



The dispute arises from Doyle's prior independent-contractor relationship with Market America, during which Doyle executed an Advisory Council Agreement ("ACA") that included provisions restricting Doyle after the termination of his position from competing in a defined geographical area for a six-month period and from soliciting other Market America distributors for two years.

Doyle did not seek to designate the case as a mandatory complex business case. He filed counterclaims against Market America on November 30, 2015, alleging claims for libel and for unfair and deceptive trade practices under N.C. Gen. Stat. § 75-1.1. The section 75-1.1 counterclaim is based on allegations that Market America made false statements and engaged in a pattern of unfair conduct, such as sending spies to Doyle's business meetings at which confidential information was discussed.

Superior Court Judge Richard Doughton issued a preliminary injunction against Doyle in Market America's favor on December 3, 2015, directing that Doyle comply with the ACA's restrictions, including the use of Market America's confidential information.

The Notice of Designation states that Defendant Tami Gaines ("Gaines") had also been an earlier distributor for Market America, in a relationship that ended on October 13, 2014. Market America had earlier obtained a preliminary injunction against Gaines in litigation brought against her. The parties dispute whether Gaines solicited Doyle to leave Market America or to join Javita in violation of her contract or the injunction entered against her.

In its Notice of Designation, Javita contends that this lawsuit includes material issues that are grounded in antitrust law and trade-secrets law, even though no specific claim has been stated in either Market America's complaint or Doyle's counterclaim that asserts relief for antitrust violations or trade-secret misappropriation. While Doyle does assert a claim for unfair and deceptive trade practices under section 75-1.1, subsection 7A-45.4(a)(3) explicitly excludes disputes that are based solely on section 75-1.1. *See id.* § 7A-45.4(a)(3). The Notice of Designation further contends that the pleadings should be construed to present a

claim for common-law unfair competition. No such claim is included within the provisions of section 7A-45.4(a) unless a claim for unfair competition can be classified as a “[d]ispute involving antitrust law.” *Id.*

It is self-evident that Market America did not assert an actual claim for common-law unfair competition or for trade-secret misappropriation. However, this Court has previously recognized that designation as a complex business case may be appropriate if disputes within the scope of section 7A-45.4(a) have not been expressly pleaded but must necessarily be resolved in order to litigate the claims that have been asserted. *See* Order on Opposition to Designation of Action as Mandatory Complex Business Case, *Union Corrugating Co. v. Viechnicki*, No. 14-CVS-6240 (N.C. Super. Ct. Sept. 9, 2014). However, *Union Corrugating* cannot be fairly read to support designation merely because the pleadings include factual allegations that arguably touch upon facts that, when read together with other allegations, might have been a basis for a claim that the plaintiff chose not to allege.

Here, the breach-of-contract claim does not necessarily present the Court with a dispute involving trade-secret misappropriation merely because a term in the contract states that Market America owns trade secrets that Doyle agreed to honor. Market America has not asserted that any trade secrets have been misappropriated, and resolving the breach-of-contract claim does not require the Court to assess whether certain information does or does not constitute a trade secret. The Court is not persuaded otherwise by Javita’s argument that, because one of Market America’s claims involves the solicitation of other distributors, and because Market America contends that its list of distributors is a trade secret, it logically must follow that this case contains a dispute involving trade secrets.

The Court likewise concludes that there is no material issue of antitrust law that must be resolved to litigate the claims that have been asserted. In its effort to define an antitrust dispute, Javita claims that the impact of a prohibition on soliciting any Market America distributor based on a covenant that Defendants believe is overly broad and unsupported by consideration necessarily extends beyond just the parties in the case, therefore affecting competition in some way that

risers to the level of an antitrust issue. Javita's logic appears to be that such a covenant is an agreement in restraint of trade, and when the effect of enforcing the covenant has an impact beyond just the parties to the covenant so as to restrict competition by others, there is some special antitrust injury that falls within the scope of section 7A-45.4(a)(3). The Court gives Javita fair credit for creativity, but it is not persuaded by this argument.

In sum, the Court concludes that Javita is not entitled to have the case designated as a mandatory complex business case because it has not shown that the case involves material issues involving either an antitrust dispute or a trade-secrets dispute. Consequently, designation is improper. Market America's Opposition should be allowed, and the case should continue as a regular civil matter on the Guilford County Superior Court docket.

This Order is without prejudice to any parties' right to request the senior resident superior court judge to request that the case be designated as an exceptional matter under Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

IT IS SO ORDERED, this the 29th day of February, 2016.

/s/ James L. Gale

James L. Gale

Chief Special Superior Court Judge  
for Complex Business Cases