

Relx, Inc. v. Morrow, 2020 NCBC Order 8.

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 17404

RELX, INC. d/b/a LEXISNEXIS,
Plaintiff,
v.
STACEY MORROW,
Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on February 13, 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. Plaintiff Relx, Inc. d/b/a/ LexisNexis (“Plaintiff” or “LexisNexis”) filed the Complaint initiating this action in Wake County Superior Court on December 30, 2019, asserting a claim against Defendant—a former employee of LexisNexis—for breach of contract premised on alleged violations of the non-competition, non-solicitation, and non-disclosure provisions in her employment agreement and requesting that Defendant be estopped “from servicing, soliciting, contacting, selling to, or marketing to” certain of Plaintiff’s customers, and “from using, disclosing or disseminating LexisNexis Trade Secret or confidential information[.]” (Compl. 14.) Defendant was served on January 8, 2020 and timely filed the Notice of Designation (“NOD”) on February 6, 2020.

3. Defendant contends that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(5) and (a)(8). Designation under section 7A-45.4(a)(8) is proper 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.” Because the Court concludes that designation is proper under section 7A-45.4(a)(8), it will not address designation under section 7A-45.4(a)(5).

4. In support of section 7A-45.4(a)(8) designation, Defendant draws particular attention to Plaintiff’s allegations that (i) Defendant “is in possession of valuable trade secrets, confidential information and proprietary knowledge, including but not limited to[] her knowledge of their computer software, software applications, information technology and systems and data and data security[,]” (NOD 2), (ii) “because of Defendant’s senior position as a Lead Account Manager with [her new employer], it is inevitable that Defendant will disclose and utilize the confidential and proprietary information she was exposed to at LexisNexis[,]” (NOD 3; *see* Compl. ¶¶ 39–42), and (iii) Defendant is “threatened with losing customer relationships, the value of its Trade Secret and/or confidential information, its competitive advantage, income and goodwill,” (NOD 3; Compl. ¶ 52).

5. Although not specifically referenced in the NOD, Plaintiff further alleges that Defendant retained her company-issued laptop for one week after her termination, (Compl. ¶ 45), and that when Plaintiff recovered the device, a forensic analysis of the laptop revealed that Defendant:

accessed confidential and proprietary files from LexisNexis’[s] CMR system and downloaded them directly to her hard drive. Suspiciously,

LexisNexis discovered that [Defendant] had attempted to completely “wipe” clean or erase the hard drive of her laptop before returning it to LexisNexis. [Defendant] even erased all of the files that she downloaded from hidden back-up folders on her hard drive that users normally would not access, upon information and belief, *to disguise that she had misappropriated confidential information and Trade Secrets from LexisNexis on the eve of her departure from the Company.*

(Compl. ¶¶ 45–46 (emphasis added).)

6. Relying on these and similar allegations, Plaintiff pleads, *inter alia*, a claim for breach of the non-disclosure provision of Defendant’s employment agreement. Although Plaintiff has not asserted a claim for trade secret misappropriation under Chapter 66, it seeks injunctive relief seeking to prevent Defendant’s use, disclosure and dissemination of Plaintiff’s “Trade Secret . . . information.” (Compl. 14.)

7. Mandatory complex business case designation under section 7A-45.4(a)(8) 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. (the “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).

8. Based on its review of Plaintiff’s factual allegations here, the Court concludes that designation under section 7A-45.4(a)(8) is appropriate. Not only does

Plaintiff plead that its trade secrets were disclosed to Defendant, (Compl. ¶ 10), misappropriated by Defendant, (Compl. ¶ 46), and are threatened to be disseminated to third parties by Defendant, (Compl. ¶ 50), but, as noted above, Plaintiff also seeks injunctive relief to enjoin the use, disclosure or dissemination of those trade secrets, (Compl. 14). As such, the allegations of Plaintiff's Complaint "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), permitting section 7A-45.4(a)(8) designation. That Plaintiff elected not to plead a NCTSPA claim, perhaps because this Court has viewed NCSTPA claims based on alleged "inevitable disclosure" with some skepticism, *see Aym Techs., LLC v. Rodgers*, 2019 NCBC LEXIS 64, at *34 (N.C. Super. Ct. Oct. 16, 2019) (noting "that North Carolina courts have been reluctant to embrace [inevitable disclosure arguments] under Chapter 66"), does not change this result.

9. Accordingly, for the reasons set forth above, the Court concludes that designation of this action as a mandatory complex business case under section 7A-45.4(a)(8) is proper.

10. **WHEREFORE**, the Court hereby **ORDERS** that this action shall proceed as an action properly designated as a mandatory complex business case under section 7A-45.4(a)(8). The action shall be assigned to a Special Superior Court Judge for Complex Business Cases by separate order.

SO ORDERED, this the 18th day of February, 2020.

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