

STATE OF NORTH CAROLINA  
COUNTY OF IREDELL

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CIVIL ACTION NO: 12-CvS-508  
(In the Business Court)

LaVONNE R. EKREN,

Plaintiff,

v.

K & E REAL ESTATE INVESTMENTS,  
LLC; and PAUL A. KONRADY,  
Individually,

Defendants.

**DEFENDANTS' BRIEF  
SUPPORTING RESPONSE  
TO MOTION FOR SUPREME COURT  
TO REVOKE STATUS OF  
MANDATORY BUSINESS  
COURT CASE**

The Plaintiff has filed a "Motion" for the Supreme Court to revoke the status of this case as a Mandatory Complex Business Case. Pursuant to N.C. Gen. Stat. § 7A-45.4, this Court may only review the decision of the Business Court Judge to deny Plaintiff's Motion as an appeal. N.C. Gen. Stat. § 7A-45.4(e) states:

Within 30 days after service of the Notice of Designation, any other party may, in good faith, file and serve an opposition to the designation of the action as a mandatory business case. Based on the opposition or ex mero motu, the Business Court Judge may determine that the action should not be designated as a mandatory complex business case. If a party disagrees with the decision, the party may appeal to the Chief Justice of the Supreme Court.

(Emphasis added.)

The Chief Judge of the Business Court has denied Plaintiff's Opposition to the Designation of this case as a Mandatory Business Case. The statute above dictates the next step would be an appeal to the Chief Justice of the Supreme Court. Plaintiff has not filed an appeal under the N.C. Rules of Appellate Procedure, rather the Plaintiff has filed a "Motion" to the Chief Justice of the Supreme Court. Under the statute cited above, this is not the proper

procedural method for the Court to review the action of Judge Jolly on April 4, 2012. Therefore, the Supreme Court does not have jurisdiction over this matter and Plaintiff's Motion should be denied.

In the event the Court reaches the issue of whether or not this case is properly designated as a Business Court Case, N.C. Gen. Stat. § 7A-45.4(a)(1) defines a "mandatory complex business case" as an action that involves a material issue related to:

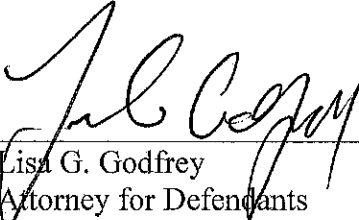
The law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, limited liability companies, and limited liability partnerships, including issues concerning governance, involuntary dissolution of a corporation, mergers and acquisitions, breach of duty of directors, election or removal of directors, enforcement of interpretation of shareholder agreements, and derivative actions.

The pleadings in this case clearly show that this case arises under the laws governing limited liability companies and involves the dissolution of the company, along with a derivative action filed by the Plaintiff. Also involved are issues of breach of fiduciary duty as alleged in Defendants' Counterclaim against the Plaintiff. There is no requirement in the statutory definition that the case be "complex" or complicated in the colloquial sense of the term.

The subject matter of the Complaint and Answer and Counterclaim in this case falls squarely within the statutory definition of a "Mandatory Complex Case."

For all of the reasons stated above, Defendants respectfully request this Court to deny Plaintiff's Motion for the Supreme Court to Revoke Status of Mandatory Business Court Case.<sup>1</sup>

This the 4th day of May, 2012.

  
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Lisa G. Godfrey  
Attorney for Defendants

<sup>1</sup> Pursuant to BCR 15.8, counsel for Defendants certifies this brief complies with the word limitations on length of briefs.

FOR THE FIRM:

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**CERTIFICATE OF SERVICE**

I, Lisa G. Godfrey, Attorney for Defendants, certify that I have this day served a copy of the foregoing **DEFENDANTS' BRIEF SUPPORTING RESPONSE TO MOTION FOR SUPREME COURT TO REVOKE STATUS OF MANDATORY BUSINESS COURT CASE** on the following individuals, via electronic submission and/or by depositing a copy of same in the United States Mail, first-class mail, postage prepaid, as follows:

Mr. Douglas G. Eisele  
Eisele, Ashburn, Greene  
& Chapman, P.A.  
P.O. Box 1108  
Statesville, NC 28687-1108

and via electronic submission:  
[gblee@bellsouth.net](mailto:gblee@bellsouth.net)

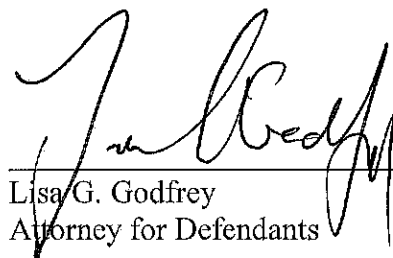
The Honorable John R. Jolly, Jr.  
Chief Special Superior Court Judge  
for Complex Business Cases  
North Carolina Business Court  
c/o Christy Rutan via e-mail:  
[christy.rutan@aoc.nccourts.org](mailto:christy.rutan@aoc.nccourts.org)

The Honorable Calvin E. Murphy  
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The Honorable Sarah Parker, Chief Justice  
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This the 4<sup>th</sup> day of May, 2012.

  
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Lisa G. Godfrey  
Attorney for Defendants