

STATE OF NORTH CAROLINA

BUNCOMBE COUNTY

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.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
25CV005368-100

**ORDER ON PLAINTIFFS'  
OPPOSITIONS TO DESIGNATION  
OF ACTION AS MANDATORY  
COMPLEX BUSINESS CASE UNDER  
N.C. GEN. STAT. § 7A-45.4(A)**

BUNCOMBE COUNTY

DOUGLAS M. BROCK; LORRAINE  
M. CONNOLLY; and SBM 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.

25CV007671-100

1. **THIS ORDER** addresses two filings made by Plaintiffs Douglas M. Brock, Lorraine M. Connolly, and SBM Realty, LLC (collectively, Plaintiffs) in the above-captioned related cases—(i) the 17 November 2025 filing of *Plaintiffs’ Opposition to Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4(a)* (First Opposition) in *Brock et al. v. Kyryk et al.* (25CV005368-100; Buncombe Cnty.) (First Action); and (ii) the 22 January 2026 filing of *Plaintiffs’ Opposition to Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4(a)* (Second Opposition; and together with the First Opposition, the Oppositions) in *Brock et al. v. Kyryk et al.* (25CV007671-100; Buncombe Cnty.) (Second Action).<sup>1</sup> (25CV005368-100, ECF No. 19 [1st Opp’n]; 25CV007671-100, ECF No. 7 [2d Opp’n].)

2. Plaintiffs initiated the First Action on 2 September 2025, asserting claims against Defendants Steven Kyryk, Milton McClurkan, Jr., Janice Johnston, Linda Barber, Senta M. Taylor (Ms. Taylor), James A. Schorr, individually and in their official capacities, and The Settings of Black Mountain Association, Inc. (the Association; and collectively, Defendants) for breach of fiduciary duty, negligent misrepresentation, and preliminary injunction. (25CV005368-100, Verified Compl. ¶¶ 41–54, ECF No. 3 [1st Compl].) Plaintiffs brought the First Action as a derivative action under N.C.G.S. § 55A-7-40. (See 1st Compl. ¶ 11.) On 23 October 2025, Ms. Taylor timely filed a *Notice of Designation of Action as*

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<sup>1</sup> Because the Second Opposition raises the question of whether or not the Business Court has the authority to hear this case, this Order will address both Oppositions despite the Court’s stay of the Second Action.

*Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4(a)*, (25CV005368-100, ECF No. 11 [1st NOD]), asserting the First Action meets the criteria for designation under N.C.G.S. § 7A-45.4(a)(1). (1st NOD 1, 3–5.)

3. On 27 October 2025, the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, filed an *Order* designating the First Action as a mandatory complex business case under N.C.G.S. § 7A-45.4(a) and ordered the undersigned to assign the case to a Business Court Judge. (25CV005368-100, Designation Order, ECF No. 1.) On the same date, the First Action was assigned to the Honorable Matthew T. Houston, Special Superior Court Judge for Complex Business Cases. (25CV005368-100, Assignment Order, ECF No. 2.)

4. On 17 November 2025, Plaintiffs timely filed the First Opposition, contending that designation under N.C.G.S. § 7A-45.4(a) is improper. (1st Opp'n 2.) According to Plaintiffs, (i) the Business Court is not the best-suited Court to hear the First Action; (ii) the designation statute, N.C.G.S. § 7A-45.4, does not reference the North Carolina Planned Community Act (PCA), and the PCA should control as the more specific statute; and (iii) the Superior Court Judges in Buncombe County are capable of handling this dispute. (1st Opp'n 2–4.)

5. Plaintiffs purported to voluntarily dismiss the First Action without prejudice on 1 December 2025. (25CV005368-100, Voluntary Dismissal Without Prejudice, ECF No. 21 [Voluntary Dismissal].) Ms. Taylor timely filed her *Response to Plaintiffs' Opposition to Designation as a Mandatory Complex Business Case* the next morning on 2 December 2025. (25CV005368-100, ECF No. 20 [1st Resp].)

6. Ten (10) days after voluntarily dismissing the First Action, on 11 December 2025, Plaintiffs filed the Second Action, a second, similar action against the same Defendants alleging claims for declaratory judgment, breach of fiduciary duty, and negligent misrepresentation, and applying to the Court for a Court-ordered meeting pursuant to N.C.G.S. § 55A-7-03. (25CV007671-100, Verified Complaint ¶¶ 51–74, ECF No. 3 [2d Compl.]) On 31 December 2025, Ms. Taylor timely filed a second *Notice of Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4(a)*, (25CV007671-100, ECF No. 5 [2d NOD]), again asserting the Second Action meets the criteria for designation under N.C.G.S. § 7A-45.4(a)(1). (2d NOD 1.) On 2 January 2026, the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, filed an *Order* designating the Second Action as a mandatory complex business case under N.C.G.S. § 7A-45.4(a) and ordered the undersigned to assign the case to a Business Court Judge. (25CV007671-100, Designation Order, ECF No. 1.) On the same date, the case was assigned to the Honorable Matthew T. Houston. (25CV007671-100, Assignment Order, ECF No. 2.)

7. On 22 January 2026, Plaintiffs timely opposed designation in the Second Action. (2d Opp'n 1.) In their Second Opposition, Plaintiffs focus on Court-ordered meetings under N.C.G.S. § 55A-7-03 and repeat arguments made in the First Opposition. (*See* 2d Opp'n 2–11.) According to Plaintiffs, N.C.G.S. § 55A-7-03 “is clear, unambiguous, and specific in terms of which court any matter brought pursuant to 55A-7-03 is the proper court.” (2d Opp'n 4.) Plaintiffs contend that given

“the plain and definite meaning” of N.C.G.S. § 55A-7-03, “this case is not properly designated as a mandatory complex business case” because “the relief Plaintiffs seek may only be granted by the Buncombe County Superior Court, not by the North Carolina Business Court, which is not located in Buncombe County[.]” (2d Opp’n 6.)

8. Ms. Taylor timely filed her *Response to Plaintiffs’ Opposition to Designation as a Mandatory Complex Business Case* on 5 February 2026. (25CV007671-100, ECF No. 12 [2d Resp].)

9. Ultimately, the Court struck Plaintiffs’ *Voluntary Dismissal Without Prejudice* in the First Action on 5 February 2026, noting Plaintiffs did not seek the Court’s required approval to dismiss their derivative claims. (25CV005368-100, Order Striking Pls.’ Notice Voluntary Dismissal ¶¶ 1, 6–7, ECF No. 28.)

10. On 11 February 2026, the Court stayed the Second Action “to more promptly and efficiently address the same dispute between the parties in the First Action.” (25CV007671-100, Order Staying & Designating Action Inactive ¶¶ 9–10, ECF No. 19.)

11. Pursuant to N.C.G.S. § 7A-45.4(e), the undersigned is required to rule by written order on Plaintiffs’ objections and to determine whether the actions should be designated as mandatory complex business cases.

12. Based on the record before the Court, it appears these actions arise out of a dispute between some of the Association’s members and the Association’s Board of Directors (Board) in The Settings of Black Mountain (The Settings), a neighborhood located in Buncombe County, North Carolina. (*See generally* 1st Compl.; 2d Compl.)

According to Plaintiffs, following damage to The Settings from Hurricane Helene in September 2024, the Board planned to levy a special assessment on the Association's members to cover the cost of repairs to common areas and roads in the neighborhood. (See 1st Compl. ¶¶ 15–16; 2d Compl. ¶¶ 15–16.) Plaintiffs brought this litigation following concerns over how a special meeting to disapprove the special assessment was allegedly handled by the Board, as well as certain alleged actions by the Board before and after the special meeting. (See 1st Compl. ¶¶ 25–40; 2d Compl. ¶¶ 26–48.)

13. In both cases, Defendants sought mandatory complex business case designation pursuant to N.C.G.S. § 7A-45.4(a)(1). (See 1st NOD 1; 2d NOD 1.) Designation under this section 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).

14. According to Defendants, “[b]ecause Plaintiffs’ claims ultimately depend upon application of duties arising under Chapter 55A,” subsection (a)(1) is implicated. (1st NOD 5; 2d NOD 5.) The Court agrees.

15. A breach of fiduciary duty claim based on one of the North Carolina business organization statutes, including Chapter 55A, falls within N.C.G.S. § 7A-45.4(a)(1). See, e.g., *Meridian Renewable Energy LLC v. Birch Creek Dev., LLC*, 2025 NCBC LEXIS 85, at \*5 (N.C. Super. Ct. July 23, 2025) (overruling opposition to designation

under subsection (a)(1) where alleged breach of fiduciary duty arising out of an alleged joint venture relationship implicated Chapter 59); *Suazo v. Suazo*, 2025 NCBC LEXIS 50, at \*6–7 (N.C. Super. Ct. May 6, 2025) (overruling opposition to designation under subsection (a)(1) where alleged breach of fiduciary duty as officer and director of corporation implicated Chapter 55); *Leone v. Leone*, 2025 NCBC LEXIS 1, at \*4–5 (N.C. Super. Ct. Jan. 16, 2025) (overruling opposition to designation under subsection (a)(1) where alleged breach of fiduciary duty was governed in part by Chapter 57D); *see also Brenner v. Hound Ears Club, Inc.*, 2022 NCBC LEXIS 50, at \*5–6 (N.C. Super. Ct. May 26, 2022) (overruling opposition to designation under subsection (a)(1) where relief under Chapter 55A was sought in a special assessment action).

16. The complaints in both the First Action and Second Action contain a breach of fiduciary duty claim against individual defendants regarding their conduct as members of a board of a corporate entity. (*See* 1st Compl. ¶¶ 41–44; 2d Compl. ¶¶ 62–68.) Specifically, Plaintiffs allege the nonprofit Board owed, and breached, a fiduciary duty to the Association and its members. (*See* 1st Compl. ¶ 43; 2d Compl. ¶ 66.) As the Association is organized as a North Carolina nonprofit corporation, Chapter 55A is implicated and Defendants properly designated the case under N.C.G.S. § 7A-45.4(a)(1).

17. In addition, the complaints include derivative claims under N.C.G.S. § 55A-7-40, which also implicate a material issue related to disputes

involving the law governing nonprofit corporations under N.C.G.S. § 7A-45.4(a)(1). (See 1st Compl. ¶ 11; 2d Compl. ¶ 11.)

18. Therefore, the Court concludes that both cases have been properly designated under N.C.G.S. § 7A-45.4(a)(1).<sup>2</sup>

19. Plaintiffs oppose designation on several grounds, none of which have merit.

20. Plaintiffs claim their disputes involve voting rights among homeowners in a neighborhood association, and are not the type of “complex, high-stakes business disputes involving millions of dollars in controversy” that the Business Court was created to hear. (1st Opp’n 2.) However, this Court has explained time and time again that “while a material issue related to the law governing corporations is required to support designation under section 7A-45.4(a)(1), that section does not further require that the issue involve a claim of any particular complexity[ ] . . . or extend beyond the regular jurisdiction of any Superior Court Judge.” *Leone*, 2025 NCBC LEXIS 1, at \*6 (quoting *Bui v. Phan*, 2024 NCBC LEXIS 43, at \*7 (N.C. Super. Ct. Mar. 8, 2024)). To be clear, case complexity is not a determining factor for the Court in its analysis of whether a case is properly designated under subsection (a)(1).

21. Plaintiffs note that allowing designation “would open the door for thousands of disputes involving homeowners associations to fill the docket of this Court, which was not created to hear disputes regarding homeowners association voting rights.” (1st Opp’n 2.) This Court, however, regularly hears disputes involving homeowners

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<sup>2</sup> Defendants also raise concerns over a looming “coup de état” of the Association’s Board. (1st Resp. 4; 2d Resp. 3–4.) While the Court does not base its ruling on this allegation, it provides yet another example of the Chapter 55A corporate governance issues involved in these actions.

associations and their members under section 7A-45.4(a)(1), not because they involve homeowners associations, but because they involve material issues related to disputes involving the law governing nonprofit corporations under Chapter 55A—the North Carolina Nonprofit Corporation Act.

22. Plaintiffs further contend that because N.C.G.S. § 7A-45.4 does not reference the PCA and Chapter 55A does not reference special assessments, the PCA should govern—not the designation statute—given the issues raised in this case. (1st Opp’n 3.) Plaintiffs completely miss the mark here. The PCA requires that an association for a planned community be created as a nonprofit corporation. *See* N.C.G.S. § 47F-3-101. Importantly, the PCA states the provisions of the North Carolina Nonprofit Corporation Act supplement the PCA, except where inconsistent. *See* N.C.G.S. § 47F-1-108. With respect to fiduciary duties, N.C.G.S. § 47F-3-103(a) requires officers and executive board members of an association to “discharge their duties in good faith” in accordance with standards set forth in N.C.G.S. § 55A-8-42 (for officers) and § 55A-8-30 (for executive board members). N.C.G.S. § 47F-3-103(a). Clearly, the two statutes work together. Given that the Association was created as a North Carolina nonprofit corporation, the laws governing nonprofit corporations in Chapter 55A apply, including the laws governing fiduciary duties of the board of directors. Designation under section 7A-45.4(a)(1) is, therefore, appropriate.

23. Plaintiffs also assert the Superior Court Judges are “capable of handling disputes involving homeowners associations meetings, procedures and voting rights under the PCA without involving this Court.” (1st Opp’n 4.) However, the Court has

previously explained that designation of a case to the Business Court pursuant to N.C.G.S. § 7A-45.4(a)(1) “is not an indicator that the case cannot or should not be litigated before a ‘regular’ Superior Court Judge. Rather, the designation in this case, and in most cases designated to the Business Court, is in compliance with the North Carolina Legislature’s directives as contained in N.C.G.S. § 7A-45.4(a).” *Olds v. Olds*, 2025 NCBC LEXIS 102, at \*2 n.1 (N.C. Super. Ct. Aug. 13, 2025).

24. Further, Plaintiffs assert “the relief Plaintiffs seek [under N.C.G.S. § 55A-7-03] *may only be granted* by the Buncombe County Superior Court, *not* by the North Carolina Business Court, which is not located in Buncombe County[.]” (2d Opp’n 6 (emphasis added).) This argument is nonsensical and, as Defendants point out, leads to “an absurd result.” (2d Resp. 7.) Despite citing to—and unsuccessfully attempting to distinguish—*Barclift v. Martin*, 2018 NCBC LEXIS 5, at \*4–6 (N.C. Super. Ct. Jan. 9, 2018), Plaintiffs fail to understand the basic framework of the Business Court and the authority of the Business Court Judges. Business Court Judges are Special Superior Court Judges that have “the same power and authority in all matters that a regular judge holding the same court would have.” N.C.G.S. § 7A-45.1(c); N.C.G.S. § 7A-45.3; *see also Ehrenhaus v. Baker*, 2014 NCBC LEXIS 30, at \*8 (N.C. Super. Ct. July 16, 2014). Once a case is designated as a Business Court case, “the venue continues to be the county of origin, and the Business Court Judge assigned to the case is commissioned as a Superior Court Judge for that county for purposes of hearing and considering matters arising within the specific designated case.” *Barclift*, 2018 NCBC LEXIS 5, at \*6. Importantly, the venue of the

First Action and Second Action is still Buncombe County, and the Honorable Matthew T. Houston—Special Superior Court Judge for Complex Business Cases assigned to the cases—“is commissioned as a Superior Court Judge for [Buncombe County] for purposes of hearing and considering matters arising” in the cases. *Id.* Essentially, the Business Court Judge steps into the shoes of the Superior Court Judge that would normally oversee the litigation. To hold otherwise would mean the Business Court Judges could only enforce some of the North Carolina statutes, but not others, based on the Business Court Judge’s physical location, an absurd result not intended by N.C.G.S. § 7A-45.1(c).

25. **THEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** that the Oppositions are **OVERRULED**. These actions involve 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[ ]” as required by N.C.G.S. § 7A-45.4(a)(1) and shall proceed as mandatory complex business cases before the Honorable Matthew T. Houston.

**SO ORDERED**, this the 23rd day of February, 2026.

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