

STATE OF NORTH CAROLINA
COLUMBUS COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 419

LISA GURKIN AS ATTORNEY IN
FACT FOR ROBERT GURKIN and
ROBERT GURKIN, BY AND
THROUGH HIS ATTORNEY IN FACT
LISA GURKIN,

Plaintiffs,

v.

ROBERT THOMAS SOFIELD, JR.;
EQUITY INVESTMENTS
ASSOCIATES, LLC; SOUTHEAST
PROPERTY ACQUISITIONS, LLC
FKA APPALACHIAN PROPERTY
HOLDINGS, LLC; CAROLINA
FORESTS, LLC; APPALACHIAN
PROPERTY HOLDINGS, LLC; PINE
FOREST DEVELOPMENT
COMPANY, LLC; SPG PROPERTY,
LLC; GPS HOLDINGS, LLC; SOFIELD
HOLDINGS MANAGEMENT, INC.;
RTS-DMC 1, LLC; HS GREEN
FAMILY IRREVOCABLE TRUST; HS
PORTANTE FAMILY IRREVOCABLE
TRUST; and RT SOFIELD III
IRREVOCABLE TRUST,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court on Plaintiffs' Opposition to Designation as Mandatory Complex Business Case under N.C. Gen. Stat. § 7A-45.4(a) ("Opposition"). (Pls.' Objs. Defs.' Joint Notice Designation Mandatory Complex Business Case [hereinafter "Opp'n"], ECF No. 16.)

2. Plaintiffs initiated this action on April 8, 2019, asserting claims they have titled: (i) breach of fiduciary duty and oppression of minority member, (ii) claim due to lack of mental capacity to transfer interests, (iii) claim for damages due to duress, (iv) claim for damages due to undue influence, (v) fraud and misrepresentation, (vi) constructive trust, and (vii) unfair or deceptive trade practices. (*See* Compl., ECF No. 4.)

3. Defendants Robert Thomas Sofield, Jr., Pine Forest Development Company, LLC, SPG Property, LLC, GPS Holdings, LLC, Sofield Holdings Management, Inc., HS Green Family Irrevocable Trust, HS Portante Family Irrevocable Trust, and RT Sofield III Irrevocable Trust (together, the “Sofield Defendants”) timely filed a Notice of Designation (“NOD”) on May 8, 2019, asserting that this action is properly designated as a mandatory complex business case because it involves a dispute under N.C. Gen. Stat. § 7A-45.4(a)(1) and (b)(2). (Joint Notice Designation Mandatory Complex Business Case [hereinafter “NOD”], ECF No. 9.)

4. This case was designated as a mandatory complex business case by the Chief Justice of the Supreme Court of North Carolina on May 9, 2019, (Designation Order, ECF No. 1), and assigned to the Honorable Gregory P. McGuire on the same day, (Assignment Order, ECF No. 2).

5. Plaintiffs timely filed the Opposition on June 6, 2019, contending that designation of this action as a mandatory complex business case is not proper under either ground stated in the NOD.

6. 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[.]” “For a case to be [designated] 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 N.C. Gen. Stat. § 7A-45.4(a)(1) is proper if the action involves a material issue relating to a “[d]ispute[] 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.”

8. Additionally, an action shall be designated as a “mandatory mandatory” complex business case, *see Barclift v. Martin*, 2018 NCBC LEXIS 5, at *4–5 (N.C. Super. Ct. Jan. 19, 2018), under N.C. Gen. Stat. § 7A-45.4(b)(2) where:

[a]n action described in subdivision (1), (2), (3), (4), (5), or (8) of subsection (a) of this section in which the amount in controversy computed in accordance with G.S. 7A-243 is at least five million dollars (\$ 5,000,000) [is] designated as a mandatory complex business case by the party whose pleading caused the amount in controversy to equal or exceed five million dollars (\$ 5,000,000).

9. This case arises in part out of Plaintiff Robert Gurkin’s (“Mr. Gurkin”) and Defendant Robert Thomas Sofield, Jr.’s (“Mr. Sofield”) interests in Defendant Equity Investments Associates, LLC (“Equity Investments, LLC”). Plaintiffs allege that Mr.

Sofield, a majority owner of Equity Investments, LLC, exerted undue influence on Mr. Gurkin, a minority owner, by convincing Mr. Gurkin to sell his entire 25% interest to an entity owned by Mr. Sofield for a grossly insufficient price, (Compl. ¶¶ 37–42), and exerted control over Equity Investments, LLC to convey real property to entities owned by Mr. Sofield for amounts substantially below market value, (Compl. ¶¶ 18, 34, 36, 46–49).

10. The Sofield Defendants first argue that designation as a mandatory complex business case is proper under section 7A-45.4(a)(1) because, by including claims for breach of fiduciary duty and oppression of a minority member of an LLC with supporting allegations, this action involves a material issue relating to a dispute involving the law governing limited liability companies. (NOD 7.) The Court agrees.

11. Plaintiffs contend that, in the LLC context, section 7A-45.4(a)(1) contemplates designation only for claims arising under Chapter 57D of the General Statutes and excludes designation based on an LLC member’s common law breach of fiduciary duty claim—the specific claim Plaintiffs purport to assert here. (Opp’n 3–4.) The statute’s unambiguous language, however, does not support Plaintiffs’ interpretation. Indeed, section 7A-45.4(a)(1) makes plain that its reach is broader than claims arising under Chapter 57D by permitting designation where an action involves a material issue relating to a “[d]ispute[] involving the law governing . . . limited liability companies, *including* disputes arising under Chapter[] . . . 57D[.]” (emphasis added); see *Jeffries v. Cty. of Harnett*, 817 S.E.2d 36, 49 (N.C. Ct. App. 2018) (finding that a statute’s use of “including” . . . indicates the list is meant to be

illustrative and not exhaustive”). In short, that a minority LLC member like Mr. Gurkin chooses to assert a breach of fiduciary duty claim against the LLC’s majority member under common law principles rather than under Chapter 57D matters not to designation under section 7A-45.4(a)(1). Plaintiffs’ Opposition must therefore be overruled.

12. Because the Court concludes that designation of this action is proper under 7A-45.4(a)(1), the Court need not consider Plaintiffs’ challenge to designation under section 7A-45.4(b)(2).

13. **WHEREFORE**, Plaintiffs’ Opposition is **OVERRULED**. This action shall continue before the Honorable Gregory P. McGuire as an action properly designated as a mandatory complex business case under section 7A-45.4(a)(1).

SO ORDERED, this the 18th day of June, 2019.

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