

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 4161

HEATH KNIGHT,

Plaintiff,

v.

BECHTEL ASSOCIATES
PROFESSIONAL CORPORATION,
(NORTH CAROLINA); BECHTEL
INFRASTRUCTURE
CORPORATION; BECHTEL
INFRASTRUCTURE AND POWER
CORPORATION; DEBORAH J.
ANDROVICH; DEWBERRY
ENGINEERS INC.; EXTREME
DESIGN LANDSCAPING
& TURFGRASS MANAGEMENT
INC.; GOOGLE FIBER INC.;
GOOGLE FIBER NORTH
CAROLINA, LLC; S&N
COMMUNICATIONS, INC.; CITY
OF DURHAM; MARVIN G.
WILLIAMS; KIMLEY-HORN AND
ASSOCIATES, INC.; SEPI
ENGINEERING &
CONSTRUCTION, INC.; and
JOHN/COMPANY DOE;

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on December 23, 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 accord with N.C.G.S. § 7A-45.4(a) (the "Determination Order"). (Determination Order, ECF No. 1.)

2. Plaintiff filed the Complaint initiating this action in Durham County Superior Court on November 18, 2019, asserting claims for trespass, negligence, infliction of emotional distress, timber theft, and violation of N.C.G.S. § 75-1.1. (*See* Compl., ECF No. 2.) Defendants Bechtel Infrastructure Corporation, Bechtel Infrastructure and Power Corporation, Google Fiber Inc., Google Fiber North Carolina, LLC, and S&N Communications, Inc. (collectively “Designating Defendants”), timely filed the Notice of Designation (“NOD”) on December 20, 2019. (Notice of Designation [hereinafter “NOD”], ECF No. 4.)

3. Designating Defendants contend that designation as a mandatory business case is proper under N.C.G.S. § 7A-45.4(a)(5). 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.” In order to qualify for mandatory business designation under section 7A-45.4(a)(5), the material issue must relate to a dispute that is “closely tied to the underlying intellectual property aspects” of the intellectual property at issue. *Cardioventis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at *6 (N.C. Super. Ct. June 27, 2018).

4. In support of designation under section 7A-45.4(a)(5), Designating Defendants argue that “[t]his case involves multiple material issues related to disputes that arise out of the ownership, installation, use, and maintenance of fiber

optic cable and related information technology . . . infrastructure near plaintiff Dr. Heath Knight's home in Durham.” (NOD 3.) Specifically, Designating Defendants argue that two agreements concerning the installation, use, and maintenance of the fiber optic cable are referenced in and relevant to Plaintiff's Complaint, (NOD 3), that Plaintiff alleges that certain Defendants owe her duties concerning the installation of utilities like the fiber optic cables, (NOD 4), and that Plaintiff's trespass claim hinges on allegations of Defendants' ownership of the fiber optic cables in question, (NOD 5).

5. As made plain by the NOD and the allegations in the Complaint, however, the intellectual property characteristics of the fiber optic cables are extraneous to the resolution of Plaintiff's claims attacking aspects of their installation. *See Cardioventis AG*, 2018 NCBC LEXIS 64, at *6. The central factual allegations supporting Plaintiff's claims are that Defendants trespassed upon and damaged Plaintiff's real property during construction related to the installation of the fiber optic cables on a public right-of-way abutting Plaintiff's real property. (*See* Compl. ¶¶ 34, 44, 52.)

6. Because resolution of Plaintiff's tort and statutory claims does not turn on the intellectual property characteristics of the fiber optic cables, the Complaint does not raise a “material issue” permitting mandatory business court designation under section 7A-45.4(a)(5). *See Grifols Therapeutics LLC v. Z Automation Co.*, 2019 NCBC LEXIS 91, at *2–4 (N.C. Super. Ct. July 3, 2019) (deciding (a)(5) designation was improper where purchase agreement for intellectual property only required

application of contract law principles); *Grid Therapeutics, LLC v. Song*, 2019 NCBC LEXIS 99, at *2–3 (N.C. Super. Ct. May 31, 2019) (holding that “dispute over the continued viability of a sublicense for the use and commercial exploitation of certain intellectual property” only required “straightforward application of contract law” and was not properly designate under (a)(5)); *Innovative Agriproducts v. Fins & Feathers’ Charter & Com. Fishing, LLC*, 2019 NCBC LEXIS 98, at *3, *8 (N.C. Super. Ct. Apr. 23, 2019) (determining designation improper under (a)(5) in part because alleged misconduct regarding “sale, licensing, and extraction of oil from hemp plant clones” did not involve “intellectual property aspects of the hemp plant clones at issue”).

7. The Court therefore concludes that this action shall not proceed as a mandatory complex business case under section 7A-45.4(a) 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 the parties may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Judge.

SO ORDERED, this the 31st day of December, 2019.

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