

Fairness in the Marketplace Matters in Small Claims Court

Small claims magistrates don't see many lawsuits filed by individuals alleging injury from unfair or deceptive acts (hereinafter, UTP^[1]) by persons with whom they've done business -- but they should. A primary purpose of GS 75-1.1, the relevant statute, is to provide a remedy for consumers injured by unethical or improper behavior in the marketplace, even when the dollar amount of the injury suffered is relatively small. Proving a right to relief under GS 75-1.1, unlike many consumer protection statutes, is simplicity itself, often requiring an injured plaintiff to do little more than relate his story in a clear and persuasive manner. Compared to small claims cases requiring magistrates to interpret and apply multiple statutes in the light of often complicated case law, the straightforward legal principles applicable to UTP cases make them ideal for determination in small claims court. In this blog post, I'll take a quick look at some of the common procedural issues related to this claim in small claims court, review the general legal principles governing these actions, and briefly discuss case law involving GS 75-1.1 in the context of residential lease agreements.

First, the Procedure

Counterclaim or Complaint?

Often a magistrate will encounter a UTP claim in a counterclaim to an action brought by a creditor or landlord, but these claims are equally appropriate when raised in a lawsuit by the consumer. The complaint may assert only a UTP claim but often include related assertions such as breach of contract, conversion, or violation of a specific consumer protection statute.

Sometimes consumers struggle with which AOC complaint form to use and how to fill it out. *Pro se* plaintiffs are often surprised to learn that [CVM-200, Complaint for Money Owed](#), is the appropriate form for all actions seeking only money damages, regardless of the basis of the lawsuit. Almost all the check boxes on CVM-200 pertain to contracts (e.g., *Action on an account*, or *For money lent*) and thus may be puzzling to litigants seeking damages for torts involving negligent behavior, property damage, or ... unfair trade practices. Lawsuits such as these require the plaintiff to check the "Other" block on the complaint form, adding relevant details in the blank that follows. Ideally, the plaintiff will describe the conduct complained of, identify it as an unfair or deceptive trade practice, and mention "treble damages" in this blank, but magistrates should remember [GS 7A-216's](#) admonition that the complaint need only "enable a person of common understanding to know what is meant." If the magistrate thinks the complaint is insufficient to provide adequate notice to the defendant, the magistrate should order the plaintiff to "perfect the statement of his claim," allowing continuances as necessary.

Amount in Controversy

The amount in controversy in a UTP action is the total sum the court is asked to award: i.e., treble

damages.

Statute of Limitations

The relevant statute of limitations for UTP actions is four years. [GS 75-16.2](#).

What's a UTP?

The provisions of GS 75-1.1 are simple:

"Unfair methods of competition ... and unfair or deceptive acts or practices in or affecting commerce are declared unlawful."

Many appellate opinions state that "a practice is unfair when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers." [Marshall v. Miller](#), 302 NC 539 (1981). Other cases have said that an unfair act or practice occurs when a person "engages in conduct which amounts to an inequitable assertion of its power or position." [Johnson v. Phoenix Mutual](#), 300 NC 247 (1980). Unfairness is not to be defined in the abstract, but rather in light of all the facts and circumstances involved. See e.g., [Barbee v. Atlantic Marine Sales](#), 115 NC App 641 (1994). An act is deceptive, according to the courts, if it "possesses the tendency or capacity to mislead, or creates the likelihood of deception," even if statements made by the defendant were technically true. In these cases, the plaintiff is not required to prove that a defendant acted in bad faith or with the intention of deceiving the plaintiff; the concern instead is the actual effect of the defendant's behavior on the consuming public. *Marshall*. An intentional breach of a contract is not, standing alone, sufficient to establish liability for an unfair or deceptive act or practice, but such liability may be found if a breach of contract is accompanied by deceptive communications or other aggravating circumstances. [Poor v. Hill](#), 138 NC App 19 (2000).

When a plaintiff proves that they have been injured by a "person, firm, or corporation" in violation of GS 75-1.1 and are thus entitled to compensatory damages, they are entitled to have those damages trebled as a matter of law. [GS 75-16](#). In addition, if the plaintiff is represented by an attorney, the court has discretion to award "a reasonable attorney fee," provided the court expressly finds that (1) the violation was willful, and (2) the defendant unreasonably refused to "fully resolve the matter which constitutes the basis of such suit." [GS 75-16.1](#).

Some Examples from Landlord-Tenant Case Law

[Love v. Pressley](#), 34 NC App 503 (1977). Two days after notifying LL that they were moving out, tenants discovered that landlord had entered the premises and removed some of their property. Upon inquiry, tenants were informed that "the clean-up man had been there," but efforts to contact LL were unsuccessful. After jury determined damages for trespass and conversion by LL, trial

judge found LL's actions were UTP and trebled amount awarded by jury.

[*Borders v. Newton*](#), 68 NC App 768 (1984). Based on LL's statements that rental property was available and suitable for occupancy, T paid one month's rent and security deposit. In fact, city had forbidden LL to rent property, which had been declared uninhabitable. When LL refused to refund T's money, court awarded that amount trebled as damages for LL's deceptive acts pursuant to GS 75-1.1.

[*Stanley v. Moore*](#), 339 NC 717 (1995). Repeated efforts by LL to force Ts to vacate residential rental property, including cutting off water and power and forcefully entering property to demand that Ts leave immediately, was unlawful self-help eviction in violation of GS 42-25.6 and was UTP, entitling Ts to treble damages.

Marshall v. Miller, 302 NC 539 (1981): LL induced Ts to rent mobile homes in mobile home park by promising to provide amenities such as swimming pool and playground with no present intention or ability to do so was UTP.

[*Allen v. Simmons*](#), 99 NC App 636 (1990) and many other cases as well: LL who collects rent with knowledge that rental premises are uninhabitable in violation of [GS Ch. 42, Art. 5](#) (Residential Rental Agreements Act) violates GS 75-1.1, entitling T to treble damages.

A final note: The list of cases cited above is by no means complete. Residential lease agreements are a ripe source of UTP claims because of the many statutes protecting tenants from unfair practices in the rental of residential housing. Remember that an identified target for GS 75-1.1 protection are acts or practices that "offend established public policy." Several statutes found in GS Ch. 42 specifically state that violations are "against the public policy of this State." See, for example, [GS 42-46](#) (regulating late fees and administrative fees); [GS 42-37.1](#) (prohibiting retaliatory eviction); [Ch. 42, Art. 6](#) (the Tenant Security Deposit Act); [GS 42-25.7](#) (related to LL's treatment of T's personal property).

[1] *Unfair trade practices* (UTPs) is a term commonly used to refer to behavior that violates GS 75-1.1 and will be used in this post. Although the term is no longer technically correct due to a statutory amendment deleting the word "trade" from the statute, its use persists.