An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-785

Filed 18 November 2026

Mecklenburg County, No. 23CVS012463-590

CKE PROPERTIES, LLC, Plaintiff,

v.

SODOMA LAW, P.C.; AMY E. SIMPSON; ELIZABETH TEMPLE; GARY L. MCFADDEN, in his official capacity as Mecklenburg County Sheriff; KIMBERLY WILLIAMS, individually and in her official capacity as deputy sheriff of Mecklenburg County; PLATTE RIVER INSURANCE COMPANY; FIDELITY BROKERAGE SERVICES (NORTH CAROLINA) LLC; and BANK OF AMERICA, N.A., Defendants.

Appeal by plaintiff from orders entered 1 May 2024, 2 May 2024, and 3 June 2024 by Judge Karen Eady-Williams in Mecklenburg County Superior Court. Heard in the Court of Appeals 28 August 2025.

Law Office of Thomas D. Bumgardner, PLLC, by Thomas D. Bumgardner, and Plumides, Romano & Johnson, PC, by Richard B. Johnson, for plaintiff-appellant.

Poyner Spruill LLP, by Steven B. Epstein, for defendants-appellees Sodoma Law, P.C., Amy E. Simpson, and Elizabeth Temple.

Womble Bond Dickinson (US) LLP, by Sean F. Perrin, for defendants-appellees Gary L. McFadden, Kimberly Williams, and Platte River Insurance Company.

McGuireWoods LLP, by Michael S. Mestre, Dylan M. Bensinger, and Kelly A. Warlich, for defendant-appellee Bank of America, N.A.

No brief filed for defendant Fidelity Brokerage Services (North Carolina) LLC.

FREEMAN, Judge.

Plaintiff appeals from the trial court's orders granting defendants' Rule 12(b)(6) motions to dismiss. On appeal, plaintiff argues that it (1) stated a claim for each claim as to each defendant (2) and did not assert an insurmountable defense on the face of its brief for any defendant. After careful review, we affirm.

I. Factual and Procedural Background

Andrea Kirby Crowell is a member of CKE Properties, LLC, along with two other members, Gentry Kirby and Carolina Kirby. In 2014, Andrea Crowell initiated divorce proceedings with her husband, William Crowell. William was represented by Amy E. Simpson of Sodoma Law, P.C. He had Alzheimer's disease, so his daughter, Elizabeth Temple, communicated with Simpson and the firm on William's behalf.

In July 2016, the Honorable Judge Mann of Mecklenburg County District Court presided over the trial on the equitable division of the Crowells' marital property and entered a written order to that effect. Andrea Crowell appealed, and on 16 August 2019, the Supreme Court of North Carolina vacated the trial court's order and remanded the case. *Crowell v. Crowell*, 372 N.C. 362, 371 (2019) (*Crowell I*).

On 16 July 2021, the trial court entered an amended equitable distribution order and authorized William's attorneys to collect $424,294.00 from Andrea Crowell. Andrea Crowell appealed the amended judgment.

William Crowell died on 30 April 2022. On 9 May 2022, the trial court entered an attachment order, listing accounts from which William Crowell's attorneys could collect. This attachment order included an account with Bank of America in the name of CKE Properties, LLC, which is the account that is the subject of this appeal.

William's legal team caused writs of execution to be issued. One of the writs of execution included "accounts listed in the attachment order" in the description of things to be collected. Another referred to "Exhibit A," which likewise identified accounts listed in the attachment order. Mecklenburg County Sheriff Garry McFadden and Deputy Sheriff Kimberly Williams levied on the writs. Bank of America thereafter released $122,440.15 from plaintiff's account.

On 6 June 2023, this Court vacated and remanded the trial court's amended equitable distribution order. *See Crowell v. Crowell*, 289 N.C. App. 112 (2023) (*Crowell II*). On 1 August 2023, this Court vacated the attachment order for lack of subject matter jurisdiction. *See Crowell v. Crowell*, 290 N.C. App. 1 (2023) (*Crowell III*).

On 19 July 2023, plaintiff sued defendants Sodoma Law, P.C., Amy Simpson, and Elizabeth Temple (collectively the Sodoma defendants), for (1) wrongful execution and seizure, (2) conversion, (3) fraud, (4) abuse of process, (5) negligence, (6) gross negligence, and (7) punitive damages. Plaintiff also sued Sheriff Garry McFadden, in his official capacity, Deputy Sheriff Kimberly Williams, in her

individual and official capacity, and Platte River Insurance Company[1] (collectively the Sheriff defendants) for (1) wrongful execution and seizure, (2) conversion, (3) negligence, and (4) gross negligence; and Bank of America, N.A., for (1) wrongful execution and seizure, (2) conversion, (3) negligence, and (4) gross negligence.[2] [3]

On 15 September 2023, the Sodoma defendants moved to dismiss all of plaintiff's claims against them for failure to state a claim upon which relief may be granted because they "enjoyed absolute immunity to engage in such alleged conduct." The Sheriff defendants moved to dismiss all of plaintiff's claims against them on 20 September 2023, alleging that: (1) "[a]ll official capacity claims against Kimberly Williams [were] barred because they [were] duplicative of the official capacity claims against Sheriff Garry McFadden"; (2) "[a]ll individual capacity claims against Kimberly Williams [were] barred by public official immunity"; (3) "[p]laintiff's claims in their entirety should be dismissed because there [wa]s no liability for law enforcement serving a valid writ on its face, and law enforcement has no duty to go

---

[1] Plaintiff alleges that Platte River Insurance Company is liable for the actions of McFadden and Williams under N.C.G.S. § 58-76-5 because Platte River provided the bond for the sheriffs.

[2] Plaintiff also asserted claims of civil conspiracy, injunctive relief, and declaratory judgment against the Sodoma defendants. On appeal, plaintiff did not contend that the trial court erred by dismissing its claims for injunctive relief and declaratory relief. Plaintiff asserted that the trial court erred by dismissing its derivative claim of civil conspiracy. Although plaintiff cites cases in support of its argument, plaintiff addressed this claim entirely in a footnote and failed to make a sufficient argument in support of the claim. Therefore, to the extent that the argument was proffered on appeal, we deem it abandoned. N.C. R. App. P. 28(b)(6).

Further, plaintiff asserted claims of unfair and deceptive trade practices, injunctive relief, and declaratory relief against defendant Bank of America, but it did not argue these claims in its brief. Accordingly, we do not address these claims.

[3] Plaintiff also named Fidelity Brokerage Services (North Carolina) as a defendant. On 29 May 2024, plaintiff voluntarily dismissed all its claims against Fidelity.

beyond the face of the writ of execution;" and (4) [p]laintiff's claim against Platte River Insurance Company fails because there [wa]s no underlying liability for its principal, Sheriff McFadden, and because [p]laintiff failed to bring a claim pursuant to N.C.G.S. § 58-76-5." On 4 October 2023, Bank of America moved to dismiss plaintiff's claims against it. Bank of America alleged: (1) plaintiff failed to state a claim for wrongful execution and seizure because Bank of America "was obligated to comply with a valid writ of execution and a valid notice of levy"; (2) plaintiff failed to state a claim for conversion because "plaintiffs d[id] not allege that [Bank of America] received or withheld any funds stemming from its processing of writ of execution and notice of levy"; and (3) "[p]laintiff's cause of action for negligence / gross negligence . . . fail[ed] to state a claim against [Bank of America]" and were "barred by the economic loss doctrine."

The trial court heard arguments on all motions to dismiss on 16 November 2023. The court subsequently entered written orders granting each motion to dismiss. On 1 May 2024, the court concluded that all of plaintiff's claims against the Sodoma defendants arose "out of statements and conduct occurring in the course of judicial proceedings, to wit, the Underlying Domestic Action." Because the claims were "sufficiently relevant to the underlying judicial proceeding to be afforded the protection of absolute immunity," the trial court held that "the face of Plaintiff's Amended Complaint disclose[d] an insurmountable bar to recovery and . . . fail[ed] to state a claim for which relief may be granted against the Sodoma defendants."

On 2 May 2024, the court granted the Sheriff defendants' motion to dismiss, concluding that for the wrongful execution and seizure claims, "a Sheriff's deputy has no duty to look beyond the face of a writ order, and the claim is barred by governmental/public official immunity," and that the negligence and gross negligence claims were barred by "governmental/public official immunity." On 3 June 2024, the court dismissed plaintiff's claims against Bank of America with prejudice.

Plaintiff timely appealed each order.

II. Jurisdiction

The trial court's orders granted defendants' motions to dismiss with respect to all of plaintiff's claims, and we have jurisdiction to review these final judgments of a superior court pursuant to N.C.G.S. § 7A-27(b)(1) (2025).

III. Standard of Review

We review "de novo legal conclusions of a trial court, including orders granting or denying a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6) . . . ." *Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 332 (2019). "Motions to dismiss brought under Rule 12(b)(6) test the legal sufficiency of a complaint." *Legal Impact for Chickens v. Case Farms, LLC*, 299 N.C. App. 43, 47 (2025) (cleaned up). We review "whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Taylor v. Bank of Am., N.A.*, 382 N.C. 677, 679 (2022) (quoting *Bridges v. Parrish*, 366 N.C. 539, 541 (2013)). "We treat factual allegations as true and ignore

legal conclusions." *Legal Impact for Chickens*, 299 N.C. App. at 47–48. This Court should affirm a trial court's order granting a 12(b)(6) motion to dismiss if "(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim." *Newberne v. Dep't of Crime Control & Pub. Safety*, 359 N.C. 782, 784 (2005) (cleaned up).

"Where a trial court has reached the correct result, the judgment will not be disturbed on appeal even where a different reason is assigned to the decision." *Eways v. Governor's Island*, 326 N.C. 552, 554 (1990); *see also Orlando Residence, Ltd. v. All. Hosp. Mgmt., LLC*, 375 N.C. 140, 154–55 (2020) (holding that the Business Court correctly dismissed the party's crossclaims under Rule 12(b)(6), but on different grounds than those relied upon by the Business Court).

IV. Discussion

On appeal, plaintiff argues the trial court erred by dismissing its claims against all defendants. We address each argument in turn.

A. Sodoma Defendants

First, plaintiff argues the trial court erred by dismissing its claims against the Sodoma defendants. We disagree. Although the trial court relied on absolute privilege or immunity, we may affirm a correct result on any ground supported by the record and the law. *See Eways*, 326 N.C. at 554. Here, the claims fail because the

facts alleged do not establish wrongful conduct by the Sodoma defendants in obtaining execution on the court orders that were then in effect.

1. Wrongful Execution and Seizure

Our case law states, "no valid levy can be made on property not owned by the judgment debtor." *Cmty. Credit Co. v. Norwood*, 257 N.C. 87, 91 (1962). Our precedent also recognizes that persons who procure, direct, or assist in a wrongful levy may be liable to the injured property owner. *Mica Indus., Inc. v. Penland*, 249 N.C. 602, 605 (1959). Those principles, however, assume a wrongful levy.

Here, the amended complaint and the court orders incorporated into the execution process show that, when the collection occurred, the district court had entered an amended equitable distribution order and an attachment order identifying CKE's Bank of America account as the account from which collection could be made. This Court later reversed the amended equitable distribution order and vacated the attachment order. *See Crowell II,* 289 N.C. App. at 112. However, at the time the Sodoma defendants pursued execution, these orders were valid and authorized collection from the account.

Plaintiff relies on our later rulings vacating those orders. Our reversals do not turn the Sodoma defendants' earlier reliance on those orders into a wrongful levy. Our statutes allow property to be collected under a judgment that is later reversed and authorizes restitution following reversal. N.C.G.S. § 1-297 (2025). However, plaintiff does not seek this relief on appeal.

Since the orders were valid at the time of execution, there was not a wrongful execution or seizure. Accordingly, plaintiff failed to allege facts showing that the Sodoma defendants wrongfully executed or seized plaintiff's property, and the trial court properly dismissed this claim.

2. Conversion

"Conversion is defined as 'an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights.' " *Gallimore v. Sink,* 27 N.C. App. 65, 67 (1975) (quoting *Wall v. Colvard*, *Inc.*, 268 N.C. 43, 49 (1966)). Conversion requires that "there must be ownership in the plaintiff and a wrongful conversion by defendant." *Id*.

Even assuming plaintiff adequately alleged an ownership interest, its allegations do not establish a wrongful conversion by the Sodoma defendants. As stated above, the collection efforts were authorized by court orders that were valid at the time and that expressly identified plaintiff's account. Because the amended complaint does not allege the necessary wrongful deprivation, plaintiff failed to state a claim for conversion.

3. Fraud and Abuse of Process

"Fraud requires a '(1) [f]alse representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party.' " *Hudgins v. Wagoner*,

204 N.C. App. 480, 486 (2010) (quoting *Forbis v. Neal,* 361 N.C. 519, 526–27 (2007)). Plaintiff argues that the Sodoma defendants falsely represented that they possessed legal authority to collect from CKE's accounts. But the facially valid order supplied authority to pursue the identified accounts at the time those representations were made. Plaintiff therefore has not alleged a false representation of material fact sufficient to sustain its fraud claim.

Plaintiff's abuse-of-process claim fails for the same reason. "Protection against wrongful litigation is afforded by a cause of action for either abuse of process or malicious prosecution. The legal theories underlying the two actions parallel one another to a substantial degree, and often the facts of a case would support a claim under either theory." *Stanback v. Stanback*, 297 N.C. 181, 200 (1979). Misusing the legal system for an ulterior purpose is actionable as abuse of process. *Pinewood Homes Inc. v. Harris*, 184 N.C. App. 597, 602 (2007) (holding that the underlying complaint stated a cause of action for abuse of process by alleging defendant sought an injunction to coerce plaintiffs to pay a judgment for which they were not responsible); *Chidnese v. Chidnese*, 210 N.C. App. 299, 310–11 (2011) (holding that the underlying complaint supported abuse of process when defendant initiated a criminal case to harass plaintiff without a lawful basis and defendant's attorney knowingly provided false information to the court to gain an advantage over plaintiff).

Although abuse of process protects against misuse of the legal system for an ulterior purpose, the conduct plaintiff alleges here was the use of writs of execution

to collect from accounts identified in facially valid court orders. Because the amended complaint does not allege that those writs were used beyond the scope authorized by those orders, it does not state an actionable abuse-of-process claim.

4. Negligence, Gross Negligence, and Punitive Damages

Negligence consists of four elements: (1) legal duty, (2) breach of that duty, (3) actual and proximate causation, and (4) injury. *Mabrey v. Smith*, 144 N.C. App. 119, 122 (2001). Gross negligence is "wanton conduct done with conscious or reckless disregard for the rights and safety of others." *Est. of Graham v. Lambert*, 385 N.C. 644, 658 (2024).

Plaintiff argues that the Sodoma defendants acted with both negligence and gross negligence by pursuing a judgment against CKE's account. But because the facially valid orders expressly identified CKE's account as the account subject to collection, plaintiff's complaint fails to establish that the Sodoma defendants breached a duty or showed wanton disregard by pursuing the actions authorized by those orders. The negligence and gross-negligence claims were therefore properly dismissed.

Punitive damages are only recoverable if the claimant proves the defendant engaged in fraud, malice, or willful or wanton conduct. N.C.G.S. § 1D-15(a) (2025). Because plaintiff failed to state an underlying claim against the Sodoma defendants for fraud, malice, or willful or wanton conduct, the trial court properly dismissed the punitive damages claim.

Because plaintiff's claims against the Sodoma defendants fail on the grounds discussed above, we need not reach the parties' arguments concerning absolute privilege or immunity.

B. Sheriff Defendants

Plaintiff next argues the trial court erred by dismissing its claims against the Sheriff defendants. We disagree.

By statute, a "sheriff, by himself or his lawful deputies, shall execute and make due return of all writs and other process to him legally issued and directed, within his county . . . or in any other place where he may lawfully execute the same." N.C.G.S. § 162-14 (2025). A sheriff levying a writ "cannot enquire upon what evidence the judicial officer proceeded, or whether he committed an error or irregularity in his decision." *Welch v. Scott*, 27 N.C. 72, 76 (1844). Further, law enforcement officers "cannot be deemed to act maliciously when they enforce a court order that is valid on its face" and "are not expected to go beyond the face of the order." *Thomas v. Sellers*, 142 N.C. App. 310, 313 (2001) (quoting *Jacobs v. Sherard*, 36 N.C. App. 60, 65 (1978)).

Here, the writs and accompanying materials identified the accounts to be levied upon, including plaintiff's account. The Sheriff defendants executed the writs as directed. Plaintiffs argue that under *Mica Indus.*, the Sheriff defendants can be held liable because they executed the writ. 249 N.C. at 602. However, *Mica* does not require that result. In *Mica*, the sheriff levied on property belonging to an entity

other than the judgment debtor without process, directing seizure of that entity's property. *Id.* at 603–05. Here, by contrast, the process itself identified the account that plaintiff argues was wrongfully seized. Neither *Mica* nor any of our other case law required the Sheriff defendants to determine whether the district court correctly included that account in its orders before executing the writs.

Because the Sheriff defendants' execution of the writs was not wrongful, plaintiff cannot state valid claims against them for wrongful execution and seizure or for conversion. For the same reason, plaintiff has not alleged a breach of duty supporting negligence or gross negligence. Further, plaintiff has not alleged underlying neglect, misconduct, or misbehavior by the Sheriff defendants; therefore, its derivative claim against Platte River Insurance Company likewise fails. In the absence of any neglect, misconduct, or misbehavior by an officer, an insurance company cannot be liable. N.C.G.S. § 58-76-5 (2025). We therefore affirm the order dismissing the claims against the Sheriff defendants without reaching the parties' remaining immunity arguments.

C. Bank of America

Finally, plaintiff argues the trial court erred by dismissing its claims against Bank of America. Again, we disagree.

> Where a judgment requires the payment of money or the delivery of real or personal property it may be enforced in those respects by execution, as provided in this Article. Where it requires the performance of any other act a certified copy of the judgment may be served upon the

> party against whom it is given, or upon the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuses, he may be punished by the court as for contempt.

N.C.G.S. § 1-302 (2025).

"After the issuing of an execution against property, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff the amount of their debt, or as much thereof as is necessary to satisfy the execution . . . ." N.C.G.S. § 1-359(a) (2025). We have held that a bank may pay to the sheriff's office an amount from a bank account "when it is notified that there is an outstanding writ of execution against its depositor," and that Section 1-359 "provides the defendant with a complete defense to plaintiff's action." *Faught v. Branch Banking & Tr. Co.*, 53 N.C. App. 132, 134 (1981).

The writs served on Bank of America identified the account as property from which the funds were to be collected to satisfy the judgment. Both the Sheriff defendants and Bank of America complied. Thus, plaintiff has not alleged a wrongful act supporting its wrongful execution claim nor the wrongful deprivation necessary for conversion. *See Gallimore*, 27 N.C. App. at 67. Nor has plaintiff alleged a breach of duty supporting negligence or gross negligence where the alleged breach consists of Bank of America's compliance with a then-valid writ of execution. Accordingly, the trial court properly dismissed the claims against Bank of America. Because these claims fail on that basis, we need not address Bank of America's alternative argument

under the economic loss rule.

V. Conclusion

The trial court properly dismissed plaintiff's claims against the Sodoma defendants, the Sheriff defendants, and Bank of America under Rule 12(b)(6). Accordingly, we affirm the trial court's orders.

AFFIRMED.

Judges COLLINS and MURRY concur.

Report per Rule 30(e).