

STATE OF NORTH CAROLINA  
HAYWOOD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 1224

MARY ANNETTE, LLC,  
Plaintiff,

v.

TERRI LYNN CRIDER,  
Defendant/  
Third-Party  
Plaintiff,

v.

MOUNTAIN GIRL VENTURES,  
LLC,  
Third-Party  
Plaintiff,

v.

JORGE CURE; DANA CURE;  
TWILIGHT DEVELOPMENTS,  
INC.; OZZIE 1, LLC; MICHAEL  
WASHBURN; and CHRISTINE  
SHEFFIELD,  
Third-Party  
Defendants.

**ORDER ON DESIGNATION**

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 2 May 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 Mary Annette, LLC (“Mary Annette”) filed the Verified Complaint (the “Complaint”) initiating this action in Haywood County Superior Court on 23

November 2021, asserting claims for replevin and trover and conversion against Defendant/Third-Party Plaintiff Terri Lynn Crider (“Crider”). (*See Verified Compl.* ¶¶ 12–18.)

3. Crider filed her Motions, Answer, Counterclaims, and Third-Party Complaint (the “Counterclaims and TPC”) on 10 January 2022, in which she (i) moved to dismiss Mary Annette’s Complaint pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure (“Rule(s)”); (ii) moved to join Mountain Girl Ventures, LLC (“Mountain Girl”) as a Third-Party Plaintiff and compel mediation; (iii) answered Mary Annette’s Complaint; and (iv) asserted claims for intentional misrepresentations and fraud, obtaining property by false pretenses, breach of duty for fidelity and loyalty, breach of contract, reformation and declaratory judgment, unfair and deceptive trade practices, and damages against the Third-Party Defendants.<sup>1</sup> (*See Mots., Answer, Countercls., and Third-Party Compl.* 1–9 [hereinafter “Countercls. and TPC”].)<sup>2</sup>

4. On 21 April 2022, Crider and Mountain Girl filed an Amended Third-Party Complaint as to Third-Party Defendants and Motion to Amend Counterclaim and Third-Party Complaint as to Plaintiff (the “Amended TPC”).<sup>3</sup> (*See Am. TPC.*) The

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<sup>1</sup> It is unclear to the Court whether Crider intends to assert these claims as counterclaims, third-party claims, or both. Nevertheless, the Court need not resolve this ambiguity to determine whether designation is proper under section 7A-45.4(a) for the reasons stated below.

<sup>2</sup> Citations to the page numbers of this document refer to the electronic PDF page numbers as there are no page numbers on the pages themselves.

<sup>3</sup> According to the Amended TPC, this filing constitutes an amendment as of right pursuant to Rule 15(a) to the Counterclaims and TPC with respect to the Third-Party Defendants

next day, Crider and Mountain Girl filed a Motion for Preliminary Injunction and Appointment of Receiver (the “Motion to Appoint Receiver”). (See Mot. Prelim. Inj. and Appointment Receiver [hereinafter “Mot. Appoint Receiver”].) They subsequently filed the Notice of Designation (the “NOD”) on 29 April 2022, contending that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(1), (see Notice Designation 1 [hereinafter “NOD”]), which permits designation if the action involves a material issue related to “[d]isputes involving the law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, and limited liability companies, including disputes arising under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.”

5. Section 7A-45.4(c) requires that “[t]he Notice of Designation shall, in good faith and based on information reasonably available, succinctly state the basis of designation[.]” In addition, “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 \*11 (N.C. Super. Ct. Feb. 5, 2016).

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because, at the time of filing, they had neither been served nor had they filed a responsive pleading. (See Am. TPC as to Third-Party Defs. and Mot. Am. Countercl. and TPC as to Pl. 1 [hereinafter “Am. TPC”].) The same filing also purports to be a motion to amend the Counterclaims and TPC with respect to Mary Annette, which has filed a motion to dismiss. (See Am. TPC 1.) The Court only addresses this filing to the extent it purports to amend the Counterclaims and TPC with respect to the Third-Party Defendants in this Order. The Court also notes that citations to the page numbers of this document refer to the electronic PDF page numbers as there are no page numbers on the pages themselves.

6. The NOD, however, does not clearly identify the pleading upon which designation is based. As such, the Court will assess whether designation is proper based on each of the three filings referenced in the NOD in turn.

7. Designation based on the Counterclaims and TPC. The first filing referenced in the NOD is the Counterclaims and TPC. (See NOD 3.) Crider and Mountain Girl contend that designation under section 7A-45.4(a)(1) is proper because their counterclaims and third-party claims involve “Mary Annette, LLC’s Articles of Organization and Operating Agreement[.]” (NOD 3.)

8. “N.C.G.S. § 7A-45.4(d) establishes fixed timelines for filing [a Notice of Designation] that the Court cannot alter.” *Merritt v. S&S Mgmt. Grp., LLC*, 2022 NCBC LEXIS 37, at \*5 (N.C. Super. Ct. Apr. 28, 2022). Because Crider and Mountain Girl have not indicated which of the claims in the Counterclaims and TPC are counterclaims and which are third-party claims, the Court will analyze whether the NOD was timely filed based on both types of pleadings.

9. This Court has consistently held that counterclaims may serve as a basis for mandatory complex business case designation. *See Composite Fabrics of Am., LLC*, 2016 NCBC LEXIS 11, at \*8. When designation is based on a counterclaim, “the NOD must be filed contemporaneously with the counterclaim to be timely.” *Merritt*, 2022 NCBC LEXIS 37, at \*2–3; *see Prod. Recovery Mgmt., Inc. v. D.D. Williamson & Co.*, 2018 NCBC LEXIS 248, at \*2 (N.C. Super. Ct. Dec. 21, 2018) (“[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].” (quoting *id.* at \*9)).

10. The deadline for filing a Notice of Designation based on a third-party complaint is identical: “The Notice of Designation shall be filed . . . [b]y . . . the third-party plaintiff . . . contemporaneously with the filing of the . . . third-party complaint[.]” N.C.G.S. § 7A-45.4(d)(1).

11. Here, Crider and Mountain Girl filed their Counterclaims and TPC on 10 January 2022. (*See* Countercls. and TPC 1.) Whether the claims asserted therein were intended as counterclaims or third-party claims is irrelevant, because Crider and Mountain Girl were required to file the NOD contemporaneously with either pleading for it to be considered timely under section 7A-45.4(d)(1). Because the NOD was filed over three months later, designation based on the Counterclaims and TPC is untimely.

12. Designation based on the Amended TPC. The next filing referenced in the NOD is the Amended TPC. (*See* NOD 3.) Crider and Mountain Girl contend that they “filed [the Amended TPC] on April 21, 2022 seeking a declaratory judgment as to ownership and title of company assets, to wit, real property[.]” (NOD 3.)

13. Although Rule 2.3 of the Business Court Rules (“BCR”) permits designation based on an amended pleading, the amendment must raise “a *new* material issue listed in N.C.G.S. § 7A-45.4(a)” that did not appear in the previous pleading. BCR 2.3(a) (emphasis added). Furthermore, “[i]f the party that files the amended pleading

seeks designation, the Notice of Designation must be made contemporaneously with the filing of the amended pleading.” *Id.*

14. Designation based on the Amended TPC thus fails for two reasons. First, the Amended TPC simply incorporates the prior allegations of the Counterclaims and TPC and adds an additional claim for declaratory judgment. (*See* Am. TPC 1–2.) As a result, the Amended TPC does not include a *new* material issue listed in section 7A-45.4(a) that did not already appear in the Counterclaims and TPC. Second, the NOD was filed on 29 April 2022, (*see* NOD 1), eight days after the Amended TPC, (*see* Am. TPC 1). The NOD thus does not comply with the contemporaneous filing requirement of BCR 2.3. For these reasons, the Court concludes that designation as a mandatory complex business case based on the Amended TPC is both improper and untimely.

15. Designation based on Motion to Appoint Receiver. The last filing referenced in the NOD is the Motion to Appoint Receiver. (*See* NOD 3.) Crider and Mountain Girl contend that they “filed a motion seeking dissolution of [Mary Annette] and appointment of a receiver pursuant to N.C.G.S. 57-D-6-02 [sic] . . . , which qualifies [Crider and Mountain Girl’s] actions as a complex business case pursuant to N.C.G.S. 7A-45.4(a).” (NOD 3.)

16. Although the dissolution of an LLC and the appointment of a receiver may constitute a dispute involving the law governing LLCs under section 7A-45.4(a)(1), designation under this section must be based on a *pleading*, not a motion. *See Composite Fabrics of Am., LLC*, 2016 NCBC LEXIS 11, at \*11. Consequently, the Court may not consider any issues raised in a subsequently filed motion when

determining whether designation is proper under this section. *Cf. Stout v. Alcon Ent., LLC*, 2020 NCBC LEXIS 77, at \*4 (N.C. Super. Ct. June 30, 2020) (concluding that it is improper for the Court to consider an anticipated defense for designation purposes).

17. One additional point bears mentioning. While the NOD does not seek designation under N.C.G.S. § 7A-45.4(b)(4), the Court nevertheless determines that it is appropriate to address whether this matter qualifies for “mandatory mandatory” designation under this section.

18. Section 7A-45.4(b)(4) was recently enacted as part of the North Carolina Commercial Receivership Act (the “Act”) and provides that the following actions “shall” be designated as mandatory complex business cases:

An action in which a general receiver is sought to be appointed pursuant to G.S. 1-507.24 for a debtor that is not an individual business debtor as defined in G.S. 1-507.20 and has assets having a fair market value of not less than five million dollars (\$5,000,000), if the party making the designation is either (i) the debtor or (ii) one or more creditors or creditors’ duly authorized representatives that assert a claim or claims against the debtor exceeding, in the aggregate, twenty-five thousand dollars (\$25,000) that in each case is not contingent as to liability and is not the subject of a bona fide dispute as to liability or amount. Any creditor or creditor’s duly authorized representative that is not a party to the action may join in the notice of designation with the same effect as if such joining creditor or creditor's representative were a party.

19. The Court notes that none of the pleadings allege that Mary Annette has assets with a fair market value of at least \$5,000,000. (*See* Compl. Prayer for Relief ¶ 2 (seeking “compensatory, consequential, direct, and special damages in an amount to be proven at the time of trial”); Countercls. and TPC 9 (seeking “a sum in excess of \$25,000.00 compensatory damages, punitive damages, and reasonable attorney’s fees”); Am. TPC 1 (incorporating allegations of the Counterclaims and TPC); *see also*

NOD 3 (contending that “damages could potentially exceed \$2,000,000.00”).) And, even assuming that Crider and/or Mountain Girl asserted “a claim or claims against [Mary Annette] exceeding, in the aggregate, twenty-five thousand dollars (\$25,000)[,]” it is clear to the Court that, based on the allegations in the pleadings, the claims are “contingent as to liability” and/or are the “subject of a bona fide dispute as to liability or amount.” N.C.G.S. § 7A-45.4(b)(4). Designation under this section is therefore not required.

20. 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)(1)—or (b)(4)—and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

21. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 30B 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, wherein any party may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Judge.

22. The Court’s ruling is without prejudice to the right of any party to otherwise seek designation of this matter as a mandatory complex business case as provided under section 7A-45.4.

**SO ORDERED**, this the 4th day of May, 2022.

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