

129 LLC v. Allison Supply, Inc., 2016 NCBC Order 20.

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
16 CVS 7956

129 L.L.C. f/k/a ALLISON SUPPLY L.L.C., )  
)  
Plaintiff, )  
)  
v. )  
)  
ALLISON SUPPLY, INC. f/k/a )  
AS ACQUISITION CORP., )  
CHRISTOPHER J. WHIDDON, EAST )  
COAST RELOADING SUPPLIES, INC. )  
)  
Defendants. )

**ORDER REGARDING  
DESIGNATION**

THIS MATTER is before the undersigned pursuant to Chief Justice Mark Martin’s Order of October 7, 2016, directing the undersigned to determine whether Plaintiff 129 L.L.C. properly is entitled to designate this matter as a mandatory complex business case pursuant to N.C. Gen. Stat. § 7A-45.4. The Court concludes that Plaintiff is not entitled to that designation.

On October 6, 2016, Plaintiff timely filed a Notice of Designation (“NOD”) contemporaneously with the filing of the Complaint in this action. The NOD asserts that the matter is properly designated because the case involves a material issue related to disputes involving the law governing corporations, partnerships, and limited liability companies within the scope of N.C. Gen. Stat. § 7A-45.4(a)(1).

The Court has carefully reviewed the Complaint, which includes twelve separately stated causes of action, arising out of an asset purchase agreement between Plaintiff and Defendant Allison Supply, Inc., which Plaintiff alleges is

controlled by Defendant Christopher J. Whiddon, as are the other named corporate defendants. The central gravamen of the action is that Whiddon caused Allison Supply to enter the asset purchase agreement, financed by a promissory note secured by the collateral being acquired, with the intent not to comply with the payment obligations, but rather to acquire Plaintiff's assets and then transfer them to Whiddon's other corporate entities in a manner that effectively allowed Whiddon to carry on Plaintiff's former business operations without paying to do so. The twelve causes of action present claims of breach of contract and fraud, together with ancillary claims grounded on the financing provisions of the asset purchase agreement, which Plaintiff seeks to pursue against Whiddon individually and his various other entities under theories of piercing of the corporate veil and successor liability. Nevertheless, the action is essentially a collection action and does not raise any material issue within the purview of Section N.C. Gen. Stat. § 7A-45.4(a)(1).

Accordingly, this action should not be designated as a mandatory complex business case, and the case should proceed on the regular civil docket of the Guilford County Superior Court. This Order is without prejudice to any party's right to request that the matter be designated as an exceptional case under Rule 2.1 of the General Rules of Practice for the Superior and District Courts. While any such request would be determined in the discretion of the Chief Justice following a request from the Senior Resident Superior Court Judge of Guilford County, this

Court's review of the Complaint and its attachments suggests no immediately obvious reason which the action should be deemed exceptional.

IT IS SO ORDERED this the 12th day of October, 2016.

/s/ James L. Gale  
James L. Gale  
Chief Business Court Judge