

STATE OF NORTH CAROLINA  
BURKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 486

THE SYSTEMS DEPOT, INC.,

Plaintiff,

v.

DAVID CLEMENT,

Defendant.

**ORDER ON PLAINTIFF'S  
OBJECTION TO NOTICE OF  
DESIGNATION**

1. **THIS MATTER** is before the Court on Plaintiff The Systems Depot, Inc.'s ("TSD") Objection to Notice of Designation (the "Objection"). (Pl.'s Obj. Notice Designation [hereinafter "Obj."], ECF No. 5.)

2. This case arises out of a dispute between TSD and its former employee, Defendant David Clement ("Clement"). TSD alleges that Clement breached his 2016 employment agreement when Clement left TSD in March 2022 to work for a direct competitor located less than a mile away. (*See* Compl. ¶¶ 16–18, 23–25, 33–37, ECF No. 3.) TSD further alleges that the employment agreement contains non-solicitation and confidentiality clauses, (*see* Compl. ¶¶ 19–22, 26–31), and seeks to enjoin Clement from "inevitably" disclosing its "confidential, proprietary, and/or trade secret information" and soliciting its customers, (Compl. ¶¶ 39–44).

3. TSD initiated this action on 28 April 2022, asserting a claim for breach of employment agreement against Clement and requesting preliminary and permanent injunctive relief. (*See* Compl. ¶¶ 32–44.)

4. Clement timely filed a Notice of Designation (the “NOD”) on 4 May 2022, asserting that this action involves a dispute under N.C.G.S. § 7A-45.4(a)(8). (Notice Designation 1–2 [hereinafter “NOD”], ECF No. 4.)

5. This action was designated as a mandatory complex business case by the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, on 4 May 2022, (Designation Order, ECF No. 1), and assigned to the Honorable Adam M. Conrad, Special Superior Court Judge for Complex Business Cases, that same day, (Assignment Order, ECF No. 2). The case was subsequently reassigned to the undersigned. (Reassignment Order, ECF No. 13.)

6. TSD timely filed the Objection on 9 May 2022, contending that designation of this action as a mandatory complex business case pursuant to section 7A-45.4(a)(8)<sup>1</sup> is not proper. (*See* Obj. 2.) Clement filed his Response to TSD’s Objection on 24 May 2022. (Def.’s Resp. Pl.’s Obj. Notice Designation [hereinafter “Resp.”], ECF No. 15.) The matter is now ripe for determination.

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 \*11 (N.C. Super. Ct. Feb. 5, 2016). “The inquiry of whether a case involves the requisite disputes falling

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<sup>1</sup> Although the Objection purports to oppose designation pursuant to N.C.G.S. § 55A-1-40(4), which sets forth the definition of “charitable or religious corporation” for Chapter 55A, it appears clear to the Court that TSD intends to oppose designation pursuant to N.C.G.S. § 7A-45.4(a)(8), the section permitting mandatory complex business case designation for disputes involving trade secrets. (*Compare* Obj. 2–4, *with* N.C.G.S. § 7A-45.4(a)(8).)

with[in] the statutory requirements has not been historically confined to the actual causes of action asserted in a complaint, but has also examined the underlying factual allegations.” *Cornerstone Health Care, P.A. v. Moore*, 2015 NCBC LEXIS 65, at \*7 (N.C. Super. Ct. June 22, 2015).

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.” Although a claim for misappropriation of trade secrets frequently serves as the basis for designation under section 7A-45.4(a)(8), other types of claims, including contract claims, may also qualify for designation under this section “when the complaint puts the existence, ownership, or misuse of alleged trade secrets squarely in dispute.” *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at \*4 (N.C. Super. Ct. June 28, 2019).

9. TSD contends that the Complaint contains “no claim for relief that rests squarely on an alleged breach of [its] trade secrets[.]” (Obj. 2.) Instead, TSD argues that its use of “the term ‘trade secret’ twice in the body of the Complaint as a descriptive term[ ]” is “completely overshadowed by the allegations sounding in breach of contract[.]” (Obj. 3–4.)

10. The Court disagrees. While it is true that “the Court has never construed [section 7A-45.4(a)(8)] so broadly as to permit ‘designation of an action as a mandatory complex business case based on claims involving generalized confidential or proprietary information[.]’ ” *UNOX, Inc.*, 2019 NCBC LEXIS 41, at \*4 (quoting *Cornerstone Health Care, P.A.*, 2015 NCBC LEXIS 65, at \*6), the Complaint, as

drafted, alleges that at least some of the information TSD seeks to enjoin Clement from using and/or disclosing may be subject to trade-secret protection. The fact that the Complaint uses the terms “confidential information” and “confidential and proprietary information” more frequently than the term “trade secret,” (*see* Obj. 3; *compare* Compl. ¶¶ 19–22, 29–31, 37, 39, 43, *with* ¶¶ 20, 43), does not change this result because “designation under section 7A-45.4(a)(8) [does not] depend[ ] on the appearance or absence of magic words[.]” *UNOX, Inc.*, 2019 NCBC LEXIS 41, at \*7.

11. Moreover, the information that TSD seeks to protect is not generalized confidential and proprietary information. Instead, TSD has provided detailed descriptions of five categories of information that it has “designate[d] . . . as confidential, proprietary, and/or *trade secret* information”:

- a. Customer identity, customer preferences, specific customer pricing, purchasing history information, and customer pricing arrangement based upon volume and availability.
- b. Information on product pricing available to TSD and information on favorable negotiated pricing arrangements with suppliers and manufacturers.
- c. Profit margin information as applicable to product and parts that are needed in volume by specific customers, which allows TSD to target specific customers at the most opportune times.
- d. Source information for specific products and parts that allows TSD to take more aggressive (lower) pricing based upon TSD’s knowledge of the sources and product availability.
- e. Current efforts to solicit and obtain contracts and business with prospective customers, which efforts were ongoing at the time of [Clement’s] resignation.

(Compl. ¶¶ 19–20 (emphasis added).) The specificity with which TSD describes this information contradicts TSD’s assertion that the information it seeks to protect is merely generalized confidential and proprietary information. *Compare UNOX, Inc.*,

2019 NCBC LEXIS 41, at \*5 (concluding complaint’s reference to “product designs and materials, customer lists, techniques, business plans, strategic plans, marketing information and other business and financial information[ ]” constituted only generalized confidential and proprietary information), *with Union Corrugating Co. v. Viechnicki*, No. 14 CVS 6240, Order Opp’n Designation Mandatory Complex Bus. Case 2 (N.C. Super. Ct. Sept. 9, 2014) (unpublished) (determining designation appropriate under section (a)(8) where plaintiff “devote[d] a substantial portion of its Verified Complaint to defining the confidential, proprietary, and trade secret information”).

12. Additionally, TSD alleges that Clement will “inevitably” use and/or disclose this information, (Compl. ¶¶ 31, 39), and bases its breach of employment agreement claim, at least in part, on TSD’s alleged “entitle[ment] to a remedy that will protect its confidential information, [and] prohibit its unlawful use and dissemination,” (Compl. ¶ 37; *see also* Resp. 3).<sup>2</sup> Indeed, TSD specifically requests that this Court “prohibit Clement from using TSD’s confidential, proprietary, and/or *trade secret* information” in compliance with his employment agreement in the Complaint’s Prayer for Relief. (Compl. Prayer for Relief ¶ 4 (emphasis added); *see also* Resp. 3.)

13. Based on the above, the Court concludes that the allegations in the Complaint raise a material issue related to the existence, protection, and enforcement

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<sup>2</sup> The Court notes that these paragraphs of the Complaint refer to “confidential information” or “confidential and proprietary information.” (*See* Compl. ¶¶ 31, 37, 39.) However, TSD alleges that it has designated the five categories of information listed in Paragraph 19 as “confidential, proprietary, and/or trade secret information,” (Compl. ¶ 20), and the information TSD seeks to protect in Paragraphs 31, 37, and 39 clearly refers to those same five categories.

of trade secrets. As such, the Court concludes that this action qualifies for designation as a mandatory complex business case under section 7A-45.4(a)(8).

14. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** that the Objection 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 undersigned.

**SO ORDERED**, this the 25th day of May, 2022.

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