

STATE OF NORTH CAROLINA
CALDWELL COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 176

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY; STATE FARM LIFE
INSURANCE COMPANY; STATE
FARM FIRE AND CASUALTY
COMPANY; and STATE FARM
GENERAL INSURANCE
COMPANY,

Plaintiffs,

v.

JOHN E. MILLER,

Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on February 11, 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”). (Determination Order, ECF No. 1.)

2. Plaintiffs filed the Complaint initiating this action in Caldwell County Superior Court on February 10, 2020, asserting claims against Defendant—a former independent contractor and insurance agent for Plaintiffs—for breach of contract based on alleged misappropriation of Plaintiffs’ confidential information, alleged solicitation of Plaintiffs’ customers, alleged failure of Defendant to cease representing himself as an agent of Plaintiffs, and alleged failure to return Plaintiffs’ equipment;

trespass to chattels; tortious interference with contract; and violation of N.C.G.S. § 75-1.1. Plaintiffs timely filed the Notice of Designation (“NOD”) on the same day.

3. Plaintiffs contend that designation as a mandatory complex 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. *Cardioentis 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), Plaintiffs argue that “[a]djudication of this matter will necessarily require analysis of the use and licensing of the Proprietary Information and other intellectual property of State Farm; the appropriate uses and misappropriation of that intellectual property (including the Proprietary Information); and the use and possession of State Farm’s computer software.” (NOD ¶ 9.)

5. A close analysis of the NOD and the allegations in the Complaint demonstrate, however, that the intellectual property characteristics of Plaintiffs’ Proprietary Information and computer software are peripheral to the resolution of

Plaintiffs' claims attacking their continued possession and use by Defendant. *See Cardiorientis AG*, 2018 NCBC LEXIS 64, at *6. The central factual allegations supporting Plaintiffs' claims are that Defendant retained Plaintiffs' proprietary or confidential information and equipment in contravention of their written agreements and used that information to improperly compete with Plaintiffs. (*See* Compl. ¶¶ 45–74.) The primary relief sought is return of the information and equipment taken and damages arising from possession and use of that information and equipment by Defendant.

6. As pleaded, the intellectual property aspects of Plaintiffs' information and equipment are not the focus of Plaintiffs' claims; rather, the claims are concerned with Defendant's extracontractual possession and use of that information and equipment. The confidential and proprietary nature of the information and equipment are only relevant to the extent they bear on whether the information and equipment fall within the contract terms on which Plaintiffs base their claims.

7. This Court has previously stated that it “has never construed the [designation] statute so broadly as to permit designation . . . based on claims involving generalized confidential or proprietary information[,]” *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at *4 (N.C. Super. Ct. June 28, 2019) (citation and internal quotations omitted). This Court has also made plain that it will not recognize designation where it appears, as it does here, (*see* Compl. ¶¶ 14–21), 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 “require[s] or rel[ies] on a showing that [the] confidential information qualifies as a trade secret[.]” *id.* at *6.

8. Because resolution of Plaintiffs’ contract, tort, and statutory claims does not turn on the intellectual property characteristics of Plaintiffs’ Proprietary Information, the Complaint does not raise a “material issue” permitting mandatory business court designation under section 7A-45.4(a)(5). See *Knight v. Bechtel Assocs. Prof’l Corp.*, (N.C.), 2019 NCBC ORDER 36 (N.C. Super. Ct. Dec. 31, 2019) (holding that designation was improper under (a)(5) where resolution of tort and Chapter 75 claims did not turn on the intellectual property characteristics of fiber optic cables that were the subject of the complaint); *Grifols Therapeutics LLC v. Z Automation Co.*, 2019 NCBC LEXIS 91, at *2–4 (N.C. Super. Ct. July 3, 2019) (concluding (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 designated 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”); see also *Prod. Recovery Mgmt. v. D.D. Williamson & Co.*, 2018 NCBC

LEXIS 248, at *3–5 (N.C. Super. Ct. Dec. 21, 2018) (holding that (a)(5) designation based on counterclaim was improper while suggesting that, if designation had been filed contemporaneously with the complaint, designation could have been proper because contract claim was based on allegations that the contracted-for water treatment system, a biotechnology product, did not perform as intended).

9. 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.

10. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 25A 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 11th day of February, 2020.

Louis A. Bledsoe, III
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Chief Business Court Judge