

STATE OF NORTH CAROLINA
CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 3494

PILLAR TO POST, INC.,

Plaintiff,

v.

TODD FREEBURG and FUTURE
ABODE, INC.,

Defendants.

**ORDER ON DEFENDANTS'
OBJECTION AND OPPOSITION TO
DESIGNATION AS MANDATORY
COMPLEX BUSINESS CASE (N.C.G.S.
§ 7A-45.4(e))**

1. **THIS MATTER** is before the Court on Defendants Todd Freeberg (“Freeberg”) and Future Abode, Inc.’s (“Future Abode”; together, the “Defendants”) Objection and Opposition to Designation as Mandatory Complex Business Case (N.C.G.S. § 7A-45.4(e)) (the “Opposition”). (Defs.’ Obj. & Opp’n Designation Mandatory Complex Bus. Case (N.C.G.S. § 7A-45.4(e)) [hereinafter “Opp’n”], ECF No. 11.)
2. Plaintiff Pillar to Post, Inc. (“Plaintiff”) initiated this action on 11 October 2021, asserting claims for confirmation of an arbitration award pursuant to N.C.G.S. § 1-569.22 and breach of contract against Defendants. (*See* Compl. ¶¶ 30–41, ECF No. 3.)
3. That same day, Plaintiff timely filed a Notice of Designation (the “NOD”), asserting that this action involves a dispute under N.C.G.S. § 7A-45.4(a)(4). (Notice Designation 1 [hereinafter “NOD”], ECF No. 4.)
4. On 9 November 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 Mark A. Davis, Special Superior Court Judge for Complex Business Cases, (Assignment Order, ECF No. 2).

5. Defendants timely filed the Opposition on 29 November 2021, contending that designation of this action as a mandatory complex business case pursuant to section 7A-45.4(a)(4) is not proper. (*See* Opp'n 2.) Plaintiff filed its Response to Defendants' Opposition on 13 December 2021. (Pl.'s Resp. Defs.' Opp'n, ECF No. 12.) 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)(4) is proper if the action involves a material issue related to "[d]isputes involving trademark law, including disputes arising under Chapter 80 of the General Statutes."

9. This case arises out of an alleged breach of a settlement agreement between Plaintiff and Defendants. (*See* Compl. ¶¶ 4, 20, 29, 38–41.) Freeberg is a former franchisee of Plaintiff. (*See* Compl. ¶¶ 4, 9–12.) As a result of prior litigation stemming from this franchise relationship, the parties entered into a settlement agreement, which enjoined Freeberg from “competing with Plaintiff in providing home inspection services within a certain limited geographical area[,]” (Compl. ¶ 5; *see also* Compl. Ex. B, Settlement Term Sheet ¶ 3(a) [hereinafter “Settlement Agreement”], ECF No. 3), and “using names, trademarks, service marks or logos of [Plaintiff], or any confusingly similar names, marks, logos and designations[,]” (Settlement Agreement ¶ 3(b)). These terms were subsequently incorporated into the final award issued by the arbitrator at the conclusion of the parties’ arbitration. (*See* Compl. ¶ 15; *see also* Compl. Ex. C, Final Award of Arbitrator ¶¶ 1–3, ECF No. 3.) Plaintiff now alleges that Freeberg continues to provide services to Future Abode, a direct competitor of Plaintiff, and perform home inspections within the restricted territory in violation of the settlement agreement and the final award. (*See* Compl. ¶¶ 13, 20–22, 28–29, 40.)

10. Defendants contend that “Plaintiff’s ‘breach of contract’ claim revolves around allegations that Freeberg has (a) provided services to Future Abode (a competing business) in violation of the injunction; (b) on March 10, 2021, competed against Plaintiff in violation of the injunction; and (c) upon information and belief competed against [P]laintiff on other occasions (by allegedly performing inspections for a competitor, Future Abode).” (Opp’n ¶ 12 (cleaned up).) Because “Plaintiff fails

to plead any specific facts that Defendants have violated an injunction [in the settlement agreement] related to Plaintiff's proprietary marks – much less Plaintiff's trademarks[.]” (Opp'n ¶ 19), Defendants argue that designation under 7A-45.4(a)(4) is improper because “this matter does not involve a material issue related to trademark law[.]” (Opp'n ¶ 5).

11. The Court agrees. While both the settlement agreement and the final award enjoin Defendants from making use of Plaintiff's trademarks or other service marks, the Complaint does not contain a single allegation that Defendants have, in fact, used Plaintiff's marks in violation of the injunctions contained therein. Instead, all of the alleged breaches of the settlement agreement and final award relate to the non-compete provisions of those documents. (*See, e.g.*, Compl. ¶¶ 5, 20–22, 28, 40.) This dispute does not, therefore, involve a tangential issue of trademark law, much less a material one.

12. Accordingly, the Court concludes that this action is not properly designated as a mandatory complex business case because it does not involve a material issue related to disputes involving trademark law, as required by section 7A-45.4(a)(4). *See JCG & Assocs., LLC v. Disaster Am., USA, LLC*, 2019 NCBC Order 40, at ¶ 3 (N.C. Super. Ct. July 3, 2019) (unpublished) (requiring that claims triggering section 7A-45.4(a)(4) designation present a “material issue related to disputes involving trademark law” (cleaned up)).

13. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** that the Opposition is **ALLOWED**. The Court concludes that this

proceeding was improperly designated and thus should proceed on the regular civil docket of Cabarrus County Superior Court.

SO ORDERED, this the 15th day of December, 2021.

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