

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 16201

PERFORMANCE REHAB
ASSOCIATES, P.C.,

Plaintiff/
Counterclaim
Defendant,

v.

WOLVERINE ESTATE LIMITED
FAMILY TRUST XIV, LLC,

Defendant/
Counterclaim
Plaintiff.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 21 January 2022 by the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, directing the undersigned to determine whether this action is properly designated as a mandatory complex business case in accord with N.C.G.S. § 7A-45.4(a). (*See* Determination Order.)

2. Plaintiff filed the Complaint for Declaratory Judgment (the “Complaint”) initiating this action in Mecklenburg County Superior Court on 6 October 2021, asserting two claims for declaratory judgment and two claims for breach of contract against Defendant. (*See* Compl. Declaratory J. ¶¶ 36–53 [hereinafter “Compl.”].) Plaintiff subsequently filed an Amended Complaint on 10 December 2021, asserting the same four claims as those in the original Complaint and adding claims for breach of the duty of good faith and fair dealing, fraud, and unfair and deceptive trade practices under N.C.G.S. § 75-1.1. (*See* Am. Compl. ¶¶ 44–80.)

3. On 7 January 2022, Defendant filed its Affirmative Defenses, Answer to Amended Complaint, and Counterclaims (the “Counterclaims”), asserting counterclaims for declaratory judgment, breach of contract, breach of the duty of good faith and fair dealing, fraud, slander of title, and unfair and deceptive trade practices under N.C.G.S. § 75-1.1 against Plaintiff. (See Def.’s Affirmative Defenses, Answer Am. Compl., & Countercls. ¶¶ 29–66 [hereinafter “Countercls.”].) Defendant filed a Notice of Designation to Business Court (the “NOD”) on the same day, contending that designation as a mandatory business case is proper under N.C.G.S. § 7A-45.4(a)(9). (See Notice Designation Bus. Ct. 1–2 [hereinafter “NOD”].)

4. The NOD, however, fails to specify the pleading on which designation is based. (See NOD 1–2.) “For a case to be certified as a mandatory complex business case, the *pleading* upon which designation is based must raise a material issue that falls within one of the categories specified in section 7A-45.4.” *Composite Fabrics of Am., LLC v. Edge Structural Composites, Inc.*, 2016 NCBC LEXIS 11, at *25 (N.C. Super. Ct. Feb. 5, 2016) (emphasis added). The Court must therefore determine whether the NOD was timely based first on the Amended Complaint and then on the Counterclaims.

5. “If a party amends a pleading, and the amendment raises a new material issue listed in N.C.G.S. § 7A-45.4(a), any party may seek designation of the action as a mandatory complex business case within the time periods set forth in subsection 7A-45.4(d).” BCR 2.3(a). According to the NOD, the basis for designation is a material issue related to a contract dispute pursuant to section 7A-45.4(a)(9). (See

NOD 1–2.) The declaratory judgment and breach of contract claims asserted in the original Complaint are identical to those asserted in the Amended Complaint. (*Compare* Compl. ¶¶ 36–53, *with* Am. Compl. ¶¶ 44–61.) As such, the Complaint was the first pleading to raise a basis for designation under section 7A-45.4(a)(9) and Defendant should have filed the NOD “within 30 days of receipt of service of the pleading[.]” N.C.G.S. § 7A-45.4(d)(3). Defendant accepted service on 14 October 2021, (*see* Mot. Extension Time Respond Compl.), so the NOD or a conditional notice of designation pursuant to Rule 2.5 of the Business Court Rules should have been filed on or before 15 November 2021. The Court therefore concludes that designation based on the Amended Complaint is untimely.

6. The Court will now consider whether designation based on the Counterclaims is timely. As an initial matter, the Court notes that counterclaims may serve as a basis for mandatory complex business case designation. *See Composite Fabrics of Am., LLC*, 2016 NCBC LEXIS 11, at *9. “[W]here a counterclaim is the first pleading to raise a material issue that falls within a category that qualifies for mandatory designation under section 7A-45.4(a) . . . the statutory time requirements for seeking designation are measured by the [counterclaim].” *Prod. Recovery Mgmt., Inc. v. D.D. Williamson & Co.*, 2018 NCBC LEXIS 248, at *2 (N.C. Super. Ct. Dec. 21, 2018) (quoting *Composite Fabrics of Am., LLC*, 2016 NCBC LEXIS 11, at *9).

7. In order to determine whether this case is timely designated, the Court must determine whether Defendant’s Counterclaims state a basis for designation that the

Complaint does not. As alleged in the Complaint, Plaintiff and Defendant entered into a lease and two addendums in which Defendant, as landlord, agreed to lease certain property to Plaintiff for use as a medical office. (See Compl. ¶¶ 8, 12.) Plaintiff alleges that Defendant breached the lease and its addendums by refusing to sell the property to Plaintiff by a date certain for a sum certain and by charging Plaintiff improper accounting, maintenance, and property management fees. (See Compl. ¶¶ 42, 51.) Plaintiff additionally seeks declaratory relief regarding the rights and obligations of the parties with respect to these issues under the lease and its addendums. (See Compl. ¶¶ 37, 46.)

8. The Counterclaims are based on the same conduct as that described in the Complaint. Defendant alleges that Plaintiff breached the lease and its addendums by recording the lease, “failing to execute a Subordination and Attornment Agreement and Estoppel Certificates,” and “attempting to revoke the power of attorney” contained in the lease. (Countercls. ¶¶ 35–36.) Defendant also seeks declaratory relief with respect to the terms of the lease and its addendums governing Plaintiff’s rights to purchase the property. (See Countercls. ¶¶ 29, 32.)

9. Because Defendant’s Counterclaims and grounds for designation under section 7A-45.4(a)(9) are based on breaches of the same lease at issue in the Complaint, the Counterclaims do not provide a basis for designation under that section different from that in the Complaint. As a result, section 7A-45.4(d)(3) required that a designation based on those grounds be filed by 15 November 2021, making Defendant’s 7 January 2022 NOD untimely.

10. Based on the foregoing, the Court determines that this action is not properly designated as a mandatory complex business case in accord with N.C.G.S. § 7A-45.4(a)(9) and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases. *See, e.g., Prod. Recovery Mgmt., Inc.*, 2018 NCBC LEXIS 248, at *5 (determining designation was improper where counterclaims did not provide a basis for designation not otherwise present in the complaint).

11. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 26 that this action is not properly designated as a mandatory complex business case so that the action may be treated as any other civil action.

SO ORDERED, this the 21st day of January, 2022.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge