Smith v. Finger, 2026 NCBC Order 81.

STATE OF NORTH CAROLINA CABARRUS COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 26CV005374-120
MELISSA H. SMITH, RILEY M. SMITH, and COLTON S. SMITH, Individually and Derivatively on Behalf of BILLANDAL, LLC, Plaintiffs, v. JON R. FINGER, SR., DAVID A. FINGER, JR., PHYLLIS F. HEALEY, SADIE B. FINGER, and BILLANDAL, LLC (Nominal Defendant), Defendants.	**ORDER AND MEMORANDUM OF DECISION ON CLERK'S ORDER ENTERING DEFAULT AND DEFENDANT HEALEY'S MOTION TO SET ASIDE ENTRY OF DEFAULT AND TO EXTEND TIME**

1. This matter is before the Court on (i) the Order entered by an Assistant Clerk of Superior Court granting Plaintiff's motion for entry of default against Phyllis F. Heasley and (ii) defendant Phyllis F. Healey's motion to set aside the entry of default against her and to extend her time to respond to the complaint by one month. (ECF No. 25).[1]

2. On 28 August 2026, by Order of Chief Justice Paul Newby of the Supreme Court of North Carolina, this action was designated as a mandatory complex business case pursuant to N.C. Gen. Stat. § 7A-4.5(4)(a). (ECF No. 1).

3. In turn, by an Assignment Order entered on 28 August 2026, this action

[1] Under Rule 7.2 of the Business Court Rules, "[e]ach motion must be filed as a separate document." BCR 7.2. Defendant Healey's motion is ultimately two separate motions: a motion to set aside default and a motion for extension of time. However, rather than striking the motions for non-compliance, the Court in its discretion addresses her motions on their merits. Counsel, however, is directed to comply with the Business Court Rules going forward and is reminded that the Court may strike or disregard non-compliant filings.

was assigned to the undersigned Business Court judge. (ECF No. 2).

4. The Assignment Order provided that, following assignment of the action to the undersigned Business Court judge, "*all proceedings* in this action hereafter shall be before" the undersigned. (ECF No. 2 (emphasis added)). Section 7A-45.4(f) of the North Carolina General Statutes further provides that, "[o]nce a designation is filed" and "after preliminary approval by the Chief Justice," "[*a*]*ll proceedings* in the action shall be before the Business Court Judge to whom it has been assigned unless and until an order has been entered under subsection (e) of this section ordering that the case not be designated a mandatory complex business case or the Chief Justice revokes approval." N.C. Gen. Stat. § 7A-45.4(f) (emphasis added); *KJET Ventures, LLC v. Jamison*, 2026 NCBC LEXIS 1, at *2 (N.C. Super. Ct. Jan. 7, 2026).

5. Similarly, Rule 7.1 of the North Carolina Business Court Rules provides that, "[a]fter an action has been designated as a mandatory complex business case or assigned to a Business Court judge under Rule 2.1 of the General Rules of Practice, the Business Court judge to whom the action is assigned will preside over *all motions and proceedings* in the action." BCR 7.1 (emphasis added); *KJET Ventures, LLC*, 2026 NCBC LEXIS 1, at *2.

6. Thus, upon designation of this action to the Business Court and assignment of this matter to the undersigned Business Court judge, the Cabarrus County Clerk of Superior Court was no longer empowered to enter orders in this action on motions, including those for entry of default, absent a delegation of authority by the Court. *KJET Ventures, LLC*, 2026 NCBC LEXIS 1, at *2; *see In re*

S.E. Eye Center-Pending Matters, 2022 NCBC LEXIS 91, at *15 (N.C. Super. Ct., as amended Sep. 6, 2022).

7. On 27 October 2026, Plaintiffs filed a motion for entry of default against defendant Phyllis Healey and a proposed order granting the motion on both the Business Court's e-filing system (commonly referred to as "Alpine") and with the Clerk on the statewide e-filing system (variously referred to as "Odyssey" or "Enterprise Justice"). (ECF Nos. 20, 21; Odyssey Index Nos. 30, 31).

8. At the bottom of their proposed order, Plaintiffs properly inserted a signature block containing the undersigned judge's name and reflecting his role as a "Special Superior Court Judge for Complex Business Cases." (ECF No. 21 at 2). Plaintiffs' inclusion of this signature block is consistent with this Court's exclusive jurisdiction to enter orders in this action and is consistent with the Business Court Rules. *See* BCR 7.10 (requiring proposed orders for motions for entry of default).

9. Nonetheless, Plaintiffs tendered a proposed order to the Clerk of Superior Court via Odyssey. That same day, an Assistant Clerk of Superior Court removed the Court's signature block from the proposed Order, inserted a signature block for the Assistant Clerk, and entered an Order purporting to enter default against Healey. (*Compare* ECF No. 21 at 2, *with* ECF No. 29 at 2; Odyssey Index Nos. 31, 34).

10. The Assistant Clerk's Order was not authorized by the Court, nor was it properly filed and entered on Alpine until after the Court discovered the putative Order on 3 November 2026. (ECF No. 29).

11. Accordingly, the Assistant Clerk's Order is void and of no effect. *Allred v. Tucci*, 85 N.C. App. 138, 142 (1987) (clarifying that an order is void when the court entering it "act[ed] in excess of [its] jurisdiction"); *see Barton v. Sutton*, 152 N.C. App. 706, 708 (2002); *KJET Ventures, LLC*, 2026 NCBC LEXIS 1, at *2; N.C. Gen. Stat. § 7A-45.4(f); BCR 7.1; (*see also* ECF Nos. 1, 2).

12. After entry of the Assistant Clerk's Order, but also on 27 October 2026, Plaintiffs filed a putative notice of withdrawal of their motion for entry of default on both Alpine and Odyssey, (ECF No. 24; Odyssey Index No. 35), suggesting that they were unaware of the Assistant Clerk's Order.

13. Regardless, on 2 November 2026, defendant Healey filed a motion seeking (i) to set aside the Assistant Clerk's Order and (ii) an approximately one-month extension of time to respond to the complaint. (ECF No. 25). The motion represents that Healey's counsel has conferred with counsel for all other parties, who consent to the relief requested. (ECF No. 25, ¶ 8).

14. Having reviewed the motion,[2] applicable law, and all appropriate matters of record, and considering the consent of the parties, the Court determines that it is appropriate to grant in part the requested extension and deny as moot the request to set aside the purported entry of default.

15. Therefore, in the exercise of its discretion, the Court **GRANTS in part** and **DENIES in part as moot** the motion as follows:

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[2] The Court notes that Healey's motion is single spaced in violation of BCR 3.5. *See* BCR 3.5 (requiring double-spaced filing). Once again, in its discretion, the Court elects to resolve the motion on the merits, and counsel is again reminded and instructed to comply with the Business Court Rules going forward.

a. The Court **STRIKES** the Order entering default signed by the Assistant Clerk of Superior Court, (ECF No. 29; Odyssey Index No. 34), and **DECLARES** that defendant Healey is not currently in default in this action;

b. The Court **DENIES as moot** Defendant Healey's motion to set aside entry of default; and

c. The Court **GRANTS** defendant Healey's motion for an extension of time, and Healey's time to respond to Plaintiffs' complaint is hereby **EXTENDED** through and including **27 November 2026**;

d. The Court **ORDERS** the Cabarrus County Clerk of Superior Court (including all Deputy and Assistant Clerks) not to enter any further orders in this action unless authorized by the judge to whom the action is assigned; and

e. The Court **ORDERS** counsel and the parties in this action not to submit any proposed order to the Court (or the Office of the Clerk of Superior Court of Cabarrus County) via Odyssey submission or by email to the Office of the Clerk of Superior Court of Cabarrus County. All proposed orders are to be submitted via the Business Court's Alpine filing system only and shall not be filed on, or submitted via, Odyssey or by submission to the Clerk's Office unless ordered otherwise by the Court.

SO ORDERED, this 4th day of November 2026.

/s/ Matthew T. Houston
Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases