

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 1718

ROBERT LABARGE and ROBERT)
BOSTON,)
)
 Plaintiffs,)

v.)

E RECYCLING SYSTEMS, LLC; JAMES)
P. "JIM" CUNNINGHAM; BRIAN)
CUNNINGHAM; DALLAS ELMS; JEFF)
MEADOWS; RECYCLING EQUIPMENT,)
INC.; WILLIAM J. WALLS; JOE SZANY;)
and SCOTT A. SHARP,)
)
 Defendants.)

**ORDER OVERRULING PLAINTIFFS'
OBJECTION TO DESIGNATION AS
COMPLEX BUSINESS CASE**

THIS MATTER is before the Court on Plaintiffs' Objection to Designation as Complex Business Case ("Objection"), filed August 31, 2016, to which Defendants responded on September 13, 2016. For the reasons stated below, the Objection is OVERRULED, and the Court finds that the matter is properly designated as, and should proceed as, a mandatory complex business case.

Plaintiffs initiated this action on July 12, 2016. The Complaint was served on Defendants E Recycling Systems, LLC, James P. "Jim" Cunningham, Brian Cunningham, Dallas Elms, and Jeff Meadows (collectively the "ERS Defendants") on July 21, 2016.

On August 16, 2016, the ERS Defendants timely filed a Notice of Designation ("NOD") pursuant to N.C. Gen. Stat. § 7A-45.4 (2015). The NOD asserted that the

case qualifies as a mandatory complex business case pursuant to subsection 7A-45.4(a)(8) as a dispute that involves a material issue regarding alleged trade secrets. The matter was designated by the Chief Justice as a mandatory complex business case on August 16, 2016, and assigned to the undersigned on August 18, 2016.

The Complaint reveals that the claims relate to one or more transactions between ZLoop, Inc. (“ZLoop”) or ZLoop’s predecessor and E Recycling Systems, LLC. Plaintiffs in this lawsuit are two individuals who had an ownership interest in ZLoop who complain that they invested in ZLoop and that ZLoop lost value as a result of misrepresentations made by Defendants and because of Defendants’ misappropriation of ZLoop’s proprietary information. The original Complaint in several instances refers to this proprietary information as “trade secrets.” (*E.g.*, Compl. ¶¶ 23, 24, 35(c), 50.)

On August 19, 2016, the ERS Defendants filed their Motion to Dismiss Plaintiffs’ Complaint, along with a supporting brief. The statement of facts in the supporting brief indicate that there are several other legal proceedings arising out of the same facts, including (1) *ZLoop, Inc. v. E Recycling Sys., LLC*, No. 5:14-cv-87-RLV-DCK (W.D.N.C. filed May 30, 2014); (2) *In re ZLoop, Inc.*, No. 1:15-BK-11660 (Bankr. D. Del. filed Aug. 9, 2015) (involving ZLoop’s Chapter 11 bankruptcy proceeding); and (3) *ZLoop, Inc. v. Recycling Equip., Inc.*, No. 15 CVS 1878 (N.C. Super. Ct. filed July 3, 2015). In part, the ERS Defendants challenge Plaintiffs’ standing to bring individual claims for ZLoop’s corporate losses.

On August 31, 2016, Plaintiffs timely filed their Objection pursuant to N.C. Gen. Stat. § 7A-45(e). Plaintiffs challenge the NOD on the basis that the Complaint includes allegations aimed at “confidential information, such as customer lists, financial information and other confidential business information” but does not include an actual claim for trade-secret misappropriation pursuant to N.C. Gen. Stat. § 66-153. (Obj. 2.)

On September 7, 2016, Plaintiffs filed an Amended Complaint. While the factual allegations are essentially the same, the Amended Complaint omits any reference to ZLoop’s confidential business information as “trade secrets.”

On September 13, 2016, all Defendants filed their Joint Response to Plaintiffs’ Objection to Designation as Complex Business Case (“Response”). In addition to contending that the NOD was proper based on a material issue regarding trade secrets as stated in the Complaint, the ERS Defendants contend that they could have properly stated that the NOD is supported because the Complaint raises a material issue related to the law involving corporations—specifically, the issue whether Plaintiffs are entitled to pursue individual claims for losses suffered by their corporation.

The Court first notes that the NOD is proper if the Complaint raised material issues within the scope of section 7A-45.4(a). If properly designated and assigned to a special superior court judge for complex business cases based on the Complaint and the NOD, Plaintiffs did not render the designation and assignment improper by subsequently filing their Amended Complaint.

The Court concludes that the original Complaint sufficiently raised a material issue involving trade secrets, thus bringing the action within the scope of section 7A-45.4, even though Plaintiffs make no specific claim for trade-secret misappropriation. *See Cornerstone Health Care, P.A. v. Moore*, No. 15 CVS 604, 2015 NCBC LEXIS 65, at *7 (N.C. Super. Ct. June 22, 2015).

The Court further notes that, even assuming, without deciding, that the Amended Complaint no longer raises a material issue regarding a dispute involving trade secrets, the substantial question as to Plaintiffs' right to bring individual claims for losses to their corporation raises a dispute involving a material issue of the law governing corporations. *See Barger v. McCoy Hillard & Parks*, 346 N.C. 650, 662, 488 S.E.2d 215, 221–22 (1997).

Accordingly, Plaintiffs' Objection is OVERRULED.

SO ORDERED, this the 19th day of September, 2016.

/s/ James L. Gale

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