

Edwards v. Vanguard Fiduciary Trust Co., 2018 NCBC Order 4.

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 2818

PHILLIP KENNETH EDWARDS,
Plaintiff,

v.

VANGUARD FIDUCIARY TRUST
COMPANY, RUSSELL JOSEPH
MUTTER individually and d/b/a RJM
FINANCIAL and RJM FINANCIAL
LLC, and ALLEGACY FEDERAL
CREDIT UNION,

Defendants.

ORDER REGARDING DESIGNATION

1. **THIS MATTER** is before the Court on Order of the Chief Justice of the North Carolina Supreme Court directing the undersigned to ascertain whether the above-captioned case is properly designated as a mandatory complex business case in accordance with N.C. Gen. Stat. § 7A-45.4(a)(2). For the reasons stated below, the Court concludes that the matter satisfies the designation criteria in N.C. Gen. Stat. § 7A-45.4(a)(2) and therefore that the case should be designated to the North Carolina Business Court and subsequently assigned to a Business Court Judge.

2. Plaintiff initiated this action on May 29, 2018, asserting claims for breach of contract, breach of fiduciary duty, negligence, and violation of the Uniform Fiduciaries Act. Plaintiff alleges that he hired Russell Mutter (“Mutter”) as his investment advisor, and, based on Mutter’s advice, invested his retirement savings in two Vanguard Fiduciary Trust Company (“Vanguard”) securities brokerage accounts. (See Compl. ¶¶ 9–11, ECF No. 2.) Plaintiff asserts that Vanguard failed to safeguard his retirement savings and provide him with investment services and

breached its fiduciary duty by allowing Mutter to have “full agent” access to Plaintiff’s retirement account without proper approval or oversight. (*See* Compl. ¶¶ 44, 48.)

3. Vanguard timely filed a Notice of Designation Pursuant to N.C. Gen. Stat. § 7A-45.4 (“Notice”) on July 3, 2018.

4. The Chief Justice of the North Carolina Supreme Court issued a Determination Order directing the undersigned to determine if this action meets the designation requirements of a mandatory complex business case.

5. To aid the Court in its determination, and in the exercise of its discretion, the Court issued a Scheduling Order allowing each party to file briefs in support of and in opposition to Vanguard’s Notice.

6. In accordance with the Court’s Scheduling Order, Plaintiff filed a Brief in Opposition to Vanguard Fiduciary Trust Company’s Business Court Designation (“Opposition”) and Vanguard filed Defendant’s Brief in Support of Notice of Designation on July 16, 2018. Vanguard filed Defendant’s Reply Brief in Support of Notice of Designation on July 23, 2018.

7. Plaintiff contends that this action is not properly designated as a mandatory complex business case because it does not involve a material issue in a dispute involving securities. Instead, Plaintiff contends that securities are only tangentially related to this action because regardless of whether Plaintiff’s retirement account included securities, the focus of the lawsuit is on the duties Vanguard and the other Defendants owed to Plaintiff and whether they breached those duties.

8. Vanguard contends, in support of designation, that this action raises issues concerning the application of the law of contract, fiduciary duty, and negligence to securities. Specifically, Vanguard contends that Plaintiff's claims relate to the determination of the duties and responsibilities owed by a broker-dealer to a brokerage account holder.

9. N.C. Gen. Stat. § 7A-45.4(a)(2) encompasses all matters that involve “a material issue related to . . . [d]isputes involving securities,” and is not limited to disputes arising under Chapter 78A of the General Statutes. N.C. Gen. Stat. § 7A-45.4(a)(2) (2015). However, a tangential relationship between securities and a complaint's allegations, without more, will not meet the criteria of section 7A-45.4(a)(2).

10. Prior to the 2014 amendment of N.C. Gen. Stat. § 7A-45.4(a), this Court held that an action involved material issues related to “securities laws” where the claims raised issues concerning “the existence and scope of any duties owed by broker-dealers to down-stream clients” and “the relationship of licensed securities representative to broker-dealers.” Notice of Designation, *Deyton v. Waters, Jr.*, No. 10 CVS 2582, ECF No. 1; *see* Order Opp'n to Notice of Designation, *Deyton v. Waters, Jr.*, No. 10 CVS 2582, ECF No. 12.

11. The 2014 amendment expanded the application of N.C. Gen. Stat. § 7A-45.4(a)(2) by broadening the language beyond “securities laws” to include any “[d]isputes involving securities, including disputes arising under Chapter 78A of the General Statutes.” N.C. Gen. Stat. § 7A-45.4(a)(2) (2015).

12. While Plaintiff does not assert a claim under the securities laws, Plaintiff's claims, analogous to the claims in *Deyton*, do require a factfinder to determine the duties owed by broker-dealers to brokerage account holders and the responsibilities broker-dealers have in monitoring and supervising independent investment advisors. Therefore, the Court finds that this action, like *Deyton*, meets the designation requirements set forth in N.C. Gen. Stat. § 7A-45.4(a)(2). Accordingly, the Court concludes that this action should be designated as a mandatory complex business case.

IT IS SO ORDERED, this the 24th day of July, 2018.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge