

STATE OF NORTH CAROLINA  
DAVIDSON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
19 CVS 793

KNC TECHNOLOGIES, LLC, f/k/a  
KEN-NECT COMMUNICATIONS,  
L.L.C.,

Plaintiff,

v.

ERIC TUTTON

Defendant.

**ORDER ON REQUEST FOR JURY  
TRIAL**

1. THIS MATTER comes before the Court on its own motion.
2. A complete summary of the factual background of this case can be found in the Court's Order and Opinion on Plaintiff's Motion for Partial Summary Judgment, Defendants' Motion for Summary Judgment, and Defendants' Motion to Exclude (the "Summary Judgment Order," ECF No. 97).
3. Plaintiff filed a Complaint in this action on 9 April 2019 asserting various claims for relief against Eric Tutton and I-Tech Security & Networks Solutions, LLC ("I-Tech"). (ECF No. 3.) On 9 October 2019, the Court issued an Order and Opinion granting Defendants' Motion to Dismiss in which it dismissed all claims except for KNC's First, Second, Third, and Sixth Claims for Relief. (ECF No. 29, at p. 33.)
4. The Court subsequently issued the Summary Judgment Order on 8 April 2021. The Summary Judgment Order granted summary judgment in Defendants' favor as to all claims except for (1) Plaintiff's claim for breach of contract

against Tutton based on his alleged breach of a “Suppliers Restriction” contained in an agreement between the parties; and (2) its claim for Unfair and Deceptive Trade Practices against Tutton. (ECF No. 97, at pp. 45–46).<sup>1</sup>

5. After the issuance of the Summary Judgment Order, Plaintiff filed a Notice of Appeal on 7 May 2021. (ECF No. 99.) On 7 July 2022, the Supreme Court of North Carolina dismissed Plaintiff’s appeal. (ECF No. 106.)

6. This matter is now before the Court on its own motion to determine whether a jury trial in this matter is appropriate.

7. The North Carolina Rules of Civil Procedure provide, in pertinent part, that

[a]ny party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be made in the pleading of the party or endorsed on the pleading.

N.C. R. Civ. P. 38(b). In addition, Rule 38(d) states that “the failure of a party to serve a demand as required by [Rule 38] . . . constitutes a waiver by him of a trial by jury.” N.C. R. Civ. P. 38(d).

8. Rule 39(b), however, provides, in relevant part, as follows:

Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a trial by jury in an action in which such a demand might have been made of right, the court in its discretion upon motion or of its own initiative may order a trial by jury of any or all issues.

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<sup>1</sup> Because the Summary Judgment Order dismissed all remaining claims against I-Tech, I-Tech is no longer a party in this action, and the parties are directed to use in all future filings the revised caption set out above that lists Tutton as the sole Defendant in this case.

N.C. R. Civ. P. 39(b).

9. It is undisputed that neither party requested a trial by jury in their respective pleadings or within the ten days following the service of the last pleading.

10. Therefore, it is clear that the parties waived their entitlement to a jury trial as of right. Nevertheless, Plaintiff has now requested a jury trial pursuant to the Court's authority under Rule 39(b). Defendant, conversely, opposes Plaintiff's request.

11. The Court has thoroughly considered the parties' arguments and concludes, in the exercise of its discretion, that Plaintiff's request for a jury trial should be DENIED. *See Schoolfield v. Collins*, 281 N.C. 604, 617 (1972) ("The denial of respondent's belated demand for a jury trial was within the discretion of [the trial judge]."); *Whitfield v. Todd*, 116 N.C. App. 335, 338 (1994) (cleaned up) ("[T]he denial of a belated demand for a jury trial is within the discretion of the trial court.").

SO ORDERED, this the 17th day of August, 2022.

/s/ Mark A. Davis  
Mark A. Davis  
Special Superior Court Judge for  
Complex Business Cases