

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 1475

KENNETH I. MOCH,)
Plaintiff,)
v.)
A.M. PAPPAS & ASSOCIATES, LLC; ART M.)
PAPPAS; and FORD S. WORTHY,)
Defendants.)

ORDER REGARDING DESIGNATION

THIS MATTER is now before the Court pursuant to a December 3, 2015 Order of the Honorable Mark Martin, Chief Justice of the North Carolina Supreme Court (“Determination Order”), which directed the undersigned “to determine whether this action meets the designation requirements of a complex business case.”

The record demonstrates the following:

1. Plaintiff filed his Complaint on November 18, 2015, and contemporaneously filed a Notice of Designation, contending that the matter is properly designated as a complex business case pursuant to N.C. Gen. Stat. §§ 7A-45.4(a) (1) and (2).
2. Prior to the Chief Justice acting upon Plaintiff’s request for designation, Defendants opposed designation by letter to the Chief Justice.
3. The Chief Justice then issued the Determination Order.
4. The undersigned issued an Order on December 4, 2015, allowing each of the parties to file a brief in support of their respective positions.
5. Each of the parties has filed a brief, and the question of designation of the case as a complex business case is now ripe for determination.
6. The dispute between the parties arises from an anonymous e-mail sent to the Office of the North Carolina State Treasurer, in the nature of a whistleblower complaint regarding the manner in which Defendants conduct their business involving investments. Plaintiff complains that thereafter Defendants undertook a campaign against Plaintiff which included an abuse of process and statements, demands, and filings that collectively constitute an unfair and deceptive trade practice. Plaintiff contends he is entitled to compensatory and punitive damages. Defendants have argued in a separate pending action

that Plaintiff has libeled Defendants, entitling Defendants to recover compensatory and punitive damages.

7. This Court need not assess the merits of the respective claims in order to determine whether the case is properly designated as a complex business case.

8. The separate claims of abuse of process and unfair and deceptive practices do not expressly fall within the provisions of Section 7A-45.4(a). In fact, arguments have been made by others that a case arising solely under G.S. 75-1.1 are excluded as mandatory complex business cases by negative implication because any such claim is excepted from antitrust disputes governed by G.S. 7A-45.4(a)(3).

9. Plaintiff contends, however, that the case is properly designated pursuant to 7A-45.4(a)(1) and (2) because the underlying facts involve questions of how Defendants have conducted their investment business and further will require sophisticated analysis of Defendants' assertions of financial injury.

10. After careful review of the Complaint, other filings, and the briefs of the parties, the undersigned concludes that the nature of the underlying facts do not convert the claims asserted into those which are properly designated as a mandatory complex business case. Rather, the underlying claims in this action as well as those pending in the prior action between the parties are matters outside of the scope of Section 7A-45.4. While Plaintiff may be correct as to the potential complexities of the facts and issues that must ultimately be resolved, those complexities may be properly considered in any request that the Senior Resident Judge recommend assignment of the case as an exceptional case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

11. The undersigned has further considered Plaintiff's suggestion that designation may be proper because of the potential overlap of claims, issues or defenses with the separate action of *Linsley v. A.M. Pappas & Associates, LLC*, 15 CVS 764, Orange County Superior Court, which was designated as a complex business case and assigned to the Honorable Gregory P. McGuire of this Court. There are claims present in the *Linsley* action, not present in this action, which made designation proper. The undersigned also notes that Judge McGuire issued an order on October 15, 2015 ordering that all claims in that action be determined through arbitration.

Based on the foregoing, and review of all matters of record, the undersigned concludes that Plaintiff's Notice of Designation did not properly designate the matter as a complex business case pursuant Section 7A-45.4(a), and this matter is not a mandatory

complex business case within the scope of that statute. The undersigned recommends that the Chief Justice issue an order accordingly, without prejudice to Plaintiff's ability to request that the Senior Resident Judge of Orange County recommend that the case be designated an exceptional case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

This the 28th day of December, 2015.

/s/ James L. Gale
James L. Gale
Chief Special Superior Court Judge for
Complex Business Cases