STATE OF NORTH CAROLINA

COUNTY OF AVERY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 38

HARVEST FARM, LLC,

Plaintiff,

v.

R. D. CLIFTON CO., INC., d/b/a
CLIFTON SEED COMPANY; and
CROSS CREEK COATING, INC.,

Defendants.

**ORDER ON PLAINTIFF HARVEST
FARM LLC'S OPPOSITION TO
DEFENDANT CROSS CREEK
COATING, INC.'S NOTICE OF
DESIGNATION AS MANDATORY
COMPLEX BUSINESS CASE**

1. THIS MATTER is before the Court on Plaintiff Harvest Farm LLC's Opposition to Defendant Cross Creek Coating, Inc.'s Notice of Designation as Mandatory Complex Business Case ("Opposition"). The Court OVERRULES the Opposition for the reasons discussed below.

2. Plaintiff Harvest Farm, LLC ("Harvest Farm") filed its complaint ("Complaint") on February 13, 2018, which was served on Defendant Cross Creek Seed, Inc. ("Cross Creek") on February 20, 2018.

3. Cross Creek timely filed a notice of designation ("NOD") on March 21, 2018, asserting that the Complaint involves a "material issue relating to the 'performance' of a 'biotechnology product[].'" (Def. Cross Creek Coating, Inc.'s Notice of Designation as Mandatory Complex Business Case 3, ECF No. 8 (quoting N.C. Gen. Stat. § 7A-45.4(a)(5)).)

4.   On March 22, 2018, the Chief Justice designated the action ("Action") as a mandatory complex business case. The Action was assigned to the undersigned the same day.

5.   Harvest Farm timely filed its Opposition on April 19, 2018. Cross Creek timely filed its response in support of designation on May 3, 2018.

6.   The Complaint alleges that Harvest Farm purchased tomato and bell pepper seeds from R.D. Clifton Co. ("Clifton") that were improperly pelletized by Cross Creek, with resulting poor germination. Harvest Farm brings claims against Clifton for negligence and breaches of express and implied warranties, and against Cross Creek for negligence. (Compl. ¶¶ 7–23, ECF No. 3.)

7.   In support of its NOD, Cross Creek filed the affidavit of its president, Samuel Baker, attesting that the tomato and bell pepper seeds were genetically engineered and are, therefore, "biotechnology products" within the scope of Section 7A-45.4(a)(5). (Aff. Samuel Baker 3, ECF No. 8.1.)

8.   Harvest Farm contends that the Action does not require any adjudication of the complexities of biotechnology or genetic engineering, but rather is a case based on a "simple and straightforward" issue of whether the seed coating Cross Creek used to pelletize seeds that Clifton sold to Harvest Farm was "improper," such that the issues raise only "very simple questions." (Pl. Harvest Farm LLC's Opp. to Def. Cross Creek Coating, Inc's Notice of Designation as Mandatory Complex Business Case 1–2, ECF No. 12 ("Opp. to Designation").) Harvest Farm further

asserts that the material issue is not *whether* the seeds failed to perform, but *why* they failed to perform. (Opp. to Designation 2.)

9.   The significant point is that the Complaint challenges the performance of seeds that the Court finds are "biotechnology products" within the scope of Section 7A-45.4(a)(2).   As this Court has explained, cases that fall within the scope of the various provisions of N.C. Gen. Stat. § 7A-45.4(a) do not "require that the issue involve a claim of any particular complexity" in order to support designation of the case as a mandatory complex business case. *Barclift v. Martin*, No. 17 CVS 580, 2018 NCBC LEXIS 5, at *4 (N.C. Super. Ct. Jan. 19, 2018).   The distinction Harvest Farm seeks to draw as to why the seeds failed to perform does not take the controversy outside the scope of Section 7A-45.4(a)(5). Harvest Farm admits in its Opposition that a material issue is whether "the seed coating cause[d] the seeds to *fail to perform as expected and advertised*[.]" (Opp. to Designation 2 (emphasis added).)

10.   Accordingly, because the Action "involves a material issue related to" a "[d]ispute involving the . . . performance of . . . biotechnology products," N.C. Gen. Stat. § 7A-45.4(a)(5), the Opposition is OVERRULED.

SO ORDERED, this the 7th day of May, 2018.

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

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