

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV023489-910

IN RE MATTER OF THE 2025
ANNUAL SHAREHOLDERS'
MEETING OF CHARLES &
COLVARD LTD.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the *Determination Order* issued on 17 July 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 accordance with N.C.G.S. § 7A-45.4(a). (ECF No. 1.)

2. On 10 July 2025, Riverstyx Fund, LP (Riverstyx), initiated this action by filing an Application for Court-Ordered Shareholder Meeting Pursuant to N.C.G.S. § 55-7-03 (the Application) in Wake County Superior Court. (See Application, ECF No. 2.) A week later, on 17 July 2025, Riverstyx filed a Notice of Designation seeking designation of the action as a mandatory complex business case under N.C.G.S. § 7A-45.4(a). (Notice Designation 1, ECF No. 4 [NOD].)

3. 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. *See BITCO Gen. Ins. Corp. v. SAS Retail Servs., LLC*, 2024 NCBC LEXIS 89, at *1 (N.C. Super. Ct. July 3, 2024). For purposes of designation under N.C.G.S. § 7A-45.4(a), the Court considers the Application to be in the nature of a complaint, and as such, the NOD should have been submitted contemporaneously

with the filing of the Application. Here, the NOD was filed a week after the Application, and therefore, is untimely. This matter is therefore not properly designated to the Business Court as a mandatory complex business case. *See, e.g., BITCO Gen. Ins. Corp.*, 2024 NCBC LEXIS 89, at *2 (determining designation was improper when notice of designation was filed one day after 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 *1–2 (N.C. Super. Ct. Nov. 30, 2022) (determining designation was improper when notice of designation was filed thirty-three days after the filing of the complaint).

4. 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.

5. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 10 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 with the Senior Resident Superior Court Judge if deemed appropriate.

6. 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 permitted under N.C.G.S. § 7A-45.4.

SO ORDERED, this the 18th day of July, 2025.

/s/ Michael L. Robinson

Michael L. Robinson
Chief Business Court Judge