Ludwig v. Lilly, 2020 NCBC Order 23.

STATE OF NORTH CAROLINA NEW HANOVER COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 20 CVS 1232
DAVID CHRISTIAN LUDWIG and ARUZA, LLC, Plaintiffs, v. DAMON LILLY, Defendant.	**ORDER ON DESIGNATION**

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on May 6, 2020 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).

2. Plaintiffs David Christian Ludwig ("Ludwig") and his pest-control company Aruza, LLC ("Aruza") (together, "Plaintiffs") filed the Complaint initiating this action in New Hanover County Superior Court on March 30, 2020, asserting claims against Defendant Damon Lilly ("Defendant")—a former co-worker of Ludwig's at non-party Aptive Environmental, LLC ("Aptive")—for *per se* defamation, defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, unfair and deceptive trade practices under N.C.G.S. § 75-1.1, tortious interference with contract, and tortious interference with business relations. Defendant was served on April 7, 2020 and timely filed the Notice of Designation ("NOD") on May 4, 2020.

3. Plaintiffs' claims are predicated on their allegations that, after Ludwig left Aptive to co-found Aruza and recruited several Aptive employees to join his new company, Defendant "engaged in an ongoing campaign of libel and slander with the express intent of harming Plaintiffs and Plaintiffs' business." (Compl. & Demand Jury Trial ¶ 8 [hereinafter "Compl."].)

4. Defendant contends that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(8). That section permits designation if the action involves a material issue related to "[d]isputes involving trade secrets, including disputes arising under Article 24 of Chapter 66 of the General Statutes."[1]

5. Section 7A-45.4(a)(8) designation is most often premised on a claim or counterclaim under the North Carolina Trade Secrets Protection Act, N.C.G.S. § 66-152, et seq ("NCTSPA"). The designation statute makes clear, however, that it need not be. *See* N.C.G.S. § 7A-45.4(a)(8) (covering "[d]isputes involving trade secrets, *including* disputes arising under [the NCTSPA]" (emphasis added).) "[W]hether a case involves the requisite disputes falling with[in] the statutory requirements has not been historically confined to the actual causes of action asserted in a complaint[] but has also examined the underlying factual allegations." *Cornerstone Health Care, P.A. v. Moore*, 2015 NCBC LEXIS 65, at *7 (N.C. Super. Ct. June 22, 2015).

6. In support of section 7A-45.4(a)(8) designation, Defendant draws particular attention to Plaintiffs' allegations that Defendant "induced Plaintiffs' personnel to

[1] Defendant further contends that this action is a "mandatory mandatory" complex business case under section 7A-45.4(b)(2) as a case properly designated under section 7A-45.4(a)(8) for which the amount in controversy exceeds $5,000,000. (Notice Designation 3–4 [hereinafter "NOD"]); *see Barclift v. Martin*, 2018 NCBC LEXIS 5, at *5 (N.C. Super. Ct. Jan. 19, 2018).

divulge proprietary and confidential business information, including client and sales representative lists and sales leaderboards belonging to Aruza, in express violation of the salespeople's contracts, which information [Defendant] used to harm Plaintiffs' business and benefit himself[,]" (Compl. ¶ 12), and that Defendant violated section 75-1.1, in part, by "seeking out and profiting from unlawfully acquired private business information," (Compl. ¶ 34). Based on these allegations, Defendant argues that "Plaintiffs rely on [Defendant's] alleged trade-secrets misappropriation as a predicate for their section 75-1.1 claim and, to at least some degree, as a predicate for their tortious-interference claims." (NOD 6.)

7. Although appearing to argue for designation based on the Complaint, Defendant also cites to factual allegations stated in support of his counterclaim for breach of contract. Specifically, Defendant alleges that Aptive sued Plaintiffs in Utah in 2018 for allegedly breaching Ludwig's employment agreement with Aptive and violating the Utah Uniform Trade Secrets Act ("Utah Case"). (NOD 5; *see* Def.'s Answer & Countercls. ¶¶ 8,9, 11 [hereinafter "Countercls."] (alleging that Ludwig was subject to an agreement not to disclose Aptive's trade secrets and that, "[i]n the course of starting his own pest-control company, Mr. Ludwig breached his agreement with Aptive . . . , including by using Aptive's proprietary and confidential business information").) Defendant further contends that the "Mutual Release of Claims" provision in the resulting settlement agreement prohibits Plaintiffs from bringing their current claims against him. (Countercls. ¶¶ 15–17.)

8. The Court finds Defendant's arguments for section 7A-45.4(a)(8) designation unavailing.

9. First, the allegation that Aptive sued Plaintiffs for trade secret misappropriation in 2018 is irrelevant to section 7A-45.4(a)(8) designation. That Plaintiffs settled the Utah Case by making a cash payment is not an admission of liability on Aptive's trade secret claim, *see Penn Dixie Lines, Inc. v. Grannick*, 238 N.C. 552, 556, 78 S.E.2d 410, 413 (1953) ("[I]f a man could not settle one claim out of court without fear that this would be used in another suit as an admission against him, many settlements would not be made."), and, in any event, Plaintiffs' allegations about that settlement do not put Aptive's or Azura's trade secrets at issue in the litigation here.

10. Moreover, while it is true that a plaintiff need not plead a trade secret misappropriation claim to support mandatory complex business case designation under section 7A-45.4(a)(8), N.C.G.S. § 7A-45.4(a)(8); *see Pinsight Tech., Inc. v. Driven Brands, Inc.*, 2020 NCBC LEXIS 23, at *6–7 (N.C. Super. Ct. Feb. 20, 2020), the factual allegations here do not sufficiently "put[] the existence, ownership, or misuse of alleged trade secrets at issue," *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at *7 (N.C. Super. Ct. June 28, 2019), to permit 7A-45.4(a)(8) designation, *see RELX, Inc. v. Morrow*, 2020 NCBC LEXIS 21, at *4–5 (N.C. Super. Ct. Feb. 18, 2020) (holding that despite not stating a trade secret misappropriation claim, the plaintiff put trade secrets at issue by alleging that its trade secrets were disclosed to the defendant, misappropriated by the defendant, were threatened to be disseminated to third

parties by the defendant, and by requesting injunctive relief to enjoin the defendant from using, disclosing, or disseminating those trade secrets).

11. For one, Plaintiffs make only passing references to "proprietary and confidential business information," (*see, e.g.*, Compl. ¶ 12), which this Court has held on several occasions is not synonymous with trade secret information, *see, e.g.*, *UNOX, Inc.*, 2019 NCBC LEXIS 41, at *4 (quoting *Cornerstone Health Care, P.A.*, 2015 NCBC LEXIS 65, at *6), and Plaintiffs do not allege that the "client and sales representative lists and sales leaderboards" that Defendant allegedly induced Azura employees to divulge constitute trade secrets, *see Pinsight Tech., Inc.*, 2020 NCBC LEXIS 23, at *8–9 (holding that designation under section 7A-45.4(a)(8) was improper where the plaintiff did "not allege that its customer or vendor lists constituted trade secrets").

12. Further, "this Court has made plain that it will not recognize [7A-45.4(a)(8)] designation where it appears, as it does here, that Plaintiffs potentially could have, but chose not to, allege a claim that puts the existence, ownership, or misuse of alleged trade secrets at issue and requires or relies on a showing that the confidential information qualifies as a trade secret." *State Farm Mut. Auto. Ins. Co. v. Miller*, 2020 NCBC LEXIS 18, at *4 (N.C. Super. Ct. Feb. 11, 2020) (internal quotation marks, brackets, and citations omitted).

13. Finally, while Defendant is correct that trade secret misappropriation would constitute a *per se* violation of section 75-1.1, *see* N.C.G.S. § 66-146(b), Plaintiffs' section 75-1.1 claim—predicated on Defendant allegedly

> spreading false allegations regarding Plaintiffs' financial status, falsely alleging that Plaintiffs did not fully and fairly pay employees, falsely alleging that Plaintiff engaged in illegal activity, coercing employees to breach contractual obligations, seeking out and profiting from unlawfully acquired private business information, and impeding Plaintiffs' ability to conduct business by falsely damaging his reputation within the business community and community of consumers[,]

(Compl. ¶ 34)—does not rely on or require proof of the existence, ownership, or misuse of alleged trade secrets. The same is true for Plaintiffs' tortious interference claims, which are similarly predicated on Defendant's alleged "defamation of Plaintiffs and his express encouragement to third-parties (Plaintiffs' sales personnel) to abandon and/or violate their contractual obligations with regard to Plaintiffs[.]" (Compl. ¶¶ 39, 44.)

14. Accordingly, for the reasons set forth above, the Court 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.

15. **WHEREFORE**, consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 5 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 6th day of May, 2020.

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