

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF
JUSTICE
DISTRICT COURT DIVISION
(Small Claims)
FILE NO: 26CV001352-800

TOWN OF LAKE LURE, a North)
Carolina municipality,)

Plaintiff,)

v.)

SECOND MOUNTAIN, LLC, a)
North Carolina limited liability)
company)

Defendant.)

MOTION TO CONTINUE

Defendant Second Mountain, LLC (“Defendant” or “Second Mountain”), by and through its undersigned counsel, and pursuant N.C. Gen. Stat. § 7A-223(b), hereby moves for a continuance of this action until the judge presiding in Superior Court, Rutherford County, can rule on Defendant’s Motion to Transfer. In support of this Motion to Continue, Defendant shows unto the Court as follows:

1. Plaintiff filed this summary ejectment action on 24 August 2026.
2. Defendant accepted service of process on 26 August 2026.

3. Defendant filed its Motion to Transfer, to Consolidate, and to Stay on 1 September 2026, seeking resolution of the matters in controversy in Superior Court, Rutherford County, along with other matters already pending there.

4. The Office of the Clerk of Court informed counsel on 2 September 2026 that the hearing would be continued.

5. In reliance on that communication, Defendant focused on other aspects of this case, including soliciting input from counsel for Plaintiff on seeking a consent order of transfer to Superior Court. A copy of the undersigned's email and letter to opposing counsel of 2 September 2026 at 9:58 is attached hereto as Exhibit A. It was transmitted at 9:58 a.m.

6. The Assistant Clerk of Court sent an email on 2 September 2026 at 12:48 p.m. to counsel informing them that the matter was back on the docket for 3 September 2026 at 10:00 a.m.. The undersigned responded to that email at 1:02 p.m. This email exchange is attached as Exhibit B.

7. Defendant filed its Motions to Transfer, to Consolidate, to Stay, and to Dismiss, Answer and Affirmative Defenses at 2:44 p.m. raising subject matter jurisdiction and other considerations.

8. For the reasons shown above, Defendant has had extremely limited time to prepare for a hearing on the merits.

9. Continuances can be allowed under N.C. Gen. Stat. § 7A-223(b).

10. Defendant respectfully requests that this matter be continued until such time as the Superior Court can rule on the Motion to Transfer, to Stay, and to Consolidate.

11. Should the matter proceed to judgment in Small Claims Court, it appears to be inevitable that one or both parties would appeal to District Court.

12. In District Court, Defendant, whether as an appellant or an appellee, would renew the motion to transfer to Superior Court.

13. A continuance would allow these matters to be handled in an orderly manner with lesser costs to the parties and fewer burdens on the judiciary.

WHEREFORE, Defendant respectfully prays as follows:

1. That this Motin to Continue be allowed; and
2. That Defendant have such other and further relief as may
be just and proper.

This the 2nd day of September, 2026.

/s/ Edward L. Bleynat, Jr.

Edward L. Bleynat, Jr. (N.C. Bar No. 16558)

FERIKES BLEYNAT & CANNON, PLLC

67 Charlotte Street

Asheville, NC 28801

Tele: (828) 251-1588

ed@ashevillelitigators.com

Attorney for Defendant Second Mountain, LLC

CERTIFICATE OF SERVICE

This is to certify that I have, on this day, filed electronically through the NC eCourts File & Serve system a copy of the foregoing **MOTION TO CONTINUE**. Parties may access this filing through the Court's system. Notice of this filing will be sent through the Court's Electronic Case Filing System in the manner prescribed under the Rules of Civil Procedure to:

Robert C. Carpenter
N.C. State Bar No. 36672
Marty Benson
N.C. State Bar No. 62791
docket@asklawnc.com
bcarpenter@asklawnc.com
mbenson@asklawnc.com
20 Town Mountain Road, Suite 100
Asheville, NC 28801
828-254-4778
828-254-6646 fax
Attorneys for Town of Lake Lure

This, the 2nd day of September, 2026.

/s/ Edward L. Bleynat, Jr.

Edward L. Bleynat, Jr.

FERIKES BLEYNAT & CANNON, PLLC

67 Charlotte Street

Asheville, NC 28801

Tele: (828) 251-1588

ed@ashevillelitigators.com

Attorneys for Defendant.

**Exhibit A to
Defendant's Motion to
Continue**



Ed Bleynat <ed@ashevillelitigators.com>

Second Mountain, LLC v. Town of Lake Lure

1 message

Ed Bleynat <ed@ashevillelitigators.com>

Wed, Sep 2, 2026 at 9:58 AM

To: Bo Carpenter <bcarpenter@asklawnc.com>, Marty Benson <mbenson@asklawnc.com>

Cc: Ashley Pearce <apearce@asklawnc.com>, "Derek J. Allen" <dja@asklawnc.com>, Ed Bleynat <ed@ashevillelitigators.com>

Correspondence is attached.

--

Edward L. Bleynat Jr.
Ferikes Bleynat & Cannon PLLC
67 Charlotte Street
Asheville, NC 28801 (Physical Address)

ed@ashevillelitigators.com
www.ashevillelitigators.com
828-251-1588 ext. 4
828-251-2214 fax

Our office is located at 67 Charlotte Street just north of I-240.

**Letter to Counsel for Town RE Motions to Transfer, Consolidate, and Stay (signed).pdf**

254K

2026.1025

September 2, 2026

Via Electronic Mail, PDF Format

Robert C. Carpenter
bcarpenter@asklawnc.com

Marty Benson
mbenson@asklawnc.com
Allen, Stahl & Kilbourne
20 Town Mountain Rd., Suite 100
Asheville, NC 28801

Re: Town of Lake Lure v. Second Mountain, LLC, Rutherford County District Court, Small
Claims Division, File No: 26CV001352-800

Dear Bo and Marty:

By now, you should have received a copy of the Motions to Transfer, to Consolidate, and to Stay in the referenced matter (the “Second Mountain Motions”). You should also have heard from the Clerk of Court that Thursday’s hearing has been continued, and that any matters relating to summary ejectment will first go to the Superior Court judge for consideration along with our motion to transfer. We are at a point where I think it would be a good idea to see if we can avoid expending client resources by unnecessarily spinning our wheels. Please let me know whether you are in agreement with one of the options below.

1. **The Town consents to the Second Mountain Motions.** If the Town consents to our motions, I will prepare a proposed order for your review and we can ask the courthouse staff to submit it to a Superior Court judge for entry. We can then work to move the dispute forward toward resolution.
2. **The parties seek a hearing on the Second Mountain Motions before a Superior Court judge.** If the Town cannot consent to entry of orders allowing the Second Mountain Motions, counsel should at least be able to look for a mutually agreeable

hearing date in Superior Court, Rutherford County, for consideration of those motions. Any hearing date will need to take into account my two weeks of secure leave beginning later this month. If there are motions ripe for consideration in the current Superior Court action, that might also be a time to address one or more of them.

3. **The Parties resolve the summary ejectment action.** The parties take action to moot the Second Mountain Motions by agreeing to resolve the Summary Ejectment Action along the following lines:
 - a. Second Mountain again remits the August, 2026 rent by noon on 3 September 2026.
 - b. The Town takes a voluntary dismissal with prejudice of the current Summary Ejectment Action.
 - c. Second Mountain pays the September 2026 rent within five business days of my receipt of the dismissal.
 - d. Second Mountain then pays regular monthly rent in a timely manner while the current Superior Court action is pending, until it is resolved.
 - e. In this scenario, the parties' remaining claims and defenses are preserved in the pending Superior Court Action.
4. **The parties seek a global settlement.** By now, it should be clear that there will be tremendous difficulty in reaching any settlement without a financial component to it which offsets some of Second Mountain's losses. We have repeatedly made proposals involving such a component. They have repeatedly been ignored or rejected. I will seek authorization from my client to make a response to the Town's latest counter offer, which Second Mountain actually regarded as an ultimatum, not a proposal. It is poor stewardship of tax payer dollars for the Town to spend more money on attorneys' fees than on reaching a business solution that avoids litigation costs and fees all around and offsets some of the losses Second Mountain sustained as a result of not having full access to the Lake – something which the boat house provision in the lease was supposed to provide. That is why my client entered into the lease and why the lease reflected that availability. We all have our arguments on that issue. My client thinks its position is stronger. The Town thinks its position is stronger. They will not agree and a judge or jury may have to decide. It is a lot more cost effective to reach a financial settlement than an adjudication on the merits. If I can get authority to make another proposal, I will pass it along promptly.

Please let me know whether any of the foregoing options will work for your client; and, if not, when you are in a good position to discuss this matter.

Marty Benson
Allen, Stahl & Kilbourne
Page 3
September 2, 2026

Sincerely,

FERIKES BLEYNAT & CANNON PLLC

/s/ Edward L. Bleynat, Jr.
Edward L. Bleynat, Jr.
ELBjr/tm

Cc (via email): Second Mountain, LLC
 Paul B. Brock
 Cara Brock
 Derek Allen

**Exhibit B to
Defendant's Motion to
Continue**



Ed Bleynat <ed@ashevillelitigators.com>

Re: 26CV001352-800 Town of Lake Lure vs Second Mountain, LLC

1 message

Ed Bleynat <ed@ashevillelitigators.com>

Wed, Sep 2, 2026 at 1:02 PM

To: "Rodriguez, Ashley R." <ashley.r.rodriguez@nccourts.org>

Cc: "bcarpenter@asklawnc.com" <bcarpenter@asklawnc.com>, "martybenson@mac.com" <martybenson@mac.com>, Ed Bleynat <ed@ashevillelitigators.com>

Thanks, Ashley. I actually think the first determination was the correct one. Is there someone we should discuss this topic with?

On Wed, Sep 2, 2026 at 12:48 PM Rodriguez, Ashley R. <ashley.r.rodriguez@nccourts.org> wrote:

Good afternoon,

Yesterday afternoon I contacted both of your offices to let you know I had taken this case off of the small claims docket per a discussion I had with my legal department. I have now been told that was incorrect. Therefore, this case will be on the docket for tomorrow 9/3/26 @ 10AM.

I apologize for any confusion.

**Ashley Rodriguez**

Assistant Clerk

Civil Division, Rutherford County

North Carolina Judicial Branch

O 828-288-6100

F 828-288-6108

*Justice for all***www.NCcourts.gov**

E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

--

Edward L. Bleynat Jr.
Ferikes Bleynat & Cannon PLLC
67 Charlotte Street
Asheville, NC 28801 (Physical Address)

ed@ashevillelitigators.com
www.ashevillelitigators.com
828-251-1588 ext. 4
828-251-2214 fax

Our office is located at 67 Charlotte Street just north of I-240.