STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 25CV014253-910
HELIX MECHANICAL, LLC fka ELEMENT MECHANICAL AND REFRIGERATION, LLC; CHRISTOPHER J. CALDWELL; and STEVEN RUSHIN, Plaintiffs, v. ELEMENT SERVICE GROUP MECHANICAL, LLC; ELEMENT SERVICE GROUP, LLC; WESLEY STOUT; and PAUL BOMMER, Defendants.	**ORDER ON DESIGNATION**

1. **THIS MATTER** is before the Court pursuant to the *Determination Order* issued on 22 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). (ECF No. 1.)

2. Plaintiffs Helix Mechanical, LLC, formerly known as Element Mechanical and Refrigeration, LLC (Helix), Christopher J. Caldwell, and Steven Rushin (collectively, the Plaintiffs) filed the Complaint initiating this action in Wake County Superior Court on 25 April 2025, asserting claims against Defendants Element Service Group Mechanical, LLC (ESGM), Element Service Group, LLC, Wesley Stout, and Paul Bommer (collectively, the Defendants) for (i) breach of contract and in the alternative, unjust enrichment/quantum meruit between Helix and ESGM; (ii) fraudulent inducement, Unfair and Deceptive Trade Practices Act violations, and

punitive damages between Helix and the Defendants; and (iii) a declaratory judgment as to ESGM. (*See* Compl. ¶¶ 315–427, ECF No. 2.)

3. On 21 May 2025, Defendants timely filed and served their Notice of Designation (NOD) contending that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(4) and (a)(5). (Notice Designation, ECF No. 5 [NOD].) According to Defendants, this action falls under subsections (a)(4) and (a)(5) because "it includes a 'dispute involving trademark law' and/or a 'dispute involving the ownership' or 'use' of 'intellectual property.' Namely, the Complaint alleges a dispute over the ownership of intellectual property, specifically including a Business sign and logo." (NOD 4.) Defendants note that Plaintiffs do not oppose designation. (NOD 4.)

4. Based on the record before the Court, it appears this case arises out of the alleged breach of an asset purchase agreement for the purchase of a commercial HVAC business. (Compl. ¶ 2.) According to Plaintiffs, during the due diligence period from March to June 2024 that preceded execution of the parties' asset purchase agreement, Defendants allegedly misrepresented client revenue, key client relationships, and other client contracts, and allegedly breached various provisions in the asset purchase agreement while refusing to indemnify the Plaintiffs after the fact. (*See* Compl. ¶¶ 87–206, 225–50.) Included in the alleged breaches of the asset purchase agreement was Defendants' removal of a business sign from Helix's facility. (Compl. ¶ 264.) Defendants allegedly claimed that Helix had no claim to the business logo. (Compl. ¶ 265.) According to Helix, the asset purchase agreement transferred

all intellectual property to Helix, including the sign and logo. (Compl. ¶ 261–63, 266.) Ultimately, Plaintiffs contend that after accumulating months of net losses following the purchase of the business, Helix was shutdown in January 2025. (*See* Compl. ¶¶ 272–300.)

5. Defendants' contention that this case is properly designated under N.C.G.S. § 7A-45.4(a)(4) and (a)(5) is misplaced. Designation under N.C.G.S. § 7A-45.4(a)(4) is proper if the action involves a material issue related to "[d]isputes involving trademark law, including disputes arising under Chapter 80 of the General Statutes." N.C.G.S. § 7A-45.4(a)(4). However, the NOD and the Complaint assert claims that require only a straightforward application of contract law principles as to the asset purchase agreement and do not implicate trademark law under section 7A-45.4(a)(4).[1] *See FootCareMax, LLC v. Edge Mktg. Corp.*, 2021 NCBC LEXIS 18, at *3 (N.C. Super. Ct. Mar. 4, 2021) (declining to designate under subsection (a)(4) where plaintiff's claim required nothing more than a straightforward application of contract law principles and did not implicate trademark law); *Grindstaff v. Knighton*, 2020 NCBC LEXIS 98, at *3–4 (N.C. Super. Ct. Sept. 1, 2020) (declining to designate under subsection (a)(1) where plaintiff's claim for breach of a stock purchase agreement required only application of contract law principles).

6. Defendants' contention that designation is proper under N.C.G.S. § 7A-45.4(a)(5) also fails. For an action to be designated under N.C.G.S. § 7A-45.4(a)(5), the action must involve a material issue related to "[d]isputes involving the

[1] Notably, the word "trademark" is never used in the Complaint.

ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies." N.C.G.S. § 7A-45.4(a)(5). "To qualify for mandatory complex business case designation under [section 7A-45.4(a)(5)], the material issue must relate to a dispute that is 'closely tied to the underlying intellectual property aspects' of the intellectual property at issue." *Pinsight Tech., Inc. v. Driven Brands, Inc.*, 2020 NCBC LEXIS 23, at *5 (N.C. Super. Ct. Feb. 20, 2020) (quoting *Cardiorentis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at *6 (N.C. Super. Ct. June 27, 2018)).

7. According to Defendants, designation is proper under N.C.G.S. § 7A-45.4(a)(5) because "the Complaint alleges a dispute over the ownership of intellectual property, specifically including a Business sign and logo." (NOD 4.) However, a close reading of the Complaint reveals Plaintiffs' claims–which cite to specific provisions in the asset purchase agreement–are focused on an alleged breach of contract with respect to intellectual property (*e.g.*, the business sign and logo), (*see* Compl. ¶¶ 261–267), and are not "closely tied to the underlying intellectual property aspects of the intellectual property at issue." *Pinsight Tech., Inc.*, 2020 NCBC LEXIS 23, at *5. "[W]here, as here, the material issues in dispute are closely tied to something other than the underlying intellectual property involved, such as contract. . . the case does not fall within the limits of section 7A-45.4(a)(5)." *ECA Gen. P'ship, LLC v. First Bank*, 2025 NCBC LEXIS 16, at *5 (N.C. Super. Ct. Feb. 18, 2025) (citing *Health*

Logix, LLC v. US Radiology Specialists, Inc., 2024 NCBC LEXIS 138, at *5–6 (N.C. Super. Ct. Oct. 18, 2024)) (concluding designation under subsection (a)(5) was improper where claims were straightforward contract claims that could be resolved solely by application of contract law principles and did not require an examination of the underlying intellectual property characteristics of plaintiff's software) (compiling cases). Accordingly, this action is not properly designated as a mandatory complex business case under N.C.G.S. § 7A-45.4(a)(5).

8. 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) 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 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 designation as a Rule 2.1 exceptional case may be pursued with the Senior Resident Superior Court Judge if deemed appropriate.

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 N.C.G.S. § 7A-45.4.

SO ORDERED, this the 29th day of May, 2025.

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