

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CVS 3084

MICHAEL D. FOSTER,)
Plaintiff)
v.)
BELL MINI-STORAGE, INC. d/b/a MAIN)
AUTO PARTS, INC., JOHN BELL and)
ANSON BELL, Individually,)
Defendants)

**ORDER ON NOTICE
OF DESIGNATION**

THIS MATTER is before the court on Defendants' Response to Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4 ("Response"); and

THE COURT, having reviewed Defendants' Response, Plaintiff's Reply to Response to Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4 ("Reply"), Plaintiff's Notice of Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4 ("Notice of Designation") and the Complaint, FINDS and CONCLUDES that:

1. Plaintiff filed his Complaint in this matter on June 27, 2012, contending he is a minority shareholder in Defendant Bell Mini-Storage, Inc. d/b/a Main Auto Parts, Inc. Plaintiff's Complaint raises issues of the law governing corporations. It alleges claims including breach of fiduciary duty and fraud and it seeks appointment of a receiver for the corporate defendant.
2. Plaintiff did not file his Notice of Designation contemporaneously with the filing of his Complaint.

3. Defendants filed an Answer and Counterclaim for Specific Performance ("Answer") on July 12, 2012. The Answer raises issues of corporate governance, including a counterclaim for specific performance, that arise from the facts and circumstances alleged in the Complaint. However, the issues raised in the Answer are substantively different from those alleged in the Complaint.

4. On July 18, 2012, Plaintiff filed his Notice of Designation. The Notice of Designation references the claims in Plaintiff's Complaint, and does not reference those issues raised by Defendants' Answer. By way of their Response, Defendants object to designation of this action to the Business Court on the grounds that the Notice of Designation was not timely filed.

5. N.C. Gen. Stat. § 7A-45.4(d)(1) (hereinafter, references to the North Carolina General Statutes will be to "G.S.") requires that a Plaintiff filing a Notice of Designation do so "contemporaneously" with the filing of the complaint in the action. To comply with this requirement, a plaintiff must file a notice of designation at the same time the complaint is filed, which Plaintiff here did not do. However, G.S. 7A-45.4(d)(3) provides that a Notice of Designation also may be filed by "defendant or *any other party* within 30 days of receipt of service of the pleading seeking relief from the defendant or party" (emphasis added).

6. Notwithstanding that Plaintiff's Notice of Designation does not reference Defendants' Answer specifically, it includes as an attachment copies of all pleadings to date, which includes the Defendants' Answer.

7. The court concludes that issues raised by the Answer form a basis for filing of the Notice of Designation, and that the Notice of Designation therefore was timely filed within thirty (30) days of service of the Answer.

NOW THEREFORE, based upon the foregoing FINDINGS and CONCLUSIONS, it is ORDERED that Defendants' objection to designation of this matter as a Mandatory Complex Business Case and its assignment to the North Carolina Business Court is OVERRULED.

SO ORDERED, this the 10th day of August, 2012.

/s/ John R. Jolly, Jr.
John R. Jolly, Jr.
Chief Special Superior Court Judge for
Complex Business Cases