

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 868

ALLIANCE HOLDINGS, LLC; DANIEL J.)
RATAJCZAK; and ANGELA R.)
RATAJCZAK,)
Plaintiffs,)
v.)
YADKIN BANK,)
Defendant.)

ORDER ON OPPOSITION

1. THIS MATTER is before the Court on Plaintiffs’ Notice of Opposition to Notice of Designation of Action as a Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4 (“Opposition”).

2. Plaintiffs instituted this action by filing a Complaint on January 21, 2016, which was served on Defendant on February 5, 2016. Defendant timely filed a Notice of Designation on March 4, 2016. The case was designated as a mandatory complex business case by Chief Justice Mark Martin on March 7, 2016, and assigned to Judge Gregory P. McGuire on March 8, 2016. Plaintiffs timely filed their Opposition on March 22, 2016. Defendant filed a responsive memorandum in support of designation on April 6, 2016. The Opposition is now ripe for ruling.

3. The Notice of Designation avers that this case is appropriately designated as a mandatory complex business case because the matter involves material issues of partnership law within the purview of N.C. Gen. Stat. § 7A-45.4(a)(1) (2015). This subsection was the basis for the Chief Justice’s designation. Plaintiffs assert that there is no basis for such designation.

4. The Complaint arises from a lending relationship between the parties and includes five claims: (1) unfair and deceptive trade practices, (2) fraud, (3) negligence, (4) negligent misrepresentation, and (5) breach of fiduciary duty. Plaintiffs claim that the alleged fiduciary duty was created during their lending relationship with Defendant, which developed into a relationship of special trust and confidence. The Complaint does not assert the existence of any partnership agreement, make a claim for breach of a partnership agreement, or allege that a fiduciary duty arose as a result of a partnership agreement.

5. Defendant claims that there is nevertheless a basis to find that the matter involves a substantial issue related to the law of partnership, particularly because the Complaint makes specific allegations that employ the term “partner.” (*See, e.g.*, Compl. ¶ 16.) More specifically, the Complaint avers that Defendant referred to itself as “a strategic partner in [Plaintiffs’] success,” (Compl. ¶ 16,) and thanked the corporate Plaintiff for its “willingness to partner with [Defendant],” (Compl. ¶ 41,) but in fact did not partner with Plaintiffs on the project at issue, (Compl. ¶ 47.) Defendant asserts that the Court must “determine whether such statements concerning partnering created a fiduciary duty under North Carolina partnership law.” (Def.’s Mem. Resp. Pls.’ Opp’n 3 (citing *Wilkie v. Stanley*, No. 10 CVS 6257, 2011 NCBC LEXIS 11, at *1 (N.C. Super. Ct. Apr. 20, 2011).) Defendant contends that the statements will necessarily be used in Plaintiffs’ efforts to prove the existence of a fiduciary duty, even if no claim has been made regarding the existence or breach of a partnership agreement, since no fiduciary duty relationship is generally owed by a lender in an arms’-length lending relationship. (Def.’s Mem. Resp. Pls.’ Opp’n 4.) Thus, Defendant asserts that it must follow that the claim involves significant, material issues of partnership law.

6. A party’s right to designate a case as a mandatory complex business case is governed by section 7A-45.4, and specifically, in this case, by section 7A-45.4(a)(1). The statute contemplates that the Chief Justice will make a prompt determination regarding designation based on a party’s good-faith assertion in the notice of designation that the matter includes material issues that bring the case within the statute’s purview. N.C. Gen. Stat. § 7A-45.4(c). Likewise, following the Chief Justice’s designation, the undersigned promptly assigns the matter to a Business Court judge. However, a party opposing designation is afforded thirty days from service of the notice of designation to file an opposition to designation, and any such opposition is to be resolved by the undersigned as an administrative matter.

7. While Defendant would be entitled to have the case designated as a mandatory complex business case if the matter, in fact, involved a material issue related to the law of partnerships, that right is defeated if no such material issue is present in the case.

8. After reviewing the pleadings, the Notice of Designation, the Opposition, the parties’ briefs, and the controlling statute, the undersigned concludes that Defendant is not entitled to designate this case as a mandatory complex business case. The fiduciary duty

claim in this matter does not depend on the assertion or finding of a partnership, and the fact that the term “partner” was used in communications between the parties does not equate to bringing Plaintiffs’ assertion of a fiduciary duty based on special circumstances of trust and confidence within the scope section 7A-45.4(a)(1).

9. Section 7A-45.4(a) does not contain a more generalized provision that provides a party the right to designate any matter involving material issues of fiduciary duties as a mandatory complex business case. By the same token, section 7A-45.4 does not foreclose a case from being designated as a discretionary complex case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts. However, any such designation must be made by application to the Senior Resident Superior Court Judge.

Accordingly, it is HEREBY ORDERED that Plaintiffs’ Opposition is SUSTAINED, and that this matter should not proceed as a mandatory complex business case; rather, it should proceed on the regular docket of the Wake County Superior Court, without prejudice to any party’s right to request that the Senior Resident Superior Court Judge, in his discretion, recommend that the Chief Justice designate the matter pursuant to Rule 2.1.

This the 19th day of April, 2016.

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