

STATE OF NORTH CAROLINA
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV006857-500

LEA LEONE,

Plaintiff,

v.

PHILIP JOSEPH LEONE;
CLEVELAND LUBE AND TUNE,
LLC; CLAYTON AUTOMOTIVE
REPAIR SPECIALISTS LLC;
JORDAN WADE HINKLE; and
CLAYTON AUTO SOLUTIONS,
LLC,

Defendants.

**ORDER ON PLAINTIFF'S
OPPOSITION TO NOTICE OF
DESIGNATION**

1. **THIS MATTER** is before the Court following the 13 January 2025 filing by Plaintiff Lea Leone (“Ms. Leone”) of the *Opposition to Defendants’ Notice of Designation of Action as a Mandatory Complex Business Case* (the “Opposition”). (ECF No. 6 [“Opp’n”].)

2. Ms. Leone initiated this action on 30 December 2024, asserting claims against Defendants Philip Joseph Leone (“Mr. Leone”), Cleveland Lube and Tune, LLC (“Cleveland”), Clayton Automotive Repair Specialists LLC (“Clayton”), Jordan Wade Hinkle, and Clayton Auto Solutions, LLC for conversion and trespass to chattels, breach of fiduciary duties as an officer, fraud, breach of contract, abuse of process, unjust enrichment and constructive trust, punitive damages, for appointment of a receiver for Cleveland, and for an accounting. (*See* Am. Compl. ¶¶ 101–215, ECF No. 3.) Defendants Mr. Leone and Clayton (together, the “NOD Defendants”), timely filed a Notice of Designation (the “NOD”) on 10 January 2025,

asserting the case meets the criteria for designation under N.C.G.S. § 7A-45.4(a)(1). (Notice Designation, ECF No. 4 [“NOD”].)

3. On 13 January 2025, the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, issued an Order designating the case as a mandatory complex business case under N.C.G.S. § 7A-45.4(a) and ordered the undersigned to assign the case to a Business Court Judge. (Designation Order, ECF No. 1.) Thereafter, on 13 January 2025, the case was assigned to the undersigned’s docket. (Assignment Order, ECF No. 2.) On the same day, Ms. Leone filed her Opposition, contending that designation under N.C.G.S. § 7A-45.4(a) is improper. (Opp’n 1.) In so doing, Ms. Leone claims that this action “is a standard Superior Court case involving claims for . . . breach of fiduciary duty. . . .” (Opp’n 1.)

4. Pursuant to N.C.G.S. § 7A-45.4(e), the undersigned is required to rule by written order on Ms. Leone’s objection and to determine whether the action should be designated as a mandatory complex business case.¹

5. This action arises out of a dispute between Mr. and Ms. Leone and their respective membership in Cleveland, a North Carolina limited liability company that was created by the Leones on 26 August 2014. (*See* Am. Compl. Ex. A.) Ms. Leone asserts that she is a 50% owner/member of Cleveland. (*See* Am. Compl. ¶¶ 7, 116–17.) Among other claims, Ms. Leone alleges that as a member of Cleveland, Mr. Leone owed her “fiduciary, statutory, and common law duties” and that Mr. Leone breached

¹ Because the Court believes that Ms. Leone’s opposition is straightforward and easily determined without awaiting a response to Ms. Leone’s objection by the designating parties, the Court enters this Order before any response has been received.

those duties, violating N.C.G.S. § 57D-3-21, by “failing to discharge the duties as a manager of Defendant, the Shop, in good faith.” (Am. Compl. ¶¶ 108, 110.) Ms. Leone also asserts that by making distributions “which significantly reduced Defendant’s, the Shop’s, assets, [were] not authorized by the members, or any other officer of the Company, and increased the Shop’s liabilities,” Mr. Leone impaired Cleveland’s “ability to transact its business or to meet its obligations to Plaintiff, Lea Leone,” in violation of N.C.G.S. § 57D-3-21. (Am. Compl. ¶ 111.)

6. The NOD Defendants seek mandatory complex business case designation pursuant to N.C.G.S. § 7A-45.4(a)(1). (See NOD 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.”

7. The NOD Defendants argue in their Notice of Designation that designation is proper under section 7A-45.4(a)(1) because Ms. Leone alleges that Defendant Mr. Leone “‘violated N.C. Gen. Stat. § 57D-3-21 by failing to discharge the duties as a manager of Defendant, [Lube and Tune], in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in Defendant’s, [Lube and Tune’s] best interests.’” (NOD 3.) In addition, the NOD Defendants assert that designation is proper under section 7A-45.4(a)(1) because Ms. Leone alleges irreparable injury has

resulted under N.C.G.S. § 57-D-8-01 and will continue by waiting to file the instant action. (NOD 3.)²

8. The Court agrees. In her Amended Complaint, Ms. Leone alleges that Mr. Leone breached his statutory duties as a manager of Cleveland under N.C.G.S. § 57D-3-21. (Am. Compl. ¶¶ 110.) Designation under section 7A-45.4(a)(1) is proper when the action involves a material issue related to “[d]isputes involving the law governing . . . limited liability companies, *including disputes arising under Chapter[] . . . 57D[] . . . of the General Statutes.*” (emphasis added). The Court therefore concludes that designation as a mandatory complex business case is proper under this section. *See, e.g., Bui v. Phan*, 2024 NCBC LEXIS 43, at *5 (N.C. Super. Ct. Mar. 8, 2024) (overruling opposition to designation under (a)(1) where alleged breach of fiduciary duty governed in part by Chapter 57D); *Davis v. Davis Funeral Serv., Inc.*, 2022 NCBC LEXIS 70, at *6 (N.C. Super. Ct. June 30, 2022) (overruling opposition to designation under (a)(1) where alleged breach of fiduciary duty governed in part by Chapter 55); *Donald R. Simpson Family L.P. v. Donald R. Simpson Family L.P.*, 2021 NCBC LEXIS 20, at *4–5 (N.C. Super. Ct. Mar. 9, 2021) (overruling opposition to designation under (a)(1) where alleged breaches of fiduciary duty governed in part by Chapter 59).

² The Court notes that the NOD also argues that designation under N.C.G.S. § 7A-45.4(a)(1) is warranted because of the “complex nature of the allegations in the Complaint, requiring the Business Court’s expertise and skilled application of the law.” (NOD 3.) The Court does not find this argument to be a proper or sufficient basis for designation pursuant to the statute or Rule 2.2 of the General Rules of Practice. *See also*, ¶13 *infra*.

9. Ms. Leone opposes designation on multiple grounds, none of which have merit.

10. First, Ms. Leone argues that the case is “a standard Superior Court case involving claims for conversion, breach of fiduciary duty, fraud, breach of contract, abuse of process, unjust enrichment, and punitive damages,” but does not involve material issues governing limited liability companies. (Opp’n 1.) She summarizes her references to Chapter 57D in the Amended Complaint as merely evidence that Ms. Leone is a member of Cleveland, that she did not cease being a member, and her reference in paragraph 9 is immaterial to this action. (Opp’n 2–3.)

11. However, Ms. Leone notably omits from her Opposition that the second claim for relief in this action alleges that Mr. Leone, as a member and manager of a limited liability company of which Ms. Leone was also a member, owed “fiduciary, **statutory**, and common law duties to Plaintiff” and committed multiple breaches of fiduciary duty under Chapter 57D. (Am. Compl. ¶ 108.) As such, at least one claim in the Amended Complaint squarely falls within the law governing limited liability companies. Therefore, Ms. Leone’s argument fails.

12. Additionally, Ms. Leone argues that designation as a mandatory complex business case is improper because “[t]his action contains no novel[,] [e]xtraordinary or complex claims or issues and is similar to other matters routinely filed and handled by our Superior Court judges.” (Opp’n 1.)

13. However, this Court has repeatedly stated that, “while a material issue related to the law governing corporations is required to support designation under

section 7A-45.4(a)(1), that section does not further require that the issue involve a claim of any particular complexity[] . . . or extend beyond the regular jurisdiction of any Superior Court Judge.” *Bui*, 2024 NCBC LEXIS 43, at *7 (quoting *Davis*, 2022 NCBC LEXIS 70, at *6–7). Because the complexity of a case does not have any bearing on whether it has been properly designated as a mandatory complex business case under section 7A-45.4(a)(1), Ms. Leone’s argument in this regard similarly fails.

14. **THEREFORE**, 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 . . . 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 undersigned.

SO ORDERED, this the 16th day of January, 2025.

/s/ Michael L. Robinson
Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases