

FILED

NORTH CAROLINA 2009 MAR 25 P 3:17 IN THE GENERAL COURT OF JUSTICE  
CHATHAM COUNTY SUPERIOR COURT DIVISION  
FILE NO. 09 CVS 261

JOSEPH BERNICE BEAVER and )  
ANN F. BEAVER, )  
Plaintiffs )  
vs. )  
GRANT MICHAEL FOUNTAIN, )  
Defendant )

**COMPLAINT**

(Filed 26 March 2009)

THE PLAINTIFFS, COMPLAINING OF THE DEFENDANT, ALLEGE AND SAYS:

1. Plaintiffs are citizens and residents of Chatham County, North Carolina, and upon information and belief, Defendant is a citizen and resident of Guilford County, North Carolina.
2. On or about March 25, 2006, at approximately 10:10, Plaintiffs were operating their vehicle in a southerly direction on North Elm Street, near the intersection of West Market Street in Greensboro, North Carolina.
3. At said time and place, Defendant was operating his vehicle in an easterly direction on West Market Street, near the intersection of North Elm Street in Greensboro, North Carolina.
4. As Plaintiffs drove through the intersection, with the green light facing their lane of travel, the Defendant drove his vehicle through a red light facing his direction of travel and violently collided with Plaintiffs' vehicle.

5. Defendant was negligent in the operation of his vehicle in the following particulars:

- a. He failed to keep a proper lookout.
- b. He failed to keep his vehicle under proper control.
- c. He failed to stop for a red light facing his direction of travel and yield the right-of-way to the Plaintiffs' vehicle.
- d. He operated his vehicle at a speed that was greater than reasonable under the conditions then existing.
- e. He failed to reduce his speed to avoid an accident.

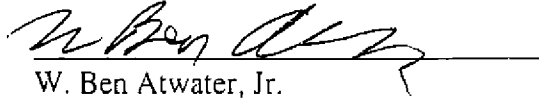
6. The negligence of the Defendant proximately caused both Plaintiffs to incur severe injuries, medical expenses, lost income, and temporary and permanent disability, and pain, suffering and mental anguish.

WHEREFORE, PLAINTIFF PRAYS THE COURT:

- (1) That Plaintiff Joseph Bernice Beaver have and recover judgment of and from the Defendant in a sum in excess of \$10,000.
- (2) That Plaintiff Ann F. Beaver have and recover judgment of and from the Defendant in a sum in excess of \$10,000.
- (3) That the costs of this action be taxed against the Defendant.
- (4) For such other relief as to the Court deems right and proper.
- (5) Jury trial requested.

This ~~28~~ day March, 2009.

EDWARDS & ATWATER



W. Ben Atwater, Jr.  
Attorney for Plaintiffs  
P.O. Box 629  
Siler City, NC 27344\  
919 663-2850  
919 663-3790 Fax  
State Bar #6986

STATE OF NORTH CAROLINA

-5-

File No 09 CVS 261

CHATHAM County

In The General Court of Justice

District  Superior Court Division

Name of Plaintiff  
JOSEPH BERNICE BEAVER and ANN F. BEAVER

Address

City, State, Zip

CIVIL SUMMONS

Alias and Pluries Summons

(Filed 26 March 2009)

G.S. 1A-1, Rules 3, 4

VERSUS

Name of Defendant(s)  
GRANT MICHAEL FOUNTAIN

Date Original Summons Issued

Date(s) Subsequent Summon(es) Issued

To Each of The Defendant(s) Named Below:

Name And Address of Defendant 1  
GRANT MICHAEL FOUNTAIN  
5328 W. MARKET STREET 14B  
GREENSBORO, NC 27403  
919 673-0166 HOME  
919 855-5266 WORK

W21

Name And Address of Defendant 2

| Date | Amount | Time | Initials |
|------|--------|------|----------|
| 4-7  | 1000   | 4/4  | GB       |
| 4-7  | 1470   | 4/4  | GB       |
| 4-28 | 1125   | 4/4  | GB       |

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address of Plaintiff's Attorney (If None, Address of Plaintiff)  
W. BEN ATWATER, JR.  
P.O. BOX 629  
SILER CITY, NC 27344  
919 663-2850

Date Issued 3-26-09 Time 3:47  AM  PM

Signature Brenda Shaw

Deputy CSC  Assistant CSC  Clerk of Superior Court

ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date of Endorsement Time  AM  PM

Signature  Deputy CSC  Assistant CSC  Clerk of Superior Court

NOTE TO PARTIES: Many Counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

939063 (over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

|             |             |   |                   |
|-------------|-------------|---|-------------------|
| Date Served | Time Served | <input type="checkbox"/> AM <input type="checkbox"/> PM | Name of Defendant |
|-------------|-------------|---|-------------------|

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

3 attempts, no contact/no response, did not locate

DEFENDANT 2

|             |             |   |                   |
|-------------|-------------|---|-------------------|
| Date Served | Time Served | <input type="checkbox"/> AM <input type="checkbox"/> PM | Name of Defendant |
|-------------|-------------|---|-------------------|

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to person named below.

Name And Address of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason.

Service Fee Paid  
\$

Signature of Deputy Sheriff Making Return

Date Received

4-1-09

Name of Sheriff (Type or Print)

Date of Return

4-30-09

County of Sheriff

BJ Barnes, Sheriff  
Guilford County

STATE OF NORTH CAROLINA  
CHATHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
09 Cvs 261

JOSEPH BERNICE BEAVER and  
ANN F. BEAVER,

Plaintiffs,

vs.

GRANT MICHAEL FOUNTAIN,

Defendant.

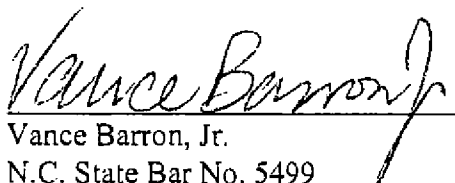
**NOTICE OF APPEARANCE**

(Filed 28 May 2009)

2009 MAY 28 A 11:39  
CHATHAM COUNTY C.S.C.  
M

Vance Barron, Jr., hereby gives notice of his appearance in this action as counsel for the plaintiffs, Joseph Bernice Beaver and Ann F. Beaver.

This the 27th day of May, 2009.

  
Vance Barron, Jr.  
N.C. State Bar No. 5499  
Attorney for Plaintiffs

OF COUNSEL:

BARRON & BERRY, L.L.P.  
301 South Greene St., Suite 310  
Post Office Box 2370  
Greensboro, NC 27402-2370  
Telephone: (336) 274-4782  
Facsimile: (336) 379-8592

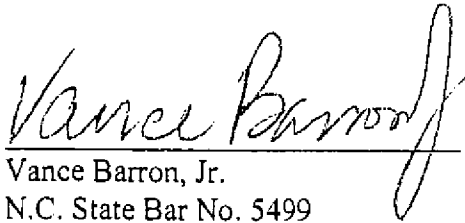
CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing *Notice of Appearance* by first-class mail, postage prepaid, addressed as follows:

W. Bennett Atwater, Jr., Esq.  
The Atwater Law Firm  
Post Office Box 629  
Siler City, North Carolina 27344

James B. Stephenson II, Esq.  
Stephenson, Stephenson & Gray, LLP  
580 New Waverly Place, Suite 240  
Cary, North Carolina 27518

This the 27th day of May, 2009.

  
Vance Barron, Jr.  
N.C. State Bar No. 5499  
Attorney for Plaintiffs

STATE OF NORTH CAROLINA  
COUNTY OF CHATHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 09-CVS-261

JOSEPH BERNICE BEAVER AND ANN )  
F. BEAVER, )  
Plaintiffs, )  
v. )  
GRANT MICHAEL FOUNTAIN, )  
Defendant. )

MOTION TO DISMISS, MOTION FOR  
JUDGMENT ON THE PLEADINGS AND

ANSWER  
(DISM; JOPL; ANSW)  
(Filed 4 June 2009)

CLERK OF SUPERIOR COURT  
JUN 4 2009  
-11 P 2:27

NOW COMES the Defendant and answers the Complaint as follows:

**MOTION TO DISMISS**

NOW COMES the Defendant and moves the Court, pursuant to Rule 12(b)(5) of the Rules of Civil Procedure, for an Order dismissing the above entitled action on the grounds that the Complaint fails for lack of service of process.

**MOTION FOR JUDGMENT ON THE PLEADINGS**

NOW COMES the Defendant and moves the Court, pursuant to Rule 12(c) of the Rules of Civil Procedure, that judgment be entered for the Defendant on the pleadings on the ground that the undisputed facts appearing therein entitle Defendant to such judgment as a matter of law. Specifically, the Complaint alleges that the accident that is the subject of the action occurred on March 25, 2006 and that the Complaint shows that the action was filed on March 26, 2009. The action was therefore brought more than three (3) years after the matter giving rise to the cause of action and is time barred pursuant to N.C. Gen. Stat. §1-52.

**FIRST DEFENSE**

Answering the allegations contained in the Complaint in numerical order:

1. It is admitted that the Plaintiffs are citizens and residents of Chatham County, North Carolina. Except as admitted, the allegations contained in Paragraph 1 of the Complaint are denied.
2. The allegations contained in Paragraphs 2 and 3 of the Complaint are admitted.
3. The Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and, therefore, such allegations are denied.



4. The allegations contained in Paragraphs 5 and 6 of the Complaint are denied.

**ANY ALLEGATION CONTAINED IN THE COMPLAINT THAT HAS NOT BEEN SPECIFICALLY ADMITTED HEREIN IS DENIED.**

**SECOND DEFENSE**  
**(Contributory Negligence)**

If Defendant was negligent as alleged in the Complaint, which negligence is again denied, then in that event, upon information and belief, Plaintiffs were also negligent in that they failed to watch out for their own safety and were otherwise careless and negligent in their actions.

This negligence of the Plaintiffs was a proximate cause of the damage, if any, sustained by Plaintiffs and constitutes contributory negligence, which is pled as an alternative defense and bar to any recovery herein.

**THIRD DEFENSE**  
**(Statute of Limitations)**

The Defendant affirmatively pleads that this action is time barred pursuant to N.C. Gen Stat. §1-52 in that this action was brought in excess of three (3) years from the incident which gave rise to the cause of action.

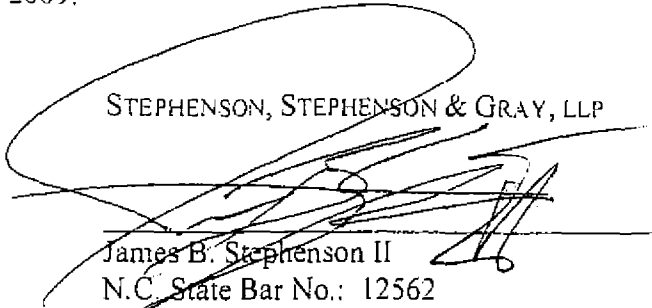
WHEREUPON, having answered the Complaint, the Defendant prays for relief as follows:

1. That this action be dismissed;
2. That judgment be entered in favor of Defendant upon the pleadings.
3. That the Plaintiffs have and recover nothing of and from Defendant;
4. That the costs of this action be taxed against the Plaintiffs;
5. That there be trial by jury of all issues so triable; and
6. That the Court grant such other and further relief as it deems just and

proper.

This the 3<sup>rd</sup> day of June, 2009.

STEPHENSON, STEPHENSON & GRAY, LLP

A large, stylized handwritten signature in black ink, which appears to be "James B. Stephenson II". The signature is written over a horizontal line and extends upwards into the name of the law firm.

James B. Stephenson II  
N.C. State Bar No.: 12562  
Attorney for Defendant  
580 New Waverly Place, Suite 240  
Cary, NC 27518  
Telephone: 919/858-7008  
Facsimile: 919/858-8414

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served a copy of the foregoing document upon all parties of record by depositing a copy of the same in the custody of the U.S. Postal Service, first class postage prepaid, addressed as follows:

W. Ben Atwater, Jr.  
Edwards & Atwater  
PO Box 629  
Siler City, NC 27344

Vance Barron, Jr.  
Barron & Berry, L.L.P.  
PO Box 2370  
301 South Greene Street, Suite 310  
Greensboro, NC 27402-2370

This the 3<sup>rd</sup> day of June, 2009.

STEPHENSON, STEPHENSON & GRAY, LLP



James B. Stephenson II  
Attorney for Defendant

STATE OF NORTH CAROLINA  
CHATHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
09 CvS 261

JOSEPH BERNICE BEAVER and  
ANN F. BEAVER,

Plaintiffs,

vs.

GRANT MICHAEL FOUNTAIN,

Defendant.

**PLAINTIFFS' MOTION TO  
AMEND COMPLAINT  
(AMND)**

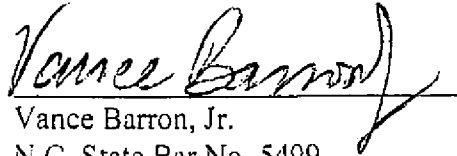
(Filed 12 June 2009)

CLERK OF SUPERIOR COURT  
JUN 12 P 2:30  
2009

The plaintiffs, Joseph Bernice Beaver and Ann F. Beaver, hereby move for leave of Court to amend their *Complaint* filed on March 26, 2009, by substituting the *Amended Complaint* attached hereto as Exhibit A, which is incorporated by reference. This motion is made pursuant to Rule 15 of the North Carolina Rules of Civil Procedure upon the ground that the plaintiffs did not learn until after March 26, 2009, the facts set forth in paragraph 4 of Exhibit A, *i.e.*, that the defendant has been on active duty in the United States Air Force at times pertinent to this action, which resulted in a suspension of the statute of limitation pursuant to the Servicemembers' Civil Relief Act ("the SCRA"), 50 App. U.S.C.A. § 501, *et seq.*

WHEREFORE, the plaintiffs pray that the Court grant them leave to file and serve their proposed *Amended Complaint* (Exhibit A) and that the Court grant such further relief as justice may require.

This the 9th day of June , 2009.

  
Vance Barron, Jr.  
N.C. State Bar No. 5499  
Attorney for Plaintiffs

OF COUNSEL:

BARRON & BERRY, L.L.P.  
301 South Greene St., Suite 310  
Post Office Box 2370  
Greensboro, NC 27402-2370  
Telephone: (336) 274-4782  
Facsimile: (336) 379-8592

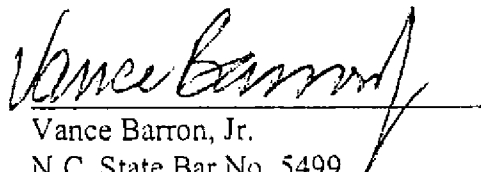
W. Bennett Atwater, Jr., Esq.  
The Atwater Law Firm  
Post Office Box 629  
Siler City, North Carolina 27344  
Telephone: (919) 663-2850  
Facsimile: (919) 663-3790

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing motion upon the defendant by mailing a copy by first-class mail, postage prepaid, addressed to his counsel as follows:

James B. Stephenson II, Esq.  
Stephenson, Stephenson & Gray, LLP  
580 New Waverly Place, Suite 240  
Cary, North Carolina 27518

This the 9th day of June, 2009.

  
Vance Barron, Jr.  
N.C. State Bar No. 5499  
Attorney for Plaintiffs

STATE OF NORTH CAROLINA  
CHATHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
09 Cvs 261

JOSEPH BERNICE BEAVER and  
ANN F. BEAVER,

Plaintiffs,

vs.

GRANT MICHAEL FOUNTAIN,

Defendant.

AMENDED COMPLAINT

The plaintiffs, Joseph Bernice Beaver and Ann F. Beaver, hereby amend their *Complaint* filed on March 26, 2009, by substituting this *Amended Complaint*.

1. The plaintiff Joseph Bernice Beaver ("J.B. Beaver") is a citizen and resident of Bear Creek, Chatham County, North Carolina.
2. The plaintiff Ann F. Beaver ("Ann Beaver") is a citizen and resident of Bear Creek, Chatham County, North Carolina.
3. The defendant, Grant Michael Fountain ("Fountain"), is a citizen and resident of Apex, Wake County, North Carolina.
4. Fountain is a reservist serving as an enlisted man in the United States Air Force. He is on active duty with the Air Force with the 60th Aerial Port Squadron at Travis Air Force Base, California. He has been on active duty in the Air Force since a date several months prior to March 25, 2009. As provided by the Servicemembers' Civil Relief Act ("the SCRA"), 50 App. U.S.C.A. § 501, *et seq.*, formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940, any statute of limitations applicable to the plaintiffs' claim stated in this *Amended Complaint* is tolled by 50 App.



U.S.C.A. § 526(a) for the period of time in which Fountain has been on active duty in the Air Force. The SCRA preempts any North Carolina statute of limitation or repose which might otherwise apply to bar the plaintiffs' claim in this *Amended Complaint*.

5. On March 25, 2006, at about 10:10 a.m., Ann Beaver was riding as a passenger in right front seat of her 2000 Chevrolet Blazer. She had just been released from Moses H. Cone Memorial Hospital, and her husband, J.B. Beaver, was operating the Blazer southbound on North Elm Street in the City of Greensboro.

6. At the same time, Fountain was operating his 2006 Nissan Pathfinder eastbound on West Market Street in Greensboro.

7. As J.B. Beaver drove the Blazer into the intersection of Elm Street and West Market Street, his direction of travel was governed by a steady green light, and his vehicle had the right-of-way at the intersection. Fountain's direction of travel in the Pathfinder at the intersection was governed by a steady red light.

8. Fountain drove the Pathfinder into the intersection of North Elm Street and West Market Street and collided violently with the Blazer and caused the Blazer to overturn in the intersection. J.B. Beaver and Ann Beaver were both trapped in the overturned Blazer and had to be cut out of the vehicle.

9. The collision injured Mr. and Mrs. Beaver. Ann Beaver's injuries included a broken rib and a broken right arm that required surgery.

10. Fountain was negligent in the following respects:

- (a) He failed to keep a proper lookout before entering the intersection.
- (b) He failed to keep his vehicle under proper control.

- (c) He drove his Pathfinder upon a highway carelessly and heedlessly in wanton disregard of the rights and safety of others in violation of N.C. Gen. Stat. § 20-140(a).
- (d) He drove his Pathfinder on a highway at a speed greater than is reasonable and prudent under the conditions then existing in violation of N.C. Gen. Stat. § 20-141(a).
- (e) He failed to reduce the speed of his Pathfinder as necessary to avoid colliding with the Blazer in the intersection in violation of N.C. Gen. Stat. § 20-141(m).
- (f) He drove his Pathfinder into the intersection of West Market Street and North Elm Street when he should have stopped for a steady red light in violation of N.C. Gen. Stat. § 20-158 and Greensboro Code of Ordinances § 16-97.

11. The negligence of Fountain proximately caused the injuries of Mr. and Mrs. Beaver for which they are entitled to recover such past and future medical expenses, loss of earning capacity, physical impairment and disfigurement, and pain and suffering as the evidence may disclose.

12. Mr. and Mrs. Beaver are entitled to compensation for their injuries in the form of money damages, which are reasonably believed to be in excess of \$10,000.00. They are also entitled to recover prejudgment interest at the legal rate on all such compensatory damages from the date of the filing of their *Complaint* on March 26, 2009.

WHEREFORE, the plaintiffs pray that this Court enter judgment against the defendant as follows:



- (a) Compensatory damages in an amount in excess of \$10,000.00 plus prejudgment interest thereon at the legal rate from the date of the filing of the *Complaint* on March 26, 2009;
- (b) Trial by jury on all issues;
- (c) Taxation of costs against the defendant; and
- (d) Such further relief as may be just and appropriate.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

---

Vance Barron, Jr.  
N.C. State Bar No. 5499  
Attorney for Plaintiffs

OF COUNSEL:

BARRON & BERRY, L.L.P.  
301 South Greene St., Suite 310  
Post Office Box 2370  
Greensboro, NC 27402-2370  
Telephone: (336) 274-4782  
Facsimile: (336) 379-8592

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The Atwater Law Firm  
Post Office Box 629  
Siler City, North Carolina 27344  
Telephone: (919) 663-2850  
Facsimile: (919) 663-3790

Filed  
\*CB  
-19-  
7-6-09

STATE OF NORTH CAROLINA  
CHATHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
09 Cvs 261

JOSEPH BERNICE BEAVER and  
ANN F. BEAVER,

Plaintiffs,

vs.

GRANT MICHAEL FOUNTAIN,

Defendant.

**ORDER ALLOWING  
AMENDMENT OF COMPLAINT  
(GW)**

(Filed 6 July 2009)

THIS CAUSE coming on to be heard before the undersigned Judge Presiding in Chatham County Superior Court at the July 6, 2009, civil session upon the *Plaintiffs' Motion to Amend Complaint*, and the Court having considered the matters of record and the arguments of counsel for the parties, the Court concludes that the motion is made upon good cause and that it should be granted,

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed that the motion to amend the plaintiffs' *Complaint* shall be and is hereby ALLOWED. The defendant shall have thirty days after service of the *Amended Complaint* in which to serve a responsive pleading.

This the 6<sup>th</sup> day of July, 2009.

*S/ Paul Ridgeway*  
Judge Presiding

STATE OF NORTH CAROLINA  
CHATHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
09 Cvs 261

JOSEPH BERNICE BEAVER and  
ANN F. BEAVER,

Plaintiffs,

vs.

GRANT MICHAEL FOUNTAIN,

Defendant.

AMENDED COMPLAINT

(Filed 9 July 2009)

FILED  
2009 JUL -9 A 9:22  
CHATHAM COUNTY N.C.

By and with the leave of Court, the plaintiffs, Joseph Bernice Beaver and Ann F. Beaver, hereby amend their *Complaint* filed on March 26, 2009, by substituting this *Amended Complaint*.

1. The plaintiff Joseph Bernice Beaver ("J.B. Beaver) is a citizen and resident of Bear Creek, Chatham County, North Carolina.
2. The plaintiff Ann F. Beaver ("Ann Beaver") is a citizen and resident of Bear Creek, Chatham County, North Carolina.
3. The defendant, Grant Michael Fountain ("Fountain"), is a citizen and resident of Apex, Wake County, North Carolina.
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U.S.C.A. § 526(a) for the period of time in which Fountain has been on active duty in the Air Force. The SCRA preempts any North Carolina statute of limitation or repose which might otherwise apply to bar the plaintiffs' claim in this *Amended Complaint*.

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- (d) He drove his Pathfinder on a highway at a speed greater than is reasonable and prudent under the conditions then existing in violation of N.C. Gen. Stat. § 20-141(a).
- (e) He failed to reduce the speed of his Pathfinder as necessary to avoid colliding with the Blazer in the intersection in violation of N.C. Gen. Stat. § 20-141(m).
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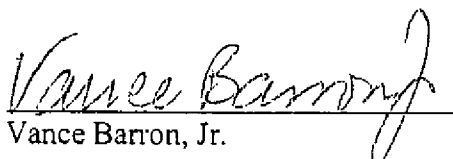
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WHEREFORE, the plaintiffs pray that this Court enter judgment against the defendant as follows:

- (a) Compensatory damages in an amount in excess of \$10,000.00 plus prejudgment interest thereon at the legal rate from the date of the filing of the *Complaint* on March 26, 2009;
- (b) Trial by jury on all issues;
- (c) Taxation of costs against the defendant; and
- (d) Such further relief as may be just and appropriate.

This the 6th day of July, 2009.

  
Vance Barron, Jr.  
N.C. State Bar No. 5499  
Attorney for Plaintiffs

OF COUNSEL:

BARRON & BERRY, L.L.P.  
301 South Greene St., Suite 310  
Post Office Box 2370  
Greensboro, NC 27402-2370  
Telephone: (336) 274-4782  
Facsimile: (336) 379-8592

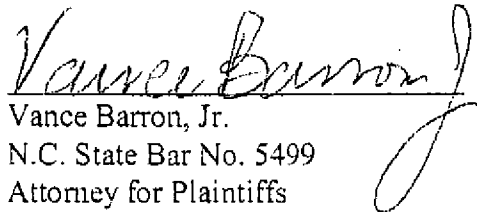
W. Bennett Atwater, Jr., Esq.  
The Atwater Law Firm  
Post Office Box 629  
Siler City, North Carolina 27344  
Telephone: (919) 663-2850  
Facsimile: (919) 663-3790

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing *Amended Complaint* upon the defendant by mailing a copy by first-class mail, postage prepaid, addressed to his counsel as follows:

James B. Stephenson II, Esq.  
Stephenson, Stephenson & Gray, LLP  
580 New Waverly Place, Suite 240  
Cary, North Carolina 27518

This the 6th day of July, 2009.

  
Vance Barron, Jr.  
N.C. State Bar No. 5499  
Attorney for Plaintiffs

STATE OF NORTH CAROLINA  
COUNTY OF CHATHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 09-CVS-261

FILED

JOSEPH BERNICE BEAVER AND ANN  
F. BEAVER,  
CHATHAM COUNTY C.S.C.

Plaintiffs,

v.

GRANT MICHAEL FOUNTAIN,  
Defendant.

BY

*[Signature]*

MOTION FOR JUDGMENT ON THE  
PLEADINGS AND ANSWER TO  
AMENDED COMPLAINT  
(JOPL, ANSW)

(Filed 5 August 2009)

**MOTION FOR JUDGMENT ON THE PLEADINGS**

NOW COMES the Defendant and moves the Court, pursuant to Rule 12(c) of the Rules of Civil Procedure, that judgment be entered for the Defendant on the pleadings on the ground that the undisputed facts appearing therein entitle Defendant to such judgment as a matter of law. Specifically, the Amended Complaint alleges that the accident that is the subject of the action occurred on March 25, 2006 and that the initial Complaint shows that the action was filed on March 26, 2009. The action was therefore brought more than three (3) years after the matter giving rise to the cause of action and is time barred pursuant to N.C. Gen. Stat. §1-52.

**ANSWER**

NOW COMES the Defendant and answers the Amended Complaint as follows:

**FIRST DEFENSE**

The Amended Complaint fails for lack of service of process and should, therefore, be dismissed pursuant to Rule 12(b)(5) of the Rules of Civil Procedure.

**SECOND DEFENSE**

The Amended Complaint fails to state a claim upon which relief may be granted and should, therefore, be dismissed pursuant to Rule 12(b)(6) of the Rules of Civil Procedure.

**THIRD DEFENSE**

Answering the allegations contained in the Amended Complaint in numerical order:

1. The allegations contained in Paragraphs 1 and 2 of the Amended Complaint are admitted.



2. It is admitted that Fountain's parents maintain a home in Apex, Wake County, North Carolina and that he has lived there from time to time in the past several years. It is further admitted that he was assigned to Seymour Johnson AFB during the time surrounding March 25, 2009 and that he was also living at his parents' home during portions of those times. Except as admitted, the allegations contained in Paragraphs 3 and 4 of the Amended Complaint are denied.

3. The allegations contained in Paragraphs 5 and 6 of the Amended Complaint are admitted upon information and belief.

4. It is admitted that a collision occurred between the Plaintiffs' vehicle and the Defendant's vehicle. Except as admitted, the allegations contained in Paragraphs 7 and 8 of the Amended Complaint are denied.

5. The Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 9 of the Amended Complaint and, therefore, such allegations are denied.

6. The allegations contained in Paragraphs 10, 11, and 12 of the Amended Complaint are denied.

**ANY ALLEGATION CONTAINED IN THE AMENDED COMPLAINT THAT HAS NOT BEEN SPECIFICALLY ADMITTED HEREIN IS DENIED.**

**FOURTH DEFENSE**  
**(Contributory Negligence)**

If Defendant was negligent as alleged in the Amended Complaint, which negligence is again denied, then in that event, upon information and belief, Plaintiffs were also negligent in that they ran a red light, failed to slow for an intersection, failed to watch out for their own safety and were otherwise careless and negligent in their actions.

This negligence of the Plaintiffs was a proximate cause of the damage, if any, sustained by Plaintiffs and constitutes contributory negligence, which is pled as an alternative defense and bar to any recovery herein.

**FIFTH DEFENSE**  
**(Statute of Limitations)**

The Defendant affirmatively pleads that this action is time barred pursuant to N.C. Gen Stat. §1-52 in that this action was brought in excess of three (3) years from the incident which gave rise to the cause of action.

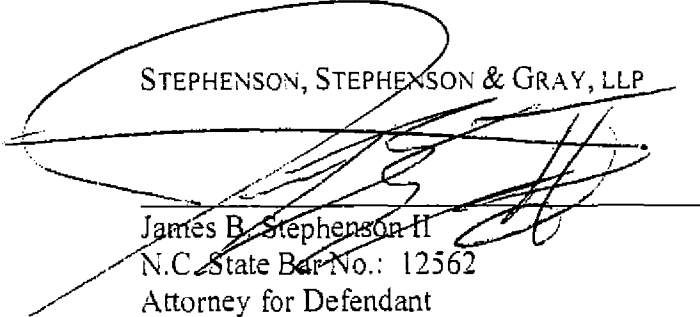
WHEREUPON, having answered the Amended Complaint, the Defendant prays for relief as follows:

1. That this action be dismissed;
2. That judgment be entered in favor of Defendant upon the pleadings.
- 3 That the Plaintiffs have and recover nothing of and from Defendant;
4. That the costs of this action be taxed against the Plaintiffs;
5. That there be trial by jury of all issues so triable; and
6. That the Court grant such other and further relief as it deems just and

proper.

This the 4<sup>th</sup> day of August, 2009.

STEPHENSON, STEPHENSON & GRAY, LLP



James B. Stephenson II  
N.C. State Bar No.: 12562  
Attorney for Defendant  
580 New Waverly Place, Suite 240  
Cary, NC 27518  
Telephone: 919/858-7008  
Facsimile: 919/858-8414

CERTIFICATE OF SERVICE

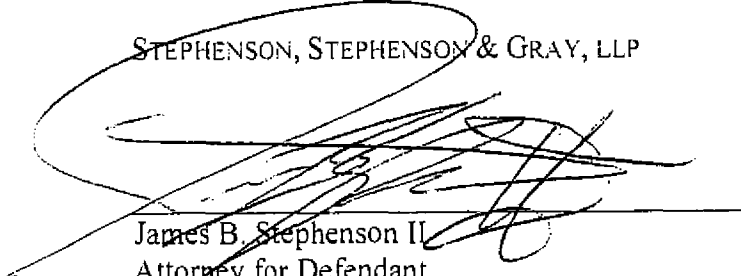
This is to certify that the undersigned has this day served a copy of the foregoing document upon all parties of record by depositing a copy of the same in the custody of the U.S. Postal Service, first class postage prepaid, addressed as follows:

W. Ben Atwater, Jr.  
Edwards & Atwater  
PO Box 629  
Siler City, NC 27344

Vance Barron, Jr.  
Barron & Berry, L.L.P.  
PO Box 2370  
301 South Greene Street, Suite 310  
Greensboro, NC 27402-2370

This the 4<sup>th</sup> day of August, 2009.

STEPHENSON, STEPHENSON & GRAY, LLP



James B. Stephenson II  
Attorney for Defendant