

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 4260

SOUTHERN FASTENING SYSTEMS, INC.,)
Plaintiff,)
v.)
GRABBER CONTRUCTION PRODUCTS,)
INC. and JOSEPH EDWARD FARRELL,)
Defendants.)

**ORDER REGARDING NOTICE OF
DESIGNATION AND ASSIGNMENT**

THIS MATTER was designated to the North Carolina Business Court by Order of the Chief Justice of the North Carolina Supreme Court dated November 5, 2014, pursuant to Defendants' Notice of Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4 served on the Chief Justice on November 3, 2014 ("Notice of Designation"). For reasons explained below, the Court has inquired on its own motion whether the Notice of Designation was timely in accordance with recent statutory amendments regarding mandatory designation. The Court understands the operative facts are as follows:

1. Plaintiff initiated this action by filing a Verified Complaint and Motion for Preliminary and Permanent Injunctive Relief ("Complaint") in Buncombe County on September 30, 2014.
2. The Complaint was served on Defendant Grabber Construction Products, Inc. on October 3, 2014, and on Defendant Farrell on October 4, 2014, via FedEx.
3. On November 3, 2014, within thirty days of service of the Complaint, Defendants served the Notice of Designation on Plaintiff via e-mail and First Class Mail, and on the same day provided notice via e-mail to the Chief Justice of the Supreme Court of North Carolina and to the Chief Business Court Judge.
4. Also on November 3, 2014, Defendants mailed the Notice of Designation to the Clerk of Superior Court of Buncombe County for filing. Presumptively, the Notice of Designation was then actually filed with the Clerk after November 3, 2014, and more than thirty days after service of the Complaint on Defendants.

On these facts, the question arises whether the Notice of Designation was untimely because it was not “filed” within the requisite thirty days after service of the Complaint. N.C. Gen. Stat. § 7A-45.4 (effective October 1, 2014) provides that:

(c) A party designating an action as a mandatory complex business case shall file a Notice of Designation in the Superior Court in which the action has been filed, shall contemporaneously serve the notice on each opposing party or counsel and on the Special Superior Court Judge for Complex Business Cases who is then the senior Business Court Judge, and shall contemporaneously send a copy of the notice by e-mail to the Chief Justice of the Supreme Court for approval of the designation of the action as a mandatory complex business case.

(d) The Notice of Designation shall be filed . . . [b]y any defendant or any other party within 30 days of receipt of service of the pleading seeking relief from the defendant or party.

The statute does not further define the term “filing.” The Court reads the statute to mean that “filing” occurs when a Notice of Designation is filed with the Clerk of the Superior Court in the county in which the action is pending. Under this construction, the Notice of Designation here would not be timely. Recognizing the possible uncertainty in how the statute should be read until clarified by this Order and further recognizing that any defect is not jurisdictional, the Court, in its discretion, deems the Notice of Designation to be timely.

The Court will publish its Order to provide notice to the practicing bar that the Court will in the future expect a Notice of Designation to be filed with the appropriate Clerk of Superior Court within the time provided by N.C. Gen. Stat. § 7A-45.4, and that failure to do may result in the Notice of Designation being deemed untimely, defeating a right to mandatory designation.

THEREFORE, IT IS ORDERED that:

1. The Notice of Designation is deemed timely.
2. This civil action hereby is ASSIGNED to the Honorable Louis A. Bledsoe, III, Special Superior Court Judge for Complex Business Cases and the General Rules of Practice and Procedure for the North Carolina Business Court shall apply to this case going forward.

3. All motions, except for any opposition to the designation of this action as a mandatory complex business case, should be directed to Judge Bledsoe. Any motion opposing designation of the case as a mandatory complex business case on grounds other than the timely filing of the Notice of Designation with the Clerk of Superior Court of Buncombe County should be directed to the undersigned.

This the 5th day of November, 2014.