

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 18097

THE AUTO CLUB GROUP and
CAROLINA MOTOR CLUB, INC.,

Plaintiffs,

v.

FROSCH INTERNATIONAL
TRAVEL LLC d/b/a FROSCH
TRAVEL; FROSCH-MANN, LLC;
JENNIFER BRAMMER; HENRY
DENNIS; and MICHELLE YOUNIS,

Defendants.

**ORDER ON PLAINTIFFS'
OPPOSITION TO DESIGNATION TO
BUSINESS COURT**

1. **THIS MATTER** is before the Court on Plaintiffs The Auto Club Group and Carolina Motor Club, Inc.'s (together, the "Plaintiffs") Opposition to Designation to Business Court (the "Opposition"). (Pls.' Opp'n Designation Bus. Ct. [hereinafter "Opp'n"], ECF No. 8.)

2. Plaintiffs initiated a prior action against Defendants Frosch International Travel, LLC d/b/a Frosch Travel and Frosch-Mann, LLC (together, "Frosch") on 15 December 2021 (the "Prior Action"), asserting claims for violations of the North Carolina Trade Secrets Protection Act (the "NCTSPA"), violations of the North Carolina Unfair and Deceptive Trade Practices Act (the "UDTPA"), and conversion against Frosch. (*See Auto Club Grp. v. Frosch Int'l Travel, LLC (Auto Club I)*, No. 21 CVS 20355, Compl. ¶¶ 44–67 (N.C. Super. Ct. Dec. 15, 2021), ECF No. 3.) Frosch timely filed a Notice of Designation on 14 January 2022, asserting that the Prior Action involved a dispute under N.C.G.S. § 7A-45.4(a)(8). (*See Auto Club I*, Notice Designation 1–2 (N.C. Super. Ct. Jan. 14, 2022), ECF No. 4.)

3. On 18 January 2022, the Prior Action was designated as a mandatory complex business case by the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, (*see Auto Club I*, Designation Order (N.C. Super. Ct. Jan. 18, 2022), ECF No. 1), and assigned to the undersigned, (*see Auto Club I*, Assignment Order (N.C. Super. Ct. Jan. 18, 2022), ECF No. 2).

4. Plaintiffs filed a Corrected Complaint on 15 February 2022, (*Auto Club I*, Corrected Compl. (N.C. Super. Ct. Feb. 15, 2022), ECF No. 10), and Frosch filed its Defenses and Answer two days later, (*Auto Club I*, Defenses and Answer Frosch (N.C. Super. Ct. Feb. 17, 2022), ECF No. 11).

5. After the parties reached an impasse in mediation, (*see Auto Club I*, Report Mediator Super. Ct. Civil Action (N.C. Super. Ct. Sept. 8, 2022), ECF No. 43), Plaintiffs dismissed the Prior Action against Frosch without prejudice on 12 October 2022, (*see Auto Club I*, Notice Voluntary Dismissal Without Prejudice (N.C. Super. Ct. Oct. 12, 2022), ECF No. 47).

6. Later that same day, Plaintiffs initiated the instant action, asserting claims for violations of the UDTPA, tortious interference with contract, tortious interference with prospective economic advantage, conversion, and civil conspiracy against Frosch and three individuals, Defendants Jennifer Brammer, Henry Dennis, and Michelle Younis (collectively, the “Individual Defendants”). (*See* Compl. ¶¶ 85–113, ECF No. 3.) Notably, Plaintiffs did not reassert a claim against Frosch and the Individual Defendants for violation of the NCTSPA in this action.

7. On 18 October 2022, Frosch timely filed its Defenses and Answer, (Defenses and Answer Frosch, ECF No. 5), and a Notice of Designation, again asserting that this action involves a trade secret dispute under N.C.G.S. § 7A-45.4(a)(8), (*see* Notice Designation 1–2, ECF No. 6).

8. On 19 October 2022, this action was again 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), and assigned to the undersigned, (Assignment Order, ECF No. 2).

9. Plaintiffs timely filed the Opposition on 4 November 2022, contending that designation of this action as a mandatory complex business case pursuant to section 7A-45.4(a)(8) is not proper. (*See* Opp’n 2.) Frosch and the Individual Defendants each filed a response to the Opposition on 18 November 2022. (*See* Frosch Resp. Pls.’ Opp’n [hereinafter “Frosch Resp.”], ECF No. 9; Individual Defs.’ Resp. Pls.’ Opp’n [hereinafter “Individual Defs.’ Resp.”], ECF No. 10.) The matter is now ripe for determination.

10. 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).

11. “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.” *Pillar to Post, Inc. v. Freeburg*, 2021 NCBC LEXIS 113, at *2 (N.C. Super. Ct. Dec. 15, 2021) (quoting *Composite Fabrics of Am., LLC v. Edge Structural Composites, Inc.*, 2016 NCBC LEXIS 11, at *11 (N.C. Super. Ct. Feb. 5, 2016)).

12. 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.”

13. This case arises out of a dispute between two travel services businesses. Plaintiffs allege that Frosch improperly solicited five of Plaintiffs’ “top-producing, long-time travel agents,” including the three Individual Defendants. (Compl. ¶ 5.) Prior to leaving their employment with Plaintiffs to work for Frosch, Plaintiffs allege that the Individual Defendants “accessed, downloaded, and transferred to their personal devices and accounts competitively valuable information belonging to Plaintiffs,” “deleted . . . Plaintiffs’ proprietary and competitively valuable information,” and lured away certain of Plaintiffs’ existing and prospective clients. (Compl. ¶¶ 6–12.) Plaintiffs further allege that they have incurred losses in the form of lost commissions associated with their former employees’ bookings as well as existing and future bookings that were transferred to Frosch. (See Compl. ¶¶ 10–12.)

14. Plaintiffs contend that designation of the instant action as a mandatory complex business case is inappropriate because the Complaint “does not include a cause of action for misappropriation of trade secrets[,]” nor does it include allegations

that “any of the confidential, commercially valuable information that Plaintiffs’ former employees took for Frosch’s benefit constitutes a ‘trade secret.’” (Opp’n 2.)

15. The Court agrees. “[A] claim for misappropriation of trade secrets frequently serves as the basis for designation under section 7A-45.4(a)(8), [but] other types of 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.’” *Sys. Depot, Inc. v. Clement*, 2022 NCBC LEXIS 48, at *3 (N.C. Super. Ct. May 25, 2022) (quoting *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at *4 (N.C. Super. Ct. June 28, 2019)); see also *Cornerstone Health Care, P.A. v. Moore*, 2015 NCBC LEXIS 65, at *7 (N.C. Super. Ct. June 22, 2015) (“[W]hether a case involves the requisite disputes falling within 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.”). And while designation under this section does not depend on “the appearance or absence of magic words—such as ‘trade secret’—in the complaint[,]” *UNOX, Inc.*, 2019 NCBC LEXIS 41, at *7, this 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,” *Sys. Depot, Inc.*, 2022 NCBC LEXIS 48, at *3–4 (cleaned up).

16. Frosch and the Individual Defendants argue that the current lawsuit “involves the exact same subject matter and virtually all of the same allegations as the [Prior Action,]” (Frosch Resp. 2), and that the instant Complaint, as pleaded, is a

mere “form-over-substance maneuver” to avoid Business Court designation by eliminating the trade secrets claim and all references to the words “trade secrets.” (Frosch Resp. 2, 4–5, 7; *see* Individual Defs.’ Resp. 1–2.) But this Court has previously rejected this argument, holding that “[t]he plaintiff is the master of its complaint and free to choose which causes of action it will bring.” *UNOX, Inc.*, 2019 NCBC LEXIS 41, at *6. This is true even where, as here, the plaintiff includes allegations similar to those it contended constituted trade secrets in a prior action but omits that contention in the re-filed action. As a result, “this Court will not designate a case under section 7A-45.4 ‘merely because the pleadings include factual allegations that arguably might touch upon facts that, when read together with other allegations, might have been a basis for a claim that the plaintiff chose not to allege.’” *Id.* at *6–7 (citation omitted).

17. The Complaint’s reference to Article 24 in the Prayer for Relief does not affect this conclusion either. Regardless of whether Plaintiffs’ request for “costs and reasonable attorneys’ fees incurred in prosecuting this action pursuant to N.C.[G.S.] § 66-154[.]” (Compl. Prayer for Relief ¶ 7), was a “scrivener’s error” as Plaintiffs contend, (Opp’n 5), the Complaint does not purport to assert a claim for misappropriation of trade secrets, nor does it allege that any of Plaintiffs’ information at issue in this action is subject to trade-secret protection. In the absence of such allegations, Plaintiffs’ claims appear to involve only the misuse of generalized confidential or proprietary information, which does not “put[] the existence,

ownership, or misuse of alleged trade secrets at issue.” *UNOX, Inc.*, 2019 NCBC LEXIS 41, at *7.

18. Accordingly, the Court concludes that this action is not properly designated as a mandatory complex business case because it does not involve a material issue related to disputes involving trade secrets, as required by section 7A-45.4(a)(8). *See Vertical Crop Consultants, Inc. v. Brick St. Farms LLC*, 2021 NCBC LEXIS 3, at *5 (N.C. Super. Ct. Jan. 12, 2021) (declining to designate under (a)(8) where “the pleading party potentially could have, but chose not to, allege a claim that puts the existence, ownership, or misuse of alleged trade secrets at issue[]” (cleaned up)).

19. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** that the Opposition is **ALLOWED**. The Court concludes that this proceeding was improperly designated and thus should proceed on the regular civil docket of Mecklenburg County Superior Court.

SO ORDERED, this the 21st day of November, 2022.

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