

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 8879

ATLANTIC BUSINESS
TECHNOLOGIES, INC.,

Plaintiff,

v.

GOVALOANS.COM, LLC,

Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 10 August 2022 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).

2. Plaintiff Atlantic Business Technologies, Inc. (“ABT”) filed the Complaint initiating this action in Wake County Superior Court on 19 July 2022, asserting claims against Defendant GOVALOANS.COM, LLC (“GoVA”) for breach of contract and implied contract/quantum meruit. (See Compl. ¶¶ 18–33.) GoVA accepted service of the Complaint on 21 July 2022 and timely filed the Notice of Designation (the “NOD”) on 9 August 2022, contending that designation is proper under N.C.G.S. § 7A-45.4(a)(5).

3. This case arises out of a contract dispute. GoVA engaged ABT to design a software system for marketing and processing home loans. (See Compl. ¶ 6.) The parties entered into a Master Services Agreement and Statement of Work (the

“Agreements”) in December 2020, and ABT began to design the software system, soliciting and incorporating feedback on required features from GoVA’s representative. (See Compl. ¶¶ 7–11.) In August or September 2021, executives of GoVA reviewed ABT’s work and requested numerous changes despite the prior approval of GoVA’s representative. (See Compl. ¶ 12.) ABT indicated that the requested changes would increase both the cost and the time needed to design the software system. (See Compl. ¶ 12.) By October 2021, GoVA ceased making payments to GoVA and ABT suspended work on the project. (See Compl. ¶ 13.) ABT then instituted this action to recoup the fees it alleges GoVA owes it for work completed pursuant to the Agreements until ABT ceased work on the project in October 2021. (See Compl. ¶¶ 14–17.)

4. Designation under section 7A-45.4(a)(5) is proper if the action involves a material issue related to “[d]isputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.”

5. In support of designation under this section, GoVA argues that this action involves GoVA’s hiring of ABT to “develop ‘a complete software system for marketing and processing home loans’ for [GoVA’s] business.” (Notice Designation 2 [hereinafter “NOD”] (quoting Compl. ¶ 6).) GoVA further argues that the parties entered into a Master Services Agreement, which calls for the “develop[ment of] a web-based

software application,” as well as a Statement of Work, which “sets forth specific software and functionality requirements.” (NOD 2; *see* Compl. Exs. A–B.)

6. A close reading of the Complaint, however, reveals that ABT’s claims are focused on GoVA’s alleged breach of the Agreements rather than on the underlying intellectual property aspects of the software system. *See Pindsight Tech., Inc.*, 2020 NCBC LEXIS 23, at *5 (quoting *Cardioentis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at *6 (N.C. Super. Ct. June 27, 2018)) (“To qualify for mandatory complex business case designation under this section, the material issue must relate to a dispute that is ‘closely tied to the underlying intellectual property aspects’ of the intellectual property at issue.”); *Grifols Therapeutics LLC v. Z Automation Co.*, 2019 NCBC LEXIS 91, at *3 (N.C. Super. Ct. July 3, 2019) (concluding that “the mere fact that intellectual property . . . is the subject of a purchase agreement is insufficient to permit designation under section 7A-45.4(a)(5)[]”). Because resolution of ABT’s contract claims is not “closely tied to the underlying intellectual property aspects” of the software system, designation under section 7A-45.4(a)(5) is improper.

7. Although GoVA forecasts that the dispute will “involve issues related to standards for systems and software engineering, conformance with software design and functionality specifications, and software security/encryption functionality[.]” (NOD 2), they have not filed the forecasted pleading. The Court may not consider any issues that may or may not be raised in a future pleading when determining whether designation is proper. *See Stout v. Alcon Entm’t, LLC*, 2020 NCBC LEXIS

77, at *4 (N.C. Super. Ct. June 30, 2020) (concluding that it is improper for the Court to consider an anticipated defense for designation purposes).

8. Based on the foregoing, the Court determines that this action shall not proceed as a mandatory complex business case under N.C.G.S. § 7A-45.4(a) and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

9. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 10 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 any party may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Judge.

10. The Court's ruling is without prejudice to the right of the parties to otherwise timely seek designation of this matter as a mandatory complex business case if permitted under section 7A-45.4.

SO ORDERED, this the 11th day of August, 2022.

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