

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 1122

DENOPHILAS “DENO” ADKINS,)
)
 Plaintiff,)
)
 v.)
)
 VENN TARRANT PARTNERS, LLC,)
 HILLCREST PARTNERS, LLC, and)
 WINDSOR COMMERCIAL HOMES, LLC,)
)
 Defendants.)

**ORDER REGARDING
DESIGNATION**

THIS MATTER is before the undersigned pursuant to Chief Justice Mark Martin’s Order of November 8, 2016, directing the undersigned to determine whether Defendant Venn Tarrant Partners, LLC (“Venn Tarrant”), in the Notice of Designation (“NOD”) filed November 4, 2016, properly designated this matter as a mandatory complex business case pursuant to N.C. Gen. Stat. § 7A-45.4(a) (2015). The Court concludes that designation of this case as a mandatory complex business case is not proper based on the allegations in the Complaint.

Venn Tarrant notes in the NOD that it intends to file counterclaims at a later date that will additionally support designation of this case as a mandatory complex business case, and that Venn Tarrant may file a separate or supplemental notice of designation when its counterclaims are filed. (NOD at 4.) This Order is limited to the issue of whether the Complaint itself provides a basis for mandatory complex business designation.

Plaintiff Denophilas “Deno” Adkins (“Adkins”) was an early townhome purchaser in a planned unit development known as Covent Garden at Deep River. Adkins alleges that he consummated his purchase based on assurances and representations not only in recorded surveys, maps, plats, and covenants that the original property developer recorded, but also in individual representations made to him by the original developer. (Compl. ¶¶ 6–8.) He complains that successor developers have filed improper and inconsistent plats and are proceeding with construction that violates both the original covenants and representations made to Adkins by the original developer. (Compl. ¶¶ 11–12.)

Adkins complains that Defendants, including Venn Tarrant, have violated “their duties to Deno to protect the value and integrity of his home, as well as other homes in the community, in order to enrich themselves,” (Compl. ¶ 20,) and have otherwise violated duties imposed by the North Carolina Planned Community Act, (Compl. ¶ 15.) The Complaint asserts four causes of action: negligence, private nuisance, unjust enrichment, and a prayer to enjoin Defendants from constructing homes in front of Plaintiff’s residence.

Based on these allegations, Venn Tarrant asserts in the NOD that the Complaint presents a dispute involving the law governing limited-liability companies within the purview of N.C. Gen. Stat. § 7A-45.4(a)(1). Venn Tarrant asserts that any duty that it might owe must arise by virtue of its control of the board of directors for the planned unit development.

The Court concludes that the four causes of actions pleaded in the Complaint do not present a dispute of the nature described in the NOD. Accordingly, the Complaint does not support a mandatory designation pursuant to section 7A-45.4(a)(1). As noted, the Court expresses no opinion on whether Venn Tarrant may assert counterclaims that could serve as an independent basis for designation. Venn Tarrant may have filed its NOD based on the Complaint to guard against a claim that the NOD was untimely. With this Order, that is not a concern. However, the Court does not properly look to potential future counterclaims to support mandatory designation when the initial Complaint does not itself support designation.

IT IS THEN ORDERED that this action shall proceed on the regular civil docket of the Guilford County Superior Court, unless and until a proper notice of designation consistent with N.C. Gen. Stat. § 7A-45.4 is filed. This Order is without prejudice to Defendants' right to seek designation based on the allegations of any potential counterclaims. Likewise, the Court expresses no opinion as to whether any potential counterclaims will in fact present a claim upon which designation may be properly based.

This the 15th day of November, 2016.

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