STATE OF NORTH CAROLINA WAYNE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 20 CVS 1430
MAXWELL FOODS, LLC, Plaintiff, v. SMITHFIELD FOODS, INC., Defendants.	**ORDER ON OPPOSITION TO DESIGNATION AS A COMPLEX BUSINESS CASE**

1. **THIS MATTER** is before the Court on Plaintiff Maxwell Foods, LLC's ("Maxwell") Opposition to Designation as a Complex Business Case (the "Opposition"). (Opp'n Designation Complex Bus. Case [hereinafter "Opp'n"], ECF No. 17.)

2. Maxwell initiated this action on 13 August 2020, asserting claims for breach of contract and breach of duty of good faith and fair dealing against Defendant Smithfield Foods, Inc. ("Smithfield"). (*See* Compl. ¶¶ 82–112, ECF No. 3.) Smithfield timely removed the case to the United States District Court for the Eastern District of North Carolina on 11 September 2020. (*See* Notice Removal, ECF No. 5.) Maxwell filed a motion to remand the case to state court on 9 October 2020, which the District Court granted on 22 February 2021. (*See* Order, ECF No. 6.) Maxwell then filed an Amended Complaint on 1 March 2021, asserting claims for breach of contract and unfair and deceptive trade practices under N.C.G.S. § 75-1.1 against Smithfield. (*See* Am. Compl. ¶¶ 94–132, ECF No. 7.)

3. Smithfield timely filed a Notice of Designation (the "NOD") on 5 March 2021, asserting that this action involves a dispute under N.C.G.S. §§ 7A-45.4(a)(3) and

(b)(2) and thus must be designated as a mandatory complex business case. (Notice Designation 1–2 [hereinafter "NOD"], ECF No. 9.)

4. On 8 March 2021, the action was designated as a mandatory complex business case by the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, (Designation Order, ECF No. 1), and assigned by the undersigned to the Honorable Adam M. Conrad, Special Superior Court Judge for Complex Business Cases, (Assignment Order, ECF No. 2).

5. Maxwell timely filed the Opposition on 25 March 2021, contending that designation of this action as a mandatory complex business case is not proper under either ground stated in the NOD. (Opp'n 1–2, 7–10.) Smithfield filed its Response to Opposition (the "Response") on 9 April 2021. (Resp. Opp'n Designation [hereinafter "Resp."], ECF No. 18.) The matter is now ripe for determination.

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 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)(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."

9. According to the Amended Complaint, Maxwell was a major producer in the U.S. hog industry and a former supplier to Smithfield, the largest processor of pork in the world. (*See* Am. Compl. ¶¶ 7, 10, 16.) Maxwell and Smithfield entered into a Production Sales Agreement (the "PSA") on 5 December 1994, in which Maxwell agreed to sell hogs to Smithfield and Smithfield agreed to purchase hogs from Maxwell. (*See* Am. Compl. ¶ 16.) The parties executed a written amendment (the "Amendment") to the PSA on 6 December 1994. (*See* Am. Compl. ¶ 28.) Maxwell alleges that Smithfield has violated the terms of the PSA and Amendment by failing to (i) give Maxwell the same economic incentives and benefits given to other major swine suppliers; (ii) negotiate in good faith with Maxwell to find a substitute basis for determining the purchase price for Maxwell's hogs when the PSA's pricing formula was no longer economically viable; and (iii) purchase all of the hogs produced by Maxwell up to a certain monthly cap. (*See* Am. Compl. ¶¶ 60–68, 70–75, 81–83, 94–121.) Maxwell further alleges that Smithfield has used its status as the dominant—indeed the monopoly—pork processor in the Southeast to manipulate the pricing mechanism in the PSA and provide other major hog suppliers with better economic terms and incentives, thereby driving Maxwell out of the hog business and benefiting Smithfield's affiliated hog producers. (*See* Am. Compl. ¶¶ 86–93, 122–32.)

10. Maxwell argues that designation under 7A-45.4(a)(3) is improper because it "has not alleged an antitrust claim under either state or federal law." (Opp'n 7.) Maxwell further contends that because the Amended Complaint asserts "several breach of contract claims and an additional claim 'solely under G.S. 75-1.1' to recover damages for Smithfield's unfair trade practices against Maxwell[,]" (Opp'n 2), the action "falls expressly outside the ambit of [s]ection 7A-45.4(a)(3)[,]" (Opp'n 7).

11. The Court disagrees. While it is true that the "plaintiff is the master of its complaint and free to choose which causes of action it will bring[,]" *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at *6 (N.C. Super. Ct. June 28, 2019), this Court has previously recognized that "designation as a complex business case may be appropriate if disputes within the scope of section 7A-45.4(a) have not been expressly pleaded but must necessarily be resolved in order to litigate the claims that have been asserted[,]" *Mkt. Am., Inc. v. Doyle*, 2016 NCBC LEXIS 182, at *4 (N.C. Super. Ct. Feb. 29, 2016).

12. Such is the case here. Designation is based on the Amended Complaint, and the NOD provides ample support for Smithfield's assertion that Maxwell's section 75-1.1 claim is premised on antitrust allegations. (*See* NOD 3–5; *see also* Am. Compl. ¶¶ 7–13, 16, 87–90, 93, 122–26.) As Smithfield notes in its Response, "Maxwell alleges that Smithfield violated [s]ection 75-1.1 by abusing its alleged monopoly power and dominant market position to manipulate national hog prices, favor its vertically-integrated producers, and force Maxwell out of business." (Resp. 6.) Although Maxwell correctly notes that designation is improper where the claim arises "solely

under G.S. 75-1.1," (*see* Opp'n 7), unlike the cases that Maxwell cites in its Opposition, a close reading of the Amended Complaint reveals that Maxwell has "otherwise invoked state or federal antitrust law" by alleging that Smithfield's monopolistic misconduct serves as the basis for its claim under section 75-1.1. *Cf. Vertical Crop Consultants, Inc. v. Brick St. Farms LLC*, 2021 NCBC LEXIS 3, at *3 (N.C. Super. Ct. Jan. 12, 2021) (declining to designate under (a)(3) where "the Complaint does not contain a claim for trade secret misappropriation or otherwise invoke state or federal antitrust law"); *Pinsight Tech., Inc. v. Driven Brands, Inc.*, 2020 NCBC LEXIS 23, at *4 (N.C. Super. Ct. Feb. 20, 2020) (declining to designate under (a)(3) where plaintiff has "not alleged trade secret misappropriation, a Chapter 75 claim other than one under section 75-1.1, or otherwise involved state or federal antitrust law"); *Charah v. Sequoia Servs. LLC*, 2019 NCBC LEXIS 87, at *2 (N.C. Super. Ct. May 30, 2019) (declining to designate under (a)(3) where plaintiff's claim arises solely under section 75-1.1 and plaintiff does not "allege or contend that the current action involves consideration and application of federal or state antitrust law"). Because there exists a material issue of antitrust law that must be resolved to litigate Maxwell's claim arising under section 75-1.1, designation under section 7A-45.4(a)(3) is proper.

13. Designation under section 7A-45.4(b)(2) is also appropriate. That section provides that "[a]n action described in subdivision (1), (2), (3), (4), (5), or (8) of subsection (a) of this section in which the amount in controversy computed in accordance with G.S. 7A-243 is at least five million dollars ($5,000,000) shall be designated as a mandatory complex business case by the party whose pleading caused

the amount in controversy to equal or exceed five million dollars ($5,000,000)." Maxwell alleges that Smithfield's conduct has "cost Maxwell tens of millions of dollars already and is causing Maxwell to incur additional substantial losses every day." (Am. Compl. ¶ 91.) For the reasons discussed above, this case is properly designated under section 7A-45.4(a)(3), and because the Amended Complaint establishes that the amount in controversy exceeds five million dollars, the Court concludes that this action qualifies for "mandatory mandatory" designation under section 7A-45.4(b)(2).

14. **WHEREFORE**, the Court hereby **ORDERS** that the Opposition is **OVERRULED**. This 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[ ]" and shall proceed as a mandatory complex business case before the Honorable Adam M. Conrad.

SO ORDERED, this the 13th day of April, 2021.

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