

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 24-CV-022933-910

CHARITY MAINVILLE,)
)
 Plaintiff,)
)
 vs.)
)
ANNA DE SANTIS and)
DE SANTIS RENTALS, LLC,)
)
 Defendant.)

**EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
UNDER RULE 65(b)**

NOW COMES the Plaintiff, Charity Mainville, proceeding pro se, and respectfully moves this Honorable Court for a Temporary Restraining Order and Preliminary Injunction pursuant to N.C. Gen. Stat. § 1-485 and Rule 65 of the North Carolina Rules of Civil Procedure. In support of this Motion, Plaintiff shows the Court the following:

INTRODUCTION

Plaintiff seeks emergency injunctive relief to enforce the automatic stay that took effect upon the filing of her interlocutory appeal on February 10, 2025, as supplemented on February 19 and February 28, 2025, pursuant to N.C. Gen. Stat. § 1-294.

Despite this statutory automatic stay, proceedings have improperly continued in this Court, including an improper hearing, orders that appear to involve ex parte communications between Defendants' counsel and the Court, and multiple filings by defendants with each one effectively violation the stay.

The Court's refusal to recognize the automatic stay and continuing procedural irregularities threaten substantial rights of the Plaintiff, violate due process, and undermine the integrity of the judicial process.

Plaintiff previously attempted to seek federal relief regarding these matters, but was informed that federal courts cannot interfere with state court proceedings absent a direct action against the court.

STATEMENT OF FACTS

1. Procedural History

1. This action originated as a small claims case filed on July 22, 2024 for breach of warranty of habitability, misrepresentation under the North Carolina Unfair and Deceptive Trade Practices Act, and subsequently included a claim for defamation.
2. After adverse rulings in small claims court and court-ordered arbitration despite the provided evidence, Plaintiff properly filed for a trial de novo in District Court.
3. Between January 23 and January 30, 2025, the Court entered several procedurally flawed orders that violated Plaintiff's substantial rights, prompting her interlocutory appeal filed on February 10, 2025.
4. Plaintiff's appeal challenges multiple orders including:
 - a. Order to Continue Exceptional Case Status and Default Judgement (January 23 2025).
 - b. Order Granting Motion for Extension of Time to File Responsive Pleadings and Motions granted ex parte (January 24, 2025).

- c. Order Granting Motion to Withdraw As Counsel and Denying and Rendering Moot Plaintiff's Motion to Compel Answer and Emergency Motion to Vacate Orders (January 30, 2025).
 - d. Order Granting Extension of Time for Defendant's Response to Plaintiff's First Set of Interrogatories and Request for Production of Documents (January 30, 2025).
 - e. Amended Order denied ex parte (January 30, 2025).
 - f. Order Denying Plaintiff's request for an Automatic Stay & Denying Defendant's Motion to Strike Plaintiff's Amended Complaint (February 17, 2025).
 - g. Order for Extension of Time on Requests for Admission granted ex parte (27 February 2025).
5. Despite Plaintiff's properly filed notice of appeal and explicit invocation of the automatic stay under N.C. Gen. Stat. § 1-294, the Court has continued proceedings, including Judge Davidian's February 17, 2025 order that mischaracterized this action as a summary ejectment proceeding rather than a habitability claim.

II. Evidence of Ex Parte Communications

On February 27, 2025, the Order for Extension of Time on Requests for Admission stated:

"Due to the numerous filings in this case, including appeals to the Court of Appeals, this motion was not properly heard until today."

In fact, no hearing occurred. The order was entered one minute before the court accepted Defendants' procedurally improper "Objection" to the Notice of Deemed Admissions—filed during an active automatic stay. The objection itself was timestamped approximately 30 minutes prior to the order, indicating the judge may have reviewed it before it was formally accepted on

the docket. The order also failed to address Plaintiff's pending Motion to Strike, ignored the defective service, and falsely stated that a hearing took place. These circumstances strongly suggest potential ex parte communication or off-record coordination between the Court and opposing counsel.

On April 28, 2025, there was a scheduled hearing regarding judicial settlement of the record on appeal. Plaintiff logged on remotely promptly on time. Defendants' counsel appeared in person at the courthouse but was absent from camera view for approximately 15 minutes while the judge's camera was also turned off prior to official proceedings.

When Judge's camera was activated, Defendants' counsel appeared shortly after. The judge cited technical issues.

During the hearing Defendants' counsel made statements demonstrating knowledge of the judge's personal computer issues, stating words to the effect of: "I forwarded an email to your clerk with the ShareFile link for the proposed settled record and supplementals, but I know you've been having issues with your personal computer, so I'm not sure if you saw it."

This statement strongly indicates private communications outside the presence of Plaintiff and off the record, constituting improper ex parte contact regarding a pending matter.

III. Interference with Appellate Process

The court has failed to issue its ruling on judicial settlement of the record by the promised deadline, which was to be on April 29, 2025.

Defendants' counsel contacted Plaintiff with a proposed settlement offer just 10 minutes before the court's promised ruling on judicial settlement of the record was due, despite Plaintiff's prior written notice that she would not engage in any state-related settlement negotiations. This contact

occurred during an active automatic stay and constitutes an improper attempt to circumvent the appellate process through direct party pressure.

Plaintiff denied this due to the automatic stay on April 30, 2025. Defendants' counsel then filed a response to Plaintiff's Petition for Discretionary Review with the North Carolina Supreme Court on April 30, 2025, containing numerous misrepresentations about both factual matters and speaking for the Court of Appeals' and trial court on their positions.

LEGAL GROUNDS FOR RELIEF

I. Plaintiff Is Likely to Succeed on the Merits

1. N.C. Gen. Stat. § 1-294 clearly provides that *“when an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from.”* This statutory language leaves no room for judicial discretion when a proper appeal has been filed.
2. Plaintiff's interlocutory appeal notice properly identified substantial rights affected:
 - a. The right to due process and a fair hearing;
 - b. The right to proper notice and an opportunity to be heard;
 - c. The right to timely resolution of an aged case;
 - d. The right to proper procedural safeguards in court orders;
 - e. The right to an impartial tribunal and fair judicial process.
3. The Court has refused to acknowledge Plaintiff's prior written notice, and Defendants' counsel now claims that such notice is insufficient—implying that Plaintiff must file a

full appellate brief at the trial level to preserve her rights. Plaintiff intentionally refrained from detailing every violation in the trial court record, reserving that information for the appellate process to prevent undue exposure of appellate arguments in a docket already influenced by improper filings. However, this restraint has proven unwarranted, as the Court's continued refusal to act is compounding procedural harm.

4. Plaintiff is now placed under an undue burden to repeatedly "prove" her claims merely to avoid ongoing harm, reflecting disparate and discriminatory treatment of a pro se litigant who has complied fully with procedural rules and filing standards. This is particularly troubling given that, with the exception of one, every filing submitted by Defendants' counsel has been procedurally improper, in violation of applicable rules, or has contained false or misleading statements.
5. A summary of the relevant facts to violations of her substantial rights is below:
 - a. Order to Continue Exceptional Case Status and Default Judgement (January 23 2025).
 - i. Violated Plaintiff's right to due process by granting an improper oral motion to continue without written filing
 - ii. Denied Plaintiff's right to be heard when attempting to seek clarification
 - iii. Violated Rule 6(d) of the N.C. Rules of Civil Procedure requiring written motions
 - iv. Denied Plaintiff's right to timely resolution of her Default Judgment motion on an aged case
 - v. Contained factual misrepresentations about Defendants' counsel statements

- vi. Was decided by Judge Baker who lacked authority to rule on the Motion for Exceptional Case Status
 - vii. Improperly continued a Default Judgment hearing when Defendants failed to file a motion to set aside judgment as required under Rule 55(d).
- b. Order Granting Motion for Extension of Time to File Responsive Pleadings and Motions granted ex parte (January 24, 2025).
- i. Granted ex parte with no mention of Plaintiff's filed objection
 - ii. Filed without required cover sheet notifying court of Plaintiff's position
 - iii. Violated Local Rule 12.2 by appearing as a consent order despite Plaintiff's explicit denial
 - iv. Extended pleading time without good cause shown as required by Rule 6(b)
 - v. Created judicial prejudice by granting extension 10 days before trial date
 - vi. Backdated order creating procedural irregularity
 - vii. Directly interfered with Plaintiff's right to timely resolution in a trial de novo proceeding
- c. Order Granting Motion to Withdraw As Counsel and Denying and Rendering Moot Plaintiff's Motion to Compel Answer and Emergency Motion to Vacate Orders (January 30, 2025).
- i. Violated N.C. Gen. Stat. § 84-5 by allowing withdrawal without secured replacement counsel for LLC

- ii. Allowed counsel to withdraw without justifiable cause based on needing "more experienced" representation - an admission of Rule 1.1 violation of professional conduct
 - iii. Failed to address Plaintiff's motion for sanctions against opposing counsel
 - iv. Allowed withdrawal without requiring disclosure of replacement counsel identity
 - v. Improperly blamed Plaintiff for case delays for exercising her statutory right to appeal
 - vi. Improperly made judicial statements constituting legal advice to pro se litigant
 - vii. Court stated an extension is automatically granted with no permission needed violating local Rule 12.2 and rule 6(b)
 - viii. Allowed to be granted on misleading and contradictory statements by opposing counsel
- d. Order Granting Extension of Time for Defendant's Response to Plaintiff's First Set of Interrogatories and Request for Production of Documents (January 30, 2025).
- i. Granted without any cause shown as required for discovery extensions
 - ii. Extended discovery deadline past trial date without justification
 - iii. Created direct prejudice by forcing Plaintiff to either proceed without discovery or continue trial
 - iv. Failed to address Plaintiff's proper objections

- v. Used identical language from Defendants' proposed order indicating lack of independent judicial consideration.
- e. Amended Rule 2.1 Order (January 30, 2025):
 - i. Contained material misrepresentations of the record by referencing withdrawn motions
 - ii. Implied a violation of Rule 15a by not clarifying the record
 - iii. Failed to address Plaintiff's request for reasonable accommodations based on disability
 - iv. Contradicted other judicial rulings approving counsel withdrawal for "more experienced" representation
 - v. Failed to address bias concerns raised in the motion
- f. Order Denying Plaintiff's request for an Automatic Stay & Denying Defendant's Motion to Strike Plaintiff's Amended Complaint (February 17, 2025)
 - i. Violating the automatic stay that was already in effect
 - ii. Proceeded on the basis of an oral objection, despite the requirement that objections be made in written form under applicable procedural rules
 - iii. Mischaracterizing the action as a summary ejectment rather than a habitability case
 - iv. Overreaching jurisdiction by determining substantial rights while appeal was pending
 - v. Improperly extended the deadline to file an answer for a second time, granting an additional 28 days beyond the 20-day limit set by rule, effectively allowing Defendants a total of 90 days to respond to a pleading

in a trial de novo—without justification and in clear violation of procedural timeframes.

- vi. Retroactively justifying removal of trial from calendar
- vii. Ruling on a procedurally defective motion with wrong caption
- viii. Issued rulings exclusively on Defendants' motions, while ignoring or failing to address multiple properly filed motions by Plaintiff, demonstrating a pattern of one-sided adjudication.

g. Order for Extension of Time on Requests for Admission (February 27, 2025)

- i. Failed to address Plaintiff's pending motion to strike the extension request
- ii. Ignored the defective certificate of service in violation of Rule 5
- iii. Created a fiction of a non-existent hearing to justify its delayed issuance
- iv. Improperly placed blame on Plaintiff's legitimate appeal for causing delay

- 6. The trial court's collective actions have systematically violated Plaintiff's statutory and constitutional rights to due process, fair hearing, and judicial impartiality. These are not mere procedural inconveniences but affect the fundamental fairness of these proceedings.
- 7. Plaintiff has diligently objected to each improper action, filed appropriate motions to correct procedural errors, and properly invoked appellate review when her substantial rights were affected.
- 8. The continued proceedings in this Court directly violate the automatic stay provisions of N.C. Gen. Stat. § 1-294, making Plaintiff likely to succeed on the merits of this motion.

II. Plaintiff Will Suffer Irreparable Harm Without Injunctive Relief

- 1. Without immediate injunctive relief, Plaintiff will continue to suffer irreparable harm through:

- a. Violation of statutory procedural rights that cannot be remedied by monetary damages;
- b. Being forced to litigate in a tribunal demonstrating bias and engaging in ex parte communications;
- c. Interference with her ability to properly pursue her appeal through obstruction of the record settlement process;
- d. Continuing damage to her case through procedurally flawed rulings made without jurisdiction.
- e. The harm to Plaintiff's due process rights cannot be adequately remedied after the fact, as each additional proceeding conducted in violation of the automatic stay compounds the constitutional violations.

III. The Balance of Equities Favors the Plaintiff

1. Granting the requested TRO merely enforces existing law by recognizing the automatic stay that should already be in effect under N.C. Gen. Stat. § 1-294.
2. Defendants will suffer no prejudice from a pause in proceedings while the interlocutory appeal is resolved, as the case will still proceed once jurisdictional issues are clarified.
3. In contrast, Plaintiff will suffer severe prejudice if forced to continue litigating in a procedurally irregular environment where her substantial rights are violated and where ex parte communications appear to be influencing judicial decisions.
4. Plaintiff has diligently pursued proper procedural channels, filing timely objections to improper proceedings and seeking relief through appropriate legal means, while Defendants have engaged in delay tactics and procedural gamesmanship.

IV. The Public Interest Favors Injunctive Relief

1. The public has a strong interest in maintaining the integrity of the judicial system, preventing ex parte communications, and ensuring that statutory protections for litigants are honored.
2. Enforcing the automatic stay provisions of N.C. Gen. Stat. § 1-294 upholds the rule of law and prevents courts from exceeding their jurisdiction while matters are under appellate review.
3. Allowing courts to ignore automatic stay provisions would undermine appellate review mechanisms and create a dangerous precedent that would threaten due process for all litigants.
4. Plaintiff has been forced to file for reasonable accommodations to avoid being abused by the Court and opposing parties, despite informing the Court four times previously of her needs, further demonstrating the public interest in protecting vulnerable litigants.
5. Failure to grant this relief will constitute a continuing violation of Plaintiff's rights under Title II of the Americans with Disabilities Act (42 U.S.C. § 12132) and Section 504 of the Rehabilitation Act (29 U.S.C. § 794), due to the Court's ongoing discriminatory treatment, failure to provide equal access to justice, and refusal to mitigate undue burden placed on a pro se litigant with a known disability.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

1. Issue an immediate Temporary Restraining Order:
 - a. Recognizing and enforcing the automatic stay under N.C. Gen. Stat. § 1-294;

- b. Prohibiting any further proceedings in this matter until the pending interlocutory appeal is resolved;
 - c. Prohibiting any ex parte communications between the Court and Defendants' counsel;
 - d. Requiring that all communications regarding this matter be properly served on all parties.
- 2. Issue a declaratory ruling that the automatic stay under N.C. Gen. Stat. § 1-294 has been in effect since February 10, 2025;
- 3. Issue an order to settle the record on appeal strictly in accordance with Rule 11(c) of the North Carolina Rules of Appellate Procedure, without requiring Plaintiff to seek further intervention from the appellate courts;
- 4. Order Defendants' counsel to correct any misrepresentations made to appellate courts regarding the status of this case or the appellate proceedings;
- 5. Order an investigation into potential ex parte communications that have occurred in this case;
- 6. Grant such other and further relief as this Court deems just and proper.

VERIFICATION

Plaintiff affirms under penalty of perjury that the factual statements contained in this motion are true and based on personal knowledge. Due to time constraints, exhibits have not been attached, but all referenced filings, motions, and transcripts are part of the court record or can be provided upon request. Plaintiff is willing to supplement this motion with supporting documentation if the Court requires specific materials.

Respectfully submitted this 2nd day of May, 2025.

A handwritten signature in black ink, appearing to read "Charity Mainville", written over a horizontal line.

Charity Mainville
Plaintiff, Pro Se

Four horizontal black bars of varying lengths, used to redact address information.