

Think You Can Appeal The Business Court's Denial Of Your Opposition To Designation? You Probably Can't

Article By:

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The NC Supreme Court's jurisdiction over appeals from the Business Court expanded significantly with the passage of a bill by the NC General Assembly "modernizing" the Business Court in 2014. A party can appeal even interlocutory orders of the Business Court to the state's highest Court. N.C. Gen. Stat. [§7A-27\(a\)](#).

What about an Order from the Business Court denying an opposition to a designation to the Business Court? That's surely "interlocutory," so appealable, right? Yes, sure, if it affects a "substantial right," as provided in G.S. §7A-27(a).

Given a ruling from the NC Supreme Court this week, however, it seems unlikely that being forced against your will to litigate in the Business Court will ever be deemed to affect a "substantial right."

The case is *Hanesbrands Inc. v. Fowler*. Plaintiff, suing the Defendant for breaching stock grant agreements, designated the case to the Business Court at the time it filed its Complaint in August 2015. The Defendant objected to the designation in September 2015. Judge Gale denied the Opposition the next month and the interlocutory ruling was appealed to the NC Supreme Court.

The Supreme Court ruled that a "substantial right" was not affected by the case remaining in the Business Court and dismissed the appeal. It rejected the Defendant's argument that she was just an "ordinary" human being who shouldn't have to fight a large corporation in a "special court" designed for sophisticated business entities. The Defendant had argued:

that requiring her 'to defend a case filed against her by a large, public corporation in a special court established primarily for disputes between businesses' denies her the substantial right to 'have this matter heard in the same manner as ordinary disputes involving ordinary citizens.'

Op. at 5.

I wonder if a "substantial right" would be affected if the Business Court were to *grant* an Opposition to a Designation in a case appropriate for designation, requiring the designating party to litigate its case outside of the Business Court. That would involve being in regular NC Superior Court, a Court **without** electronic filing, **without** law clerks to assist the Judge in ruling on its claims, **without** a Judge with the business expertise of a Business Court Judge dedicated to the case from start to finish and **without** a blog focused on the Court. If that's not "substantial" enough, it is at least probably unconstitutional.

Before the Business Court was "modernized," the General Statutes allowed precisely that sort of appeal. Section [7A-45.4\(e\)](#) used to say that a party dissatisfied with an Order kicking a case out of the Business Court "may appeal to the Chief Justice of the Supreme Court." There was no procedure for that unique kind of appeal to a single Judge. The only time I think that it was exercised resulted in nothing more than a form Order from the NC Supreme Court. [I wrote about that case back in 2012.](#)

But even looking back at that no longer effective statute, it seems unlikely that there ever was a right of appeal to the NC Supreme Court for an Order **refusing** to overturn a designation.

Thanks to Jennifer Van Zant for bringing the topic to author's attention.

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National Law Review, Volume VI, Number 358

Source URL: <https://natlawreview.com/article/think-you-can-appeal-business-court-s-denial-your-opposition-to-designation-you>