

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BY: E. Bollers IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
Civil Case No: 24 CV 022933-910

Charity Mainville
Plaintiff,
v.
**Anne De Santis &
De Santis Rentals, LLC**
Defendants.

ORDER
(Denying Plaintiff's request for an
Automatic Stay & Denying Defendant's
Motion to Strike Plaintiff's Amended
Complaint)

THIS CAUSE coming on for hearing on February 13, 2025, before the undersigned Judge presiding over the regular motions session of General Civil District Court in Wake County, North Carolina. The Court only heard the motions that were properly noticed for hearing or otherwise consented to be heard.¹ The Plaintiff was present, *pro se* and the Defendants were present and represented by Attorney David Yopp. The motions were heard via WebEx. The Court heard arguments on February 13, 2025 in the morning session, but delayed ruling until February 14, 2025, at 3:00 PM via WebEx in order to review arguments. After the February 13th motions session at approximately 3:57 PM, the Plaintiff filed an objection to the ruling due to lack of notice. See the attached email string for why the Court moved forward with the ruling at 3:00 PM on February 14, 2025.²

The Court makes the following in Denying the Defendant's motion to strike/dismiss Plaintiff's Amended Complaint and Denying the Plaintiff's request for an automatic stay.

Findings of Fact

1. This case arises from a small claims appeal. The original complaint was filed on 7/22/24.
2. Defendants, via prior counsel, filed a motion to dismiss on 8/19/24.
3. Plaintiff filed an amended complaint on 8/21/24.
4. Plaintiff filed an amended complaint (version 2) on 8/24/24.
5. The small claims case was heard on 8/26/24.
6. The appeal was requested on 9/3/2024.

¹ The motions calendar indicated other motions were scheduled, but upon review of the file, only the Defendant's motion to strike/dismiss the Plaintiff's amended complaint of 12/16/24 was properly noticed and all parties agreed for the Court to rule on Plaintiff's request for automatic stay due to her appeal of prior interlocutory orders of the Court.

² When a Court renders a decision, it is not the actual order, but merely a "rendering" of what the order will be. An Order is not an Order of the Court until it is reduced to writing, signed by a Judge and clocked in by the clerk. Caselaw is clear that an Order finally entered may differ from the rendering.

7. The case was selected for arbitration on 9/10/24 and Plaintiff filed a motion for leave to amend her complaint on 10/1/2024.
8. Notice was sent for arbitration on 10/22/2024 and arbitration was on 11/13/2024..
9. Plaintiff withdrew her motion of 10/1/2024 for leave to amend her complaint on 12/2/2024.
10. Plaintiff filed another amended complaint on 12/16/2024. This is the amended complaint subject to Defendant's motion to dismiss/strike in this hearing.
11. Defendant filed a motion to strike this amended complaint on 1/15/2025 after receiving a proper and timely extension of time to respond to this amended complaint on 1/13/2025.
12. Between the filing of her amended complaint on 12/16/2024 and this February 13, 2024, motions session, the Court made a series of orders on discovery, extensions of time, withdraw of counsel and designating a case with exceptional status. (see the official Court file for the complete list).
13. On 2/10/2024, the Plaintiff appealed these orders to the Court of Appeals. (Again, see the Court file for her exact filing). Plaintiff also filed a motion to stay the case pending her appeals being heard at the Court of Appeals.
14. Plaintiff argues these appealed orders effect a substantial right and require an automatic stay of this case. This is not accurate.
15. These Orders are interlocutory and do not affect a substantial right. The extension of time requests were timely filed and granted within the normal course of civil practice and Rules of Civil Procedure. The withdrawal of Defendant's original counsel is not of concern for the Plaintiff, and this is a simple small claims action for summary ejection with normal claims and counterclaims associated with a normal small claims appeal and not an exceptional civil case (see J. Eagles' Order of 1/30/2024).
16. Plaintiff's appeal does not warrant an automatic stay and the case should proceed.³
17. With respect to Plaintiff's 12/16/2024 amended complaint, she argues she has as a matter of right to amend her complaint up and until a responsive pleading has been filed per the Rules of Civil Procedure. Defendant argues Plaintiff has already amended her complaint 3 times during the small claims portion of the case (note one was withdrawn) and should be required to request leave from the Court to amend her complaint again.
18. N.C.G.S. 7A-229 states a District Court judge "may" order the repleading or further pleadings of the parties once appealed to District Court.

³ The Court cannot provide legal advice to the parties but advised Plaintiff to seek legal counsel and/or refer to Rule 8 of the Rules of Appellate Procedure.

19. The Defendant filed for an extension of time to respond to the 12/16/2024 amended complaint on 1/13/2025 and subsequently filed a motion to strike/dismiss the same pleading on 1/15/2024. The motion to strike the pleading tolled the time to respond to this amended complaint.
20. In reviewing the filings to date, including the ruling denying setting this case as an exceptional case, the Court is contemplating hearing the claims set forth in the Plaintiff's 12/16/2024 amended complaint. Furthermore, the Court granted the Defendant an extension of time to respond to this amended complaint. Therefore, it is reasonable for the Court to deny Defendant's motion to strike the amended complaint of 12/16/2024 and allow Plaintiff's amended complaint of 12/16/2024 to stand.
21. In denying Defendant's motion to strike/dismiss Plaintiff's 12/16/2024 amended complaint, the Court also determines that this is the Plaintiff's final complaint without an Order from this Court granting her leave to amend.
22. Furthermore, Defendant had, per the timely extension of time, until February 14, 2025, to Answer the 12/16/2024 amended complaint. Defendant's motion to strike/dismiss tolled the running of this extension of time for 28 days. Therefore, Defendant shall have until the close of business on Friday, March 14, 2025, to answer the amended complaint.
23. The case was set for trial on 2/24/2025. This is no longer feasible given the on-going motions having just been resolved and the Defendant being granted until 3/14/2025 to respond to Plaintiff's amended complaint. Therefore, the case shall be continued to allow discovery and other, proper responsive pleadings. The case will be removed from the 2/24/2025 trial calendar and shall be reset by the parties via the TCA (Trial Court Administrator) or the Court.

Conclusions of Law

1. The Court has jurisdiction over the parties and subject matter of this action.
2. The parties were properly noticed for the hearing subject to this Order.
3. The Plaintiff's issues on appeal are interlocutory, do not affect a substantial right and do not invoke an automatic stay of these proceedings.
4. The Court grants the Plaintiff leave to amend her complaint; thus her 12/16/2024 amended complaint is allowed. Further amendments will require expressed Court permission.
5. Defendant's motion to strike/dismiss the amended complaint tolled the required response time; thus an extension is proper given this ruling denying Defendant's motion to strike/dismiss said amended complaint.


6. Removing the case from the trial calendar is within the Court's discretion to manage the Court calendar.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's motion for automatic stay is DENIED.
2. Defendant's motion to strike/dismiss Plaintiff's 12/16/2024 amended complaint is DENIED.
3. Plaintiff is granted leave to amend her complaint and the Court accepts her 12/16/2024 amended complaint. Any further amendments shall only be by leave of this Court.
4. Defendant shall have until Friday, March 14, 2025, to answer Defendant's amended complaint.
5. This case is removed from the 2/24/2025 trial calendar and may be reset by the parties via the TCA or by the Court or TCA.
6. The Court retains jurisdiction to enter other orders that are just and proper.

2/17/2025 3:34:14 PM

This the 2/17/2025.



The Honorable V. A. Davidian III
District Court Judge presiding