

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 6408

STATE OF NORTH CAROLINA, ex  
rel. JOSHUA H. STEIN, Attorney  
General,

Plaintiff,

v.

MV REALTY PBC, LLC; MV  
REALTY OF NORTH CAROLINA,  
LLC; MV BROKERAGE OF NORTH  
CAROLINA, LLC; AMANDA  
ZACHMAN; ANTONY MITCHELL;  
DAVID MANCHESTER; and  
DARRYL COOK,

Defendants.

**ORDER ON DESIGNATION**

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 11 April 2023 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) and (b). (Determination Order, ECF No. 1.)

2. Plaintiff State of North Carolina, *ex rel.* Joshua H. Stein (the “Plaintiff”) filed the Complaint and Motion for Preliminary Injunction (the “Complaint”) initiating this action in Wake County Superior Court on 20 March 2023, asserting claims for unfair debt collection practices in violation of N.C.G.S. §§ 75-50 to -56 and unfair or deceptive lending practices in violation of N.C.G.S. §§ 24-1 to -11.2 and 75-1.1 against Defendants MV Realty PBC, LLC, MV Realty of North Carolina, LLC, MV Brokerage of North Carolina, LLC (collectively, “MV Realty”), Amanda Zachman

(“Zachman”), David Manchester (“Manchester”), and Antony Mitchell (“Mitchell”); and claims for unfair and deceptive trade practices in violation of N.C.G.S. § 75-1.1 and violations of the prohibitions regarding telephone solicitations set forth in N.C.G.S. §§ 75-100 to -105 against MV Realty, Zachman, Manchester, Mitchell, and Defendant Darryl Cook (“Cook”). (See Compl. & Mot. Prelim. Inj. ¶¶ 173–90 [hereinafter “Compl.”], ECF No. 2.) MV Realty timely filed a Notice of Designation (the “NOD”)<sup>1</sup> on 10 April 2023. (NOD 1.)

3. Plaintiff brings this action on behalf of affected North Carolina homeowners. Plaintiff alleges that Defendants used misleading online advertising and telemarketing tactics to target North Carolina homeowners facing financial pressures. (See Compl. ¶¶ 56–83.) Plaintiff alleges that, in exchange for receiving a small incentive payment from Defendants, these homeowners entered into a Homeowner Benefit Agreement (the “HBA”) with Defendants. (See Compl. ¶ 28.) According to the Complaint, homeowners were not given a sufficient opportunity to review the HBA, which locked them into a 40-year exclusive agreement to use MV Realty as their listing agent should they choose to sell their home. (See Compl. ¶¶ 28, 116–50.) Plaintiff further alleges that, despite Defendants’ representations to the contrary, MV Realty recorded a lien on each homeowner’s property to ensure

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<sup>1</sup> The Court notes that Defendant MV Brokerage of North Carolina, LLC objects to the sufficiency of process, service of process, and the Court’s exercise of personal jurisdiction over it, and Defendant MV Realty PBC, LLC objects to the Court’s exercise of personal jurisdiction over it. (See Notice Designation 1 [hereinafter “NOD”], ECF No. 3.) The NOD further represents that, “[t]o the extent the individual defendants . . . have been or will be timely and properly served, the [attorneys for MV Realty] anticipate representing each of the individual defendants as well.” (NOD 1.)

collection of the HBA's early termination penalty, which costs homeowners at least ten times the amount they received from the up-front incentive payment. (*See* Compl. ¶¶ 29–38.) Plaintiff also alleges that these liens impair the homeowners' ability to sell their houses, obtain home equity lines of credit, or refinance their mortgages. (*See* Compl. ¶¶ 37, 46, 63.)

4. MV Realty contends that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(1), (a)(3), and (b)(2). The Court will examine each basis for designation in turn, beginning with section 7A-45.4(a)(3).

A. Section 7A-45.4(a)(3)

5. Designation under section 7A-45.4(a)(3) is proper if the action involves a material issue related to “[d]isputes involving antitrust law, including disputes arising under Chapter 75 of the General Statutes that do not arise solely under G.S. 75-1.1 or Article 2 of Chapter 75 of the General Statutes.”

6. In support of designation under this section, MV Realty contends that this case “involves a material dispute arising under N.C.[G.S.] §§ 75-100, *et. seq.* (North Carolina Telephone Solicitations Act), which is a dispute arising under Chapter 75 of the General Statutes not solely arising under N.C.G.S. § 75-1.1 or Article 2 of Chapter 75 of the General Statutes.” (NOD 3 (cleaned up).)

7. Chapter 75 encompasses both antitrust and consumer protection law, but section 7A-45.4(a)(3) makes clear that only those actions that involve a material issue related to disputes involving *antitrust* law qualify for mandatory complex business case designation. Plaintiff's claim under the North Carolina Telephone Solicitations

Act involves a material issue related to disputes involving consumer protection law, not antitrust law, and therefore does not qualify for designation under N.C.G.S. § 7A-45.4(a)(3). *See RavenSafe, LLC v. Nexus Techs., Inc.*, 2022 NCBC LEXIS 65, at \*5 (N.C. Super. Ct. June 27, 2022) (declining to designate under (a)(3) where plaintiff “has not alleged a Chapter 75 claim other than one under section 75-1.1 *or otherwise invoked state or federal antitrust law* [ ]” (emphasis added)).

B. Section 7A-45.4(a)(1)

8. 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.”

9. In support of designation under this section, MV Realty argues that the dispute will involve the law governing limited liability companies because Plaintiff

seeks to pierce the limited liability veil and hold corporate employees Zachman, Mitchell, Manchester, and Cook individually liable for their actions and conduct as ‘principals, officers, and agents of MV Realty, . . . [directing] the [allegedly unfair, deceptive and unlawful] policies, financial affairs, and business practices of MV Realty’ despite the liability protections afforded to principals, officers, and agents pursuant to the limited liability form of business.

(NOD 3 (alterations in original) (quoting Compl. ¶ 18).)

10. However, “[t]his Court has long held that a claim for piercing the corporate veil, standing alone, is insufficient to support mandatory complex business case designation[ ]” under section 7A-45.4(a)(1). *Consol. Elec. Distribs., Inc. v. Hallmark*

*Lighting, LLC*, 2021 NCBC LEXIS 107, at \*4–5 (N.C. Super. Ct. Dec. 7, 2021) (collecting cases). Because Plaintiff’s claims do not otherwise implicate the law governing limited liability companies, the Court concludes that MV Realty’s reliance on the Complaint’s veil-piercing allegations is insufficient to support designation under section 7A-45.4(a)(1).

C. Section 7A-45.4(b)(2)

11. Section 7A-45.4(b)(2) provides that “[a]n action described in subdivision (1), (2), (3), (4), (5), or (8) of subsection (a) of this section in which the amount in controversy computed in accordance with G.S. 7A-243 is at least five million dollars (\$5,000,000) shall be designated as a mandatory complex business case by the party whose pleading caused the amount in controversy to equal or exceed five million dollars (\$5,000,000).”

12. For the reasons discussed above, the Court has concluded that the allegations in the Complaint do not provide a basis for designation under section 7A-45.4(a)(1) or (a)(3) and, therefore, this action does not qualify for “mandatory” mandatory designation under section 7A-45.4(b)(2). The Court additionally concludes that designation pursuant to this section is improper because the amount in controversy requirement is not met.

13. In support of designation under section 7A-45.4(b)(2), MV Realty contends that the “claims asserted by [Plaintiff] in the Complaint have the potential to total an amount in controversy exceeding \$5,000,000.00, . . . particularly given the request for preliminary and permanent injunctive relief . . . , and including the potential

compensatory damages, punitive damages, treble damages, restitution, penalties, attorneys' fees, and/or other relief sought.” (NOD 3.)

14. Section 7A-45.4(b)(2) requires designation when the “*pleading* caused the amount in controversy to equal or exceed five million dollars[.]” N.C.G.S. § 7A-45.4(b)(2) (emphasis added). The “amount in controversy [is] computed in accordance with G.S. 7A-243,” *id.*, which in turn focuses on the “relief prayed” for in determining the amount in controversy, *id.* § 7A-243. At the same time, Rule 8 of the North Carolina Rules of Civil Procedure requires that “[i]n all actions involving a material issue related to any of the subjects listed in G.S. 7A-45.4(a)(1), (2), (3), (4), (5), or (8), the *pleading* shall state whether or not relief is demanded for damages incurred or to be incurred in an amount equal to or exceeding five million dollars (\$5,000,000).” N.C. R. Civ. P. 8(a)(2) (emphasis added).

15. Nowhere in Plaintiff’s Complaint does Plaintiff pray for relief equal to or in excess of \$5 million. (*See generally* Compl.) Because the Complaint does not seek to recover monetary or non-monetary relief in an amount equal to or in excess of \$5 million, designation under section 7A-45.4(b)(2) is not proper.

D. Conclusion

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

17. 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 the parties may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Superior Court Judge. The Court further advises that, alternatively, the parties may pursue designation as a Rule 2.1/2.2 complex business case with the Chief Justice and the undersigned.

18. The Court's ruling is without prejudice to the right of 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 12th day of April, 2023.

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