

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV012598-910

INFRAMARK, LLC,

Plaintiff,

v.

JOSHUA HOLDER and SANFORD
ELECTRICAL CONTRACTORS,
INC.,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the *Determination Order* issued on 6 May 2025 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). (Determination Order, ECF No. 1.)

2. Plaintiff Inframark, LLC (Inframark) filed the Verified Complaint for Injunctive Relief and Damages (the Verified Complaint), thereby initiating this action in Wake County Superior Court on 14 April 2025. (Verified Compl. Injunctive Relief Damages, ECF No. 2 [Verified Compl.]) Inframark asserts claims against Defendants Joshua Holder (Holder) and Sanford Electrical Contractors, Inc. (SEC; and with Holder, the Defendants) for breach of contract as to Holder, tortious interference with contract as to SEC, and unfair and deceptive trade practices under N.C.G.S. § 75-1.1 as to SEC. (See Verified Compl. ¶¶ 59–82.)¹ On 2 May 2025,

¹ The Verified Complaint lists the request for injunctive relief as Count IV. However, this is not a cause of action, but rather a form of relief.

Defendants filed a Notice of Designation (the NOD) with the Wake County Clerk of Superior Court, contending that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(6)². (Notice Designation, ECF No. 12.) The NOD did not include the Verified Complaint or any other attachments and was not served on the Chief Justice of the Supreme Court or the undersigned, as required by N.C.G.S. § 7A-45.4(c). Three days later, on 5 May 2025, Defendants filed an Amended Notice of Designation (the Amended NOD), which is verbatim of the NOD filed on 2 May 2025, other than updates to the Certificate of Service reflecting service on the Chief Justice of the Supreme Court and the undersigned and the attachment of various exhibits, including the Verified Complaint. (Am. Notice of Designation, ECF No. 13 [Am. NOD].)

3. Defendants contend that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(8). (Am. NOD 2.) 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.” N.C.G.S. § 7A-45.4(a)(8).

4. Based on the record before the Court, it appears that this action arises out of an employment dispute. According to Inframark, the company acquired Custom Controls Unlimited, Inc. (CCU), including its rights and interests in all of its employment agreements, in April 2020. (Verified Compl. ¶ 16.) Inframark asserts

² The Court assumes that Defendants intended to reference N.C.G.S. § 7A-45.4(a)(8), instead of (a)(6), as subsection (a)(6) was repealed in 2014. To avoid any confusion, any references herein will be to N.C.G.S. § 7A-45.4(a)(8).

that Holder had previously entered into an employment agreement with CCU on 9 March 2018 and was employed by CCU as a Human Machine Interface (HMI) engineer. (Verified Compl. ¶¶ 13, 15.) Inframark contends that following its acquisition of CCU, it continued to employ Holder as an HMI engineer. (Verified Compl. ¶ 18.) According to Inframark, “[d]uring his employment with Inframark, Holder was provided unique access to Inframark’s confidential information and trade secrets, and he developed substantial relationships with numerous clients through the goodwill established by Inframark.” (Verified Compl. ¶ 23.) Inframark asserts that Holder resigned from the company effective 27 September 2024, and Inframark later learned that Holder is now employed by SEC, who was once a partner of Inframark, but has since become a direct competitor. (Verified Compl. ¶¶ 34, 36.)

5. In support of designation under section 7A-45.4(a)(8), Defendants argue that “[t]his action raises material issues involving trade secrets.” (Am. NOD 4.) Specifically, Defendants point to the Verified Complaint, which alleges that while Holder was employed by Inframark, “[he] had full access to confidential information and trade secrets that could provide him an unfair advantage if leveraged on behalf of a competitor.” (Am. NOD 4.) Inframark asserts that Holder breached his employment agreement, which contained various provisions related to confidential business information and a post-employment non-competition covenant. (See Verified Compl. ¶¶ 19–21.) Defendants conclude that “Plaintiff bases its claims against Defendants in large part on the purported violation of Holder’s obligations to Inframark regarding trade secret information. Litigation of this action will inevitably

involve material issues related to the existence, protection, and misuse of trade secrets.” (NOD 5.) The Court disagrees.

6. At the outset, this case has been improperly designated under section 7A-45.4 for several procedural reasons. First, N.C.G.S. § 7A-45.4 does not provide a procedure for amending a notice of designation. *See Hedgepeth v. Cornblum*, 2025 NCBC LEXIS 29, at *3 (N.C. Super. Ct. Mar. 17, 2025). Additionally, the Business Court provides explicit instructions on its website regarding how to properly effectuate service under N.C.G.S. § 7A-45.4(c).³ “The contemporaneous filing and service requirement set forth in N.C.G.S. § 7A-45.4(c) is mandatory,” and Defendants’ failure to comply with that requirement when they first filed the NOD on 2 May 2025 renders the NOD untimely. *See Hedgepeth v. Cornblum*, 2025 NCBC LEXIS 10, at *3–4 (N.C. Super. Ct. Jan. 31, 2025).

7. The fact pattern in this case, and Defendants’ attempt to designate the case under N.C.G.S. § 7A-45.4(a)(8) as a dispute involving trade secrets, is not unique to the Business Court. Notably, this Court has issued *multiple* opinions in recent years related to designation with very similar fact patterns. *See, e.g., Ferguson Enters., LLC v. Wilkie*, 2024 NCBC LEXIS 24 (N.C. Super. Ct. Feb. 14, 2024) (declining to designate an employment dispute under subsection (a)(8) where the claims put the existence, ownership, or misuse of the company’s confidential information, not its trade secrets, in dispute); *Clearview Ltd., LLC v. Fife*, 2023 NCBC LEXIS 171 (N.C. Super. Ct. Dec. 18, 2023) (declining to designate an employment dispute under

³ *See Designation Procedure*, www.nccourts.gov/courts/business-court/special-information-and-procedures-for-business-court (last visited May 8, 2025).

subsection (a)(8) where the amended complaint alleged only misuse of generalized proprietary information, not trade secrets); *Curo Health Servs., LLC v. Havnaer*, 2023 NCBC LEXIS 6 (N.C. Super. Ct. Jan. 19, 2023) (declining to designate an employment dispute under subsection (a)(8) where the complaint alleged misuse of confidential information, rather than trade secrets); *Auto Club Grp. v. Frosch Int’l Travel LLC*, 2022 NCBC LEXIS 138 (N.C. Super. Ct. Nov. 21, 2022) (declining to designate an employment-related dispute under subsection (a)(8) where plaintiffs chose not to allege a claim that put the existence, ownership, or misuse of alleged trade secrets at issue in their re-filed lawsuit).

8. As this Court has previously explained, “The classic example of a dispute involving trade secrets is one for misappropriation of trade secrets.” *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at *4 (N.C. Super. Ct. June 28, 2019) (citing N.C.G.S. § 66-153). “Although a claim for misappropriation of trade secrets frequently serves as the basis for designation under section 7A-45.4(a)(8), 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.*, 2019 NCBC LEXIS 41, at *4); *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.”). While

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[.]” *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).

9. In the current case, Inframark did not bring a claim for misappropriation of trade secrets. Although the Verified Complaint does include general references to “trade secrets,” (see Verified Compl. ¶¶ 23–24, 61, 66, 68, Prayer for Relief), Inframark’s claims, as pleaded, put “the existence, ownership, or misuse” of its alleged confidential information, not its trade secrets, in dispute. See *Ferguson Enters., LLC*, 2024 NCBC LEXIS 24, at *4; see also *UNOX, Inc.*, 2019 NCBC LEXIS 41, at *4–5. While it is true “[t]he plaintiff is the master of its complaint and free to choose which causes of action it will bring[.] . . . [t]he decision to assert one cause of action and to leave out another is one that carries with it meaningful and lasting consequences[.]” *UNOX, Inc.*, 2019 NCBC LEXIS 41, at *6–7. “[T]his 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.* (citing *Mkt. Am., Inc. v. Doyle*, 2016 NCBC LEXIS 182, at *4 (N.C. Super. Ct. Feb. 29, 2016)). Accordingly, the Court concludes that this action does not involve a

material issue related to disputes involving trade secrets, as required by section 7A-45.4(a)(8).

10. 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.

11. 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.

12. 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 9th day of May, 2025.

/s/ Michael L. Robinson
Michael L. Robinson
Chief Business Court Judge