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,

Defendants.

RESPONSE TO DEFENDANTS' MOTION TO DISMISS

Plaintiff objects to Defendants' attempt to re-argue a Rule 12(b)(6) motion that has already been decided. On February 17, 2025, Judge Davidian entered a written order denying Defendants' "motion to strike/dismiss" and directing Defendants to answer by March 14, 2025. Under Rule 58, the written order controls once reduced to writing, signed, and filed; oral remarks at the hearing do not supersede the filed order.

North Carolina case law is clear on this point. In *West v. Marko*, 504 S.E.2d 571 (1998), the Court of Appeals held that a judgment is not enforceable until it is entered, and "an announcement of judgment in open court constitutes the rendition of judgment, not its entry." Id. at 574 (citing *Searles v. Searles*, 100 N.C.App. 723, 726, 398 S.E.2d 55, 56 (1990); *Worsham v. Richbourg's Sales and Rentals*, 124 N.C.App. 782, 784, 478 S.E.2d 649, 650 (1996)). Rule 58 requires that a judgment or order be "reduced to writing, signed by the judge, and filed with the clerk of court" before it becomes effective. This rule applies equally to orders. *Onslow County v. Moore*, 129 N.C.App. 376, 499 S.E.2d 780, 788 (1998); *Abels v. Renfro Corp.*, 126 N.C.App. 800, 803, 486 S.E.2d 735, 737-38, disc. rev. denied, 347 N.C. 263, 493 S.E.2d 450 (1997).

Accordingly, the February 17, 2025 written order is the controlling and enforceable ruling. Defendants' attempt to revive or re-argue their Rule 12(b)(6) motion months later directly contravenes Rule 58 and settled precedent.

This is further supported by the fact that the hearing took place on February 14, 2025, but the order was not entered until the afternoon of February 17, 2025. The three-day interval confirms that the Court had time to review the Amended Complaint and consider the issues before reducing its decision to writing.

If Defendants believed the written order was wrong or that they needed to be heard on dismissal, their remedy was a timely motion for reconsideration—not a duplicative Rule 12(b)(6) filed a month later. This filing violated Rule 12(g), which requires consolidation of Rule 12 defenses and bars successive motions. While Rule 12(h)(2) preserves a failure to state a claim defense for later, it may be raised only in an answer, by motion for judgment on the pleadings, or at trial. Moreover, Defendants present no new argument; they merely recycle the same contentions rearranged in different form.

Plaintiff cited ample case law confirming this bar, including *Massey v. Hoffman*, 647 S.E.2d 457 (2007), *Evangelistic Outreach v. General Steel*, 640 S.E.2d 840 (2007), *Four Seasons Homeowners Ass'n v. Sellers*, 302 S.E.2d 848 (1983), *Stancil v. Bruce Stancil Refrigeration*, 344 S.E.2d 789 (1986), and *State Farm Fire & Casualty Co. v. DuraPro*, 713 S.E.2d 1 (2011). Defense counsel cited none. Instead, counsel repeated arguments already rejected, claimed unfairness, and attempted to shift blame to Plaintiff for objecting when the rules were not being followed.

By ignoring the plain language of the February 17, 2025 order and ordering further briefing on an issue already decided, the Court exceeded its authority. A judge's role is to apply the rules of procedure and give effect to existing orders—not to create a procedural loophole for a party who failed to comply. To demand additional briefing rather than rule on the threshold validity of the motion demonstrates either (1) incapacity to apply settled law, or (2) collusion with defense counsel under color of law to create a procedural trap depriving Plaintiff of her constitutional rights.

This Court must determine which law governs. If it permits Defendants to proceed on a renewed Rule 12(b)(6) motion, then it implicitly acknowledges that the February 14, 2025 hearing occurred during an automatic stay and was therefore void under N.C. Gen. Stat. § 1-294, which would require Defendants to refile. That acknowledgment necessarily concedes that prior orders entered during the stay were without jurisdiction and violated Plaintiff's statutory and constitutional rights. Conversely, if the Court treats the February 17, 2025 written order as controlling, as Rule 58 requires, then Defendants' successive Rule 12(b)(6) motion is barred under Rule 12(g) and (h). Either way, Defendants cannot revive a dismissal argument already foreclosed by law.

For these reasons, Defendants' Motion to Dismiss is improper, barred, and must be denied with prejudice. Any other ruling would contravene established precedent, the North Carolina Rules of Civil Procedure, and controlling state statute.

Finally, in response to Judge Williams' statement that the parties must provide all case law cited during the hearing, Plaintiff notes that the authorities are listed herein. However, it is not the responsibility of a litigant—particularly a pro se party—to serve as the Court's law clerk. Published case law is readily accessible to the Court, and judges are presumed to know the law.

The duty to research and apply precedent rests with the judiciary, not with the parties. Only unpublished cases require the parties to supply copies. Plaintiff will not undertake the improper role of providing published decisions to a sitting judge.

Respectfully submitted this the 28th day of September, 2025.

Charity Mainville
Plaintiff, Pro Se

[redacted]