

Kight v. Ganymede Holdings II, Inc., 2012 NCBC 46.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF WAKE

11 CVS 15177

JOHN A. KIGHT and KIGHT'S MEDICAL)
CORP.,)
Plaintiffs)

v.)

GANYMEDE HOLDINGS II, INC., VINCE E.)
COLE, PATRICK O'BRIEN and ACTIVA)
MEDICAL INC.,)
Defendants)

**ORDER ON NOTICE
OF DESIGNATION**

THIS MATTER is before the court on Plaintiffs' Notice of Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4(5) ("Notice of Designation"), submitted via e-mail to the court on July 19, 2012; and

THE COURT, having reviewed Plaintiffs' Notice of Designation, Complaint, Amended Complaint and other pertinent matters of record, FINDS and CONCLUDES that the Notice of Designation is untimely under N.C. Gen. Stat. § 7A-45.4 ("Mandatory Statute").

Plaintiffs filed their Amended Complaint in this matter, upon which the Notice of Designation is based, on June 22, 2012. Under Rule 3.1(b) of the General Rules of Practice and Procedure for the North Carolina Business Court, a party amending a pleading that raises a new material issue listed in subsection (a) of the Mandatory Statute may file a notice of designation with respect to such new material issue within the time periods set forth in subsection (d) of the Mandatory Statute.

Subsection (d) of the Mandatory Statute provides that a plaintiff filing a notice of designation shall do so "contemporaneously" with the filing of the complaint. Likewise, a notice of designation based on an amended complaint shall be filed contemporaneously with the amended complaint. In *Ross v. Autumn House, Inc.*, Caldwell County No. 07 CVS 2172 (N.C. Super. Ct. Order Feb. 26, 2008), this court interpreted "contemporaneously" in this context to mean within thirty days of the filing of the complaint, relying on certain "guidelines" published on the website for the North Carolina Business Court.

The court now reconsiders the requirement that a notice of designation be filed contemporaneously with the complaint. To comply with this requirement, a plaintiff must file a notice of designation at the same time the complaint—or amended complaint—is filed. The "guidelines" referenced in the *Ross* Order were removed from the North Carolina Business Court website in May 2012.

Plaintiffs' Notice of Designation in this matter was filed twenty-seven days after the filing of the Amended Complaint. As such, Plaintiffs' Notice of Designation is untimely, and this case should be REMANDED to Wake County Superior Court.

SO ORDERED, this the 21st day of August, 2012.