

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 6417

STUART STOUT; SHELBY STOUT;
JONAH HIRSCH; and MFWH
PRODUCTIONS, LLC,

Plaintiffs,

v.

ALCON ENTERTAINMENT, LLC;
ALCON MEDIA GROUP, LLC;
ANDREW KOSOVE; BRODERICK
JOHNSON; WALDEN MEDIA, LLC;
and STEVEN WEGNER,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on June 23, 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) (the “Determination Order”).

2. Plaintiffs Stuart Stout and Shelby Stout (collectively, the “Stouts”), along with their production company, MFWH Productions, LLC (“MFWH”), and executive producer Jonah Hirsch (“Hirsch”) (together, the “Plaintiffs”), filed the Complaint initiating this action in Mecklenburg County Superior Court on April 24, 2020, asserting claims against all Defendants for fraud, negligent misrepresentation, and unfair and deceptive trade practices under N.C.G.S. § 75-1.1. In addition, Hirsch asserts a claim of unjust enrichment against Defendants Alcon Entertainment, LLC and Alcon Media Group, LLC (collectively, the “Alcon Corporate Defendants”). The

Alcon Corporate Defendants, Andrew Kosove, and Broderick Johnson (together, the “Alcon Defendants”) were served on May 22, 2020 and deposited the Notice of Designation (“NOD”) in the U.S. mail on June 22, 2020.¹

3. This case arises out of a dispute over the termination of the production of a screenplay. After their daughter Hope died of cancer at age twelve, the Stouts wrote a book about Hope’s life and created MFWH to make the book into a feature film. (Compl. ¶¶ 13, 17, 36.) Plaintiffs’ claims are predicated on their allegations that they entered into negotiations with the Alcon Defendants to produce the film and were fraudulently induced by Defendants’ misrepresentations to undertake certain actions to promote the forthcoming film when Defendants knew that the film would never go forward and later “shut down production on the [f]ilm, citing a lack of funding.” (Compl. ¶¶ 18–25.)

4. The Alcon Defendants contend that designation as a mandatory business case is proper under N.C.G.S. § 7A-45.4(a)(5). That section permits designation 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

¹ In her June 20, 2020 Emergency Order, the Chief Justice of the North Carolina Supreme Court extended Emergency Directive 15 in light of the ongoing coronavirus pandemic so that “[b]eginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five (5) business days of the date the filing is due.” Emergency Order C.J. N.C. Sup. Ct. (June 20, 2020). Because the Mecklenburg County Clerk of Superior Court received Plaintiffs’ NOD on June 25, 2020, the NOD was timely filed.

and data security, pharmaceuticals, biotechnology products, and bioscience technologies.”

5. In support of designation under section 7A-45.4(a)(5), the Alcon Defendants argue that this action involves “the production of a [s]creenplay” to which “MFWH has obtained all rights in and to the book titled *Hope’s Wish*, and the life story rights of Stuart and Shelby Stout necessary to produce and exploit the [s]creenplay.” (Notice Designation 2 [hereinafter “NOD”]; see Compl. ¶¶ 36–37, 41–44, 48, 52, 54.) The NOD goes on to state that the “Complaint references chain of title documents” that “demonstrate ‘clean title’ to the [s]creenplay” and “specifically involve the ownership, use, licensing, and performance of intellectual property.” (NOD 2; see Compl. ¶¶ 54–55, 71(b).)

6. A close reading of the Complaint, however, reveals that Plaintiffs’ claims are focused on Defendants’ allegedly fraudulent conduct related to the production and funding of the film and actions taken by Plaintiffs in reliance on Defendants’ misrepresentations rather than on the underlying intellectual property aspects of the book and screenplay as required under section 7A-45.4(a)(5). See *Pinsight Tech., Inc. v. Driven Brands, Inc.*, 2020 NCBC LEXIS 23, at *5 (N.C. Super. Ct. Feb. 20, 2020) (quoting *Cardioentis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at *6 (N.C. Super. Ct. June 27, 2018)) (“To qualify for mandatory complex business case designation under this section, the material issue must relate to a dispute that is ‘closely tied to the underlying intellectual property aspects’ of the intellectual property at issue.”). In addition, Plaintiffs’ fleeting references to the chain of title documents in the

Complaint are peripheral, at best, to Plaintiffs' underlying claims of fraud, negligent misrepresentation, and unfair and deceptive trade practices. As such, the Court concludes that designation under section 7A-45.4(a)(5) is improper.

7. Although the Alcon Defendants forecast that they will "present as a defense to Plaintiffs' causes of action, among other things, the significant and material issues with the [chain of title] documents provided by Plaintiff MFWH to Alcon Corporate Defendants[.]" (NOD 2), they have not filed the forecasted Answer. The Court may not consider any issues that may or may not be raised in a future pleading when determining whether designation is proper. *See Innovative Agriproducts, LLC v. Fins & Feathers' Charter & Commercial Fishing, LLC*, No. 19 CVS 361, Order on Designation at 8 (N.C. Super. Ct. Apr. 23, 2019) (unpublished) (concluding that it is improper for the Court to consider an anticipated defense for designation purposes).

8. Based on the foregoing, the Court concludes that this action shall not proceed as a mandatory complex business case under N.C.G.S. § 7A-45.4(a) and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

9. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 26 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.

10. The Court's ruling is without prejudice to the right of any party to seek timely designation of this matter as a mandatory complex business case as provided under section 7A-45.4.

SO ORDERED, this the 30th day of June, 2020.

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