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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-415

Filed 2 January 2024

Watauga County, No. 22-CVD-464

TANGER PROPERTIES LIMITED  
PARTNERSHIP, Plaintiff,

v.

LEGACY LIBATIONS CORP.  
DBA COPPER BARREL OUTPOST, Defendant.

Appeal by defendant from judgment entered 2 December 2022 by Judge Rebecca Eggers-Gryder in Watauga County District Court. Heard in the Court of Appeals 29 August 2023.

*Womble Bond Dickinson (US) LLP, by Michael Montecalvo and Aaron J. Horner, for the plaintiff-appellee.*

*Villmer Caudill, PLLC, by Bo Caudill, for the defendant-appellant.*

STADING, Judge.

Legacy Libations Corporation (“defendant”) appeals from the trial court’s judgment for possession in favor of Tanger Properties, Limited Partnership (“plaintiff”). For the reasons set forth below, we affirm the judgment.

**I. Background**

Plaintiff and defendant entered into a written lease for defendant’s rental of a

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property in the Tanger Outlets located in Blowing Rock, North Carolina. After failing to pay rent over several months, defendant defaulted on the lease, entitling plaintiff to terminate the lease and retake possession of the property. On 24 August 2022, plaintiff filed a complaint for summary ejection in the small claims division of Watauga County District Court. Subsequently, the Deputy Clerk of Watauga County Superior Court issued a magistrate summons directing defendant to appear before the magistrate for trial on 15 September 2022. The summons included the case caption, the court's location, and the trial's time and date. The deputy clerk signed the summons but failed to check the box stating: "The above captioned small claim is assigned to the Magistrate presiding at the place, date and time indicated below." Defendant accepted service of the summons and complaint on 8 September 2022.

On 15 September 2022, with both parties present, the hearing took place and the presiding magistrate entered a judgment of possession in favor of plaintiff. On 26 September 2022, defendant exercised its sole remedy under N.C. Gen. Stat. § 7A-228 and filed an appeal for a trial *de novo*. On 14 November 2022, Watauga County District Court held a bench trial to determine the matter. At trial, defendant moved to dismiss the action for lack of subject-matter jurisdiction. Defendant pointed to N.C. Gen. Stat. § 7A-212, which provides small claims actions are assignable only when the defendant is a resident of the county where the magistrate was appointed. Defendant argued that, when the action commenced, it was not a resident of Watauga County because it no longer was "conducting any business" in the county. As a result,

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defendant alleged both the small claims court and the district court lacked subject-matter jurisdiction over the matter. The trial court requested the parties brief the issue before ruling on it.<sup>1</sup> Ultimately, the trial court denied defendant's motion and awarded possession of the property to plaintiff. Defendant entered its notice of appeal on 3 January 2023.

**II. Jurisdiction**

Since a judgment for possession is a final judgment, this Court has jurisdiction to hear defendant's appeal pursuant to N.C. Gen. Stat. § 7A-27(b) (2023).

**III. Analysis**

The single issue on appeal is whether the trial court lacked subject-matter jurisdiction over plaintiff's claim. Defendant contends the clerk never assigned the case to the magistrate, causing the case not to be properly commenced as either a small claims action or a general civil action. Hence, defendant requests this Court vacate and remand this matter with instructions to restore defendant to possession of the property.

Our Court reviews questions of subject-matter jurisdiction *de novo*. *Azure Dolphin, LLC v. Barton*, 371 N.C. 579, 594, 821 S.E.2d 711, 722 (2018). Chapter 7A

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<sup>1</sup> While the transcript provides that the trial court requested the parties provide briefs to the court on the residency issue, those briefs are not included in the record on appeal. Moreover, in regard to the trial court's decision to deny the motion to dismiss, the judgment only contains the following: "At the close of testimony at the trial before this Court, Defendant made an oral motion to dismiss, which the Court denied." The record does not contain any further information on the trial court's rationale.

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of North Carolina's General Statutes gives magistrates jurisdiction to hear small claims. *Chandak v. Elec. Interconnect Corp.*, 144 N.C. App. 258, 263, 550 S.E.2d 25, 29 (2001); *see also* N.C. Gen. Stat. § 7A-211 (2023). N.C. Gen. Stat. § 7A-210 provides "a small claim action is a civil action wherein . . . [t]he only principal relief prayed is . . . summary ejectment." N.C. Gen. Stat. § 7A-210(2) (2023). Under N.C. Gen. Stat. § 7A-211, "the chief district judge may, in his or her discretion, by specific order or general rule, assign to any magistrate of the district any small claim action pending in the district if the defendant is a resident of the county in which the magistrate was appointed." N.C. Gen. Stat. § 7A-211.

By order filed 31 July 2020, the Chief District Court Judge of Watauga County assigned all small claims actions listed within N.C. Gen. Stat. § 7A-210—including summary ejectment claims—to the magistrate of the county named in the summons directed to a defendant. N.C. Gen. Stat. § 7A-213 prescribes the procedure for assigning small claims actions. In relevant part, the statute provides:

If, pursuant to order or rule, the action is assigned to a magistrate, the clerk issues a magistrate summons substantially in the form prescribed in this Article as soon as practicable after the assignment is made. The issuance of a magistrate summons commences the action. After service of the magistrate summons on the defendant, the clerk gives written notice of the assignment to the plaintiff. The notice of assignment identifies the action, designates the magistrate to whom assignment is made, and specifies the time, date and place of trial. By any convenient means the clerk notifies the magistrate of the assignment and the setting.

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N.C. Gen. Stat. § 7A-213 (2023).

Here, defendant contends the omission of a check mark on the portion of the summons reading “[t]he above captioned small claim is assigned to the Magistrate presiding at the place, date and time indicated below[,]” meant the chief district judge did not assign the case. However, according to our statutes, a clerk will only issue a magistrate summons after the chief district judge assigns the case to the magistrates. *See* N.C. Gen. Stat. §§ 7A-211, -213. And absent a showing to the contrary, this Court will presume the clerk properly assigned the case to the magistrate before issuing the summons, even though she failed to check the box on the summons. *See Huntley v. Potter*, 255 N.C. 619, 628, 122 S.E.2d 681, 687 (1961) (upholding the presumption “that public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law.” (internal quotation marks and citations omitted)).

Moreover, the clerk’s notice of assignment met all requirements under N.C. Gen. Stat. § 7A-213. The notice included the case caption, “*Tanger Properties Limited Partnership vs Legacy Libations Corp*[.],” and designated that the matter is assigned to “the Magistrate presiding” in the Watauga County Magistrate Court, with a trial time of 9:30 AM and date of 15 September 2022. *See* N.C. Gen. Stat. § 7A-213. Thus, the omission of the checked box did not affect the commencement of the action nor the magistrate’s subject-matter jurisdiction.

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Because the case was properly assigned, defendant exercised its sole remedy to contest the assignment under our statutes—appealing to the district court for a trial *de novo*. N.C. Gen. Stat. § 7A-228(a) (2023); see *Falk Integrated Techs., Inc. v. Stack*, 132 N.C. App. 807, 810, 513 S.E.2d 572, 574 (1999) (“[N.C. Gen. Stat. § 7A-228(a)] prohibit[s] a party from asserting improper assignment by a chief district judge as a basis for attacking a magistrate’s ruling, and require instead a *de novo* proceeding by an aggrieved party . . . before a district court judge or a jury.”). Defendant raised the improper assignment argument in trial court, but the trial court nevertheless rejected its argument and subsequently rendered a judgment in favor of plaintiff. Considering the foregoing, the trial court had subject-matter jurisdiction over defendant and properly awarded possession to plaintiff.

In its motion to dismiss and reply brief on appeal, defendant also argued that because it was not a resident of Watauga County, the Watauga County magistrate could not have rendered a judgment against it. However, defendant failed to raise the same argument in its principal brief, mentioning it for the first time in its reply brief. “Under Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure, where a party fails to assert a claim in its principal brief, it abandons that issue and cannot revive the issue via reply brief.” *McLean v. Spaulding*, 273 N.C. App. 434, 441, 849 S.E.2d 73, 79 (2020) (citation omitted). Therefore, we decline to consider this particular argument by defendant.

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Defendant also contends that “[t]he clerk’s failure to issue summons pursuant to Rule 4 [of North Carolina’s Rules of Civil Procedure] left the trial court without jurisdiction to enter any judgment in this action.” However, the clerk would have only issued a summons pursuant to Rule 4 if the case had not been assigned. N.C. Gen. Stat. § 7A-215 provides the procedure upon *nonassignment* of a small claims action:

Failure of the chief district judge to assign a claim within five days after filing of a complaint requesting its assignment constitutes nonassignment. . . . 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.

N.C. Gen. Stat. § 7A-215 (2023). Moreover, under N.C. Gen. Stat. § 7A-213, “[t]he issuance of a magistrate summons commences the [small claims] action.” N.C. Gen. Stat. § 7A-213. As the chief district judge assigned the original small claims action to the magistrate by the 31 July 2020 order, there was no need for the clerk to issue a Rule 4 summons.

**IV. Conclusion**

For the foregoing reasons, the trial court’s judgment for possession is affirmed.

**AFFIRMED.**

Judges WOOD and GRIFFIN concur.

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Report per Rule 30(e).