

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV016426-590

DT LULANA GARDENS LLC;
BOMA LC LLC; and BOMA NORTH
CAROLINA, LLC,

Plaintiffs,

v.

SDCK I LLC,

Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the *Determination Order* issued on 28 April 2025 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). (ECF No. 1.)

2. Plaintiffs DT Lulana Gardens LLC (DTLG), BOMA LC LLC (BOMA LC), and BOMA North Carolina, LLC (BOMA NC; and with DTLG and BOMA LC, the Plaintiffs) filed the Verified Complaint initiating this action in Mecklenburg County Superior Court on 28 March 2025. (Verified Compl., ECF No. 2.) Plaintiffs assert claims against Defendant SDCK I, LLC (Defendant) seeking a declaratory judgment that certain agreements between the parties are terminated and unenforceable, and that Defendant has failed to establish the necessary elements for a breach of contract claim. (See Verified Compl. ¶¶ 29–57.) As remedies, Plaintiffs seek both temporary

and preliminary injunctive relief enjoining Defendant's attempted sale of BOMA NC's membership interests pledged as collateral.¹

3. On 24 April 2025, Defendant timely filed a Notice of Designation (NOD), contending that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(2). (Notice Designation, ECF No. 7 [NOD].) Designation under this section is proper if the action involves a material issue related to “[d]isputes involving securities, including disputes arising under Chapter 78A of the General Statutes.” N.C.G.S. § 7A-45.4(a)(2).

4. This action arises out of a dispute between the parties related to the failed purchase of a secured promissory note and the alleged pledge of membership interests as collateral. (*See generally* Verified Compl.) According to Plaintiffs, DTLG and Defendant entered into a Purchase and Sale Agreement (the PSA) on 1 April 2022, whereby DTLG agreed to purchase from Defendant a secured promissory note, evidencing a mortgage loan secured by real property, with a closing date of 30 July 2022. (Verified Compl. ¶¶ 13–15.) Plaintiffs assert that, BOMA LC – an affiliate of DTLG – entered into a Pledge and Security Agreement (the Pledge Agreement) with Defendant dated 1 April 2022, whereby BOMA LC pledged its membership interests in BOMA NC as collateral for the obligations owed under the PSA by DTLG. (Verified Compl. ¶ 16.) Plaintiffs contend that the parties mutually agreed to delay the closing date under the PSA; however, ultimately neither party performed on the closing date or thereafter, and Defendant allegedly terminated the PSA in December 2023.

¹ The Verified Complaint lists the requests for injunctive relief as “claims.” However, they are not causes of action, but rather are forms of relief.

(Verified Compl. ¶¶ 17–19.) According to Plaintiffs, Defendant sent a Notice of Public Sale of Collateral Under North Carolina Uniform Commercial Code on 17 March 2025, under which Defendant claimed its right under the Pledge Agreement to sell all of the BOMA NC membership interests at a public sale on 1 April 2025. (Verified Compl. ¶ 24.)

5. Designation under section 7A-45.4(a)(2) is proper where the “‘acquisition, disposition, transfer, existence or characteristics of the securities’ are at issue.” *Talley v. Earth Fare 2020, Inc.*, 2022 NCBC LEXIS 158, at *4 (N.C. Super. Ct. Dec. 12, 2022) (quoting *Queler v. Pridnia*, 2021 NCBC LEXIS 25, at *5 (N.C. Super. Ct. Mar. 24, 2021)). “[A] tangential relationship between securities and a complaint’s allegations, without more, will not meet the criteria of section 7A-45.4(a)(2).” *Edwards v. Vanguard Fiduciary Trust Co.*, 2018 NCBC LEXIS 251, at *3 (N.C. Super. Ct. July 24, 2018).

6. Defendant asserts in a conclusory fashion that “[b]ecause this dispute involves securities as defined by Chapter 78A of the North Carolina General Statutes, this case would be properly designated a mandatory complex business case.” (NOD 3.) The Court disagrees.

7. 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 the designation[.]” N.C.G.S. § 7A-45.4(c). The Notice of Designation Template on the Business Court’s website further directs a party to “[b]riefly explain why the action falls within the specific categories checked above . . . If necessary, include additional

information that may be helpful to the Court in determining whether this case is properly designated a mandatory complex business case.”²

8. Based on the facts alleged in the Verified Complaint, this case appears to be a straightforward case involving a security interest under the Uniform Commercial Code and a potential breach of contract. (*See* Verified Compl. ¶¶ 12–28.) Despite claiming the dispute involves “securities as defined by Chapter 78A,” it is not clear to the Court whether Defendant has confused the terms “securities” and “security interests”; or whether Defendant is referencing the membership interests in BOMA NC pledged as collateral. Regardless, it is not the Court’s job to guess. Without providing more explanation in the NOD as to why the case should be designated as a mandatory complex business case, the Court can only conclude that at best, a tangential relationship between securities and the complaint’s allegations are involved, and without more, the case does not meet the criteria under N.C.G.S. § 7A-45.4(a)(2).

9. The Court also notes that the materials submitted with the Complaint make clear that the sales transaction in the PSA and interests in question in the Pledge Agreement are agreed by the parties to not involve securities. *See* Verified Compl., Ex. A § 8(g) (“The purchase of the Loan does not constitute the purchase of securities within the meaning of federal or state securities laws.”); *see also* Verified Compl., Ex. B § 5(h) (“None of the Pledged Interests (i) is dealt in or traded on a securities

² *See Designation Procedure & Notice of Designation Template*, <https://www.nccourts.gov/courts/business-court/special-information-and-procedures-for-business-court> (last visited Apr. 28, 2025).

exchange or in a securities market, (ii) consists of limited liability company interests which by its terms expressly provides that it is a security governed by Article 8 of the UCC, (iii) is held in a 'securities account' (as such term is defined in the UCC), (iv) constitutes a 'security' or a 'financial asset' (as such terms are defined in the UCC[.]")

10. Practically speaking, if a party wishes to designate a case as a mandatory complex business case under N.C.G.S. § 7A-45.4, the Court expects more than a single, conclusory statement. Whether the plaintiff or defendant files a Notice of Designation, it is the designating party's responsibility under the designation statute to clearly and succinctly explain to the Court why a case should be designated as a mandatory complex business case. In this case, Defendant failed to do so.

11. Based on the foregoing, the Court concludes that this action shall not proceed as a mandatory complex business case under N.C.G.S. § 7A-45.4(a) and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

12. 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, wherein designation as a Rule 2.1 exceptional case may be pursued by any interested party with the Senior Resident Superior Court Judge if deemed appropriate.

13. The Court's ruling is without prejudice to the right of the parties to otherwise seek designation of this matter as a mandatory complex business case as may be provided under N.C.G.S. § 7A-45.4.

SO ORDERED, this the 29th day of April, 2025.

/s/ Michael L. Robinson
Michael L. Robinson
Chief Business Court Judge