

STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CVS5368-100

DOUGLAS M. BROCK, LORRAINE
M. CONNOLLY, and SMB REALTY
LLC,

Plaintiffs,

v.

STEVEN KYRYK, MILTON
MCCLURKAN, JR., JANICE
JOHNSTON, LINDA BARBER,
SENTA M. TAYLOR, JAMES A.
SCHORR, individually and in their
official capacities, and THE
SETTINGS OF BLACK MOUNTAIN
ASSOCIATION, INC.,

Defendants.

**ORDER STRIKING PLAINTIFFS'
NOTICE OF VOLUNTARY DISMISSAL**

1. This matter is before the Court on the Plaintiffs' purported Voluntary Dismissal Without Prejudice filed on 2 December 2025 and purporting to dismiss all claims asserted in this action. (ECF No. 21).

2. In their complaint, Plaintiffs affirmatively plead that "[t]his action is brought in accordance with N.C.G.S. §55A-7-40, and this court has exclusive jurisdiction," (ECF No. 3, ¶ 11), and Plaintiffs seek relief under that statute including, among other things, an award of attorneys' fees and costs "in accordance with N.C.G.S. §55A-7-40(e)," (ECF No. 11 at 14, ¶ 5).

3. Part 4 of Article 7 of the North Carolina Nonprofit Corporation Act relates to "Derivative Proceedings" involving such nonprofit corporations. The statute cited by Plaintiffs as the basis for this action, N.C. Gen. Stat. § 55A-7-40, is the specific

statute governing the process by which derivative proceedings are initiated and maintained under North Carolina law. *See generally* N.C. Gen. Stat. § 55A-7-40.

4. Plaintiffs' action is therefore a putative derivative proceeding. (*See generally* ECF No. 3).

5. Under the same statute, "[s]uch action shall not be discontinued, dismissed, compromised, or settlement without the approval of the court." N.C. Gen. Stat. § 55A-7-40(d).

6. Plaintiffs did not obtain the Court's leave prior to filing their purported voluntary dismissal of this action, and the filing was therefore impermissible and ineffective under Rule 41 of the North Carolina Rules of Civil Procedure. *See id.*; *Weatherspoon Fam. LLC v. Hatteras Inv. Partners, L.P.*, 2025 NCBC LEXIS 97 (N.C. Super. July 31, 2025) (striking notice of voluntary dismissal without prejudice of putative derivative suit under analogous Limited Liability Company Act).

7. Therefore, in the exercise of its discretion, the Court **STRIKES** Plaintiffs' purported Notice of Voluntary Dismissal from the record, and this action is administratively **REOPENED**.

SO ORDERED, this 5th day of February, 2026.

/s/ Matthew T. Houston.
Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases