

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 1060

CURO HEALTH SERVICES, LLC,
Plaintiff,

v.

DAVID HAVNAER; DONALD
BENFIELD; CHRISTOPHER
CONRAD; and RES-CARE, INC.
d/b/a BRIGHTSPRING HEALTH
SERVICES,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 19 January 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).

2. Plaintiff Curo Health Services, LLC (“Curo”) filed the Verified Complaint (the “Complaint”) initiating this action in Mecklenburg County Superior Court on 18 January 2023, asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and computer trespass in violation of N.C.G.S. § 14-458 against Defendants David Havnaer (“Havnaer”), Donald Benfield (“Benfield”), and Christopher Conrad (“Conrad”) (collectively, the “Former Employees”); tortious interference with contract, unfair and deceptive trade practices, and common law unfair competition against Defendant Res-Care, Inc. d/b/a BrightSpring Health Services (“BrightSpring”); and unjust enrichment against the Former Employees and

BrightSpring (together, the “Defendants”). (*See* Verified Compl. ¶¶ 109–73 [hereinafter “Compl.”].) Curo also seeks preliminary and permanent injunctive relief against Defendants. (*See* Compl. ¶¶ 174–88.) Curo timely filed the Notice of Designation (the “NOD”) that same day. (*See* Notice Designation 1 [hereinafter “NOD”].)

3. Curo contends that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(8). Designation under this section 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.”

4. This case arises out of a dispute between Curo and its Former Employees. Curo alleges that the Former Employees each breached the non-compete, non-solicitation, and non-disclosure/confidentiality provisions of their respective employment agreements when they left to work for BrightSpring, a direct competitor. (*See* Compl. ¶¶ 58–87, 109–34.) Curo also alleges that, prior to their departure, the Former Employees impermissibly downloaded its “IT Confidential Information,” which the Complaint defines as including “the structure of [Curo’s] IT systems, its IT security protocols, and overall security posture as well as the operating procedure performed by employees, contractors, or service providers[.]” (Compl. ¶¶ 15, 60–64, 68–77, 82–83.) Curo now seeks to enforce certain provisions of the Former Employees’ respective employment agreements, require the Former Employees to return its confidential information, and enjoin Defendants from using its confidential information. (*See* Compl. Prayer for Relief A.)

5. In support of designation under section 7A-45.4(a)(8), Curo argues that “even though [it] does not allege a trade-secret misappropriation claim, [it] alleged its confidential information *or trade secrets* were disclosed, misappropriated, and threatened to be disseminated, and [Curo] sought injunctive relief to prevent [Defendants’] use, disclosure, and dissemination of [its] confidential *or trade secret* information.” (NOD 4 (emphases added).)

6. But that is not what the Complaint alleges. Although Havnaer’s and Conrad’s employment agreements include “trade secrets” as a category within the larger definition of Curo’s confidential information, (*see* Compl. Ex. 1 § 13(b); Ex. 3 § 3), the Complaint does not purport to assert a claim for trade-secret misappropriation or allege that any of Curo’s “IT Confidential Information” is subject to trade-secret protection, nor does it seek injunctive relief to protect any alleged trade secrets.

7. Here, as in *UNOX, Inc. v. Conway*, Curo chose to allege the misuse of its “IT Confidential Information” without also alleging or seeking to establish that such information qualifies as a trade secret. Although designation under section 7A-45.4(a)(8) does not depend on “the appearance or absence of magic words—such as ‘trade secret’—in the complaint[,]” a plaintiff’s “decision to assert one cause of action and leave out another is one that carries with it meaningful and lasting consequences[.]” *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at *7 (N.C. Super. Ct. June 28, 2019). Because nothing in the Complaint, as pleaded, “suggest[s] that the dispute will require the Court to resolve material issues involving trade secrets[.]” designation under section 7A-45.4(a)(8) is improper. *Id.* at *5–6 (quoting *Stay Alert*

Safety Servs., Inc. v. Pratt, 2017 NCBC LEXIS 101, at *6 (N.C. Super. Ct. Nov. 1, 2017)); *see also Auto Club Grp. v. Frosch Int'l Travel LLC*, 2022 NCBC LEXIS 138, at *6 (N.C. Super. Ct. Nov. 21, 2011) (“[T]his 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[.]’ ” (quoting *Sys. Depot, Inc. v. Clement*, 2022 NCBC LEXIS 48, at *3–4 (N.C. Super. Ct. May 25, 2022))).

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 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 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 19th day of January, 2023.

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