

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV022819-400

FORSYTH TUCKER SPORTS
CONSTRUCTION, LLC, a
Mississippi limited liability company,

Plaintiff,

v.

DAVID WINSTON TUCKER,

Defendant,

v.

ANDREW FORSYTH,

Third-Party
Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the *Determination Order* filed on 10 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. 1.)

2. On 6 October 2025, Plaintiff Forsyth Tucker Sports Construction, LLC (Plaintiff) filed the *Complaint*, thereby initiating this action in Guilford County Superior Court. (Compl., ECF No. 2.) Plaintiff asserts claims against Defendant David Winston Tucker (Tucker) for conversion, unjust enrichment, constructive

fraud, civil liability for larceny and embezzlement, and punitive damages.¹ (*See* Compl. ¶¶ 22–54.)

3. On 8 December 2025, Tucker filed his *Answer, Affirmative Defenses, Counterclaim, and Third-Party Claim* (Counterclaim & Third-Party Claim) adding Andrew Forsyth (Forsyth) as a Third-Party Defendant. (ECF No. 5.) At the same time, Tucker filed a *Notice of Designation* (NOD) with the Guilford 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). (Notice Designation, ECF No. 3 [NOD].)

4. Based on the record before the Court, it appears this case arises out of a disagreement between business owners. (*See generally* Compl.) According to Plaintiff, Forsyth and Tucker created the company on or about 15 May 2024, which “specializ[es] in the construction of sports amenities and facilities.” (Compl. ¶ 4.) Plaintiff alleges that in reviewing its bookkeeping and accounting records, “extensive use of Plaintiff’s funds by Defendant for his personal benefit from May of 2024 until July 2025” was discovered. (Compl. ¶ 14.) Plaintiff contends at least \$61,669.01 was taken by Tucker and that there were \$872.00 in questionable charges on Tucker’s company credit card. (Compl. ¶ 16.)

5. “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.*

¹ The Court notes that under North Carolina law, a “claim” for punitive damages does not exist, as punitive damages are a remedy. However, since Plaintiff styles its request for punitive damages as a claim, the Court describes it that way here.

Edge Structural Composites, Inc., 2016 NCBC LEXIS 11, at *11 (N.C. Super. Ct. Feb. 5, 2016). Tucker seeks designation of this action as a mandatory complex business case based on the allegations of his Counterclaim & Third-Party Claim. (NOD 2.)

6. 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). Section 7A-45.4(d)(1) applies to both third-party complaints and counterclaims. See *Composite Fabrics of Am., LLC*, 2016 NCBC LEXIS 11, at *6–7. “In its timeliness analysis, the Court must determine ‘whether the counterclaim [or third-party complaint] states a basis for designation that the complaint does not.’” *Hubquarter Landing Townhome Owners Ass’n v. Toh*, 2025 NCBC LEXIS 169, at *4–5 (N.C. Super. Ct. Dec. 12, 2025) (citing *Merritt v. S&S Mgmt. Grp., LLC*, 2022 NCBC LEXIS 37, at *3 (N.C. Super. Ct. Apr. 28, 2022)); see also *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); *Prod. Recovery Mgmt., Inc. v. D.D. Williamson & Co., Inc.*, 2018 NCBC LEXIS 248, at *2 (N.C. Super. Ct. Dec. 21, 2018). “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).” *Hubquarter Landing Townhome Owners Ass’n*, 2025 NCBC LEXIS 169, at *5.

7. Tucker seeks mandatory complex business case designation pursuant to N.C.G.S. § 7A-45.4(a)(1). (See NOD 1.) 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).

8. In the NOD, Tucker contends designation is proper under subsection (a)(1) because “[r]esolution of the declaratory judgment claim will require the Court to apply law governing LLCs.” (NOD 2.) According to Tucker, “the LLC does not have a written operating agreement and the ownership interests in the LLC are in dispute—Defendant contends he and Andrew Forsyth are 50/50 owners, while Forsyth appears to contend he is the majority owner.” (NOD 2.) Tucker also requests a receiver. (*See* NOD 2.)

9. In this case, a dispute exists regarding the ownership interests in Plaintiff, a Mississippi limited liability company. (*See* NOD 2.) Since the company does not have an operating agreement, the Court will need to reference Title 79, Ch. 29 of the Mississippi Code, the Revised Mississippi Limited Liability Company Act, to address the ownership issue, implicating “the law governing . . . limited liability companies[.]” N.C.G.S. § 7A-45.4(a)(1).

10. However, the ownership issue was first raised in the Complaint. (*See* Compl. ¶¶ 4, 17.) According to Plaintiff’s Complaint, Mr. Forsyth is the rightful 93% owner given his substantial investment in the company, while Tucker is only a 7% owner in Plaintiff. (*See* Compl. ¶ 17.) Tucker’s pleading disputes this ownership

structure. Accordingly, as the ownership issue was first raised in the Complaint, Tucker should have filed the NOD “within 30 days of receipt of service of the pleading,” i.e., the Complaint. N.C.G.S. § 7A-45.4(d)(3).

11. Tucker was served with the Complaint on 8 October 2025. (Aff. Serv., ECF No. 4.) Therefore, the NOD should have been filed on or before 7 November 2025. Given that Tucker did not seek designation until 8 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).

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

13. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 24 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, if appropriate, pursue designation as a Rule 2.1 exceptional case with the Senior Resident Superior Court Judge.

14. 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 15th day of December, 2025.

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