

STATE OF NORTH CAROLINA
ROCKINGHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 1504

ROCKINGHAM COUNTY,
Plaintiff,

v.

NTE ENERGY, LLC; NTE
CAROLINAS II LLC; NTE
CAROLINAS II HOLDINGS, LLC;
CASTILLO INVESTMENT
HOLDINGS II, LLC; NTE ENERGY
SERVICES COMPANY, LLC; VITIS
ENERGY, LLC; JOHN DOE,
NATURAL PERSON; and JOHN
DOE, CORPORATE ENTITY,

Defendants.

**ORDER ON PLAINTIFF'S
OPPOSITION TO NOTICE OF
DESIGNATION OF ACTION AS
MANDATORY COMPLEX BUSINESS
CASE UNDER N.C.G.S. § 7A-45.4**

1. **THIS MATTER** is before the Court on Plaintiff Rockingham County's (the "County") Opposition to Notice of Designation of Action as Mandatory Complex Business Case Under N.C.G.S. § 7A-45.4 (the "Opposition"). (Pl.'s Opp'n Notice Designation Action Mandatory Complex Bus. Case Under N.C.G.S. § 7A-45.4 [hereinafter "Opp'n"], ECF No. 29.)

2. The County initiated this action on 21 July 2023, asserting claims for declaratory judgment and breach of contract.¹ (*See* Compl. ¶¶ 46–63.) The County

¹ The caption of the Complaint Breach of Contract, Declaratory Judgment (the "Complaint") appears to list a single Defendant: "NTE Energy, LLC, d/b/a NTE Carolinas II LLC, a subsidiary of NTE Carolinas II Holdings, LLC, Defendant." (*See* Compl. Breach Cont., Declaratory J. 1 [hereinafter "Compl."], ECF No. 3.) In the body of the Complaint, however, the allegations variously refer to a single "Defendant" and multiple "Defendants." (*Compare* Compl. ¶¶ 1, 9, 14–19 (referring to a single "Defendant"), *with* ¶¶ 6, 10, 25, 26 (referring to multiple "Defendants").) Because the Complaint is not relevant to the Court's determination of the Opposition, the Court need not determine whether the claims in the Complaint were asserted against one or more Defendants.

filed an Amended Complaint on 26 October 2023, asserting claims against Defendant NTE Carolinas II, LLC (“NTE Carolinas”) for (i) declaratory judgment, (ii) breach of contract, (iii) breach of the duty of good faith and fair dealing, (iv) breach of fiduciary duty/constructive fraud, (v) account stated, (vi) unjust enrichment (in the alternative), (vii) promissory estoppel (in the alternative), (viii) negligent misrepresentation, (ix) unfair and deceptive trade practices, and (x) an order for attachment, (*see* Am. Compl. ¶¶ 75–165, 208–12, ECF No. 20), and claims against all Defendants for (i) piercing the corporate veil, jointly and severally, (ii) civil conspiracy/facilitation of fraud (in the alternative), jointly and severally, and (iii) fraudulent inducement (in the alternative), (*see* Am. Compl. ¶¶ 166–207).

3. Defendants NTE Carolinas, NTE Carolinas II Holdings, LLC, and Castillo Investment Holdings II, LLC (collectively, the “Carolinas Defendants”) timely filed a Notice of Designation of Action as Mandatory Complex Business Case Under N.C.G.S. § 7A-45.4 (the “NOD”) on 20 November 2023, asserting that this action involves a dispute under section 7A-45.4(a)(1). (*See* Notice Designation Action Mandatory Complex Bus. Case Under N.C.G.S. § 7A-45.4 at 2, ECF No. 11.)

4. On 21 November 2023, this case was 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 Honorable Mark A. Davis, Special Superior Court Judge for Complex Business Cases, (Assignment Order, ECF No. 2).

5. The County timely filed the Opposition and a supporting brief on 19 December 2023, contending that designation of this action as a mandatory complex business case is not proper under section 7A-45.4(a)(1). (See Opp'n; Pl.'s Mem. Supp. Opp'n 1–2, ECF No. 30.) The Carolinas Defendants filed their Response to the Opposition on 3 January 2024. (Carolinas Defs.' Resp. Opp'n [hereinafter "Carolinas Defs.' Resp.'], ECF No. 39.) That same day, Defendants NTE Energy, LLC, NTE Energy Services Company, LLC, and Vitis Energy, LLC also filed a Response to the Opposition. (Defs. NTE Energy, LLC, NTE Energy Servs. Co., and Vitis Energy, LLC's Resp. Opp'n, ECF No. 40.) The matter is now ripe for determination.

6. 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 Issued to Target Corp. & Affiliates*, 2018 NCBC LEXIS 185, at *3 (N.C. Super. Ct. Dec. 4, 2018).

7. "For a case to be [designated] 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." *Composite Fabrics of Am., LLC v. Edge Structural Composites, Inc.*, 2016 NCBC LEXIS 11, at *11 (N.C. Super. Ct. Feb. 5, 2016).

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. This case arises out of a failed economic development project. The County alleges that it entered into a series of agreements with NTE Carolinas (the “Project Agreements”) in which the County agreed to provide economic development assistance to NTE Carolinas in exchange for NTE Carolinas’ construction of a 500-megawatt natural gas electric generating facility in Rockingham County (the “Project”). (See Am. Compl. ¶¶ 1, 29, 35–40.) As part of the Project Agreements, the County alleges that it agreed to make certain infrastructure improvements immediately that “were not conditioned on any investments in Rockingham County by [NTE Carolinas].” (Am. Compl. ¶ 39.) The Amended Complaint further alleges that, should NTE Carolinas terminate the Project, NTE Carolinas “agreed to reimburse [the] County for expenditures up to the date of termination.” (Am. Compl. ¶ 39(a); see also ¶ 36 (“[NTE Carolinas] agrees to compensate the County for verified costs incurred[]” “as of the date of the termination notification[.]”).)

10. The Project appeared to be moving forward: the County alleges that while it completed the necessary infrastructure improvements, (Am. Compl. ¶¶ 39(b), 44), NTE Carolinas obtained a necessary certification from the North Carolinas Utilities Commission, (Am. Compl. ¶ 41), represented that it had arranged financing for the Project, (Am. Compl. ¶ 48), and entered into an agreement with non-party Duke Energy, (Am. Compl. ¶ 45). But construction on the Project never commenced. (Am. Compl. ¶ 72.) The County alleges that NTE Carolinas failed to make payments

pursuant to the agreement with Duke Energy, so Duke Energy filed a lawsuit against several of the parties to this action as well as others, seeking to recover funds it had expended under the agreement with NTE Carolinas. (*See* Am. Compl. ¶¶ 51–54.)

11. The County further alleges that NTE Carolinas (i) failed to notify the County of its financial problems and the impact of its dispute with Duke Energy on the Project in violation of the Project Agreements, (*see* Am. Compl. ¶¶ 47, 51–54); (ii) repeatedly misrepresented to the County that the Project would nevertheless be built, (*see* Am. Compl. ¶¶ 48, 59, 62–63, 68); (iii) failed to reimburse the County for the cost of the infrastructure improvements in violation of the Project Agreements, (*see* Am. Compl. ¶¶ 64–65); and (iv) “diverted some or all of the financing for the development of the [Project] to other NTE Energy projects or otherwise commingled the funds for the [Project] with other NTE projects[,]” (Am. Compl. ¶ 49). The County subsequently initiated this action seeking a declaration that the Project has been terminated and to recover its expenditures for the infrastructure improvements from NTE Carolinas or, should NTE Carolinas be insolvent, the other entity Defendants, which the County alleges are “each instrumentalities of the joint enterprise known as NTE Energy.”² (Am. Compl. ¶¶ 6, 75–212.)

12. The County opposes designation on two grounds, neither of which have merit.

² The Amended Complaint uses the term “NTE Energy” to refer to the “joint enterprise operating under the business name, NTE Energy,” which “is composed of dozens of purportedly distinct corporate entities.” (Am. Compl. ¶ 6.) The term “NTE Energy,” as used in this Order, shall have the same meaning as that in the Amended Complaint.

13. First, the County contends that designation as a mandatory complex business case is improper because “[t]he only complexity in the case is because the underlying business is a joint enterprise which has fragmented itself into dozens of different LLCs.” (Pl.’s Mem. Supp. Opp’n 4.) The County further argues that “[t]he issue of whether these various entities exist as more than pieces of paper sharing a post office box is not a complex question involving the law governing corporations.” (Pl.’s Mem. Supp. Opp’n 6.)

14. As the Carolinas Defendants correctly note, (*see* Carolina Defs.’ Resp. 3), this Court has repeatedly held that the complexity of a case has no bearing on whether a case has been properly designated as a mandatory complex business case under section 7A-45.4(a)(1). *See, e.g., Davis v. Davis Funeral Serv., Inc.*, 2022 NCBC LEXIS 70, at * 6–7 (N.C. Super. Ct. June 30, 2022) (“[W]hile a ‘material issue’ related to the law governing corporations is required to support designation under [s]ection 7A-45.4(a)(1), that section does not further require that the issue involve a claim of any particular complexity[.]” (second alteration in original) (quoting *Donald R. Simpson Fam. L.P. v. Donald R. Simpson Fam. L.P.*, 2021 NCBC LEXIS 20, at *5 (N.C. Super. Ct. Mar. 9, 2021))). Thus, the County’s first argument fails.

15. Next, the County argues that designation is improper under section 7A-45.4(a)(1) because the “gravamen of the Amended Complaint is whether [NTE Carolinas] is responsible for reimbursing [the] County[.]” a dispute that can be “fully resolve[d] . . . without reaching any issues relating to the law governing corporations,” whereas the corporate law allegations identified in the NOD are

merely “an ancillary collection issue.” (Pl.’s Mem. Supp. Opp’n 4.) The County additionally contends that its “piercing the corporate veil allegations relate to potential future efforts to enforce a judgment, rather than as material issues in the action.” (Pl.’s Mem. Supp. Opp’n 4.)

16. The Court disagrees. Although this Court “has long held that a claim for piercing the corporate veil, standing alone, is insufficient to support mandatory complex business designation[,]” *Narsi Dev. I, LLC v. Birkdale Real Est. Invs., LLC*, 2021 NCBC LEXIS 21, at *4 (N.C. Super. Ct. Mar. 16, 2021) (collecting cases), the claims implicating the law governing corporations, partnerships, or LLCs, as pleaded in the Amended Complaint, are not ancillary to the parties’ dispute.

17. As the Carolinas Defendants correctly observe in their Response, this Court must apply the law governing corporations, partnerships, or LLCs “to determine if the [allegations] of a joint enterprise or constructive dissolution of an LLC and resulting termination and breach of contracts at issue as alleged by the County result in liability for the Defendants under several of the stated causes of action[.]” (Carolinas Defs.’ Resp. 5.) *See, e.g.*, N.C.G.S. §§ 57D-6-01 (governing dissolution of limited liability companies), 57D-7-20 (governing withdrawal of a foreign LLC); *DS & T II, Inc. v. D and E Tax and Acct., Inc.*, 2021 NCBC LEXIS 87, at *14–15 (N.C. Super. Ct. Oct. 4, 2021) (“The essential elements of a joint venture are (1) an agreement to engage in a single business venture with the joint sharing of profits, (2) with each party to the joint venture having a right in some measure to direct the conduct of the other through a necessary fiduciary relationship.” (citation omitted));

Morris Int'l, Inc. v. Packer, 2021 NCBC LEXIS 16, at *17 (N.C. Super. Ct. Feb. 22, 2021) (“A joint venture is in the nature of a kind of partnership, and although a partnership and a joint venture are distinct relationships, they are governed by substantially the same rules. A joint venture is governed by partnership law, as codified in the Uniform Partnership Act.” (cleaned up)).

18. More specifically, the Court must analyze the following circumstances alleged in the Amended Complaint:

- Whether NTE Carolinas “wrongfully transferred assets to other members of the NTE Energy joint enterprise which should have been available to satisfy its obligation to [the] County[]” to resolve part of the County’s First Claim for Relief, (Am. Compl. ¶ 80);
- Whether the County reasonably relied on representations by NTE Carolinas and the other entity Defendants that the Project was still viable to resolve the County’s Second Claim for Relief, (*see* Am. Compl. ¶¶ 90, 94);
- Whether NTE Carolinas “distributed funds to NTE Energy rather than paying its obligations to [the] County[]” and then “with[drew] from transacting business in North Carolina” to resolve the County’s Third Claim for Relief, (Am. Compl. ¶¶ 112, 114);
- Whether the “lack of business prospects and financial circumstances alleged in this Amended Complaint . . . amount to a winding up or dissolution of NTE Carolinas[,]” (Am. Compl. ¶¶ 121–26), and, if so, “the duties, if any, owed to a contractual counterparty under such circumstances[,]” (Carolinas Defs.’ Resp. 5), to resolve the County’s Fourth Claim for Relief;
- Whether NTE Carolinas “failed to use reasonable care in its communications when it concealed from [the] County that NTE Energy had diverted financing from the [Project] to other NTE Energy projects[,]” whether such misrepresentation was calculated to deceive the County and did in fact deceive the County, and whether the County’s reliance on this representation was reasonable to resolve part of the County’s Eighth Claim for Relief, (Am. Compl. ¶¶ 161—64);
- Whether Defendants constitute “a joint enterprise of related and completely intertwined companies and individuals[,]” which will require an analysis of

the LLCs' corporate documents, structure, and management, to resolve the County's Tenth Claim for Relief, (Am. Compl. ¶¶ 167–88);

- Whether the other entity Defendants, “[b]y virtue of common ownership,” knew that NTE Carolinas “was facing financial circumstances tantamount to a winding up or dissolution[]” and therefore “owed a duty to [the] County to preserve assets and minimize losses[,]” and, if so, the duties, if any, they owed to the County in such circumstances to resolve the County's Eleventh Claim for Relief, (Am. Compl. ¶¶ 190–95); and
- Whether NTE Carolinas used “its sprawling and fragmented corporate structure” to take credit for the other entity Defendants' successful projects in other states to induce the County to undertake the Project to resolve the County's Twelfth Claim for Relief, (Am. Compl. ¶¶ 200–06).

19. Contrary to the County's assertion, (*see* Pl.'s Mem. Supp. Opp'n 5), the law governing corporations, partnerships, and LLCs *is* material to the issue of which Defendant entity (or entities) is liable to the County for the misconduct alleged in the Amended Complaint. Nor do the “piercing the corporate veil allegations relate [only] to potential future efforts to enforce a judgment,” (Pl.'s Mem. Supp. Opp'n 4), as demonstrated by the three claims for relief directed against all Defendants, (*see* Am. Compl. ¶¶ 166–207). Moreover, the County explicitly states that it is requesting “the [C]ourt [to] look beyond the paper façade and recognize what is really happening[]” “[t]hrough its corporate law allegations,” (Pl.'s Mem. Supp. Opp'n 6), acknowledging that these allegations are both material to the dispute and necessary to the Court's ultimate resolution of the County's claims.

20. As this Court noted in *UNOX, Inc. v. Conway*, “[t]he plaintiff is the master of its complaint and free to choose which causes of action it will bring.” 2019 NCBC LEXIS 41, at *6 (N.C. Super. Ct. June 28, 2019). Just as “[t]he decision to assert one cause of action and to leave out another is one that carries with it meaningful and

lasting consequences,” *id.* at *7, so too is the decision to assert additional causes of action. Because the County decided to amend its Complaint to add allegations and claims that broadened the parties’ dispute to include material issues involving the law governing corporations, partnerships, and LLCs, it must accept the consequence that this action now qualifies for designation under section 7A-45.4(a)(1).

21. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** that the Opposition is **OVERRULED**. This 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[]” as required by N.C.G.S. § 7A-45.4(a)(1) and shall proceed as a mandatory complex business case before the Honorable Mark A. Davis.

SO ORDERED, this the 8th day of January, 2024.

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