

SEPTEMBER 22, 2025 | PUBLICATION

Client Alert: Strategic Lawyering Earns Dismissal of Lawsuit Against Shumaker Clients at Trial

In an action for breach of a commercial lease agreement, related personal guaranty agreement, and fraudulent inducement filed by the property owner and landlord against a former tenant and personal guarantors, Shumaker attorney Christian Staples successfully brought a Motion to Dismiss when the case was called for a jury trial, just prior to jury selection. The case was dismissed without prejudice, meaning that the Plaintiff/Landlord may refile the action within one (1) year, in compliance with the North Carolina Rules of Civil Procedure; however if it elects to do so, it must pay the costs incurred by the Tenant/Guarantors/Defendants in the original action.

The Plaintiff/Landlord was a South Carolina limited liability company who owned the subject property in Charlotte, NC. Although the foreign LLC had originally registered with the North Carolina Secretary of State, its Certificate of Authority was revoked several months prior to the trial date because of its failure to file the required annual report or to pay the annual fee.

The North Carolina Limited Liability Act, N.C. Gen. Stat. § 57D-7-02(a), provides that “No foreign LLC transacting business in this State without permission obtained through a certificate of authority may maintain any proceeding in any court of this State unless the foreign LLC has obtained a certificate of authority prior to trial. An issue arising under this subsection must be raised by motion and determined by the trial judge prior to trial.”

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Two reported appellate court decisions in North Carolina further support the proposition that if a foreign LLC/corporation does not possess a Certificate of Authority at the time its case is called for trial, it cannot maintain the action, and its claims must be dismissed, provided that the opposing party moves for such dismissal. *See JDG Environmental v. BJ & Associates, Inc.*, 291 N.C. App. 45 (2023); *Harold Lang Jewelers, Inc. v. Johnson*, 156 N.C. App. 187, 576 S.E.2d 360 (2003). These case law precedents made clear that the Motion to Dismiss would be premature if brought at the summary judgment stage and had to be raised after the case was called for trial and heard and decided by the judge presiding over the trial.

The ruling provides a lesson for foreign LLCs and corporations seeking to take advantage of the North Carolina court system—be sure to maintain your business registration, especially if you intend to prosecute an action to trial.

If you have any questions, please contact Christian Staples at cstaples@shumaker.com.

Christian is a business litigator and partner in the Charlotte, North Carolina office of Shumaker. A portion of his practice is dedicated to commercial lease disputes, representing both landlords/owners and tenants/guarantors in summary ejectment proceedings, actions for money damages, and other related matters, including lease drafting, negotiation, and interpretation.