

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 2832

GRIFOLS THERAPEUTICS LLC,

Plaintiff,

v.

Z AUTOMATION COMPANY, INC.,

Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on July 1, 2019 by the Honorable Cheri Beasley, Chief Justice of the Supreme Court of North Carolina, directing the undersigned to determine whether this action is properly designated as a mandatory complex business case in accordance with N.C. Gen. Stat. § 7A-45.4(a) (the “Determination Order”).

2. Plaintiff filed the Verified Complaint initiating this action in Durham County Superior Court on May 24, 2019, asserting several contract-based claims related to a purchase agreement between the parties for the sale of a cartoner—an automated machine that inserts products into their outer-packaging. (*See* Verified Compl. ¶ 8.) Defendant timely filed the Notice of Designation (“NOD”) on June 28, 2019 following service of the Verified Complaint on May 31, 2019. (*See* Aff. Service; Aff. Service Ex. A.)

3. Defendant contends that designation as a mandatory business case is proper under N.C. Gen. Stat. § 7A-45.4(a)(1) and (a)(5). 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.” 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 applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.”

4. Defendant contends that designation as a mandatory complex business case is proper under section 7A-45.4(a)(1) because Plaintiff alleges that it entered into the purchase agreement under its former name and later converted from a corporation to a limited liability company (“LLC”). (NOD 3–4.) Defendant contends that designation is proper under section 7A-45.4(a)(5) because this action includes a dispute “involving the ownership, use, and performance of intellectual property, namely the Cartoner.” (NOD 4.) It appears from a review of the NOD and the Verified Complaint, however, that neither ground asserted in the NOD has merit because the resolution of Plaintiff’s claims requires only the application of contract law principles.

5. First, neither Plaintiff’s allegation that it converted from a corporation to an LLC after the purchase agreement was entered, nor any other underlying allegation in the Verified Complaint, implicates the laws governing corporations or LLCs as contemplated under section 7A-45.4(a)(1). *See S.E. Auto., Inc. v. Genuine Parts Co.*,

2016 NCBC LEXIS 63, at *7 (N.C. Super. Ct. Aug. 17, 2016) (declining to designate under (a)(1) where “[f]actual allegations regarding potential acquisitions or mergers” were “incidental to the claims . . . actually presented”); *see also Innovative Agriproducts, LLC v. Fins & Feathers’ Charter & Commercial Fishing, LLC*, No. 19 CVS 361, Order on Designation at 4–5 (N.C. Super. Ct. Apr. 23, 2019) (unpublished).

6. Similarly, the mere fact that intellectual property (i.e, the cartoner here) is the subject of a purchase agreement is insufficient to permit designation under section 7A-45.4(a)(5). *See Cardiorentis Ag v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at *6–7 (N.C. Super. Ct. June 27, 2018) (requiring that a dispute under (a)(5) be “closely tied to the underlying intellectual property aspects” of the intellectual property subject to an agreement); *see also Grid Therapeutics, LLC v. Song*, No. 19 CVS 2828, Order on Designation at 2 (N.C. Super. Ct. May 31, 2019) (unpublished); *Innovative Agriproducts, LLC*, No. 19 CVS 361, Order on Designation at 5–7. As currently pleaded, the cartoner at issue here is simply a piece of equipment Plaintiff contends that it sold to Defendant and for which Defendant has failed to pay—any intellectual property aspects of the cartoner are not germane to the dispute as it is currently cast.

7. Accordingly, the Court determines that this action is not properly designated as a mandatory complex business case under N.C. Gen. Stat. § 7A-45.4(a)(1) or (a)(5) and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

8. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 14 that this action is not

properly designated as a mandatory complex business case so that the action may be treated as any other civil action, wherein Defendant may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Judge.

9. The Court's ruling is without prejudice to the right of any party to timely seek designation of this matter as a mandatory complex business case as provided under BCR 2.3 or under section 7A-45.4 if based on a qualifying counterclaim.

SO ORDERED, this the 3rd day of July, 2019.

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