

STATE OF NORTH CAROLINA
LEE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 118

DONALD R. SIMPSON FAMILY
LIMITED PARTNERSHIP, and
FRED WEBB, as Guardian of the
Estate of PAIGE BAKER SIMPSON,

Plaintiff,

v.

DONALD R. SIMPSON FAMILY
LIMITED PARTNERSHIP, and
DONALD R. SIMPSON, individually,
and PERRY S. SIMPSON,
individually,

Defendants.

**ORDER ON PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
NOTICE OF DESIGNATION OF
ACTION AS MANDATORY COMPLEX
BUSINESS CASE PURSUANT TO
N.C.G.S. § 7A-45.4(a)**

1. **THIS MATTER** is before the Court on Plaintiffs Donald R. Simpson Family Limited Partnership (“DRSFLP”) and Fred Webb’s, as Guardian of the Estate of Paige Baker Simpson (“PBS”) (together, “Plaintiffs”), Opposition to Defendants DRSFLP, Donald R. Simpson (“DRS”), and Perry S. Simpson’s (“PSS”) (collectively, “Defendants”) Notice of Designation of Action as Mandatory Complex Business Case Pursuant to N.C.G.S. § 7A-45.4(a) (the “Opposition”). (Pls.’ Opp’n Defs.’ Notice Designation Action Mandatory Complex Bus. Case [hereinafter “Opp’n”], ECF No. 13.)

2. Plaintiffs initiated this action on February 9, 2021. (See Compl., ECF No. 3.) Plaintiffs filed an Amended Complaint on February 16, 2021, asserting claims for breach of fiduciary duty, declaratory judgment, and punitive damages against all Defendants and constructive fraud against DRS. (See Am. Compl. ¶¶ 39–64, ECF No. 7.)

3. Defendants timely filed a Notice of Designation (“NOD”) on February 17, 2021, asserting that this action involves a dispute under N.C.G.S. § 7A-45.4(a)(1). (Notice Designation 1 [hereinafter “NOD”], ECF No. 11.)

4. On February 18, 2021, this case 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 Gregory P. McGuire, Special Superior Court Judge for Complex Business Cases, (Assignment Order, ECF No. 2).

5. Plaintiffs timely filed the Opposition on February 26, 2021, contending that designation of this action as a mandatory complex business case is not proper under section 7A-45.4(a)(1). (Opp’n 3–4.) Defendants filed their Response to the Opposition (the “Response”) on March 9, 2021. (Defs.’ Resp. Pls.’ Opp’n Defs.’ Notice Designation Mandatory Complex Bus. Case [hereinafter “Resp.”], ECF No. 14.) 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)(1) is proper if the action involves a material issue related to “[d]isputes involving the law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, and limited liability companies, including disputes arising under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.”

9. This case arises out of a dispute over the management of a family limited partnership. Plaintiffs allege that PBS, DRS, and PSS are partners of DRSFLP and that DRS acted as general and managing partner of DRSFLP until May 2020. (*See* Am. Compl. ¶¶ 13–14.) The Amended Complaint includes allegations that DRS mismanaged DRSFLP by failing to keep an accounting of the limited partnership’s transactions, commingling the partnership’s funds with those of other business entities, refusing to permit PBS to inspect corporate records and finances, refusing to convene partnership meetings, and transferring one-half of DRS’s interest in DRSFLP to PSS without a meeting or notice to PBS. (*See* Am. Compl. ¶¶ 15–17, 21, 29, 33–34.) Plaintiffs further allege that the parties to this action are parties in other pending lawsuits that include allegations that DRS has mismanaged various trusts. (*See* Am. Compl. ¶¶ 19–21, 24–31.)

10. Plaintiffs first argue that designation is improper under section 7A-45.4(a) because “it does not involve ‘the law governing . . . partnerships’ ” but rather “violations of the limited partnership *agreement* and fraud against at least one

individual implicating the partnership.” (Opp’n 3–4 (emphasis in original).) Plaintiffs contend that resolution of this action will require only “the interpretation of the partnership agreement, like the interpretation of contracts, and not the law of partnerships[,]” (Opp’n 4), rendering designation under section 7A-45.4(a)(1) inappropriate.

11. The Court disagrees. Plaintiffs base their first cause of action—breach of fiduciary duty—on a fiduciary duty that arises from the relationship of PBS, DRS, and PSS as partners in a partnership as well as DRS’s status as the managing partner of DRSFLP. (See Am. Compl. ¶¶ 17, 40–41; see also Opp’n 3; Resp. 2, 4.) Similarly, Plaintiffs’ claim of constructive fraud is based on DRS’s fiduciary relationship with PBS. (See Am. Compl. ¶¶ 51–54; see also Opp’n 3; Resp. 4, 6.) Also, as Defendants correctly note in their Response, some of the “alleged breaches of fiduciary duty are based on the Revised Uniform Limited Partnership Act, which is included in Chapter 59.” (Resp. 4–6; see also Am. Compl. ¶¶ 27, 41–42.) See, e.g., *Loyd v. Griffin*, 2020 NCBC LEXIS 142, at *4–5 (N.C. Super. Ct. Dec. 7, 2020) (holding that a matter involving claims for breach of fiduciary duty falls within section 7A-45.4(a)(1)). Plaintiffs’ challenge to designation on this basis is therefore without merit.

12. Plaintiffs next contend that designation as a mandatory complex business case is improper because the Complaint “contains no novel, extraordinary, or complex claims or issues[,]” (Opp’n 1), and merely “alleges claims routinely and typically

brought before the regular Superior Courts of North Carolina which are well-handled and normally-handled by our regular Superior Court judges[.]" (Opp'n 4).

13. But Plaintiffs misunderstand the requirements for designation as a mandatory complex business case under N.C.G.S. § 7A-45.4(a)(1). "While a 'material issue' related to the law governing corporations is required to support designation under [s]ection 7A-45.4(a)(1), that section does not further require that the issue involve a claim of any particular complexity, involve any threshold minimum amount in controversy, or extend beyond the regular jurisdiction of any Superior Court Judge." *Barclift v. Martin*, 2018 NCBC LEXIS 5, at *4 (N.C. Super. Ct. Jan. 19, 2018). Because the complexity of a case has no bearing on whether it has been properly designated as a mandatory complex business case under section 7A-45.4(a)(1), Plaintiffs' second argument fails.

14. Plaintiffs next argue that, "in the first iteration of this matter, Defendants did not seek to remove this matter to the Business Court[.]" thereby concluding that "[m]andatory removal was not required in the initial filing and is not required here." (Opp'n 4.)¹ According to the Response, Plaintiffs initiated a prior action against Defendants in Lee County in 2019 (19 CVS 728), which Plaintiffs subsequently dismissed on the same day that they filed the instant action. (Resp. 5.)

15. Section 7A-45.4(d)(3) states that a Notice of Designation shall be filed "[b]y any defendant . . . within 30 days of receipt of service of the pleading[.]" The fact that

¹ The Court notes that "[d]esignation does not 'remove' a case," *Composite Fabrics of Am., LLC*, 2016 NCBC LEXIS 11, at *28, as Plaintiffs suggest. To the contrary, the Business Court is not a court of separate jurisdiction but rather an administrative division of the Superior Court in the General Court of Justice.

Defendants chose not to seek mandatory complex business case designation for the 2019 Lee County action has no bearing on their ability to seek designation of this case. Defendants accepted service of both the Complaint and Amended Complaint on February 17, 2021 and timely filed the NOD that same day in compliance with N.C.G.S. § 7A-45.4(d)(3). (NOD 3.) Plaintiffs' third argument thus fails.

16. Last, although Plaintiffs do not expressly contend that designation is improper on the basis that “[t]he instant action overlaps in issues of fact, and many of the parties are similar parties, with two (2) other matters currently pending in regular Superior Court[,]” (Opp’n 2), Plaintiffs devote large portions of both the Amended Complaint and the Opposition to a discussion of this other litigation, (*see* Am. Compl. ¶¶ 19–21, 24–31; Opp’n 2–3). The Court therefore finds it appropriate to reiterate that the “pendency of a related proceeding . . . has no bearing on whether a case has been properly designated as a mandatory complex business case under section 7A-45.4.” *McKnight v. Wakefield Missionary Baptist Church, Inc.*, 2020 NCBC LEXIS 115, at *6 (N.C. Super. Ct. Oct. 6, 2020).

17. Because none of Plaintiffs' contentions challenging designation of this action as a mandatory complex business case under section 7A-45.4(a)(1) has legal merit, Plaintiffs' Opposition shall therefore be overruled.

18. **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 the law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the

grounds of religious purpose, partnerships, and limited liability companies, including disputes arising under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes[]” as required by N.C.G.S. § 7A-45.4(a)(1) and shall proceed as a mandatory complex business case before the Honorable Gregory P. McGuire.

SO ORDERED, this the 9th day of March, 2021.

/s/ Louis A. Bledsoe, III

Louis A. Bledsoe, III
Chief Business Court Judge