

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 16057

MERIT RIZZUTO and SONNY
ENTERPRISES, LLC,

Plaintiffs,

v.

DORFERCIM, INC. d/b/a Jantize
America; PAUL DORSEY;
HORSFALL ENTERPRISES, INC.;
and TODD HORSFALL,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 29 September 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. Plaintiffs Merit Rizzuto (“Rizzuto”) and Sonny Enterprises, LLC (“Sonny”; together, the “Plaintiffs”) filed the Verified Complaint initiating this action in Mecklenburg County Superior Court on 28 September 2022, asserting claims for (i) breach of contract against Defendants DORFERCIM, Inc. d/b/a Jantize America (“Jantize”) and Paul Dorsey (“Dorsey”); (ii) breach of contract, fraud, unfair and deceptive trade practices, and punitive damages against Defendants Jantize, Dorsey, Horsfall Enterprises, Inc. (“HEI”), and Todd Horsfall (“Horsfall”; collectively, the “Defendants”); and (iii) piercing the corporate veil against Dorsey and Horsfall. (*See*

Verified Compl. ¶¶ 58–91.) Plaintiffs timely filed the Notice of Designation (the “NOD”) on the same day. (See Notice Designation 1 [hereinafter “NOD”].)

3. This case arises out of a contract dispute. Dorsey is the owner of Jantize, a franchisor of commercial janitorial cleaning services. (See Verified Compl. ¶ 10.) Horsfall was a Jantize franchisee, operating a franchise through HEI in the Charlotte metro area. (See Verified Compl. ¶ 12.) In May 2021, Rizzuto formed Sonny and entered into an asset purchase agreement to purchase HEI’s assets and take over Horsfall’s Jantize franchise in the Charlotte metro area, (see Verified Compl. ¶¶ 25–26), and entered into a franchise agreement with Dorsey and Jantize for the same in August 2021, (see Verified Compl. ¶¶ 34–39). By late 2021 or early 2022, Rizzuto alleges that she discovered that the representations Dorsey and Horsfall made to her regarding the financial health of the Charlotte Jantize franchise were false. (See Verified Compl. ¶¶ 44–48.) Rizzuto sent a demand letter to Dorsey and Horsfall in September 2022, seeking to resolve the dispute, and her access to Jantize’s proprietary software, data, and communication systems was subsequently terminated. (See Verified Compl. ¶¶ 49–52.) Plaintiffs then initiated this action.

4. Plaintiffs contend that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(5). Designation under this section 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, Plaintiffs argue that Jantize “owns a system consisting of certain trademarks and proprietary marks, certain know-how and other confidential information for the franchising of commercial cleaning and maintenance business and franchise sales[,]” (NOD 2 (quoting Verified Compl. Ex. D ¶¶ 1.2–1.3)), and that, as part of the franchise agreement, Plaintiffs’ “use of such system (including confidential information, trademarks, trade names, and software) in the operation of the franchise [is] mandatory[,]” (NOD 2 (citing Verified Compl. Ex. D ¶¶ 3.2–3.3, 14.3)). Plaintiffs further argue that Jantize has breached the terms of the franchise agreement by “disabling Plaintiffs’ access and use of such system, including software, customer information, financial data, and other intellectual property[.]” (NOD 2 (citing Verified Compl. ¶¶ 66–67).)

6. As made plain by a review of the NOD and confirmed by the allegations in the Verified Complaint, however, Plaintiffs’ claims are focused on Defendants’ alleged breach of the franchise agreement rather than on the underlying intellectual property aspects of Jantize’s trade dress and software system. *See Pinsight Tech., Inc. v. Driven Brands, Inc.*, 2020 NCBC LEXIS 23, at *5 (N.C. Super. Ct. Feb. 20, 2020) (“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.” (quoting *Cardioentis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at *6 (N.C. Super. Ct. June

27, 2018)); *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 Plaintiffs’ contract claims is not “closely tied to the underlying intellectual property aspects” of Jantize’s trade dress and software system, designation under section 7A-45.4(a)(5) is improper.

7. 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.

8. 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 any party may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Judge.

9. The Court’s ruling is without prejudice to the right of the parties to otherwise seek designation of this matter as a mandatory complex business case as may be provided under section 7A-45.4.

SO ORDERED, this the 30th day of September, 2022.

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