

STATE OF NORTH CAROLINA
RICHMOND COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 695

VENTION, INC.,

Plaintiff,

v.

JB HAMLET, LLC d/b/a VBC
MANUFACTURING, a/k/a
VOLUMETRIC BUILDING
COMPANIES, a/k/a VOLUMETRIC
COMPANIES-MANUFACTURING,

Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 30 September 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. Plaintiff filed the Complaint initiating this action in Richmond County Superior Court on 14 July 2021, asserting claims against Defendant for breach of contract and quantum meruit. (*See* Compl. ¶¶ 59–70.) Defendant filed its Motion to Dismiss, Affirmative Defenses, Answer and Counterclaims (the “Counterclaims”) on 29 September 2021, asserting counterclaims against Plaintiff for breach of contract and unfair and deceptive trade practices under N.C.G.S. § 75-1.1. (*See* Mot. Dismiss, Affirmative Defenses, Answer & Countercls. ¶¶ 31–45 [hereinafter “Countercls.”].) That same day, Defendant filed a Notice of Designation (“NOD”), contending that

designation is proper under N.C.G.S. § 7A-45.4(a)(3). (Notice Designation 1 [hereinafter “NOD”].)

3. “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). Here, designation is based upon the Counterclaims. *Id.* at *19 (“[A] party may use its counterclaim as the basis for a notice of designation.”).

4. In support of designation under this section, Defendant argues that “Defendant’s counterclaim pleads a claim under Chapter 75 of the North Carolina General Statutes and prohibited by N.C. Gen. Stat. § 74-1.1 [sic], specifically, a claim of an unfair and deceptive trade practice by Plaintiff.”¹ (NOD 3.) Designation under section 7A-45.4(a)(3), however, is proper only 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.” N.C.G.S. § 7A-45.4(a)(3) (emphasis added). As pleaded, Defendant’s unfair and deceptive trade practice counterclaim arises solely under section 75-1.1 and does not otherwise invoke state or federal antitrust law. (See Countercls. ¶¶ 31–45.) As a result, designation under section 7A-45.4(a)(3) is improper. See, e.g., *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

¹ The Court notes that Defendant’s reference to “N.C. Gen. Stat. § 74-1.1,” both in the NOD and the Counterclaims, (see NOD 3; Countercls. ¶ 43), appears to be a typo.

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”).

5. 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.

6. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 16A 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 1st day of October, 2021.

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