

Article 8.

Miscellaneous.

Rule 64. Seizure of person or property.

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of this State. (1967, c. 954, s. 1.)

Rule 65. Injunctions.

(a) Preliminary injunction; notice. – No preliminary injunction shall be issued without notice to the adverse party.

(b) Temporary restraining order; notice; hearing; duration. – A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (i) it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (ii) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the judge fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice and a motion for a preliminary injunction is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with a motion for a preliminary injunction, and, if he does not do so, the judge shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the judge may prescribe, the adverse party may appear and move its dissolution or modification and in that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Damages may be awarded in an order for dissolution as provided in section (e).

(c) Security. – No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the judge deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State of North Carolina or of any county or municipality thereof, or any officer or agency thereof acting in an official capacity, but damages may be awarded against such party in accord with this rule. In suits between spouses relating to support, alimony, custody of children, separation, divorce from bed and board, and absolute divorce no such security shall be required of the plaintiff spouse as a condition precedent to the issuing of a temporary restraining order or preliminary injunction enjoining the defendant spouse from interfering with, threatening, or in any way molesting the plaintiff spouse during pendency of the suit, until further order of the court, but damages may be awarded against such party in accord with this rule.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the persons giving the security and the sureties thereon if their addresses are known.

(d) Form and scope of injunction or restraining order. – Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts enjoined or restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice in any manner of the order by personal service or otherwise.

(e) Damages on dissolution. – An order or judgment dissolving an injunction or restraining order may include an award of damages against the party procuring the injunction and the sureties on his undertaking without a showing of malice or want of probable cause in procuring the injunction. The damages may be determined by the judge, or he may direct that they be determined by a referee or jury. (1967, c. 954, s. 1; 2001-379, s. 8.)

Rule 66 through Rule 67. Omitted.

Rule 68. Offer of judgment and disclaimer.

(a) Offer of judgment. – At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted within 10 days after its service shall be deemed withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(b) Conditional offer of judgment for damages. – A party defending against a claim arising in contract or quasi contract may, with his responsive pleading, serve upon the claimant an offer in writing that if he fails in his defense, the damages shall be assessed at a specified sum; and if the claimant signifies his acceptance thereof in writing within 20 days of the service of such offer, and on the trial prevails, his damages shall be assessed accordingly. If the claimant does not accept the offer, he must prove his damages as if the offer had not been made. If the damages assessed in the claimant's favor do not exceed the sum stated in the offer, the party defending shall recover the costs in respect to the question of damages. (1967, c. 954, s. 1.)

Rule 68.1. Confession of judgment.

(a) For present or future liability. – A judgment by confession may be entered without action at any time in accordance with the procedure prescribed by this rule. Such judgment may be

for money due or for money that may become due. Such judgment may also be entered for alimony or for support of minor children.

(b) Procedure. – A prospective defendant desiring to confess judgment shall file with the clerk of the superior court as provided in section (c) a statement in writing signed and verified or sworn to by such defendant authorizing the entry of judgment for the amount stated. The statement shall contain the name of the prospective plaintiff, his county of residence, the name of the defendant, his county of residence, and shall concisely show why the defendant is or may become liable to the plaintiff.

If either the plaintiff or defendant is not a natural person, for the purposes of this rule its county of residence shall be considered to be the county in which it has its principal place of business, whether in this State or not.

(c) Where entered. – Judgment by confession may be entered only in the county where the defendant resides or has real property or in the county where the plaintiff resides but the entry of judgment in any county shall be conclusive evidence that this section has been complied with.

(d) Form of entry. – When a statement in conformity with this rule is filed with the clerk of the superior court, the clerk shall enter judgment thereon for the amount confessed, and docket the judgment as in other cases, with costs, together with disbursements. The statement, with the judgment, shall become the judgment roll.

(e) Force and effect. – Judgments entered in conformity with this rule shall have the same effect as other judgments except that no judgment by confession shall be held to be res judicata as to any fact in any civil action except in an action on the judgment confessed. When such judgment is for alimony or support of minor children, the failure of the defendant to make any payments as required by such judgment shall subject him to such penalties as may be adjudged by the court as in any other case of contempt of its orders. Executions may be issued and enforced in the same manner as upon other judgments. When the full amount of the judgment is not all due, or is payable in installments, and the installments are not all due, execution may issue upon such judgment for the collection of such sums as have become due and shall be in usual form. Notwithstanding the issue and satisfaction of such execution, the judgment remains as security for the sums thereafter to become due; and whenever any further sum becomes due, execution may in like manner be issued. (1967, c. 954, s. 1; 1987, c. 288.)

Rule 69. Omitted.

Rule 70. Judgment for specific acts; vesting title.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the judge may direct the act to be done at the cost of the disobedient party by some other person appointed by the judge and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The judge may also in proper cases adjudge the party in contempt. If real or personal property is within the State, the judge in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to execution upon application to the clerk upon payment of the necessary fees. (1967, c. 954, s. 1.)

Rule 71 through Rule 83. Omitted.

Rule 84. Forms.

The following forms are sufficient under these rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate:

(1) COMPLAINT ON A PROMISSORY NOTE.

1. On or about _____, _____, defendant executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on _____, _____, the sum of _____ dollars with interest thereon at the rate of _____ percent per annum].

2. Defendant owes to plaintiff the amount of said note and interest.

Wherefore, plaintiff demands judgment against defendant for the sum of _____ dollars, interest and costs.

(2) COMPLAINT ON ACCOUNT.

Defendant owes plaintiff _____ dollars according to the account hereto annexed as Exhibit A.

Wherefore, plaintiff demands judgment against defendant for the sum of _____ dollars, interest and costs.

(3) COMPLAINT FOR NEGLIGENCE.

1. On _____, _____, at [name of place where accident occurred], defendant negligently drove a motor vehicle against plaintiff who was then crossing said street.

2. Defendant was negligent in that:

(a) Defendant drove at an excessive speed.

(b) Defendant drove through a red light.

(c) Defendant failed to yield the right-of-way to plaintiff in a marked crosswalk.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization [in the sum of one thousand dollars] (or) [in an amount not yet determined].

Wherefore, plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

(4) COMPLAINT FOR NEGLIGENCE.

(WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER ONE OR THE OTHER OF TWO PERSONS IS RESPONSIBLE OR WHETHER BOTH ARE RESPONSIBLE AND WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF WILLFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE.

1. On _____, _____, at _____, defendant X or defendant Y, or both defendants X and Y, willfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said street.

2. Defendant X or defendant Y, or both defendants X and Y were negligent in that:

(a) Either defendant or both defendants drove at an excessive speed.

(b) Either defendant or both defendants drove through a red light.

(c) Either defendant or both defendants failed to yield the right-of-way to plaintiff in a marked crosswalk.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization [in the sum of one thousand dollars] (or) [in an amount not yet determined].

Wherefore, plaintiff demands judgment against X or against Y or against both in the sum of _____ dollars and costs.

(5) COMPLAINT FOR SPECIFIC PERFORMANCE.

1. On or about _____, _____, plaintiff and defendant entered into an agreement in writing, a copy of which is hereto annexed as Exhibit A.

2. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore, plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of _____ dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of _____ dollars.

(6) COMPLAINT IN THE ALTERNATIVE.

I.

Defendant owes plaintiff _____ dollars according to the account hereto annexed as Exhibit A.

II. ALTERNATIVE COUNT

Plaintiff claims in the alternative that defendant owes plaintiff _____ dollars for goods sold and delivered by plaintiff to defendant between _____, _____, and _____, _____.

(7) COMPLAINT FOR FRAUD.

1. On _____, _____, at _____, defendant with intent to defraud plaintiff represented to plaintiff that _____.

2. Said representations were known by defendant to be and were false. In truth, [what the facts actually were].

3. Plaintiff believed and relied upon the false representations, and thus was induced to _____.

4. As a result of the foregoing, plaintiff has been damaged [nature and amount of damage].

Wherefore, plaintiff demands judgment against defendant for _____ dollars, interest and costs.

(8) COMPLAINT FOR MONEY PAID BY MISTAKE.

Defendant owes plaintiff _____ dollars for money paid by plaintiff to defendant by mistake under the following circumstances:

1. On _____, _____, at _____, pursuant to a contract _____, plaintiff paid defendant _____ dollars.

(9) MOTION FOR JUDGMENT ON THE PLEADINGS.

Plaintiff moves that judgment be entered for plaintiff on the pleadings, on the ground that the undisputed facts appearing therein entitle plaintiff to such judgment as a matter of law.

(10) MOTION FOR MORE DEFINITE STATEMENT.

Defendant moves for an order directing plaintiff to file a more definite statement of the following matters: [set out]

The ground of this motion is that plaintiff's complaint is so [vague] [ambiguous] in respect to these matters that defendant cannot reasonably be required to frame an answer hereto, in that the complaint _____.

(11) ANSWER TO COMPLAINT.

FIRST DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

If defendant is indebted to plaintiff as alleged in the complaint, he is indebted to plaintiff jointly with X. X is alive; is a resident of the State of North Carolina, and is subject to the jurisdiction of this court as to serve of process; and has not been made a party.

THIRD DEFENSE

1. Defendant admits the allegations contained in paragraphs _____ and _____ of the complaint.

2. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph _____ of the complaint.

3. Defendant denies each and every other allegation contained in the complaint.

FOURTH DEFENSE

The right of action set forth in the complaint did not accrue within _____ year next before the commencement of this action.

COUNTERCLAIM

[Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.] Crossclaim Against Defendant Y

[Here set forth the claim constituting a crossclaim against defendant Y in the manner in which a claim is pleaded in a complaint.]

Dated: _____.

Attorney for Defendant

(12) MOTION TO BRING IN THIRD-PARTY DEFENDANT.

Defendant moves for leave to make X a party to this action and that there be served upon him summons and third-party complaint as set forth in Exhibit A attached.

(13) THIRD-PARTY COMPLAINT.

_____,
Plaintiff,
v.

_____,
Defendant and Third-Party Complaint
Third-Party Plaintiff,
v.

Third-Party Defendant.
Civil Action No. _____

1. Plaintiff _____ has filed against defendant _____ a complaint, a copy of which is attached as "Exhibit C."

2. [Here state the grounds upon which the defendant and third-party plaintiff is entitled to recover from the third-party defendant all or part of what plaintiff may recover from the defendant and third-party plaintiff.]

Wherefore, plaintiff demands judgment against third-party defendant _____ for all sums that may be adjudged against defendant _____ in favor of plaintiff.

(14) COMPLAINT FOR NEGLIGENCE UNDER FEDERAL EMPLOYER'S LIABILITY ACT.

1. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at _____ and known as Tunnel No. _____.

2. On or about June 1, _____, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

3. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workmen, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

4. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock which fell from the unsupported portion of the tunnel, and was (here describe plaintiff's injuries).

5. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning _____ dollars per day. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of _____ dollars for medicine, medical attendance, and hospitalization.

Wherefore, plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

(15) COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF.

1. On or about June 1, _____, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of _____ dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, _____, and annually thereafter as a condition precedent to its continuance in force.

2. No part of the premium due June 1, _____, was ever paid and the policy ceased to have any force of effect on July 1, _____.

3. Thereafter, on September 1, _____, G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.

4. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designed as beneficiary of said policy in place of K. L.

5. Each of defendants, C. D., E. F., and X. Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

(16) AVERMENT OF CAPACITY UNDER RULE 9(A).

(NORTH CAROLINA CORPORATION)

Plaintiff is a corporation incorporated under the law of North Carolina having its principal office in [address].

(FOREIGN CORPORATION)

Plaintiff is a corporation incorporated under the law of the State of Delaware having [not having] a registered office in the State of North Carolina.

(UNINCORPORATED ASSOCIATION)

Plaintiff is an unincorporated association organized under the law of the State of New York having its principal office in [address] and (if applicable) having a principal office in the State of North Carolina at [address], and as such has the capacity to sue in its own name in North Carolina. (1967, c. 954, s. 1; 1999-456, s. 59.)