

STATE OF NORTH CAROLINA
DAVIDSON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 2307

PAYNE'S GROUP AND
ASSOCIATES, LLC,

Plaintiff,

v.

THE BRIAN MALLARD GROUP OF
TEXAS, LP d/b/a MALLARD GROUP
AND MALLARD SERVICE GROUP,
LLC,

Defendants,

**ORDER ON PLAINTIFF'S
OPPOSITION TO DESIGNATION AS
MANDATORY COMPLEX BUSINESS
CASE**

THE BRIAN MALLARD GROUP OF
TEXAS, LP d/b/a MALLARD
GROUP,

Counterclaim
Plaintiff,

v.

PAYNE'S GROUP AND
ASSOCIATES, LLC,

Counterclaim
Defendant.

1. **THIS MATTER** is before the Court on Plaintiff/Counterclaim Defendant Payne's Group and Associates, LLC's ("Payne's Group") Opposition to Designation as Mandatory Complex Business Case under N.C.G.S. § 7A-45.4(a) (the "Opposition"). (Pl.'s Opp'n Designation Mandatory Complex Bus. Case [hereinafter "Opp'n"], ECF No. 12.)

2. Payne's Group initiated this action on October 29, 2020, asserting claims for a declaratory judgment and preliminary injunction. (See Compl. & Mot. Preliminary Inj. ¶¶ 31–61 [hereinafter "Compl."], ECF No. 3.)

3. Defendant/Counterclaim Plaintiff The Brian Mallard Group of Texas, LP d/b/a Mallard Group (“Mallard Group”) and Defendant Mallard Service Group, LLC (together, “Defendants”) filed their Verified Answer and Verified Counterclaims and Motion for Preliminary Injunction (the “Answer and Counterclaims”) on November 30, 2020, in which Mallard Group asserts counterclaims against Payne’s Group for breach of contract, breach of good faith and fair dealing, fraud, negligent misrepresentation, misappropriation of trade secrets pursuant to the North Carolina Trade Secrets Protection Act, misappropriation of trade secrets pursuant to the Texas Uniform Trade Secrets Act, civil conspiracy, violation of the North Carolina Unfair or Deceptive Trade Practices Act, and violation of Texas’ Deceptive Trade Practices–Consumer Protection Act.¹ (Answer & Countercls. 18–28.) That same day, Mallard Group filed a Notice of Designation (“NOD”) asserting that this action involves a dispute under section 7A-45.4(a)(8). (Notice Designation 1–2 [hereinafter “NOD”], ECF No. 6.)

4. This case was designated as a complex business case by the Honorable Cheri Beasley, Chief Justice of the Supreme Court of North Carolina, on December 1, 2020, (Designation Order, ECF No. 1), and assigned to the Honorable Michael L. Robinson,

¹ Mallard Group also purports to assert claims against non-party Payne’s Group, LLC for breach of contract, breach of good faith and fair dealing, fraud, negligent misrepresentation, civil conspiracy, violation of the North Carolina Unfair or Deceptive Trade Practices Act, and violation of Texas’ Deceptive Trade Practices–Consumer Protection Act. (Answer & Countercls. & Mot. Preliminary Inj. 16–20, 26–28 [hereinafter “Answer & Countercls.”], ECF No. 4.) Mallard Group’s motion to add Payne’s Group, LLC as a counterclaim defendant under Rule 13(h) and for leave to file a second amended counterclaim under Rule 15, (ECF No. 10), is currently pending before the Court.

Special Superior Court Judge for Complex Business Cases, that same day, (Assignment Order, ECF No. 2).

5. Payne's Group timely filed the Opposition on December 30, 2020, contending that designation of this action as a mandatory complex business case is not proper under section 7A-45.4(a)(8). (Opp'n 2–3.) Mallard Group filed its Response to Plaintiff's Opposition (the "Response") on January 14, 2021. (Resp. Pl.'s Opp'n Designation Mandatory Complex Bus. Case [hereinafter "Resp."], ECF No. 17.) 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 [designated] 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)(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."

9. This case arises out of a contract dispute between two businesses. Payne's Group was a subcontractor of Mallard Group, which provides retail and fixture installation as well as project management services associated with the renovation or construction of big box retail stores nationwide. (See Compl. ¶ 14; Answer & Countercls. 10, 12.) Mallard Group alleges that Payne's Group solicited and hired away a long-time employee with intimate knowledge of Mallard Group's confidential business and customer information and misappropriated such information to compete with Mallard Group in violation of a Confidentiality and Non-Disclosure Agreement (the "CNDA"). (See Answer & Countercls. 10–12, 14–17.) Payne's Group alleges that the CNDA is unenforceable. (See Compl. ¶¶ 32, 35.)

10. Payne's Group argues that designation under section 7A-45.4(a)(8) is improper because, "other than a label of trade secrets as used by Mallard Group in its counterclaim, the [CNDA] fails to define a trade secret nor has Mallard Group alleged the [CNDA] defined trade secret other than to allege in paragraphs 40 and 41 its concerns about what it would have defined as a trade secret." (Opp'n 2–3.) Payne's Group further contends that the " 'trade secrets' alleged in the counterclaim [are] information that is readily obtainable" and that "Mallard Group does not allege that [Payne's Group] used one of its articulated trade secrets to Mallard [Group]'s detriment." (Opp'n 4.)

11. But, as Mallard Group notes in its Response, the Opposition's focus on the merits of Mallard Group's misappropriation counterclaim is misplaced and premature. (See Resp. 2.) Designation is proper when "the pleading upon which

designation is based . . . raise[s] a material issue that falls within one of the categories specified in section 7A-45.4[.]” *Composite Fabrics of Am., LLC*, 2016 NCBC LEXIS 11, at *25, and “a party may use its counterclaim as the basis for a notice of designation[.]” *id.* at *8. Here, the NOD bases designation as a mandatory complex business case on Mallard Group’s misappropriation counterclaim, (*see* NOD 3), a claim which this Court has described as “[t]he classic example of a dispute involving trade secrets[.]” *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at *4 (N.C. Super. Ct. June 28, 2019). Because Mallard Group’s misappropriation counterclaim falls squarely within the purview of section 7A-45.4(a)(8), designation is proper, and any challenge as to the sufficiency of the allegations contained in Mallard Group’s pleading is better left to a motion brought under Rule 12. *See Barclift v. Martin*, 2018 NCBC LEXIS 5, at *7 (N.C. Super. Ct. Jan. 19, 2018) (holding that the mere fact that the complaint raised a material dispute under Chapter 55 was sufficient to satisfy the statutory designation process).

12. For the reasons noted above, Payne’s Group’s contention challenging designation of this action as a mandatory complex business case under section 7A-45.4(a)(8) is without merit and the Opposition shall therefore be overruled.

13. **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 trade secrets, including disputes arising under Article 24 of Chapter 66 of the General Statutes[.]” and shall proceed as a mandatory complex business case before the Honorable Michael L. Robinson.

SO ORDERED, this the 19th day of January, 2021.

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