district or superior court because of the complicated pleadings and procedures. He therefore reduces his claim to the jurisdictional maximum in Small Claims Court, which is \$3,000, and brings suit. In this case the plaintiff has made a decision based on the economics of his particular case. He has determined he can probably put more money in his pocket by representing himself in Small Claims Court than by employing an attorney to handle the case in an upper court.

Note that a single demand cannot be divided into two or more causes of action in order to confer jurisdiction on the Small Claims Court.<sup>2</sup> Suppose a plaintiff has an open account with an outstanding unpaid balance of \$3600. The plaintiff cannot split the account into two parts - \$1200 and \$2400, and bring two lawsuits against the defendant in Magistrate Court. Similarly, one unpaid account containing several different items (even if purchased on separate dates) cannot be divided to confer jurisdiction on the Magistrate Court. However, if a party has several distinct and different debts evidenced by separate contracts, then these debts constitute separate causes of action and separate lawsuits must be brought on each debt.<sup>3</sup> Conversely, the Magistrate Court cannot consolidate separate and distinct suits, if, when united the demands exceed the jurisdictional maximum of the court.

Since state law establishes the jurisdiction of the court, the parties cannot agree otherwise. For example, the plaintiff

and defendant cannot agree between themselves to raise the jurisdictional amount of Small Claims Court to \$4,000. The jurisdiction of the court is set by law and can only be changed by law.<sup>4</sup>

## **LAWSUITS FOR MONETARY RELIEF**

**Open Accounts** - Probably the most common type of case adjudicated in Magistrate Court is the open account. An open account is a statement or record of business transactions during a certain fiscal period that shows the amount of money the debtor owes the creditor. Here, a merchant extends credit on specified terms to a customer, usually for the purchase of merchandise. The customer takes physical possession of the merchandise, and normally uses it with the understanding that the purchase price of the goods will be paid to the merchant within a certain time. If the account is not paid within the specified time period, the account is delinquent and the merchant is faced with the problem of collecting the debt.

**Promissory Notes** - Lawsuits based on promissory notes are also common in Magistrate Court. A promissory note is a written promise to pay, at a determined future time or times, a specified sum of money to a particular person or business. An individual or a person on behalf of a business executes the promise in order to borrow money, purchase merchandise, or some similar reason. The promissory note itself is the evidence of the indebtedness. When the person or business does not pay the note according to its terms, the face amount becomes overdue. The holder of the note brings a lawsuit in Small Claims Court to recover the amount of the obligation, plus accrued interest.

**Contracts** - A contract is an oral or written agreement between competent parties which is enforceable by a court. Some oral contracts are not enforceable under the law known as the Statute of Frauds, (which is discussed further in Chapter 9). If one party has not complied with the contract terms regarding payment, that party has breached the contract. The non-breaching party (who performed according to the terms of the contract) is damaged because he has not been paid as agreed, and may seek recovery of the contractual indebtedness through the Small Claims Court.

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<sup>4</sup> NC. GEN. STAT. § 7A-210 (1993 as amended).

**NOTE:** Promissory notes and contracts should contain a provision for collection costs and/or attorney fees in the event of default. By including this type of provision, you have the option of including or reducing these costs if you later bring a lawsuit against the debtor.

**Bad Checks** - Bad checks plague many businesses. A check, which is evidence of a debt or some other type of legal obligation to pay, is given for the purchase of goods or services. The check is returned unpaid to the merchant by the debtor's bank. Bad checks can be handled in Magistrate Court. A civil lawsuit can be filed in Small Claims Court for recovery of the face amount of the bad check. Each check is considered to be a separate cause of action. In other words, a separate lawsuit is filed for each individual check. As long as the face amount of the check does not exceed \$3,000, Magistrate Court would have jurisdiction and could hear the case. A second method of handling bad checks is to contact the local district attorney's office for assistance under the criminal law provisions of Section 14-107 General Statutes of North Carolina, 1996, (as amended). (Please see Appendix E.)<sup>5</sup>

**NOTE: WARNING!** North Carolina law prohibits use of the criminal process for the collection of a civil indebtedness. Failure to strictly follow the law may subject one to criminal prosecution and for civil liability. It is recommended that you consult with your attorney to ensure full compliance with the law.

## **LAWSUITS FOR THE RECOVERY OF DAMAGES**

North Carolina Magistrate Courts have jurisdiction over lawsuits for the recovery of damages. When a contract breach causes the non-breaching party to suffer loss, the breaching party is subject to be sued for damages as discussed above. When a party is the victim of a tort, or when a party has property that is damaged, destroyed or stolen as a result of a tort, damages also can be awarded.

"Tort" cases are civil cases heard in Small Claims Courts. Torts are classified as intentional, negligent or strict liability torts. A tort is a wrongful act against a person, real property (such as land or buildings) and personal property (such as automobiles, furniture, typewriters, etc.), and reputation.<sup>6</sup> The right to recover under tort law does not depend on the existence of a contract between the wrongdoer and the injured party.

**Intentional Torts** - An intentional tort occurs when someone purposely injures another or damages his/her property. An intentional tort requires intent on the part of the person committing the act. For example, the tort of battery occurs when one intentionally and unlawfully<sup>7</sup> strikes and injures another person. Another example of an intentional tort might be damage to personal property. This would occur if you intentionally and unlawfully broke someone else's windshield.

**Negligent Torts** - A negligent tort occurs when a person is injured or property is damaged because someone fails to exercise ordinary, reasonable and prudent care. An example of a lawsuit based on negligence occurs when, as a result of failure to pay attention, one driver causes an automobile accident, injuring another driver or damaging that driver's vehicle. Some individuals or business entities are held to a higher standard of care. For example, a person who holds himself/herself out as an expert in a particular field may be held to a greater-than-ordinary care standard.

**Strict Liability Torts** - A tort based on strict liability means that a person is liable for damages to another, even though there was no intent or negligence in causing the harm. Intent is irrelevant. In these cases, the person causing the harm is held liable for his actions even though he has not been careless. Parties engaged in ultra-hazardous activities, for example, will be held liable for any harm they directly cause. Some examples of ultra-hazardous activities may include blasting operations, transportation of hazardous wastes, domestic keeping of wild animals, and drilling oil wells in populated areas. Courts sometimes also apply strict liability to consumer goods when the goods are defective and the defect causes harm.

## **LAWSUITS FOR THE RECOVERY OF PERSONAL PROPERTY**

A lawsuit filed in Magistrate Court for the recovery of personal property is called a replevin action. This situation occurs when someone unlawfully refuses to return property to its rightful owner.

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<sup>7</sup> without excuse or justification.



## **PREPAYMENT OF COURT COSTS**

Magistrate Courts have no jurisdiction over any civil suit until all required court costs are deposited with the court. The court is prohibited from filing, docketing, issuing process, or otherwise assuming jurisdiction over the case until the court costs are paid. Costs for court actions and process fees are found in Appendix E.<sup>8</sup>

## **NO LIMIT ON NUMBER OF LAWSUITS WHICH MAY BE FILED**

In some states, the number of lawsuits that may be filed by an individual or business is limited to a certain number per month or per year. In North Carolina, the number of lawsuits per month or per year is not limited.<sup>9</sup> North Carolina Magistrate Courts are open to hear as many cases as an individual or business desires to file. For example, if a North Carolina business has \$30,000 in delinquent debts, and if the Magistrate Court has jurisdiction over each debt, the business can bring as many lawsuits as is necessary to pursue these claims.

## **THE PARTY LITIGANTS - WHO CAN I SUE AND WHO CAN SUE ME?**

North Carolina law does not restrict who can be named parties in a lawsuit. Therefore, you can sue or be sued by a customer, a business, a supplier, an individual, a corporation, a partnership, an unincorporated association, a government entity, or other legally recognizable entities. (NOTE: Sovereign immunity statutes may prevent or limit actions against some government entities.) As a result, Magistrate Court jurisdiction is quite broad and applies to many kinds of business transactions. Consequently, Magistrate Court can be an effective business tool for resolving disputes and collecting debts.

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<sup>8</sup> NC. GEN. STAT. § 7A-305 (1995 as amended); § 7A-311 (1990 as amended).



# CHAPTER 3

## VENUE

### WHERE DO I SUE?

**V**enue deals with the question - "Where do I file my lawsuit?" Venue determines the geographical location of the court that will hear and dispose of the case. Simply put, venue refers to the place of the trial. As previously mentioned, North Carolina has at least one court in each county. The question is, "In which county do I file my lawsuit?" The determination of venue depends on the type of defendant you are suing. The following are the most common situations you will probably encounter while deciding in which court you should file your case.

#### **RESIDENT - ONE DEFENDANT**

A defendant can be sued only in the county in which he or she resides or where the cause of action arose.<sup>1</sup> The county of residence is determined by many factors, including where the person physically lives, sleeps, purchases automobile license plates, is registered to vote, and pays taxes. If a defendant works in County X and resides in County Y, he must be sued in County Y. If the cause of action arose in County X and the defendant resides in County Y, then he or she can be sued in either county. If, however, the defendant destroys property in County Z, he can then be sued in either County Z, where the cause of action arose, or in County Y where he resides.