

## SUBCHAPTER IIIA. JURISDICTION.

### Article 6A.

#### Jurisdiction.

#### **§ 1-75.1. Legislative intent.**

This Article shall be liberally construed to the end that actions be speedily and finally determined on their merits. The rule that statutes in derogation of the common law must be strictly construed does not apply to this Article. (1967, c. 954, s. 2.)

#### **§ 1-75.2. Definitions.**

In this Article the following words have the designated meanings:

- (1) "Person" means any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (2) "Plaintiff" means the person named as plaintiff in a civil action, and where in this Article acts of the plaintiff are referred to, the reference includes the acts of his agent within the scope of the agent's authority.
- (3) "Defendant" means the person named as defendant in a civil action, and where in this Article acts of the defendant are referred to, the reference includes any person's acts for which the defendant is legally responsible. In determining for jurisdictional purposes the defendant's legal responsibility for the acts of another, the substantive liability of the defendant to the plaintiff is irrelevant.
- (4) Where jurisdiction of the person is drawn into question in respect to any claim asserted under Rule 14 of the Rules of Civil Procedure, the terms "Plaintiff" and "Defendant" as above defined shall include a third-party plaintiff and a third-party defendant respectively.
- (5) "Solicitation" means a request or appeal of any kind, direct or indirect, by oral, written, visual, electronic, or other communication, whether or not the communication originates from outside the State. (1967, c. 954, s. 2; 1993, c. 338.)

#### **§ 1-75.3. Jurisdictional requirements for judgments against persons, status and things.**

(a) Jurisdiction of Subject Matter Not Affected by This Article. – Nothing in this Article shall be construed to confer, enlarge or diminish the subject matter jurisdiction of any court.

(b) Personal Jurisdiction. – A court of this State having jurisdiction of the subject matter may render a judgment against a party personally only if there exists one or more of the jurisdictional grounds set forth in G.S. 1-75.4 or G.S. 1-75.7 and in addition either:

- (1) Personal service or substituted personal service of summons, or service of publication of a notice of service of process is made upon the defendant pursuant to Rule 4(j) or Rule 4(j1) of the Rules of Civil Procedure; or
- (2) Service of a summons is dispensed with under the conditions in G.S. 1-75.7.

(c) Jurisdiction in Rem or Quasi in Rem. – A court of this State having jurisdiction of the subject matter may render a judgment in rem or quasi in rem upon a status or upon a property or other things pursuant to G.S. 1-75.8 and the judgment in such action may affect the interests in the status, property or thing of all persons served pursuant to Rule 4(k) of the Rules of Civil Procedure. (1967, c. 954, s. 2; 1983, c. 231.)

**§ 1-75.4. Personal jurisdiction, grounds for generally.**

A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j), Rule 4(j1), or Rule 4(j3) of the Rules of Civil Procedure under any of the following circumstances:

- (1) Local Presence or Status. – In any action, whether the claim arises within or without this State, in which a claim is asserted against a party who when service of process is made upon such party:
  - a. Is a natural person present within this State; or
  - b. Is a natural person domiciled within this State; or
  - c. Is a domestic corporation; or
  - d. Is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise.
- (2) Special Jurisdiction Statutes. – In any action which may be brought under statutes of this State that specifically confer grounds for personal jurisdiction.
- (3) Local Act or Omission. – In any action claiming injury to person or property or for wrongful death within or without this State arising out of an act or omission within this State by the defendant.
- (4) Local Injury; Foreign Act. – In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury either:
  - a. Solicitation or services activities were carried on within this State by or on behalf of the defendant;
  - b. Products, materials or thing processed, serviced or manufactured by the defendant were used or consumed, within this State in the ordinary course of trade; or
  - c. Unsolicited bulk commercial electronic mail was sent into or within this State by the defendant using a computer, computer network, or the computer services of an electronic mail service provider in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider. Transmission of commercial electronic mail from an organization to its members shall not be deemed to be unsolicited bulk commercial electronic mail.
- (5) Local Services, Goods or Contracts. – In any action which:
  - a. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this State or to pay for services to be performed in this State by the plaintiff; or
  - b. Arises out of services actually performed for the plaintiff by the defendant within this State, or services actually performed for the defendant by the plaintiff within this State if such performance within this State was authorized or ratified by the defendant; or
  - c. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive

- within this State, or to ship from this State goods, documents of title, or other things of value; or
- d. Relates to goods, documents of title, or other things of value shipped from this State by the plaintiff to the defendant on his order or direction; or
  - e. Relates to goods, documents of title, or other things of value actually received by the plaintiff in this State from the defendant through a carrier without regard to where delivery to the carrier occurred.
- (6) Local Property. – In any action which arises out of:
- a. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or
  - b. A claim to recover for any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control or possession or at the time the action is commenced; or
  - c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this State at the time the defendant acquired possession or control over it; or
  - d. A claim related to a loan made in this State or deemed to have been made in this State under G.S. 24-2.1, regardless of the situs of the lender, assignee, or other holder of the loan note and regardless of whether the loan payment or fee is received through a loan servicer, provided that: (i) the loan was made to a borrower who is a resident of this State, (ii) the loan is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust on real property situated in this State upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families.
- (7) Deficiency Judgment on Local Foreclosure or Resale. – In any action to recover a deficiency judgment upon an obligation secured by a mortgage, deed of trust, conditional sale, or other security instrument executed by the defendant or his predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:
- a. In an action in this State to foreclose such security instrument upon real property, tangible personal property, or an intangible represented by an indispensable instrument, situated in this State; or
  - b. Following sale of real or tangible personal property or an intangible represented by an indispensable instrument in this State under a power of sale contained in any security instrument.
- (8) Director or Officer of a Domestic Corporation. – In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out

of the activities of such corporation while the defendant held office as a director or officer.

- (9) Taxes or Assessments. – In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this State after the date of ratification of this act.
- (10) Insurance or Insurers. – In any action which arises out of a contract of insurance as defined in G.S. 58-1-10 made anywhere between the plaintiff or some third party and the defendant and in addition either:
  - a. The plaintiff was a resident of this State when the event occurred out of which the claim arose; or
  - b. The event out of which the claim arose occurred within this State, regardless of where the plaintiff resided.
- (11) Personal Representative. – In any action against a personal representative to enforce a claim against the deceased person represented, whether or not the action was commenced during the lifetime of the deceased, where one or more of the grounds stated in subdivisions (2) to (10) of this section would have furnished a basis for jurisdiction over the deceased had he been living.
- (12) Marital Relationship. – In any action under Chapter 50 that arises out of the marital relationship within this State, notwithstanding subsequent departure from the State, if the other party to the marital relationship continues to reside in this State. (1967, c. 954, ss. 2, 10; 1969, c. 803; 1981, c. 815, s. 4; 1983, c. 231; 1995, c. 389, s. 1; 1999-212, s. 1; 2007-351, s. 2; 2008-187, s. 1.)

#### **§ 1-75.5. Joinder of causes in the same action.**

In any action brought in reliance upon jurisdictional grounds stated in subdivisions (2) to (10) of G.S. 1-75.4 there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under G.S. 1-75.4 for personal jurisdiction over the defendant as to the claim or cause to be joined. (1967, c. 954, s. 2.)

#### **§ 1-75.6. Personal jurisdiction – Manner of exercising by service of process.**

A court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4 may exercise personal jurisdiction over a defendant by service of process in accordance with the provisions of Rule 4(j) or Rule 4(j1) of the Rules of Civil Procedure. (1967, c. 954, s. 2; 1983, c. 231.)

#### **§ 1-75.7. Personal jurisdiction – Grounds for without service of summons.**

A court of this State having jurisdiction of the subject matter may, without serving a summons upon him, exercise jurisdiction in an action over a person:

- (1) Who makes a general appearance in an action; provided, that obtaining an extension of time within which to answer or otherwise plead shall not be considered a general appearance; or
- (2) With respect to any counterclaim asserted against that person in an action which he has commenced in the State. (1967, c. 954, s. 2; 1975, c. 76, s. 1.)

#### **§ 1-75.8. Jurisdiction in rem or quasi in rem – Grounds for generally.**

A court of this State having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem on the grounds stated in this section. A judgment in rem or quasi in rem may affect the interests of a defendant in a status, property or thing acted upon only if process has been served upon the defendant pursuant to Rule 4(k) of the Rules of Civil Procedure. Jurisdiction in rem or quasi in rem may be invoked in any of the following cases:

- (1) When the subject of the action is real or personal property in this State and the defendant has or claims any lien or interest therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This subdivision shall apply whether any such defendant is known or unknown.
- (2) When the action is to foreclose, redeem from or satisfy a deed of trust, mortgage, claim or lien upon real or personal property in this State.
- (3) When the action is for a divorce or for annulment of marriage of a resident of this State.
- (4) When the defendant has property within this State which has been attached or has a debtor within the State who has been garnished. Jurisdiction under this subdivision may be independent of or supplementary to jurisdiction acquired under subdivisions (1), (2) and (3) of this section.
- (5) In any other action in which in rem or quasi in rem jurisdiction may be constitutionally exercised. (1967, c. 954, s. 2.)

**§ 1-75.9. Jurisdiction in rem or quasi in rem – Manner of exercising.**

A court of this State exercising jurisdiction in rem or quasi in rem pursuant to G.S. 1-75.8 may affect the interests of a defendant in such an action only if process has been served upon the defendant in accordance with the provisions of Rule 4(k) of the Rules of Civil Procedure, but nothing herein shall prevent the court from making interlocutory orders for the protection of the res while the action is pending. (1967, c. 954, s. 2.)

**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

(a) Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

- (1) Personal Service or Substituted Personal Service. –
  - a. If served by the sheriff of the county or the lawful process officer in this State where the defendant was found, by the officer's certificate thereof, showing place, time and manner of service; or
  - b. If served by any other person, his affidavit thereof, showing place, time and manner of service; his qualifications to make service under Rule 4(a) or Rule 4(j3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside this State, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.
- (2) Service of Publication. – In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and

specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.

- (3) **Written Admission of Defendant.** – The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.
- (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.
- (5) **Service by Designated Delivery Service.** – In the case of service by designated delivery service, by affidavit of the serving party averring all of the following:
  - a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt requested.
  - b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the addressee.
  - c. That the delivery receipt or other evidence of delivery is attached.
- (6) **Service by Signature Confirmation.** – In the case of service by signature confirmation as provided by the United States Postal Service, by affidavit of the serving party averring all of the following:
  - a. That a copy of the summons and complaint was deposited in the post office for mailing by signature confirmation.
  - b. That it was in fact received as evidenced by the attached proof of delivery obtained from the United States Postal Service, or other evidence satisfactory to the court of delivery to the addressee.
  - c. That the copy of the signature confirmation or other evidence of delivery is attached.

(b) As used in subdivision (5) of subsection (a) of this section, "delivery receipt" includes a facsimile receipt and a printout of an electronic receipt. (1967, c. 954, s. 2; 1969, c. 895, s. 14; 1973, c. 643; 1979, c. 525, s. 2; 1981, c. 540, ss. 9, 10; 2001-379, s. 2.3; 2005-221, s. 3; 2008-36, s. 4.)

#### **§ 1-75.11. Judgment against nonappearing defendant, proof of jurisdiction.**

Where a defendant fails to appear in the action within apt time the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by G.S. 1-75.10 and, in addition, shall require further proof as follows:

- (1) **Where Personal Jurisdiction Is Claimed Over the Defendant.** – Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence, to be made and filed, of the existence of any fact not shown by verified complaint which is needed to establish grounds for

personal jurisdiction over the defendant. The court may require such additional proof as the interests of justice require.

- (2) Where Jurisdiction Is in Rem or Quasi in Rem. – Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show that the court's jurisdiction has been invoked over the status, property or thing which is the subject of the action. The court may require such additional proof as the interests of justice require. (1967, c. 954, s. 2.)

**§ 1-75.12. Stay of proceeding to permit trial in a foreign jurisdiction or filing of a bankruptcy trust claim.**

(a) When Stay May be Granted. – If, in any action pending in any court of this State, the judge shall find that it would work substantial injustice for the action to be tried in a court of this State, the judge on motion of any party may enter an order to stay further proceedings in the action in this State. A moving party under this subsection must stipulate his consent to suit in another jurisdiction found by the judge to provide a convenient, reasonable and fair place of trial.

(a1) [Bankruptcy Trust Claims.] – In any civil action asserting personal injury claiming disease based upon exposure to asbestos, if a defendant has a reasonable belief that the plaintiff can file additional bankruptcy trust claims, the court on motion of the defendant may enter an order to stay the civil action until the plaintiff files the bankruptcy trust claim.

(b) Subsequent Modification of Order to Stay Proceedings. – In a proceeding in which a stay has been ordered under this section, jurisdiction of the court continues for a period of five years from the entry of the last order affecting the stay; and the court may, on motion and notice to the parties, modify the stay order and take such action as the interests of justice require. When jurisdiction of the court terminates by reason of the lapse of five years following the entry of the last order affecting the stay, the clerk shall without notice enter an order dismissing the action.

(c) Review of Rulings on Motion. – Whenever a motion for a stay made pursuant to subsection (a) above is granted, any nonmoving party shall have the right of immediate appeal. Whenever such a motion is denied, the movant may seek review by means of a writ of certiorari and failure to do so shall constitute a waiver of any error the judge may have committed in denying the motion. (1967, c. 954, s. 2; 2018-4, s. 3.)