

STATE OF NORTH CAROLINA  
COUNTY OF POLK

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
18 CVS 35

HOME REALTY CO. & INSURANCE  
AGENCY, INC.,

Plaintiff,

v.

RED FOX COUNTRY CLUB OWNERS  
ASSOCIATION, INC., et al.

Defendants.

**ORDER REGARDING DESIGNATION**

THIS MATTER is before the Court on the June 7, 2018 Order of Chief Justice Mark Martin requesting the Court to determine whether this action may be properly designated as a mandatory complex business case pursuant to N.C. Gen. Stat. § 7A-45.4(a).

On June 6, 2018, Plaintiff and some, but not all, Defendants (“Movants”) filed a Motion for Designation as Mandatory Complex Business Case (“Motion”) seeking to designate this action as a mandatory complex business case, based solely on Section 7A-45.4(a)(9), which governs cases that involve a material issue related to certain “[c]ontract disputes.” N.C. Gen. Stat. § 7A-45.4(a)(9)(a)-(d) (2015). That section requires that four prerequisites be met to support designation. *Id.* Those four prerequisites are: (1) “[a]t least one plaintiff and at least one defendant is a corporation, partnership, or limited liability company”; (2) “[t]he complaint asserts a claim for breach of contract or seeks a declaration of rights, status, or other legal relations under a contract”; (3) “[t]he amount in controversy computed in accordance

with G.S. 7A-243 is at least one million dollars (\$1,000,000)”; and (4) “[a]ll parties consent to the designation.” *Id.*

Two of these four prerequisites are clearly met. Plaintiff is a North Carolina corporation and at least one defendant, Red Fox Country Club Owners Association, Inc., is a corporation. The amount in controversy is at least one million dollars.

It is unclear whether a claim seeking a declaration as to the continued application of restrictive covenants included in a real estate deed can be properly classified as seeking “a declaration of rights . . . under a *contract*.” N.C. Gen. Stat. 7A-45.4(a)(9)(b) (emphasis added). The Court, however, need not resolve that issue because the failure to secure consent of “*all parties*” defeats the Motion and any right to designate the action. N.C. Gen. Stat. § 7A-45.4(a)(9)(d) (2015) (emphasis added).

Plaintiff was required to join all property owners that might be potentially affected by the declaration. Movants acknowledge the lack of consent of all Defendant property owners, but contend that securing their consent is impractical, if not impossible. Movants then request that the Court hold a hearing at which any Defendant may object to designation and then consider a failure to appear and object to be consent for purposes of Section 7A-45.4(a)(9)(d). Leaving aside any due process considerations this procedure presents, the Court is aware of no statutory basis that would allow it to proceed in this fashion and excuse the clear statutory directive calling for consent of all parties. Any such procedure would instead require a statutory amendment.

Movants do not contend that the action can be properly designated under any other section of N.C. Gen. Stat. § 7A-45.4(a). Accordingly, the case cannot be properly designated as a mandatory complex business case and must proceed on the regular civil docket of the Polk County Superior Court.

IT IS SO ORDERED, this the 12th day of June, 2018.

/s/ James L. Gale  
James L. Gale  
Chief Business Court Judge