

Innovative Agriproducts, LLC v. Fins & Feathers' Charter And Comm. Fishing, LLC,
2019 NCBC Order 11.

STATE OF NORTH CAROLINA
COUNTY OF RANDOLPH

IN THE GENERAL COURT OF
JUSTICE
SUPERIOR COURT DIVISION
19 CVS 361

INNOVATIVE AGRIPRODUCTS, LLC,

Plaintiff,

v.

FINS & FEATHERS' CHARTER AND
COMMERCIAL FISHING, LLC;
CLIFFORD PAUL REED, JR. d/b/a
Southern Ag Builders of Jackson
Springs, NC; and WILLIAM T. BULL
d/b/a Wilshire Farms of Santee, SC,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court on Defendants' Opposition to Designation as Mandatory Complex Business Case under N.C. Gen. Stat. § 7A-45.4(a) ("Opposition"). (Opp'n Designation Mandatory Complex Business Case Under G.S. §7A-45.4(a) [hereinafter "Opp'n"], ECF No. 10.)

2. Plaintiff Innovative Agriproducts, LLC ("IAP") initiated this action on February 19, 2019, asserting claims against all Defendants for breach of contract, fraud, breach of implied covenant of good faith and fair dealing, civil conspiracy, and requesting injunctive relief. (See Compl., ECF No. 4.) Along with its Complaint, IAP filed a Notice of Designation ("NOD"), asserting that this action involves a dispute under sections 7A-45.4(a)(1) and (a)(5). (Notice Designation 1 [hereinafter "NOD"], ECF No. 5.)

3. This case was designated as a complex business case by the Chief Justice of the Supreme Court of North Carolina on February 20, 2019, (Designation Order, ECF No. 5), and assigned to the undersigned on the same day, (Assignment Order, ECF No. 2).

4. Defendants timely filed the Opposition on March 8, 2019, contending that designation of this action as a mandatory complex business case is not proper under either ground stated in the NOD. (Opp'n 1.) IAP filed its Response to the Opposition on March 25, 2019. (Pl.'s Resp. Defs.' Opp'n Designation Mandatory Complex Business Case Under G.S. § 7A-45.4(a) [hereinafter "Resp."], ECF No. 13.) The matter is now ripe for determination.

5. Section 7A-45.4(c) requires that "[t]he Notice of Designation shall, in good faith and based on information reasonably available, succinctly state the basis of designation[.]" As a result, "the Court may consider all materials reasonably necessary to rule on an opposition to designation." *In re Summons Issues to Target Corp. & Affiliates*, 2018 NCBC LEXIS 185, at *3 (N.C. Super. Ct. Dec. 4, 2018).

6. "For a case to be certified as a mandatory complex business case, the pleading upon which designation is based must raise a material issue that falls within one of the categories specified in section 7A-45.4." *Composite Fabrics of Am., LLC v. Edge Structural Composites, Inc.*, 2016 NCBC LEXIS 11, at *25 (N.C. Super. Ct. Feb. 5, 2016).

7. Designation under section 7A-45.4(a)(1) is proper if the action "involves a material issue related to . . . [d]isputes involving the law governing corporations,

except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, and limited liability companies, including disputes arising under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.” N.C. Gen. Stat. § 7A-45.4(a)(1).

8. Designation under section 7A-45.4(a)(5) is proper if the action “involves a material issue related to . . . [d]isputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software application, information technology and systems, data and data security, pharmaceuticals, biotechnological products, and bioscience technologies.” N.C. Gen. Stat. § 7A-45.4(a)(5).

9. This case arises out of a dispute over the sale, licensing, and extraction of oil from hemp plant clones. IAP alleges that it entered into an agreement with Defendants in February 2018 under which IAP agreed to sell hemp plant clones to one or more Defendants at a reduced price, (Compl. ¶¶ 11–12, ECF No. 4; *see also* Resp. Ex. A, at 1), and Defendants agreed to grant an exclusive license to IAP to extract oil from “any and all hemp harvested by Defendants in 2018.” (Compl. ¶¶ 12–13.) The parties further agreed that Defendants would organize a North Carolina limited liability company to serve as a registered hemp processor to enable the processing of hemp flower into hemp oil. (Compl. ¶¶ 9–10, Ex. A.) IAP also alleges that Defendants reaffirmed the parties’ extraction agreement by separate written agreements in July 2018 and again in December 2018, (Compl. ¶¶ 16, 24), and that the parties also entered into one or more contracts, each titled an

“Industrial Hemp Clone Sale & Limited License Agreement” (“Industrial Agreement”), by which IAP restricted Defendants’ rights to “manipulate or recreate clones purchased from IAP.” (Compl. ¶ 12.) IAP claims that Defendants delayed their performance through the fall of 2018 and ultimately breached their various agreements with IAP by not using IAP to extract all of Defendants’ 2018 hemp harvest and by failing to pay for the hemp Defendants did deliver to IAP for extraction. (Compl. ¶¶ 14, 23, 27, 31.)

10. IAP asserts that designation is proper under section 7A-45.4(a)(1) because the Court “may be called upon to evaluate the liability of Defendants and their various entities” as well as “the propriety of Defendants’ attempts to use those entities to perpetrate their fraud on IAP.” (NOD 3.) Specifically, IAP contends that, in furtherance of their fraud, “Defendants failed to organize a North Carolina limited liability company as required by their agreements” with IAP, (Compl. ¶ 10), and attempted to “circumvent their obligations and to conceal their misconduct through a shell game of using, when convenient, corporate entities,” (Compl. ¶ 51). IAP contends that this “misuse of the corporate form,” together with an alleged partnership dispute among Defendants, “are each at the heart of Defendants’ fraudulent conduct” and alleged breach of contract, and thus justify designation under section 7A-45.4(a)(1). (Resp. ¶¶ 25, 26.)

11. The Court disagrees. IAP’s claims here are focused on Defendants’ breach of the parties’ various agreements and Defendants’ allegedly fraudulent conduct in attempting to conceal, perpetuate, or justify that alleged breach. Although IAP

contends that Defendants' misuse of the corporate form is central to IAP's fraud claim, Defendants' alleged misconduct—the alleged failure to create an LLC, the alleged substitution of a different LLC as the registered hemp processor, and the failure to pay sums due—reflects matters governed by the law of contract, not a dispute involving the law governing corporations, partnerships, or limited liability companies. Further, the alleged partnership dispute among Defendants is pleaded as an explanation for Defendants' misconduct, not as a claim requiring the parties or the Court to consider or interpret issues of partnership law. Finally, although IAP alleges Defendants organized a “shell game” using its corporate entities, IAP has not pursued a veil piercing remedy as relief and IAP's claims based on this conduct do not require consideration of the law governing business organizations.

12. Accordingly, the Court concludes that this action does not involve a material issue related to the law governing corporations, partnerships, or limited liability companies, as required by section 7A-45.4(a)(1). *See, e.g., Southeastern Auto. Inc. v. Genuine Parts Co.*, 2016 NCBC LEXIS 63, at *7 (N.C. Super. Ct. Aug. 17, 2016) (requiring that claims triggering section 7A-45.4(a)(1) designation “present a material issue involving the law governing [business entities]”).

13. IAP next argues that designation under section 7A-45.4(a)(5) is proper because “hemp and associated clones, flower, and oil” are biotechnology products and that “[t]he parties' rights and obligations with respect to the sale, use, and licensing of those products are material to this dispute.” (NOD 3.) In particular, IAP contends that “Defendants' motivations for seeking to pursue extraction

elsewhere, and the factual basis for Defendants’ claim that the clones (e.g. baby hemp plants) were defective, *may* require the Court to evaluate the licensing, use, and performance of such products, expert scientific analysis relative to the planting, harvesting, storage, and species of such clones, and the role of Defendants in such use and performance.” (NOD 3 (emphasis added).) As such, IAP contends designation under section 7A-45.4(a)(5) is proper.

14. Again, the Court disagrees. In particular, IAP has failed to show that the hemp plant clones at issue are intellectual property for purposes of designation under section 7A-45.4(a)(5). Although plants may constitute intellectual property under appropriate circumstances, *see, e.g., J.E.M. AG Supply, Inc. v. Pioneer Hi-Bred International, Inc.*, 534 U.S. 124 (2001) (recognizing that plants may be patentable under federal law); *Del Monte Fresh Produce Co. v. Dole Food Co.*, 136 F. Supp. 2d 1271, 1292 (S. Dist. Fla. 2001) (holding trade secret protection available to certain plants), IAP has failed to offer any factual allegations or evidence to support its contention that the hemp clone plants are unlike ordinary agricultural crops like tobacco, corn, wheat or soy and constitute intellectual property. In particular, IAP has not alleged or shown that the hemp plant clones are patentable or patented, constitute trade secrets, or otherwise contain creative effort legally protected from unauthorized use. The only support IAP offers for its conclusory assertion here is the parties’ statement in the Industrial Agreement that the hemp plant clones are intellectual property. (Resp. 5; *see* Compl. ¶ 12, n.1.) The parties’ agreement, however, standing alone, is insufficient to satisfy section 7A-45.4(a)(5).

15. Even if IAP had shown through allegation or evidence that the hemp plant clones constituted intellectual property, IAP's attempt to designate would still fall short. As pleaded, Defendants' alleged misconduct involves the failure to use IAP as an oil extractor, the failure to pay IAP certain sums owed, and the failure to create an LLC to serve as a registered hemp processor under state law. None of this alleged misconduct involves the intellectual property aspects of the hemp plant clones at issue in this case. As such, even if the Court were to assume that hemp plant clones are, in fact, intellectual property for the purposes of this Order, IAP's Complaint fails to demonstrate that this case involves a material issue relating to a dispute that is "closely tied to the underlying intellectual property aspects" of the hemp plant clones at issue. *Cardioventis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at *6-7 (N.C. Super. Ct. June 27, 2018).

16. Perhaps recognizing this deficiency, IAP bases its second argument under section 7A-45.4(a)(5) on its contention that Defendants' have forecast a defense based on the defective performance of the hemp plant clones. For its support, however, IAP offers only a letter from Defendant Reed's counsel to IAP stating that most of the hemp plant clones sold by IAP "died due to significant age inconsistencies, inconsistent instructions on fertilizers and nutrients, and other issues that arose from the apparent inexperience of [IAP] in hemp production." (Resp. Ex. D.) Thus, Defendants' anticipated defense is premised on IAP's alleged failure to provide adequate instructions for planting and growing the clones, not on defects in the hemp plant clones themselves that are tied to the intellectual

property aspects of the clones. Accordingly, even if an anticipated defense may be considered for designation purposes, which the Court concludes is not proper, IAP's argument fails.

17. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** that the Opposition is **ALLOWED**. The Court concludes that this proceeding was improperly designated and thus should proceed on the regular civil docket of Randolph County Superior Court.

SO ORDERED, this the 23rd day of April, 2019.

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