

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 1812

NARSI DEVELOPMENT I, LLC,
Plaintiff,

v.

BIRKDALE REAL ESTATE
INVESTORS, LLC; ROMSPEN
BIRKDALE, LLC; and TRENTON G.
GUSTAFSON,
Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on March 12, 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 Narsi Development I, LLC (“Narsi”) filed the Complaint initiating this action in Mecklenburg County Superior Court on February 9, 2021, asserting claims against Defendants Birkdale Real Estate Investors, LLC (“BREI”), Romspen Birkdale LLC (“Romspen”), and Trenton G. Gustafson (“Gustafson”) (collectively, the “Defendants”) for declaratory judgment, breach of contract, and piercing the corporate veil/alter-ego liability, and against Romspen and Gustafson for tortious interference with contract. (See Compl. ¶¶ 66–98.)

3. Romspen and Gustafson accepted service of the Complaint on February 11, 2021, and BREI accepted service of the Complaint on February 19, 2021. Defendants

timely filed a Joint Notice of Designation of Action as a Mandatory Complex Business Case (“NOD”) on March 11, 2021, contending that designation is proper under N.C.G.S. §§ 7A-45.4(a)(1) and (b)(2). (Joint Notice Designation Action Mandatory Complex Bus. Case 1, 3 [hereinafter “NOD”].)

4. This case arises out of a contract dispute. Romspen owns a parcel of real property adjacent to Birkdale Golf Course. (See Compl. ¶¶ 11, 13.) BREI entered into an Agreement for Purchase and Sale of Real Property (the “Underlying Purchase Agreement”) in May 2016, in which BREI agreed to purchase the real property from Romspen. (See Compl. ¶ 14.) In July 2018, Narsi and BREI entered into a Purchase, Sale and Development Agreement (the “PSA”). (See Compl. ¶ 19.) Narsi agreed to purchase a portion of the real property in order to construct and operate a hotel thereon in exchange for BREI’s compliance with the terms and conditions of the Underlying Purchase Agreement and agreement to complete all necessary site work on the property so that construction could commence immediately upon closing. (See Compl. ¶¶ 15–20.) Narsi alleges that, as of December 2020, Gustafson and Romspen undercapitalized BREI so that it could not purchase the property in compliance with the Underlying Purchase Agreement and that BREI had not completed any site work on the property, thereby breaching the PSA with Narsi. (See Compl. ¶¶ 36–37, 45, 47, 59–60.)

5. 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.”

6. In support of designation under this section, Defendants argue that Narsi’s claims involve “complex, sophisticated corporate issues, including alter-ego liability, member liability, company formation issues, adequate capitalization of the company, issues concerning corporate formalities, issues involving domination and control of the company, and an assessment of the parties’ rights and obligations under the PSA, Underlying [Purchase Agreement], and BREI’s operating agreement.” (NOD 4.)

7. The Complaint, however, does not support Defendants’ characterization. Although the NOD purports to identify several bases for designation under section 7A-45.4(a)(1), Narsi’s claims, as pleaded, center on Defendants’ alleged breach of the PSA and Narsi’s request for a declaration of the parties’ current rights and obligations thereunder. The issues regarding piercing the corporate veil are ancillary to the parties’ main dispute. Defendants’ alleged misconduct—the alleged inability of BREI to purchase the real property from Romspen pursuant to the Underlying Purchase Agreement, the alleged failure of BREI to complete the necessary site work, and the resulting failure of BREI to deliver the property to Narsi under the terms of the PSA—reflects matters governed by the law of contract rather than a dispute involving the law governing corporations, partnerships, and limited liability companies. Designation under section 7A-45.4(a)(1) is therefore improper. *See Innovative Agriproducts, LLC v. Fins & Feathers’ Charter & Commercial Fishing, LLC*, 2019 NCBC LEXIS 98, at *5 (N.C. Super. Ct. Apr. 23, 2019) (declining to

designate under (a)(1) when Defendants' alleged misuse of the corporate form reflected matters governed by the law of contract, not a dispute involving the law governing corporations, partnerships, or limited liability companies).

8. Defendants' veil piercing allegations do not change this result. This Court has long held that a claim for piercing the corporate veil, standing alone, is insufficient to support mandatory complex business case designation. *See, e.g., 129 LLC v. Allison Supply, Inc.*, 2016 NCBC LEXIS 193, at *2 (N.C. Super. Ct. Oct. 12, 2016); *Bullard v. Liberty Healthcare Servs. of Mary Gran Nursing, LLC*, No. 10 CVS 497, Order Denying Designation as Mandatory Complex Business Case at 2 (N.C. Super. Ct. May 17, 2010) (unpublished); *CCE Dev. Corp. v. Jebara Invs., LLC*, No. 09 CVS 8235, Order Denying Designation as Mandatory Complex Business Case at 1 (N.C. Super. Ct. Nov. 2, 2009) (unpublished).

9. Defendants forecast that “[r]esolution of this dispute is also anticipated to involve application of the provisions of the North Carolina Limited Liability Company Act[,]” which would fall within the purview of section 7A-45.4(a)(1). (NOD 4.) Such a conclusion, however, is not apparent from the Complaint, and instead appears to be based on one or more of Defendants' anticipated defenses to Narsi's claims. But this Court has made clear that it “may not consider any issues that may or may not be raised in a future pleading when determining whether designation is proper.” *Stout v. Alcon Entm't, LLC*, 2020 NCBC LEXIS 77, at *4 (N.C. Super. Ct. June 30, 2020) (citing *Innovative Agriproducts, LLC*, 2019 NCBC LEXIS 98, at *9–10 (concluding

that it is improper for the Court to consider an anticipated defense for designation purposes)).

10. Designation under section 7A-45.4(b)(2) also fails for two reasons. First, designation under this section is predicated on designation under section 7A-45.4(a). Section 7A-45.4(b)(2) 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).” Because Narsi’s claims do not give rise to designation under any subsection of 7A-45.4(a), including (a)(1), designation under section 7A-45.4(b)(2) is improper.

11. Second, Defendants contend that “it is anticipated that Romspen, as owner of the subject property, will assert counterclaims against [Narsi] to recover its damages associated with the cloud on title created by the instant litigation and [Narsi’s] filing of a notice of lis pendens against the subject property, and that Romspen’s damages sought will exceed five million dollars (\$5,000,000).” (NOD 4.) For the same reasons as those discussed in Paragraph 8 above, however, it is improper for the Court to consider information that may or may not be raised in Romspen’s anticipated counterclaims when determining whether designation is proper under section 7A-45.4(b)(2) at this point in the proceedings.

12. Based on the foregoing, the Court determines that this action is not properly designated as a mandatory complex business case in accord with N.C.G.S. §§ 7A-45.4(a) or (b) at this time, and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

13. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 26 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.

14. The Court's ruling is without prejudice to the right of any party to seek designation of this matter as a mandatory complex business case as provided under section 7A-45.4.

SO ORDERED, this the 16th day of March, 2021.

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