

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.* )

**MOTIONS TO TRANSFER, TO  
CONSOLIDATE, TO STAY,  
AND TO DISMISS, ANSWER,  
AND AFFIRMATIVE  
DEFENSES**

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Defendant Second Mountain, LLC (“Defendant” or “Second Mountain”), by and through its undersigned counsel, and pursuant to Rules 7(b) and 12 of the North Carolina Rules of Civil Procedure, and to N.C. Gen. Stat. § 7A-258(f)(2), hereby responds to the Complaint in Summary Ejectment (the “Complaint”) filed by the Town of Lake Lure (the “Town”) as follows:

**INCORPORATION AND REASSERTION**  
**OF PRELIMINARY MOTIONS**

Defendant incorporates by reference and reasserts the motions set forth in its Motions to Transfer, to Consolidate, and to Stay filed on 1 September 2026 at 10:00 a.m. (the “Preliminary Motions”).

**FIRST MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION**

Defendant moves to dismiss the Complaint under Rule 12(b)(1) of the North Carolina Rules of Civil Procedure and under N.C. Gen. Stat. § 7A-258(f)(2) for lack of subject matter jurisdiction. N.C. Gen. Stat. § 7A-258(f)(2) provides in pertinent part as follows:

The filing of a motion to transfer does not stay further proceedings in the case except that: . . .

- (2) Assignment to a magistrate is not ordered while a motion to transfer is pending.

N.C. Gen. Stat. Ann. § 7A-258.

This matter has been set for hearing before a magistrate on 3 September 2026. No assignment to a magistrate may be made while the Motion to Transfer is pending. Therefore, there is a lack of subject matter jurisdiction to proceed before the Magistrate in a Small Claims Action. The Motion to Transfer must be resolved first.

**SECOND MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION**

Defendant moves to dismiss the Complaint under Rule 12(b)(1) of the North Carolina Rules of Civil Procedure for lack of subject matter jurisdiction over this matter, in that all jurisdiction relating to the dispute between the parties that is a subject of this summary ejectment action has already been vested in the Superior Court Division based upon the pleadings previously filed in the matter styled *Second Mountain, LLC v. Town of Lake Lure, a North Carolina Municipality*, Superior Court, Rutherford County, Case No. 26CV000857-800 (the “Superior Court Action”). In the Superior Court Action, the parties are currently litigating issues relating to the lease that is a subject of this summary ejectment action. Without limitation, the dispute involves claims for declaratory relief and injunctive relief, and the amount in controversy is in excess of Small Claims Court jurisdictional limits, with Superior Court being the proper division, because the value of the leasehold is in excess of \$25,000.00. Therefore, there is no subject matter jurisdiction to proceed in Small Claims Court.

In addition, Defendant has already invoked the jurisdiction of the Superior Court in this action by way of its Preliminary Motions. “[T]he superior court division has original jurisdiction over summary ejectment actions.” E. Carolina Farm Credit, ACA v. Salter, 113 N.C. App. 394, 399, 439 S.E.2d 610, 612 (1994).

**FAILURE TO STATE A CLAIM  
UPON WHICH RELIEF CAN BE GRANTED**

Plaintiff’s Complaint fails to state a claim upon which relief can be granted under Rule 12(b)(6) of the North Carolain Rules of Civil Procedure.

**ANSWER**

The Allegations st forth in the Complaint in Summary Ejectment are denied.

**AFFIRMATIVE DEFENSES**

The Town’s claims are barred by its material antecedent breaches of the lease agreement including, but not limited to, by its failure to provide the leased premises in full to Defendant, its wrongful entry upon the leased premises, its dispossession of Defendant from a portion of the leased premises, its failure to honor lease terms, and otherwise.

WHEREFORE, Defendant respectfully prays as follows:

1. That this action be dismissed;
2. In the alternative, that this action be transferred to  
Superior Court, Rutherford County;
3. That this Action be consolidated in with the Superior  
Court Action upon transfer;
4. That all further proceedings, discovery, and deadlines in  
this Summary Ejectment Action be stayed pending  
transfer to Superior Court; and
5. That Defendant have such other and further relief as may  
be just and proper.

This the 2<sup>nd</sup> day of September, 2026.

/s/ Edward L. Bleynat, Jr.

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

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*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 **MOTIONS TO TRANSFER, TO CONSOLIDATE, TO STAY, AND TO DISMISS, ANSWER, AND AFFIRMATIVE DEFENSES**. 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:

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This, the 2<sup>nd</sup> day of September, 2026.

/s/ Edward L. Bleynat, Jr.

Edward L. Bleynat, Jr.

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