

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 3379

ELZBIETA RYBICKA-
KOZŁOWSKA, M.D.,

Plaintiff,

v.

DURHAM NEPHROLOGY
ASSOCIATES, P.A.; CHARLES I.
COOPERBERG, M.D.; SAMUEL
THEODORE SHAIKEWITZ, M.D.;
TOMASZ GAWECKI, M.D., and
AMARNATH KATHRESAL, M.D.,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 30 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. Plaintiff Elzbieta Rybicka-Kozłowska, M.D. (“Plaintiff”), filed the Complaint initiating this action in Durham County Superior Court on 30 August 2022, asserting claims for breach of contract and breach of the duty of good faith against Defendant Durham Nephrology Associates, P.A. (“DNA”), and a claim for breach of contract against Defendants DNA, Charles I. Cooperberg, M.D., Samuel Theodore Shaikewitz, M.D., Tomasz Gawecki, M.D., and Amarnath Kathresal, M.D. (collectively, the “Defendants”). (See Compl. ¶¶ 102–26.) According to Defendants, the Complaint was “purportedly” served on Defendants on 31 August 2022, and Defendants therefore

timely filed the Notice of Designation (the “NOD”) on 28 September 2022. (*See* Notice Designation 1, 5 [hereinafter “NOD”].)

3. Plaintiff contends that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(1). Designation under this section 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.”

4. This case arises out of a contract dispute. According to the Complaint, Plaintiff, a physician at DNA, became a member/partner of DNA pursuant to a First Amended and Restated Stock Purchase Agreement (the “Shareholder Agreement”) in 2007. (*See* Compl. ¶¶ 17, 20.) The Shareholder Agreement was amended twice in 2011. (*See* Compl. ¶¶ 29–30.) Plaintiff also entered into a Nonqualified Deferred Compensation Plan and an Employment Agreement with DNA in 2008 and 2010, respectively. (*See* Compl. ¶¶ 23, 26.) Plaintiff alleges that, in the months leading up to her 9 September 2019 termination from DNA, she was scheduled for less office and hospital time than the other DNA physicians, thereby decreasing her compensation. (*See* Compl. ¶¶ 60–61, 65.) Almost three years later, Plaintiff initiated this suit, alleging that Defendants miscalculated and/or took affirmative actions to reduce various payments owed to her upon her termination pursuant to the Shareholder

Agreement (and its subsequent amendments), Nonqualified Deferred Compensation Plan, and Employment Agreement. (See Compl. ¶¶ 60–101.)

5. In support of designation under section 7A-45.4(a)(5), Defendants argue that this dispute “concern[s] the rights of Plaintiff . . . in her capacity as a former DNA shareholder, thus involving material issues related to the law governing corporations under Chapters 55 and 55B of the North Carolina General Statutes.” (NOD 3.) Defendants further contend that “Plaintiff’s claims, and Defendants’ defenses to the same, will require analysis and application of North Carolina’s Professional Corporation Act to identify the legal obligations owed to Plaintiff and determine whether the Defendants satisfied those obligations.” (NOD 5.)

6. From a review of the NOD and the allegations in the Complaint, however, it is clear that resolution of Plaintiff’s asserted claims requires only a straightforward application of contract law principles and does not implicate the law governing corporations under N.C.G.S. § 7A-45.4(a)(1). See *Grindstaff v. Knighton*, 2020 NCBC LEXIS 98, at *2–3 (N.C. Super. Ct. Sept. 1, 2020) (declining to designate under (a)(1) where plaintiff’s claims involved only breach of contract); *Grifols Therapeutics LLC v. Z Automation Co.*, 2019 NCBC LEXIS 91, at *3 (N.C. Super. Ct. July 3, 2019) (declining to designate under (a)(1) where limited liability company’s claims involved only breach of contract).

7. The Court further notes that, even if Defendants are correct that their defenses “will require analysis and application of North Carolina’s Professional Corporation Act[,]” (NOD 5), this Court has previously held that it “may not consider

any issues that may or may not be raised in a future pleading when determining whether designation is proper.” *Atl. Bus. Techs. v. GOVALOANS.COM, LLC*, 2022 NCBC LEXIS 93, at *7 (N.C. Super. Ct. Aug. 11, 2022); *see also 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 14 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.

10. 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