

STATE OF NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 583

WESTON DAVIS,

Plaintiff,

v.

DAVIS FUNERAL SERVICE, INC.;  
ROBERT L. MORGAN, III, President  
(as an officer of Davis Funeral  
Service, Inc.); PHILLIP TILLMAN,  
Vice President (individually and as  
an officer of Davis Funeral Service,  
Inc.); and ROBIN H. MORGAN,  
Secretary (as an officer of Davis  
Funeral Service, Inc.),

Defendants/Third-  
Party Plaintiffs,

v.

DEIDRA TEDDER,

Third-Party  
Defendant.

**ORDER ON DEFENDANTS AND  
THIRD-PARTY PLAINTIFFS'  
OBJECTION TO THIRD-PARTY  
DEFENDANT'S NOTICE OF  
DESIGNATION AS A MANDATORY  
COMPLEX BUSINESS CASE**

1. **THIS MATTER** is before the Court on Defendants and Third-Party Plaintiffs Davis Funeral Service, Inc. (“DFS”), Robert L. Morgan, III (“Robert”), Phillip Tillman (“Tillman”), and Robin H. Morgan’s (“Robin”) (collectively, the “Defendants”) Objection to Third-Party Defendant Deidra Tedder’s (“Tedder”) Notice of Designation as a Mandatory Complex Business Case (the “Objection”) in the above-captioned case. (Defs. & Third-Party Pls.’ Obj. Third-Party Def.’s Notice Designation Mandatory Complex Bus. Case [hereinafter “Obj.”], ECF No. 13.)

2. Plaintiff Weston Davis (“Davis”) initiated this action on 3 March 2022, asserting a claim for defamation per se against DFS and Tillman and appearing to

assert claims for breach of contract, quantum meruit, breach of the covenant of good faith and fair dealing, unjust enrichment, and preliminary injunction to prevent spoliation of assets against DFS and Robert, Robin, and Tillman in their roles as officers of DFS. (*See* Compl. for Breach of Contract, Quantum Meruit, Defamation Per Se, Pet. Prelim. Inj. Prevent Spoliation of Assets ¶¶ 85–110 [hereinafter “Compl.”], ECF No. 3.)

3. Defendants filed their Answer, Counterclaims, and Third-Party Complaint (the “Counterclaims and TPC”) on 4 May 2022, appearing to assert counterclaims against Davis for fraudulent misrepresentation, fraud, conversion, breach of fiduciary duty, and misappropriation of corporate funds/embezzlement, and third-party claims against Tedder for breach of fiduciary duty and misappropriation of corporate funds/embezzlement. (*See* Answer, Countercls., & Third-Party Compl. 8–10<sup>1</sup> [hereinafter “Countercls. & TPC”], ECF No. 4.)

4. Tedder timely filed a Notice of Designation (the “NOD”) on 27 May 2022, asserting that this action involves a dispute under section 7A-45.4(a)(1). (Notice Designation 1–2 [hereinafter “NOD”], ECF No. 5.)

5. On 31 May 2022, 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.) The next day, the undersigned assigned this case to the Honorable Adam M. Conrad, Special Superior Court Judge for Complex Business Cases. (Assignment Order, ECF No. 2.)

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<sup>1</sup> Citations to the page numbers of this document refer to the electronic PDF page numbers as there are no page numbers on the pages themselves.

6. Defendants timely filed the Objection on 26 June 2022, contending that designation of this action as a mandatory complex business case is not proper under section 7A-45.4(a)(1). (See Obj. ¶¶ 4, 9–10.) Tedder filed his Response to Objection (the “Response”) the following day. (Third-Party Def.’s Resp. Opp’n Notice Designation [hereinafter “Resp.”], ECF No. 14.) The matter is now ripe for determination.

7. 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).

8. “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 \*11 (N.C. Super. Ct. Feb. 5, 2016).

9. 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.”

10. This case arises out of a dispute over the operation of a funeral home. Davis alleges that the former president of DFS, Henry Vann Davis, III (“Vann”), hired him as a vice president in 2018 to “begin training to take over and manage the funeral service,” “handle the business portion of the operations[,]” and “begin training to become a licensed funeral director[.]” (Compl. ¶¶ 10–13.) Beginning in 2020, Davis alleges that Vann reduced the overall number of funerals DFS performed and also decided not to perform funerals for those who had died from Covid-19. (See Compl. ¶¶ 17–18.) According to the Complaint, these business decisions had a negative impact on the business’s finances and resulted in Davis and other DFS employees receiving reduced or no compensation for a period of time. (See Compl. ¶¶ 19–21, 24–25.) After Vann’s sudden death in September 2020, Davis alleges that he assumed the role of president of DFS and, under his management, returned the business to profitability until his removal by the administrator of Vann’s estate in November 2021. (See Compl. ¶¶ 26–33, 37.) Davis also alleges that, after his termination, Tillman falsely told DFS clients that he had been operating the business without a license, which resulted in his firing. (See Compl. ¶¶ 53–54, 56–79.)

11. Defendants, however, allege that Davis defrauded Vann’s heirs, wrongfully took control of DFS, and engaged in self-dealing transactions that included “siphoning thousands of dollars in cash and other assets” from DFS for the benefit of himself and Tedder. (Countercls. & TPC 8–10.) Defendants also allege that, as an officer of DFS, Tedder breached his fiduciary duty to the business by engaging in

these self-dealing transactions independently and in concert with Davis. (Countercls. & TPC 10.)

12. Defendants oppose designation on two grounds, neither of which have merit.

13. First, they argue that designation is improper under section 7A-45.4(a)(1) because “the essence of this action is that [Davis] engaged in fraudulent and deceitful representations concerning the heirs of [Vann] in order to gain control of the late [Vann’s] estate and thereby gain[ ] control of [DFS] and thereafter engaged in self-dealing transactions and siphoned cash and other assets” from the business. (Obj. ¶ 4.) Defendants contend that the Counterclaims and TPC do “not even allege that [Tedder] had any involvement whatsoever in the fraudulent and deceitful representations concerning the heirs of [Vann.]” (Obj. ¶ 6.)

14. The Court disagrees. Defendants allege that “Davis stood in a fiduciary capacity to the corporation as its President and Sole Director” and his “breach of fiduciary duty, conversion, fraud and misappropriation of corporate funds were willful, wanton, malicious and oppressive[.]” (Countercls. & TPC 9–10; *see* Obj. ¶¶ 4, 7(a); Resp. 2.) Similarly, Defendants allege that Tedder “owed a fiduciary to [DFS] as its Secretary and breached said duty” by “failing to act in good faith[.]” (Countercls. & TPC 10; *see* Obj. ¶ 7; Resp. 2.) As Tedder correctly notes in his Response, “[s]uch duties are governed at least in material part by Chapter 55 of the N.C. General Statutes.” (Resp. 2.) *See* N.C.G.S. §§ 55-8-30, -42; *see, e.g., Donald R. Simpson Fam. L.P. v. Donald R. Simpson Fam. L.P.*, 2021 NCBC LEXIS 20, at \*5–6 (N.C. Super. Ct. Mar. 9, 2021) (holding that a matter involving claims for breach of

fiduciary duty falls within section 7A-45.4(a)(1)); *Loyd v. Griffin*, 2020 NCBC LEXIS 142, at \*4–5 (N.C. Super. Ct. Dec. 7, 2020) (same).

15. Next, Defendants contend that designation as a mandatory complex business case is improper because “there is simply nothing complex about this cause of action” and “the aggregate damages suffered by Defendants . . . likely does not exceed \$75,000.00.” (Obj. ¶¶ 9, 11.)

16. But as this Court has stated previously, “[w]hile 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.” *Donald R. Simpson Fam. L.P.*, 2021 NCBC LEXIS 20, at \*5–6 (quoting *Barclift v. Martin*, 2018 NCBC LEXIS 5, at \*4 (N.C. Super. Ct. Jan. 19, 2018)). Because neither the complexity of a case nor the amount in controversy has any bearing on whether it has been properly designated as a mandatory complex business case under section 7A-45.4(a)(1), Defendants’ second argument fails.

17. **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 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 Adam M. Conrad.

**SO ORDERED**, this the 30th day of June, 2022.

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