

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 8299

CHARLOTTE MCKNIGHT; LEROY
JEFFREYS; JULIUS MONTAGUE;
AND AUDREY FOSTER, in their
official capacities as Trustees for and
on behalf of WAKEFIELD
MISSIONARY BAPTIST CHURCH,
AN UNINCORPORATED
ASSOCIATION,

Plaintiffs,

v.

WAKEFIELD MISSIONARY
BAPTIST CHURCH, INC.,

Defendant.

**ORDER ON PLAINTIFFS' MOTION IN
OPPOSITION TO DESIGNATION AS A
MANDATORY COMPLEX BUSINESS
CASE**

1. **THIS MATTER** is before the Court on Plaintiffs' Motion in Opposition to Designation as a Mandatory Complex Business Case under N.C.G.S. § 7A-45.4(a) (the "Opposition"). (Pls.' Mot. Opp'n Designation Complex Bus. Case [hereinafter "Opp'n"], ECF No. 10.)

2. Plaintiffs initiated this action on July 29, 2020, asserting claims for breach of fiduciary duty, constructive fraud/constructive trust, and unjust enrichment. (*See* Verified Compl. ¶¶ 21–53, ECF No. 3.)

3. Defendant Wakefield Missionary Baptist Church, Inc. ("WMBC, Inc.") filed its Answer and Counterclaims on September 3, 2020, asserting counterclaims for trade name infringement, conversion, and civil conspiracy. (*See* Answer & Countercls. ¶¶ 68–104, ECF No. 6.) That same day, WMBC, Inc. timely filed a Notice of Designation (the "NOD"), asserting that this action involves a dispute under

N.C.G.S. § 7A-45.4(a)(4) as a “[d]ispute involving trademark law, including disputes under Chapter 80 of the General Statutes.” (Notice Designation ¶ 1 [hereinafter “NOD”], ECF No. 7.)

4. On September 4, 2020, this case was designated as a mandatory complex business case by the Chief Justice of the Supreme Court of North Carolina, (Designation Order, ECF No. 1), and assigned to the Honorable Adam M. Conrad, Special Superior Court Judge for Complex Business Cases, (Assignment Order, ECF No. 2).

5. Plaintiffs timely filed the Opposition on September 22, 2020, contending that designation of this action as a mandatory complex business case is not proper under section 7A-45.4(a)(4). (Opp’n 1.) WMBC, Inc. filed its Response to the Opposition to Notice of Designation on September 25, 2020. (Resp. Opp’n Notice Designation [hereinafter “Resp.”], ECF No. 13.) The matter is now ripe for determination.¹

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[.]” As a result, “the Court may consider all materials reasonably

¹ The Court will assume without deciding for purposes of this Order that this civil action may properly be heard in the North Carolina state courts but notes that the United States Supreme Court has held that “[t]he First Amendment protects the right of religious institutions ‘to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2052 (2020) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952))).

necessary to rule on an opposition to designation.” *In re Summons Issues to Target Corp. & Affiliates*, 2018 NCBC LEXIS 185, at *3 (N.C. Super. Ct. Dec. 4, 2018).

7. “For a case to be certified 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).

8. Designation under section 7A-45.4(a)(4) is proper if the action involves a material issue related to “[d]isputes involving trademark law, including disputes arising under Chapter 80 of the General Statutes.” N.C.G.S. § 7A-45.4(a)(4).

9. This case arises out of a church schism. Plaintiffs allege that internal disputes regarding church finances and other matters arose among members of the congregation of Wakefield Missionary Baptist Church, an unincorporated association (“WMBC Association”), about three years ago. (Verified Compl. ¶ 8.)

10. In July 2019, United Community Bank filed an interpleader action against WMBC Association and several members of the congregation in Wake County Superior Court (the “First Action”), seeking to interplead WMBC Association’s funds and property into the Wake County Clerk of Superior Court’s Office. (See NOD ¶ 2; see also Pls.’ Am. Br. Opp’n Designation Complex Bus. Case 3–4 [hereinafter “Br. Opp’n”], ECF No. 12.) Plaintiffs contend that, a month later, a faction of the congregation took control of WMBC Association’s physical premises and subsequently filed Articles of Incorporation with the North Carolina Secretary of State in

September 2019 to form WMBC, Inc. (Verified Compl. ¶¶ 14–15.) WMBC, Inc. then brought suit in Wake County Superior Court against several former members of the congregation (the “Second Action”), seeking a preliminary injunction enjoining these members from continuing to operate WMBC Association separate and apart from WMBC, Inc. (See Verified Compl. ¶¶ 16–17; Br. Opp’n 4.) After WMBC, Inc.’s preliminary injunction motion was denied, WMBC, Inc. took a voluntary dismissal of the Second Action, without prejudice, on July 22, 2020, and Plaintiffs initiated the current action a week later. (See Br. Opp’n 4; Br. Opp’n Ex. 5.)

11. Plaintiffs first argue that designation is improper under section 7A-45.4(a)(4) because this matter involves a dispute between WMBC Association and WMBC, Inc. over a shared trade name. (See Br. Opp’n 5.) Plaintiffs contend that a trade name does not constitute a “trademark” or a “service mark” as those terms are defined in section 80-1, (Br. Opp’n 6–7), and that Chapter 80 is inapplicable to trade name disputes, *see Hot Shoppes, Inc. v. Hot Shoppes Incorporated*, 203 F. Supp. 777, 781 (M.D.N.C. 1962) (“The North Carolina [trademark] registration statute, however, deals with trade-marks and service marks but not trade names.”). Plaintiffs argue that because disputes over a common trade name are not within the purview of Chapter 80, there is no “dispute[] involving trademark law[,]” rendering designation under section 7A-45.4(a)(4) improper.

12. Plaintiffs misconstrue the grounds for Defendant’s designation. As WMBC, Inc. notes, its counterclaim is “based on common law, and seek[s] damages and injunctive relief for the unauthorized use of the Defendant’s name by Plaintiffs.” (See

Answer & Countercls. ¶ 77 (“The Church has exclusively used the name Wakefield Missionary Baptist Church for at least 30 years as its trade name, and has the common law right to its exclusive use.”); *see also* Resp. 2; NOD ¶ 16(iv).) Designation under section 7A-45.4(a)(4) is not limited to disputes arising under Chapter 80, but rather includes *all* disputes arising under trademark law, including those at common law. And North Carolina courts have applied common law trademark principles to adjudicate disputes over business trade names. *See, e.g., Two Way Radio Serv., Inc. v. Two Way Radio of Carolina, Inc.*, 322 N.C. 809, 817, 370 S.E.2d 408, 413 (1988) (“[W]e see no reason why the law should not protect the corporation in the use of that name, upon the same principle and to the same extent that individuals are protected in the use of trademarks.”) (quoting *Blackwell’s Durham Tobacco Co. v. Am. Tobacco Co.*, 145 N.C. 367, 374, 59 S.E. 123, 126 (1907)); *Cty. of Wake Johnson & Morris, PLLC v. Abdelbaky & Boes, PLLC*, 2017 NCBC LEXIS 89, at *26 (N.C. Super. Ct. Sept. 28, 2017) (granting defendant’s motion for summary judgment on plaintiff’s common law claim for trademark infringement based on a common trade name); *SCI N.C. Funeral Servs. v. McEwen Ellington Funeral Servs.*, 2013 NCBC LEXIS 15, at *19–27 (N.C. Super. Ct. Mar. 1, 2013) (analyzing various aspects of common law trademark infringement based on alleged misappropriation of common trade name). Thus, Plaintiffs’ challenge to designation on this basis is without merit.

13. Plaintiffs also contend that designation as a mandatory complex business case is improper because the First Action involving “the exact same Plaintiff[s] and

Defendant” is currently pending in Wake County Superior Court.² (Br. Opp’n 7–8.) Plaintiffs contend that maintaining litigation in the Business Court as well as in the Wake County Superior Court “could conceivably lay the groundwork for inconsistent rulings between the two court divisions, as the issues and claims between the parties are many and overlapping in nature.” (Br. Opp’n 8.) The pendency of a related proceeding, however, has no bearing on whether a case has been properly designated as a mandatory complex business case under section 7A-45.4.³

14. Because neither of Plaintiffs’ contentions challenging designation of this action as a mandatory complex business case under section 7A-45.4(a)(4) has merit, Plaintiffs’ opposition shall therefore be overruled.

15. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** that the Opposition is **OVERRULED**. This action involves a material issue related to “[d]isputes involving trademark law, including disputes arising under Chapter 80 of the General Statutes[]” as required by N.C.G.S. § 7A-45.4(a)(4) and shall proceed as a mandatory complex business case before the Honorable Adam M. Conrad.

² WMBC, Inc. filed an interlocutory appeal of the Wake County Superior Court’s order in the First Action (1) granting Plaintiff’s Motion for Interpleader and Discharge; (2) granting Plaintiff’s Motion to Dismiss Counterclaims; (3) denying Defendants WBMC Association, Darryl High, Barbara Williams, April High, Alton High, Homer High, Rosalind Etim, Sam Etim, Houston Etim, and Natalie Harris’ Motion to Dismiss; and (4) denying WMBC Association’s Motion to Substitute Party (WMBC, Inc.). The appeal remains pending before the North Carolina Court of Appeals. (Br. Opp’n 3; Br. Opp’n Ex. 3; NOD ¶ 3.)

³ This Order is without prejudice to Plaintiffs’ right to seek redress for their concerns, including under the Business Court Rules and the North Carolina Rules of Civil Procedure.

SO ORDERED, this the 6th day of October, 2020.

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