

STATE OF NORTH CAROLINA
SAMPSON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 1083

VERTICAL CROP CONSULTANTS,
INC.,

Plaintiff,

v.

BRICK STREET FARMS LLC,

Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on January 8, 2021 by the Honorable Paul Newby, 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. This case arises out of a contract dispute. Defendant Brick Street Farms LLC purchased a specialized hydroponic growing system from Plaintiff Vertical Crop Consultants, Inc. pursuant to a Sale and Purchase Agreement (the “Agreement”). (See Compl. ¶ 10.) The Agreement contains a “Confidentiality, Non-Disclosure, and Non-Compete” provision that requires Defendant not to use any confidential information obtained from Plaintiff to develop any products or services that could compete with Plaintiff’s offerings. (See Compl. ¶¶ 11, 21, 30; Compl. Ex. A, Sale and Purchase Agreement 1–2 [hereinafter “Agreement”].) Plaintiff alleges that, in violation of the Agreement, Defendant began to sell products in direct competition with Plaintiff. (See Compl. ¶¶ 12–18.)

3. Plaintiff filed the Complaint initiating this action in Sampson County Superior Court on December 2, 2020, asserting claims against Defendant for breach of contract and unfair and deceptive trade practices under N.C.G.S. § 75-1.1. (*See* Compl. ¶¶ 19–47.) Defendant accepted service of the Complaint on December 8, 2020 and timely filed a Notice of Designation as Mandatory Business Case (“NOD”) on January 7, 2021, contending that designation is proper under N.C.G.S. § 7A-45.4(a)(3), (5), and (8).

A. Section 7A-45.4(a)(3)

4. Designation under section 7A-45.4(a)(3) is proper if the action involves a material issue related to “[d]isputes involving antitrust law, including disputes arising under Chapter 75 of the General Statutes that do not arise solely under G.S. 75-1.1 or Article 2 of Chapter 75 of the General Statutes.”

5. In support of designation under this section, Defendant argues that “the interpretation of the Agreement’s restrictive covenants will turn on whether [Plaintiff] has violated North Carolina antitrust laws by creating an unreasonable restraint on trade or commerce by reading their noncompete provision as preventing Defendant from simply ‘sell[ing] products in direct competition’ with [Plaintiff][.]” (Notice Designation Mandatory Bus. Case 6 [hereinafter “NOD”] (quoting Compl. ¶ 24)), thereby permitting designation. The Court disagrees.

6. “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) (emphasis added). Here, designation is based upon the Complaint and the NOD does not reference any portion of the Complaint to support designation under section 7A-45.4(a)(3). The Court further notes that while Plaintiff has alleged a claim under section 75-1.1, the Complaint does not contain a claim for trade secret misappropriation or otherwise invoke state or federal antitrust law. (See Compl. ¶¶ 37–47.) Designation under section 7A-45.4(a)(3) is therefore improper. See *Pinsight Tech., Inc. v. Driven Brands, Inc.*, 2020 NCBC LEXIS 23, at *4 (N.C. Super. Ct. Feb. 20, 2020) (holding that (a)(3) designation was improper where plaintiff “has not alleged trade secret misappropriation, a Chapter 75 claim other than one under section 75-1.1, or otherwise invoked state or federal antitrust law[]”).

B. Section 7A-45.4(a)(5)

7. 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.” 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. *Cardioentis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at *6 (N.C. Super. Ct. June 27, 2018).

8. In support of designation under this section, Defendant argues that “the enforceability of the Agreement’s restrictive covenants depends on whether [Plaintiff] disclosed its trade secrets, intellectual property, and knowhow to [Defendant], which [Plaintiff] contends [Defendant] used to manufacture and build modular farms in order to compete with [Plaintiff].” (NOD 5–6.) Here again, the NOD makes no reference to the allegations contained in the Complaint, (*see* NOD), but the Court notes that the Complaint includes straightforward claims for breach of the confidentiality and non-compete provisions of the Agreement, which require nothing more than the application of contract law principles for their resolution. Because resolution of Plaintiff’s contract claims is not “closely tied to the underlying intellectual property aspects” of Defendant’s competing product, designation under section 7A-45.4(a)(5) is improper. *See Pindsight Tech., Inc.*, 2020 NCBC LEXIS 23, at *5–6 (holding that (a)(5) designation was improper where plaintiff’s claim for breach of nondisclosure agreements only required application of contract law principles); *Grifols Therapeutics LLC v. Z Automation Co.*, 2019 NCBC LEXIS 91, at *3 (N.C. Super. Ct. July 3, 2019) (concluding that “the mere fact that intellectual property . . . is the subject of a purchase agreement is insufficient to permit designation under section 7A-45.4(a)(5)[]”).

C. Section 7A-45.4(a)(8)

9. 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.” Although designation

under this section 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.*[.] . . . [t]he designation statute makes clear . . . that it need not be.’ ” *Pinsight Tech., Inc.*, 2020 NCBC LEXIS 23, at *6–7 (quoting *Relx, Inc. v. Morrow*, 2020 NCBC LEXIS 21, at *4 (N.C. Super. Ct. Feb. 18, 2020)).

10. Defendant’s argument for designation under this section is identical to its argument for designation under section 7A-45.4(a)(5), (*see* NOD 5–6), and the Court finds it equally unpersuasive.

11. “[T]he Court has never construed the [designation] statute so broadly as to permit ‘designation of an action as a mandatory complex business case 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) (quoting *Cornerstone Health Care, P.A. v. Moore*, 2015 NCBC LEXIS 65, at *6 (N.C. Super. Ct. June 22, 2015)). Moreover, the Court “will not recognize designation where it appears . . . that [the pleading party] potentially could have, but chose not to, allege a claim that ‘puts the existence, ownership, or misuse of alleged trade secrets at issue[.]’ ” *State Farm Mut. Auto. Ins. Co. v. Miller*, 2020 NCBC LEXIS 18, at *4 (N.C. Super. Ct. Feb. 11, 2020) (quoting *UNOX, Inc.*, 2019 NCBC LEXIS 41, at *6).

12. Although Defendant again fails to reference any of Plaintiff’s allegations to support its NOD, the Court notes that Plaintiff alleges that Defendant was subject to contractual provisions to “ ‘use best efforts to protect all non-public information and know-how of [Plaintiff] . . . that is either designated as proprietary and/or confidential

or that, by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary’ ” (Compl. ¶ 30 (quoting Agreement 1–2).) Plaintiff further alleges that Defendant breached the confidentiality term of the Agreement when Defendant “began selling modular homes based on the design and know-how procured from the transaction with [Plaintiff].” (Compl. ¶ 34.)

13. Yet the Complaint does not purport to assert a claim for trade-secret misappropriation, nor does it allege that any of Plaintiff’s information at issue in this action is subject to trade-secret protection. In the absence of such allegations, the asserted claims appear to be based on the misuse of generalized confidential or proprietary information, such that “nothing in the Complaint ‘suggest[s] that the dispute will require the Court to resolve material issues involving trade secrets[.]’ ” *UNOX, Inc.*, 2019 NCBC LEXIS 41, at *5–6 (quoting *Stay Alert Safety Servs., Inc. v. Pratt*, 2017 NCBC LEXIS 101, at *5–6 (N.C. Super. Ct. Nov. 1, 2017)). As this Court has previously noted, designation under section 7A-45.4(a)(8) is improper when “ ‘the pleadings include factual allegations that arguably touch upon facts that, when read together with other allegations, might have been a basis for a claim that the plaintiff chose not to allege.’ ” *UNOX, Inc.*, 2019 NCBC LEXIS 41, at *6–7 (quoting *Market Am., Inc. v. Doyle*, No. 15 CVS 9658, Order at 3 (N.C. Super. Ct. Feb. 29, 2016) (unpublished)).

D. Conclusion

14. Based on the foregoing, the Court determines 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.

15. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 4 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 12th day of January, 2021.

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