

STATE OF NORTH CAROLINA
WARREN COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV000330-920

HUBQUARTER LANDING
TOWNHOME OWNERS
ASSOCIATION, INC.; CARLSON-
ENG FAMILY INVESTMENTS,
LLC; DAVID MICHAEL AMAN;
HEATHER C. BUPP, AS TRUSTEE
OF THE HEATHER C. BUPP
REVOCABLE TRUST DATED
NOVEMBER 11, 2021; HUTCHINS
FAMILY INVESTMENTS, LLC;
TERRY L. HUTCHINS, AS
TRUSTEE OF THE HUTCHINS
FAMILY REVOCABLE TRUST,
UNDER AGREEMENT DATED THE
8TH DAY OF DECEMBER, 2021;
MARC JAMES FERTIG AND WIFE,
KIMBERLY DUROCHIA FERTIG;
and KAREN DOWNER SCHAEFER,

Plaintiffs,

LAKE LYFE HOMES, LLC;
MICHAEL JOHN HOWINGTON,
SR.; SIMON SOLOMON; PRESTIGE
BUILDING GROUP, LLC; and
DECORATIVE SALES, LLC,

Defendants and
Third-Party
Plaintiffs,

And

HUBQUARTER LANDING
TOWNHOME OWNERS
ASSOCIATION, INC.,

Third-Party
Plaintiff,

v.

WENDY TOH; CONSTANTINE A.
ANNINOS and wife, HAE HWAN
ANNINOS; C. RIDLEY BAIN and
wife, SHARON L. BAIN; SCOTT
JEROME BOWMAN and wife, NELL

ORDER ON DESIGNATION

ANN BOWMAN; DOUGLAS D. BOYETTE and wife, DONNA L. BOYETTE; JOHNNIE F. BRAXTON and wife, PAMELA BRAXTON; JOHN B. BRAXTON and wife, LAURIE B. BRAXTON; THE CRAVER REVOCABLE TRUST, through its Trustees, JEFFREY A. CRAVER & S. DIANE HILL CRAVER; JADSEM, LLC; CROZIER FAMILY LIVING TRUST, through its Trustees, DOUGLAS J. CROZIER AND JULIE M. CROZIER; ERIK L. DIXON, JR. and wife, AMY C. DIXON; JERRY W. DIXON, JR. and wife, DANA S. DIXON; THE 2009 BRIAN M. FAHS AND RENEE L. FAHS REVOCABLE TRUST, through its Trustees, BRIAN MATTHEW FAHS AND RENEE LYN FAHS; DAVID PAUL FALESKI and wife, JENNIFER LYNNE FALESKI; THE FEHR FAMILY REVOCABLE TRUST, through its Trustees, JEFFREY FEHR AND GLENDA H. FEHR; AMIR ALAM FIROZVI and wife, ASRA SHABANA FIROZVI; CALVIN W. FOWLER, JR. and wife, SUSAN M. FOWLER; GREENBERG FAMILY REVOCABLE TRUST, through its Trustees, KENNETH F. GREENBERG AND MARY GILLISPIE-GREENBERG; RUSSELL AND CAROL PARKS REVOCABLE TRUST, through its Trustees, RUSSELL DEE PARKS AND CAROL ALEXANDER PARKS; BILLIE ASKEW GORDON; BARBARA GREISING and husband, MICHAEL SCHRAM; THE PAMELA A. GRIZZARD TRUST, through its Trustee, PAMELA A. GRIZZARD; BRIAN GRYGIEL; JAMES KINARD;

STEPHEN K. HARPER; JEFF
ALLEN HARTFORD and wife, LARA
KERR HARTFORD; JOSEPH F.
JAMES and Wife, JO ANN M.
JAMES; ROSEMARY G. KENYON;
SCOTT W. LISSON and wife, GAIL
L. LISSON; TIMOTHY J.
MACCARTNEY and wife, PHYLLIS
ANN MACCARTNEY; JEFFREY
LYNN MEDLIN and wife,
STEPHANIE S. MEDLIN;
MICHAEL J. MILLER and wife,
RACHEL A. MILLER; J.
TOLLEISON MORRISS, VI and wife,
ANGELA K. MORRISS;
MELBOURNE GARY MURRAY and
wife, BARBARA T. MURRAY;
VINCE G. NELSON and wife,
CHRISTINE NELSON; CHARLES J.
PITTS and wife, DONNELL L.
PITTS; JUSTIN RIEK and wife,
MARANDA RIEK; GARY P. ROSE
and wife, LISABETH C. ROSE;
DENNIS M. ROWAN and wife,
DEBRA L. ROWAN; VALERIE
ROYSTER and husband, HARRY
ROYSTER, III; MARK A.
SABATELLI and wife, CAROLE A.
SABATELLI; JONATHAN KELLY
SAIN and wife, COLLEEN TERBET
SAIN; GLEN M. SCHWIETERING
and wife, SHERI L.
SCHWIETERING; ROBERT SHAAR
and wife, MARIE-JOSEE SHAAR;
RUPERT R. SIZEMORE, III and
wife, ERICA JEVONS SIZEMORE;
WILLIAM F. SMITH and wife,
ALICIA J. SMITH; HELEN E. ST.
PIERRE; JENNIFER D. STENGL
and husband, DAVID L. STENGL;
JEFFREY A. STREICH and wife,
JULIE K. STREICH; LINDA M.
WARD; LAWRENCE WEST AND
SPOUSE, CAROLEE WEST;

MICHAEL E. WEST and wife,
SANDRA M. WEST; MARK P.
WHITSON and wife, SHANNON K.
WHITSON; GEORGE G. WILSON
and wife, LYNN D. WILSON,

Third-Party
Defendants.

1. **THIS MATTER** is before the Court pursuant to the *Determination Order* issued on 5 December 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). (Determination Order, ECF No. 5.)

2. On 21 July 2025, Plaintiffs Hubquarter Landing Townhome Owners Association, Inc. (Hubquarter), Carlson-Eng Family Investments, LLC, David Michael Aman, Heather C. Bupp, as Trustee of the Heather C. Bupp Revocable Trust dated November 11, 2021, Hutchins Family Investments, LLC, Terry L. Hutchins, as Trustee of the Hutchins Family Revocable Trust, Under Agreement dated the 8th day of December, 2021, Marc James Fertig and wife, Kimberly Durochia Fertig, and Karen Downer Schaefer (collectively, Plaintiffs) filed the *Verified Complaint* (Complaint), thereby initiating this action in Warren County Superior Court. (Verified Compl., ECF No. 1 [Compl.]) Plaintiffs assert claims against Defendants Lake Lyfe Homes, LLC (Lake Lyfe), Michael John Howington, Sr. (Howington), Simon Solomon (Solomon), Prestige Building Group, LLC (Prestige), and Decorative Sales, LLC (Decorative Sales; and collectively, Defendants) for (i) breach of protective

covenants (specific performance/mandatory injunction), breach of implied covenant of good faith and fair dealing, fraudulent misrepresentation, breach of implied warranty of workmanlike construction, and quiet title as to Lake Lyfe, (ii) breach of protective covenants (monetary damages) as to Lake Lyfe, Prestige, and Decorative Sales, (iii) unfair and deceptive trade practices under N.C.G.S. § 75-1.1 *et seq.* and breach of fiduciary duty as to Lake Lyfe, Howington, and Solomon, and (iv) fraudulent conveyance and prejudgment attachment and alter ego/corporate veil piercing as to Defendants. (See Compl. ¶¶ 88–173.)

3. On 2 September 2025, Superior Court Judge John Dunlow entered a Consent Order Staying Proceedings (Consent Order).¹ The Consent Order indicates that all parties requested a stay of proceedings “to attempt to resolve the disputes among them without waiving, compromising, diminishing, limiting, or otherwise modifying any claims or defenses that have been, could be or may, in the future, be asserted in the captioned action.” (Consent Order 1–2.) The Consent Order stayed the case, including specifically Defendants’ time to respond to the Complaint, for sixty days. (Consent Order 1–2.)

4. On 3 December 2025, following the expiration of the stay period, Defendants filed their *Answer & Counterclaim/Third-Party Complaint* (Third-Party Complaint), adding Hubquarter as a Third-Party Plaintiff with Defendants, and adding what appears to be all of the property owners in the Hubquarter Landing community as

¹ This Consent Order appears on the docket in the Odyssey e-filing system but has not been filed in Alpine, the Business Court’s e-filing system. Further, in neither Odyssey nor Alpine does a written and filed motion seeking the relief contained in the Court’s 2 September 2025 Consent Order appear.

Third-Party Defendants. (Answer & Countercl./Third-Party Compl., ECF No. 3 [Third-Party Compl.].) At the same time, Defendants filed a *Notice of Designation* (NOD) with the Warren 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)(1), (a)(7), and (b)(2).² (Notice Designation, ECF No. 4 [NOD].)

5. Based on the record before the Court, it appears this case arises out of a dispute in the Hubquarter Landing community in Warren County, North Carolina, as to the conveyance (or lack thereof) of certain common areas that include amenities and drainage control areas. (*See generally* Compl.) Among other things, Plaintiffs contend that developer Lake Lyfe and affiliates have refused to convey the common areas to Hubquarter as required in the community's Declaration filed in the real property records, as amended (Declaration), and have failed to pay property taxes, fund an operating deficit, and perform necessary maintenance on the common areas. (Compl. ¶¶ 29, 33–38, 53, 59.) Defendants disagree. (*See generally* Third-Party Compl.)

6. “For a case to be certified as a mandatory complex business case, 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). While it is not entirely clear from the NOD, the Court believes that

² The Court assumes that Defendants intended to reference N.C.G.S. § 7A-45.4(a)(9), instead of (a)(7), as subsection (a)(7) was repealed in 2014. To avoid any confusion, any references herein will be to N.C.G.S. § 7A-45.4(a)(9).

Defendants seek designation of this action as a mandatory complex business case based on the allegations of the Third-Party Complaint. (*See generally* NOD.)

7. In order to be considered timely, a notice of designation must be filed by a third-party plaintiff contemporaneously with the filing of the third-party complaint. *See* N.C.G.S. § 7A-45.4(d)(1). The Court has construed subsection (d)(1) to apply to counterclaims as well. *Composite Fabrics of Am., LLC*, 2016 NCBC LEXIS 11, at *6–7. In its timeliness analysis, the Court must determine “whether the counterclaim states a basis for designation that the complaint does not.” *Merritt v. S&S Mgmt. Grp., LLC*, 2022 NCBC LEXIS 37, at *3 (N.C. Super. Ct. Apr. 28, 2022) (citing *Performance Rehab Assocs., P.C. v. Wolverine Est. Ltd. Fam. Tr. XIV, LLC*, 2022 NCBC LEXIS 4, at *4 (N.C. Super. Ct. Jan. 21, 2022)); *see also* *Prod. Recovery Mgmt., Inc. v. D.D. Williamson & Co., Inc.*, 2018 NCBC LEXIS 248, at *2 (N.C. Super. Ct. Dec. 21, 2018). While the Court has not previously addressed this issue in the context of a third-party complaint, it follows that where a third-party plaintiff files a third-party complaint and seeks designation based on that pleading, the Court must determine whether the third-party complaint states a basis for designation that the complaint does not. Where the material issue is raised in both the complaint and the third-party complaint, the NOD’s timeliness will be based off the complaint, which is the first pleading to raise the claimed basis for designation under section 7A-45.4(a).

8. Defendants seek mandatory complex business case designation pursuant to N.C.G.S. § 7A-45.4(a)(1), (a)(9), and (b)(2). (*See* NOD 4–5.) The Court will address each subsection below.

A. Section 7A-45.4(a)(1)

9. Designation under N.C.G.S. § 7A-45.4(a)(1) is proper 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.” N.C.G.S. § 7A-45.4(a)(1).

10. Defendants contend that designation is proper under subsection (a)(1) because the action “is a dispute involving the law governing non-profit corporations under Chapter 55A of the General Statutes[,]” specifically “who has authority to act for the non-profit corporation” and “the parties[] rights and obligations under the Declaration, Chapter 47F, and Chapter 55A.” (NOD 7.) According to Defendants, “all of the claims, counterclaims, and third-party claims involve the parties’ rights and obligations concerning the non-profit corporation.” (NOD 7.)

11. In this case, a dispute exists between the parties regarding who can act for and on behalf of Hubquarter. (See NOD 6.) While certain Plaintiffs claim to be lawfully elected members of the Executive Board, Defendants contend that Lake Lyfe has the sole authority to appoint the Executive Board, which consists solely of Howington and Solomon. (See NOD 6; *see also* Compl. ¶ 31.) Defendants have asserted declaratory judgment claims that (i) “no persons other than Howington or Solomon have authority to act as the ‘Executive Board’ on behalf of the Association[,]”

and (ii) “Howington and Solomon are, and during the Declarant Control Period have been, the sole members of the Executive Board[.]” (Third-Party Compl. ¶¶ 115, 124.)

12. Article 8 of Chapter 55A, the North Carolina Nonprofit Corporation Act, addresses the requirement for a nonprofit board of directors and the method in which directors are elected, designated, and appointed. *See* N.C.G.S. §§ 55A-8-01, 55A-8-04. Here, where two groups dispute who has the authority to act on behalf of the nonprofit corporation—essentially two conflicting boards—Chapter 55A and “the law governing corporations” are implicated under N.C.G.S. § 7A-45.4(a)(1).

13. However, this material issue was first raised in the Complaint. There, Plaintiffs contend that Lake Lyfe controlled Hubquarter’s board of directors from 28 September 2015 until December 2024. (Compl. ¶ 28.) During that time, Plaintiffs assert that Lake Lyfe appointed Howington and Solomon to serve as Hubquarter’s board of directors. (Compl. ¶ 54.) According to Plaintiffs:

In December 2024, pursuant to a call of meeting and election noticed by the Declarant-controlled Board of Directors, the Association’s individual lot owners and members elected five (5) Directors to govern the Association according to its Bylaws. Previously, all Directors were appointed by Lake Lyfe during the Declarant Control Period (as defined in the Declaration).

(Comp. ¶ 31.) Plaintiffs differentiate between the “Declarant-controlled Board of Directors” and the “new Board of Directors” in the Complaint. (*See* Compl. ¶¶ 31, 153.)

14. Accordingly, the issue regarding who can act for or on behalf of Hubquarter was first raised in the Complaint, and Defendants should have filed the NOD “within 30 days of receipt of service of the pleading[.]” N.C.G.S. § 7A-45.4(d)(3).

15. Defendants accepted service of the Complaint on 4 August 2025. (Acceptance Serv., ECF No. 6.) Therefore, the NOD should have been filed on or before 3 September 2025. Given that Defendants did not seek designation until 3 December 2025, the Court concludes the NOD is untimely for purposes of determining proper designation under N.C.G.S. § 7A-45.4(a)(1).

B. Section 7A-45.4(a)(9)

16. Defendants also contend that designation is proper under N.C.G.S. § 7A-45.4(a)(9). (NOD 5, 7.) 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.

17. Defendants' argument for designation under this subsection fails for multiple reasons. First, Defendants do not identify with any specificity how subsection (a)(9) applies in this case. While Defendants checked the box for subsection (a)(9) and indicated that not all parties have consented to designation at this time, the NOD includes only one conclusory sentence as to N.C.G.S. § 7A-45.4(a)(9)—“[b]ecause it involves a matter in controversy in excess of one million

dollars (\$1,000,000), the action could also be properly designated as a mandatory complex business case under N.C.G.S. § 7A-45.4(a)(9) upon consent of Plaintiffs.”³ (NOD 5, 7.) As the Court has previously explained, “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.” *DT Lulana Gardens LLC v. SDCK I LLC*, 2025 NCBC LEXIS 48, at *5 (N.C. Super. Ct. Apr. 29, 2025). “[I]t 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.” *Id.* Here, Defendants failed to do so.

18. Furthermore, if Defendants intended the Declaration referenced in the Third-Party Complaint to satisfy the statutory requirements of subsection (a)(9), the Declaration was first raised in the Complaint. Similar to the analysis above for subsection (a)(1), the NOD is untimely for purposes of determining proper designation under N.C.G.S. § 7A-45.4(a)(9). *See supra* ¶¶ 13–14.⁴

19. However, “even if untimely, if a case is properly designated under subsection (a), and properly involves a claim for more than five million dollars, the Court *MUST* designate the action as a mandatory complex business case pursuant to section 7A-45.4(b)(2).” *Hedgepeth v. Cornblum*, 2025 NCBC LEXIS 29, at *5 (N.C. Super. Ct.

³ Defendants’ references to “the Declarations” and “deeds from, or to, the parties” as contracts appear to relate to their discussion of section 7A-45.4(a)(1), rather than subsection (a)(9). (*See* NOD 7.)

⁴ The Court additionally determines that Defendants fail to satisfy the one million dollars (\$1,000,000.00) damages threshold requirement for designation under subsection (a)(9).

Mar. 17, 2025) (emphasis added). Therefore, the Court will analyze whether this case must be designated to the Business Court under N.C.G.S. § 7A-45.4(b)(2).

C. Section 7A-45.4(b)(2)

20. Subsection (b)(2), which governs cases that *must* be designated to the Business Court—termed “mandatory mandatory” cases—provides that “[a]n action described in subdivision (1), (2), (3), (4), (5), or (8) of subsection (a) of this section in which the amount in controversy computed in accordance with G.S. 7A-243 is at least five million dollars (\$5,000,000) shall be designated as a mandatory complex business case by the party whose pleading caused the amount in controversy to equal or exceed five million dollars (\$5,000,000).” N.C.G.S. § 7A-45.4(b)(2). In order to be deemed a “mandatory mandatory” case, “the action must satisfy the requirements for designation under section 7A-45.4(a) *and* contain an amount in controversy of at least five million dollars.” *Dover Sub 1 LLC v. Hawks Note Purchase, LLC*, 2025 NCBC LEXIS 167, at *10 (N.C. Super. Ct. Nov. 25, 2025) (quoting *Meridian Renewable Energy LLC v. Birch Creek Dev., LLC*, 2025 NCBC LEXIS 56, at *5 (N.C. Super. Ct. May 16, 2025)). As set forth above, subsection (a)(1) is implicated in this case, although the NOD is untimely. The Court must determine whether the second requirement of subsection (b)(2) has been met—“the amount in controversy . . . equal[s] or exceed[s] five million dollars (\$5,000,000).” N.C.G.S. § 7A-45.4(b)(2).

21. According to section 7A-45.4(b)(2), “the amount in controversy [shall be] computed in accordance with G.S. 7A-243[,]” which focuses on the “relief prayed” for

in determining the amount in controversy. N.C.G.S. § 7A-45.4(b)(2); *id.* § 7A-243. Rule 8 of the North Carolina Rules of Civil Procedure requires that “[i]n all actions involving a material issue related to any of the subjects listed in G.S. 7A-45.4(a)(1), (2), (3), (4), (5), or (8), the pleading shall state whether or not relief is demanded for damages incurred or to be incurred in an amount equal to or exceeding five million dollars (\$5,000,000).” N.C.G.S. § 1A-1, Rule 8(a)(2).

22. Defendants assert that Plaintiffs have sued “for ownership of real property owned by Defendants” and filed a *lis pendens* action. (NOD 7.) According to Defendants, the value of the real property at issue is greater than five million dollars (\$5,000,000.00) and therefore, designation is required under N.C.G.S. § 7A-45.4(b). (NOD 7.)

23. The Court disagrees. Neither the Third-Party Complaint on which designation is based, nor the Complaint, seek damages equal to or exceeding five million dollars (\$5,000,000.00). Defendants have asserted only declaratory judgment claims in the Third-Party Complaint. (Third-Party Compl. ¶¶ 86–164.) The five million dollar (\$5,000,000.00) value is mentioned for the first time in the NOD and not in the pleading on which designation is based. (NOD 7.) Therefore, the Court concludes that Defendants have not met the statutory requirements of N.C.G.S. § 7A-45.4(b)(2) and this case does not qualify as a “mandatory mandatory” complex business case.

24. 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) or (b) and

thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

25. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 11 that this action is not properly designated as a mandatory complex business case such that the action may be treated as any other civil action, wherein the parties may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Superior Court Judge.

26. 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 allowed under section 7A-45.4.

SO ORDERED, this the 12th day of December, 2025.

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