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WAKE COUNTY
CLERK OF SUPERIOR COURT
BY: E. Bollers

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
23CV027876-910

WAKE COUNTY

TIGRESS SYDNEY ACUTE McDANIEL, JD,)
And ON BEHALF OF MINOR CHILD,)
Plaintiff,)
)
v.)
)
CAMDEN PROPERTIES, INC. dba Camden NoDa,)
CAMDEN DEVELOPMENT, INC. dba Camden)
NoDa, CUSA N.C. HOLDINGS, L.P. dba Camden)
NoDa, and AMERICAN NATIONAL PROPERTY AND)
CASUALTY COMPANY,)
Defendants.)

ORDER

THIS MATTER came on for hearing before the undersigned Judge presiding at the May 23, 2024 General Civil District Court session, Tenth Judicial District, on Defendants' Camden Development, Inc. and CUSA N.C. Holdings, L.P.'s Motion to Dismiss Plaintiff's Complaint (or alternatively Motion to Transfer Venue to Mecklenburg County), on Defendant American National Property and Casualty Company's motion to dismiss (or alternatively to transfer venue to Mecklenburg County), and on Plaintiff's Motion for Sanctions against counsel for American National Property and Casualty Company, Lori Gilmore.

IT APPEARING THAT this hearing was scheduled to be heard, and was heard, remotely via WebEx. Plaintiff appeared and represented herself; attorney Patrick Johnson appeared on behalf of Defendants Camden Development, Inc. and CUSA N.C. Holdings, L.P.; and attorney Lori Gilmore appeared on behalf of Defendant American National Property and Casualty Company.

IT FURTHER APPEARING that the undersigned judge informed the parties at the 9:00 am calendar call that she had a morning motions calendar and an afternoon status calendar, in addition to an emergency motion to stay that had to be heard that afternoon. Because the instant motions had been continued from two (or more) previous court settings, the undersigned Judge was not inclined to continue these motions again (and no party asked to have the hearing continued). The undersigned judge further informed the parties at calendar call that out of necessity, the motions would be heard in the afternoon following the emergency motion to stay and the afternoon status calendar, and each party was fully informed that they would be limited to ten minutes each to present arguments on these motions. Although exercising her inherent authority to control the courtroom and her calendar, the court assured the parties that she would take the motions under advisement and would review the file in its entirety before ruling, specifically including the Complaint, the instant motions, any briefs, memorandums of law, and/or responses to motions, as well as any review of any legal authority submitted prior to or referenced during the hearing.

Having fully considered the complete record in this matter, and considering the arguments of Plaintiff and respective counsel for Defendants, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff is a citizen and resident of Mecklenburg County.
2. Plaintiff filed the Complaint in the instant action on **October 3, 2023**. That same day, a Summons issued directed to Camden Properties, Inc. and Camden Development, Inc., and a separate Summons issued directed to CUSA N.C. Holdings, L.P. Hereinafter Defendant Camden Properties, Inc. shall be referred to herein as “Camden Properties”, Defendant Camden Development, Inc. shall be referred to herein as “Camden Development” and Defendant CUSA N.C. Holdings, L.P. shall be referred to herein as “CUSA”.
3. Prior to commencing the instant action, on **July 15, 2023**, Plaintiff filed a Complaint in Wake County, File Number 23CV018640-910, against Camden Properties regarding the same core facts as alleged in the instant action. That case remains pending, having been transferred to Mecklenburg County prior to the commencement of the instant action.
 - a. On **September 25, 2023**, the Honorable Judge Walczyk entered an Order transferring venue of Wake County File Number 23CV018640-920 to Mecklenburg County. The Clerk of Court of Wake County transferred the case to the Clerk of Court of Mecklenburg County on or about September 28, 2023. Mecklenburg County received the file on or about October 10, 2023 and assigned the case Mecklenburg County File Number 23 CVD 17525.
 - b. Despite the September 25, 2023 Order transferring venue to Mecklenburg County, on **November 13, 2023**, Plaintiff filed a Notice of Voluntary Dismissal of Wake County File Number 23CV018640-910, a case that was no longer pending in Wake County, having been transferred to Mecklenburg County. As such, the Notice of Voluntary Dismissal filed in 23CV018640-910 was ineffective.
 - c. According to Odyssey, the Mecklenburg County case, 23 CVD 017525, which was commenced prior to the instant action, remains pending.
4. On **October 16, 2023** Plaintiff filed ninety (90) page Amended Complaint¹ in this matter, which added a fourth Defendant, American National Property and Casualty Company (hereinafter referred to herein as “American National”). A Summons issued that same day for American National.
5. On October 16, 2023, Plaintiff filed a copy of the Civil Summons issued on **October 3, 2024** directed to Camden Properties and Camden Development. Attached to this filed copy of the

¹ On or about November 12, 2023, after filing the amended Complaint, Defendant inexplicably voluntarily dismissed the initial complaint filed in this matter. The filing of a dismissal of the original complaint after filing an amended complaint is not only unnecessary but inappropriate, and it resulted in the court records being updated to reflect a dismissal of the action. Plaintiff's response the updated court records was to file a document entitled “Rule 60(a) and (c) Motion for Relief from Clerk's Mistake Designating Case Disposition as Moot in Case Activity”, which created unnecessary work for the Clerks and unnecessary time spent by opposing counsel reviewing that document..

summons is a United States Postal Service (“USPS”) return receipt (“green card”) that was addressed to “Camden Development Inc, 176 Mine Lake Ct Ste 100, Raleigh, NC 27615” and it reflecting a purported signature and a date of delivery of October 5, 2023.

6. On October 16, 2023, Plaintiff filed a copy of the Civil Summons issued on **October 3, 2024** directed to CUSA. Attached to the copy of the summons is the USPS green card that was addressed to “CUSA NC Holdings LP, 176 Mine Lake Ct Ste 100, Charlotte *[sic]*, NC 27615” reflecting a purported signature and a date of delivery of October 5, 2023.
7. On **December 14, 2023**, in lieu of filing an answer, Camden Development and CUSA filed a motion to dismiss or in the alternative a motion to transfer venue to Mecklenburg County, pursuant to Rule 12(b)(3) of the North Carolina Rules of Civil Procedure (“NC R Civ P”).
8. On **January 8, 2024**, American National filed a Motion to Dismiss Amended Complaint pursuant to Rules 12(b)(2), 12(b)(3), 12(b)(4), 12(b)(5) and 12(b)(6) of the NC R Civ P, or alternatively a motion to transfer venue to Mecklenburg County pursuant to GS §§ 1-82 and 1-83.
9. Camden Development’s and CUSA’s Motions and American National’s Motions were originally noticed and calendared for hearing on February 8, 2024.
10. On **January 24, 2024**, Plaintiff filed a one hundred and three (103) page² response to American National’s Motion to Dismiss. Included in this filing is a motion for sanctions against American National’s attorney, Lori Gilmore. Plaintiff’s motion for sanctions was noticed and calendared for hearing on February 8, 2024.
11. On February 8, 2024, these motions were all continued to April 4, 2024. On March 22, 2024, Plaintiff filed a motion to continue and an amended motion to continue. The Court granted Plaintiff’s request for a continuance, and all the noticed motions were continued from the April 4, 2024 setting to May 23, 2024.

DEFENDANT AMERICAN NATIONAL’S MOTION TO DISMISS

Rule 12(b)(2), Rule 12(b)(4), Rule 12(b)(5), and Rule 12(b)(6)
NC R Civ P

12. The Amended Complaint purports to assert the following claims on behalf of Plaintiff and/or on behalf of an unnamed “minor child”³: (1) Negligence; (2) Breach of Implied Warranty of Habitability; (3) Breach of Quiet Enjoyment; (4) Retaliatory Eviction; (5) Misrepresentation in Contract Law; and (6) Breach of Contract. The Amended Complaint seeks damages (including punitive damages) and specific performance.
13. A motion to dismiss pursuant to Rule 12(b)(2) is a determination of whether the Court has jurisdiction over a party to the action. A motion to dismiss pursuant to Rule 12(b)(4) is a

² Ninety-one (91) pages of Plaintiff’s response are filings and other papers relating to a case Plaintiff filed in Federal Court against the Defendants named herein.

³ Not only does the Complaint fail to name the minor plaintiff, but Plaintiff also never sought appointment of a Rule 17 guardian *ad litem* for the minor as required by law.

determination of the sufficiency of process, and a motion to dismiss pursuant to Rule 12(b)(5) is a determination of the sufficiency of service of process.

14. Rule 4 of the NC R Civ Proc delineates the methods by which proper service may be obtained over a corporation. Rule 4(j)(6) provides as follows:

Domestic or Foreign Corporation. - Upon a domestic or foreign corporation by one of the following:

- a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.*
- b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.*
- c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.*
- d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.*

15. The subpoena directed in this case to American National failed to be addressed to a proper person or title as designated by Rule 4(j)(6) of the NC R Civ Procedure.⁴ This defect in the content of the summons constitutes insufficiency of process.

16. Plaintiff attempted to serve American National through the USPS. Pursuant to GS § 1-75.10(a)(4), proof of service of process is as follows:

(4) Service by Registered or Certified Mail. - In the case of service by registered or certified mail, by affidavit of the serving party averring:

- a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;*
- b. That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and*
- c. That the genuine receipt or other evidence of delivery is attached.*

17. There is no affidavit of service of process in the file for American National. In fact, there is no affidavit of service process in the file for any of the named defendants.⁵

18. Plaintiff has failed to make a *prima facie* showing of sufficient service of process on American National.

⁴None of the summonses Plaintiff caused to be issued in this case directed service of the summons to any person identified as a proper person to receive service as provided for in Rule 4 of the NC R Civ P.

⁵While this is insufficient proof of service of process, the Court notes that Plaintiff attached a Certificate of Service to her Amended Complaint stating: "I hereby certify that, on this 15th day of October, 2023, in full accordance with Rule 4 et sequel [sic] of the NC Rules of Civil procedure regarding service, a copy of the AMENDED COMPLAINT, and SUMMONS TO NEWLY NAMED DEFENDANT ANPCC have been delivered upon the Defendant in this action by placing date stamped copies in the custody of the USPS for delivery upon Defendants by certified mail as follows: . . . " This statement was followed by four mailing addresses, one listed for each of the named defendants.

19. Unless a defendant waives objections to personal jurisdiction, three things must exist for a court to have authority over a defendant in a civil case, the first of which is effective service of process. Plaintiff has failed to prove proper service of process on American National. As such the Court does not have personal jurisdiction over this defendant.
20. A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the pleading. Dismissal of a complaint for failure to state a claim is proper: "(1) when the complaint on its face reveals that no law supports plaintiff's claim; (2) when the complaint reveals on its face the absence of fact sufficient to make a good claim; or (3) when some fact disclosed in the complaint necessarily defeats the plaintiff's claim." *Barrington v. Dyer*, 282 N.C. App. 404, 407
21. Rule 8 of the NC R Civ P provides that a pleading, including a complaint, shall contain a short and plain statement of the claim "sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief" and a "demand for judgment for the relief" to which the pleader deems himself entitled.
22. Instead of a short and plain statement of the claims, Plaintiff chose to file an Amended Complaint that included significant detail about the facts that she believed supported her claims against American National.
23. Plaintiff's Amended Complaint disclosed facts that defeat her claims against American National.

**DEFENDANT CAMDEN DEVELOPMENT AND DEFENDANT CUSA MOTION TO DISMISS or alternatively
MOTION TO TRANSFER VENUE TO MECKLENBURG COUNTY
And
DEFENDANT AMERICAN NATIONAL'S MOTION TO DISMISS or alternatively
MOTION TO TRANSFER VENUE TO MECKLENBURG COUNTY
Rule 12(b)(3), NC R Civ P**

24. Plaintiff's Amended Complaint alleges that Plaintiff is a resident of Mecklenburg County.
25. Plaintiff's Amended Complaint alleges that Camden Development is a corporation domiciled in Raleigh, North Carolina.
26. Plaintiff's Amended Complaint alleges that CUSA is a corporation domiciled in Raleigh, North Carolina.
27. Plaintiff's Amended Complaint alleges American National is "headquartered in Missouri doing business nationwide." Plaintiff's Amended Complaint does not allege that American National is a domiciled corporation.
28. Plaintiff's Amended Complaint alleges that she entered into one (or more) residential lease with Defendants Camden Properties, Camden Development and CUSA. She contends that all three of these entities are doing business under one trade name "Camden No Da".
29. The residential lease(s) at issue in this case was executed in Mecklenburg County.

30. The residences that are the subject of these leases are located in Mecklenburg County.
31. All conduct alleged in the Amended Complaint took place in Mecklenburg County.
32. All civil claims, torts, and relevant acts asserted in Plaintiff's Amended Complaint are alleged to have taken place in Mecklenburg County.
33. The lease at issue in this action in Plaintiff's Amended Complaint is central to all of the claims asserted by Plaintiff. The lease agreement between Plaintiff and Camden Development provides that "venue for any action shall be proper in the county in which the [residence] is located."
34. Absent other considerations or as yet unknown facts (such as whether American National is domiciled in North Carolina), North Carolina's venue statutes provides that venue of this action would be proper in Wake County, North Carolina and would also be proper in Mecklenburg County, North Carolina.
35. The venue selection clause in the lease that provides for venue in the county in which the residence is located is enforceable.
36. Because of the venue selection clause, the proper venue for this action is Mecklenburg County.
37. Plaintiff has a prefiling injunction ("gatekeeper order") entered against her in Mecklenburg County, Mecklenburg File Number 18 CVS 1416. In its current form, this gatekeeper order applies to any filing by the Plaintiff in any State Court located in Mecklenburg County and includes all then pending actions and all future actions that may be commenced. This gatekeeper order is not an outright bar on Plaintiff filing in Mecklenburg County. This gatekeeper order provides, in pertinent part, as follows:

"McDaniel is hereby enjoined from filing in any North Carolina state court located in Mecklenburg County any complaint, motion, pleading or any other document unless: (1) the document has either been certified by an attorney duly licensed by the North Carolina State Bar and in good standing with both the State Bar and the Mecklenburg County Bar as complying with the requirements of Rule 11 of the Rules of Civil Procedure; or (2) has been authorized by an appropriate judicial official based upon that official's review of the document."
38. Plaintiff's Amended Complaint is not accompanied by a Rule 11 certification by any attorney licensed to practice law in North Carolina, nor was it authorized to be filed by an appropriate judicial official in Mecklenburg County.
39. Other than acknowledging that the Mecklenburg gatekeeper order exists, an order that she considers to be an unlawfully entered prefiling injunction, Plaintiff offered no explanation as to why she filed this action Wake County, and she provided no other information as to why proceeding with this action in Wake County would be more convenient to her.
40. When the Court finds that an action was filed in an improper venue, the Court has two options: to dismiss the action without prejudice or enter an order transferring venue to the proper county.

41. Transferring venue of this action to Mecklenburg County (without Plaintiff first complying with the gatekeeper order in place in Mecklenburg County) would be allowing Plaintiff to circumvent the gatekeeper order that is in place in that Mecklenburg County.
42. It is appropriate under the circumstances, and in the interest of justice that any dismissal based solely on improper venue be without prejudice.

**Plaintiff's Motion for Sanctions Against
Counsel for American National, Lori Gilmore.**

43. On January 24, 2024, Plaintiff filed a document entitled *"Plaintiff's Response in Opposition to Defendant ANPC's Wantonly Frivolous and Corruptly Motivated Motion to Dismiss and Motion for Sanctions Against Defendant's Counsel, Lori E. Gilmore"*.
44. Plaintiff specifically cites to Rules 11 and 26(g) of the NC R Civ P as the legal basis for her motion for sanctions against Attorney Gilmore for filing American National's Motion to Dismiss Amended Complaint or alternatively Motion to Transfer Venue.
45. Rule 26 of the NC R Civ P is a Discovery Rule. The Court was not made unaware of any discovery being issued in this case. As such, this Rule does not provide any basis for sanctions against Attorney Gilmore.
46. As noted in Plaintiff's written objection to the motion to dismiss and her motion for sanctions, the motion to dismiss filed by Ms. Gilmore was quite brief. Ms. Gilmore's motion cites the specific Rules of Civil Procedure under which the motion is based and includes very little other than the following:

"The Plaintiff has filed suit in Wake County in an effort to circumvent a Gate Keeper Order filed in the appropriate venue, Mecklenburg County. Therefore this Court lacks jurisdiction over the entity with respect to the matters alleged in the Complaint. The Complaint should be dismissed for violation of said Gate Keeper Order. Finally, the Complaint fails to state a cause of action upon which relief can be granted against [American National]."
47. The Court agrees that the statement in American National's motion that "the Complaint should be dismissed for violation of said Gate Keeper Order", standing alone, implies that filing the instant action in Wake County was a violation of the Mecklenburg County gatekeeper order. The filing of the Amended Complaint, in and of itself, is not a violation of the gatekeeper order.
48. When reviewing a filing that is the subject of a motion for sanctions pursuant to Rule 11, the Court must review the filing in its entirety to determine whether the **filing** in its entirety violated the Rule.
49. Having granted American National's motion to dismiss, which is the filing about which Plaintiff filed her Rule 11 motion for sanctions, the Court finds that the signing and filing of this motion was not in violation of Rule 11.

50. Any of the following conclusions of law that are more appropriately denominated as a finding of fact are incorporated herein.

Based upon the foregoing findings of fact, the court **CONCLUDES AS A MATTER OF LAW:**

1. The Court has subject matter jurisdiction over these motions and jurisdiction over Plaintiff as well as over Defendant Camden Development Inc. and Defendant CUSA (solely for the limited purposes of hearing the instant motions).
2. Insufficient process was issued for Defendant American National.
3. There is insufficient proof of proper service of process on Defendant American National.
4. The Court does not have personal jurisdiction over Defendant American National.
5. Plaintiff's claims against Defendant American National should be dismissed for insufficient process, insufficient service of process, and lack of jurisdiction over American National.
6. Plaintiff's Amended Complaint fails to state a claim for which relief can be granted against Defendant American National.
7. Defendant American National's motion to dismiss has been pending since January 8, 2024. Plaintiff completely failed to make any effort to file a second amended complaint as to this defendant, to remedy the service issues as to this defendant, or to take a voluntary dismissal as to this defendant.
8. Plaintiff's claims against Defendant American National should be dismissed with prejudice for failure to state a claim.⁶
9. The venue selection clause in the lease agreement that is at issue in this case is enforceable.
10. Pursuant to the lease agreement between Plaintiff and Camden Development, the proper venue is Mecklenburg County.
11. Transferring venue of this action to Mecklenburg County without Plaintiff first complying with the gatekeeper order in place would be allowing Plaintiff to circumvent the gatekeeper order that is in place in that Mecklenburg County.
12. It is appropriate under the circumstances, and in the interest of justice for this Court to dismiss the claims against Camden Development and CUSA WITHOUT PREJUDICE.
13. The above Findings of Facts are incorporated herein to the extent that they represent Conclusions of Law.

⁶ *First Fed. Bank v. Aldridge*, 230 N.C. App. 187, 749 S.E.2d 289 (2013)

Based upon the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that

1. Defendant American National's Motion to Dismiss is hereby **GRANTED**.
2. Plaintiff's Claims as to Defendant American National are hereby **DISMISSED WITH PREJUDICE**.
3. Defendant Camden Development and Defendant CUSA's motion to dismiss is hereby **GRANTED**.
4. Plaintiff's Claims as to Defendant Camden Development and Defendant CUSA are hereby **DISMISSED WITHOUT PREJUDICE**.
5. Plaintiff's Claims against Defendant Camden Properties, Inc. are **DISCONTINUED** pursuant to Rule 4.
6. Plaintiff's motion for sanctions against Attorney Gilmore is hereby **DENIED and DISMISSED**.
7. Court costs are taxed to Plaintiff.

This the 22nd day of July, 2024.



Debra Sasser
Judge Presiding