

STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
17 CVS 8406

GIFT SURPLUS, LLC,

Plaintiff,

v.

KMS FINANCIAL CORPORATION,  
T/A R&K EXPRESS MART; RAJEN  
SHAH; GITA R. SHAH; FADELS  
ENTERPRISE, INC., T/A EXPRESS  
MART TOO; GOOK YUN KNAPP, T/A  
EXPRESS LANE PETRO; KEYAAN,  
INC., T/A KVC CORNER STOP; H&P  
BUSINESS CENTER LLC; and LONG  
BRANCH CAFÉ, INC.,

Defendants.

**ORDER REGARDING DESIGNATION**

THIS MATTER is before the Court pursuant to the July 28, 2017 order of Chief Justice Mark Martin of the North Carolina Supreme Court (“Determination Order”), which directs the undersigned to determine whether this action has been properly designated as a mandatory complex business case under N.C. Gen. Stat. § 7A-45.4(a) (2015).

Defendant Gook Yun Knapp (“Knapp”) filed a Notice of Designation (“NOD”) seventy-nine days after being served with the Complaint. While a defendant may have a unilateral right to designate a case as a mandatory complex business case pursuant to section 7A-45.4, that right is subject to strict statutory time requirements. Section 7A-45.4(d)(3) provides that, to assert a unilateral right to designate, a notice of designation shall be filed “[b]y any defendant or any other party

within 30 days of receipt of service of the pleading seeking relief from the defendant or party.” N.C. Gen. Stat. § 7A-45.4(d)(3). The statute contains no provision that allows that time to be extended.

The record demonstrates that Plaintiff filed its Complaint on May 4, 2017, which was served on Knapp on May 6, 2017. Knapp secured two extensions of time from the Clerk before responding to the Complaint and filing the NOD on July 24, 2017. The NOD was not timely filed, and Knapp no longer had the unilateral right to designate the case as a mandatory complex business case. Any designation must then be based upon a request made by the Senior Resident Superior Court Judge of Mecklenburg County pursuant to Rule 2.2 of the General Rules of Practice for the Superior and District Courts (“Rule 2.2”).

Accordingly, the case should then proceed on the regular civil docket of the Mecklenburg County Superior Court, without prejudice to the parties requesting that the Senior Resident Superior Court Judge of Mecklenburg County request designation pursuant to Rule 2.2.

IT IS SO ORDERED, this the 31st day of July, 2017.

/s/ James L. Gale

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James L. Gale  
Chief Business Court Judge