

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

MECKLENBURG COUNTY

25CV021103-590

DURAMAX HOLDINGS LLC d/b/a
OTTO ENVIRONMENTAL
SYSTEMS,

Plaintiff,

v.

MARK BRACE and SCHAEFER
PLASTICS NORTH AMERICA, LLC,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the *Determination Order* issued on 8 May 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). (Determination Order, ECF No. 1.)

2. Plaintiff Duramax Holdings LLC (Duramax) filed the Complaint (the Complaint), thereby initiating this action in Mecklenburg County Superior Court on 25 April 2025. (Compl., ECF No. 2.) Duramax asserts claims against Defendants Mark Brace (Brace) and Schaefer Plastics North America, LLC (Schaefer; and with Brace, the Defendants) for (i) breach of contract as to Brace; (ii) tortious interference with contract as to Schaefer; and (iii) trade secrets misappropriation, civil conspiracy, unjust enrichment, and unfair and deceptive trade practices as to Defendants. (*See* Compl. ¶¶ 18–53.) On 7 May 2025, twelve days after filing the Complaint, Duramax

filed a Notice of Designation (the NOD) with the Mecklenburg County Clerk of Superior Court, contending that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(6) and (a)(7)¹. (Notice Designation, ECF No. 3.)

3. According to Duramax, Brace was a former area sales manager at Duramax from 15 March 2015 until 14 February 2025 when he voluntarily terminated his employment. (*See* Compl. ¶¶ 8, 14.) Duramax asserts that less than sixty (60) days later, it learned that Brace went to work for Schaefer, a direct competitor of Duramax, and Duramax contends that Defendants are using the confidential information Brace acquired at Duramax in his new role at Schaefer and are luring away Duramax's customers. (*See* Compl. ¶¶ 15–17.) This action followed.

4. Duramax asserts that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(8) and (a)(9). (NOD 2.) Under N.C.G.S. § 7A-45.4(d)(1), “[t]he Notice of Designation shall be filed . . . [b]y the plaintiff . . . contemporaneously with the filing of the complaint[.]” N.C.G.S. § 7A-45.4(d)(1). The contemporaneous filing requirement of N.C.G.S. § 7A-45.4(d)(1) is mandatory. Here, Duramax filed the NOD twelve days *after* the Complaint, making it untimely. As a result, 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) and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases. *See, e.g., BITCO Gen. Ins. Corp. v. SAS Retail Servs., LLC*, 2024 NCBC LEXIS 89, at *1–

¹ The Court assumes that Duramax intended to reference N.C.G.S. § 7A-45.4(a)(8) and (a)(9), instead of (a)(6) and (a)(7), as subsection (a)(6) and (a)(7) were repealed in 2014. To avoid any confusion, any references herein will be to N.C.G.S. § 7A-45.4(a)(8) and (a)(9).

2 (N.C. Super. Ct. July 3, 2024) (determining designation was improper when notice of designation was filed one day after the filing of the complaint); *Shah v. Ahmed*, 2023 NCBC LEXIS 26, at *1–2, (N.C. Super. Ct. Feb. 13, 2023) (determining designation was improper when notice of designation was allegedly filed four months after the filing of the complaint); *Shenzhen Ruobilin Network Tech. Co. v. ChannelAdvisor Corp.*, 2022 NCBC LEXIS 144, at *1 (N.C. Super. Ct. Nov. 30, 2022) (determining designation was improper when notice of designation was filed 33 days after the filing of the complaint).

5. Even if the NOD had been timely filed, Duramax’s contention that this case is properly designated under N.C.G.S. § 7A-45.4(a)(9) is misplaced. Designation under section N.C.G.S. § 7A-45.4(a)(9) is proper if the action involves a material issue related to:

Contract disputes in which all of the following conditions are met:

- a. At least one plaintiff and at least one defendant is a corporation, partnership, or limited liability company, including any entity authorized to transact business in North Carolina under Chapter 55, 55A, 55B, 57D, or 59 of the General Statutes.
- b. The complaint asserts a claim for breach of contract or seeks a declaration of rights, status, or other legal relations under a contract.
- c. The amount in controversy computed in accordance with G.S. 7A-243 is at least one million dollars (\$ 1,000,000).
- d. All parties consent to the designation.

6. 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

7. In this case, it is not clear to the Court how subsection (a)(9) applies. In fact, other than checking the box for subsection (a)(9) on the NOD, Duramax provides no explanation regarding subsection (a)(9) and its applicability to this case. (*See* NOD 1–3.) The NOD does not indicate whether all parties consent to designation, which is of critical importance for a case to be designated under section 7A-45.4(a)(9). In addition, while the Complaint asserts a claim for breach of contract as to Brace, neither the NOD nor the Complaint provide an indication that the amount in controversy is at least \$1,000,000. (*See* Compl. ¶¶ 26–31.) Duramax’s breach of contract claim is for damages “of an amount to be determined at trial but reasonably anticipated to exceed \$25,000.00.” (Compl. ¶ 31.) Therefore, this case is not properly designated under N.C.G.S. § 7A-45.4(a)(9).

8. Lastly, the Court, in its discretion, will not recommend the above-captioned case for designation to the Business Court under Rule 2.1 and 2.2 of the North Carolina General Rules of Practice for the Superior and District Courts (N.C. General Rules of Practice). Under Rule 2.1, the Chief Justice may designate any case as

² *See Designation Procedure & Notice of Designation Template*, <https://www.nccourts.gov/courts/business-court/special-information-and-procedures-for-business-court> (last visited May 13, 2025).

“exceptional” or “complex business.” N.C. Super. & Dist. Cts. Gen. R. Prac. 2.1, [N.C. Gen. R. Prac.]. Rule 2.1(d) of the N.C. General Rules of Practice provides:

Factors which may be considered in determining whether to make such designations include: the number and diverse interest of the parties; the amount and nature of anticipated pretrial discovery and motions; whether the parties voluntarily agree to waive venue for hearing pretrial motions; the complexity of the evidentiary matters and legal issues involved; whether it will promote the efficient administration of justice; and such other matters as the Chief Justice shall deem appropriate.

Such complex business cases are then designated by the Chief Justice to a Special Superior Court Judge for Complex Business Cases under Rule 2.2. *See* N.C. Gen. R. Prac. 2.2. However, the Court does not believe this case is one in which discretionary designation as an extraordinary or complex business case is appropriate under Rule 2.1(d).

9. Based on the foregoing, the Court determines that this action shall not proceed as a mandatory complex business case under N.C.G.S. § 7A-45.4(a), does not recommend Rule 2.1/2.2 designation to the Chief Justice, and hereby advises the Senior Resident Superior Court Judge of Judicial District 26 that this case shall not be assigned to this Court or another Special Superior Court Judge for Complex Business Cases and shall therefore continue on the regular docket of the Superior Court of Mecklenburg County.

10. 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 section 7A-45.4.

SO ORDERED, this the 13th day of May, 2025.

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