

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV001348-590

THAO PHUONG BUI,
Plaintiff,

v.

KHANH NGOC PHAN and GOLDEN
ROOSTER, LLC,
Defendants.

**ORDER ON DEFENDANTS'
OPPOSITION TO NOTICE OF
DESIGNATION**

1. **THIS MATTER** is before the Court on Defendants Khanh Ngoc Phan (“Phan”) and Golden Rooster, LLC’s (“Golden Rooster”) (together, the “Defendants”) Opposition to Notice of Designation (the “Opposition”). (Opp’n Notice Designation [hereinafter “Opp’n”], ECF No. 18.)

2. Plaintiff Thao Phuong Bui (“Bui”) initiated this action on 11 January 2024, asserting claims against Defendants for declaratory judgment and breach of Golden Rooster’s Operating Agreement. (See Verified Compl. ¶¶ 37–42 [hereinafter “Compl.”], ECF No. 2.) Bui timely filed a Notice of Designation (the “First NOD”) that same day. (Notice Designation [hereinafter “1st NOD”], ECF No. 3.)

3. On 12 January 2024, the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, issued a Determination Order directing the undersigned to determine whether the action was properly designated as a mandatory complex business case in accord with N.C.G.S. § 7A-45.4(a). (Determination Order, ECF No. 1.)

4. In the First NOD, Bui contended that designation as a mandatory complex business case was proper under N.C.G.S. § 7A-45.4(a)(1). (*See* 1st NOD 1.) However, in an order dated 12 January 2024, this Court concluded that, based on the allegations in the Verified Complaint, “resolution of Bui’s asserted claims requires only a straightforward application of contract law principles and does not implicate the law governing limited liability companies under N.C.G.S. § 7A-45.4(a)(1).” (Order Designation ¶ 6, ECF No. 4.) As a result, the case was not designated as a mandatory complex business case and proceeded on the civil docket of Judicial District 26. (*See* Order Designation ¶ 8.)

5. Defendants filed their Answer and Counterclaim (the “Counterclaims”) on 9 February 2024, asserting counterclaims against Bui for breach of fiduciary duty and involuntary withdrawal. (*See* Answer and Countercl. ¶¶ 37–47 [hereinafter “Countercls.”], ECF No. 7.) Bui timely filed a second Notice of Designation (the “Second NOD”) on 7 March 2024, again asserting that this action involves a dispute under section 7A-45.4(a)(1), but this time based on Defendants’ Counterclaims. (Notice Designation 1 [hereinafter “2nd NOD”], ECF No. 15.) Less than three hours later, Defendants filed their Opposition, contending that designation under this section remains improper.¹ (*See* Opp’n 1.)

6. On 8 March 2024, the Honorable Paul Newby designated this case as a mandatory complex business case, (Designation Order, ECF No. 16), and the

¹ Although this matter had not yet been designated as a mandatory complex business case, section 7A-45.4(e) permits a party to “file and serve an opposition to the designation of the action as a mandatory complex business case[]” “[w]ithin 30 days after service of the Notice of Designation[.]”

undersigned assigned this matter to Adam M. Conrad, Special Superior Court Judge for Complex Business Cases, (Assignment Order, ECF No. 17).

7. Later that day, Bui filed her Response to Opposition (the “Response”). (Pl.’s Resp. Opp’n [hereinafter “Resp.”], ECF No. 20.) The matter is now ripe for determination.

8. This action arises out of a dispute between Bui and Phan, who are 50/50 member-managers of Golden Rooster. (See Compl. ¶¶ 1, 12.) In the spring of 2023, Bui alleges that she decided to end her business relationship with Phan, (Compl. ¶¶ 1, 16), and Phan elected to buy Bui’s membership interest in Golden Rooster, (Compl. ¶ 17). However, during the buyout negotiation process, Bui alleges that Phan took several unilateral actions on behalf of Golden Rooster in violation of the Operating Agreement. (See Compl. ¶¶ 2, 21–36.) In response, Phan alleges that Bui breached her fiduciary duties of due care and good faith and fair dealing by sending Phan “threatening emails” and “attempt[ing] to withdraw approximately \$68,000 from the LLC[.]” (Countercls. ¶¶ 42–43.) Phan further alleges that Bui’s breaches constitute an involuntary withdrawal under Golden Rooster’s Operating Agreement. (See Countercls. ¶¶ 45–46.)

9. 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).

10. In her Second NOD, Bui again seeks mandatory complex business case designation pursuant to N.C.G.S. § 7A-45.4(a)(1). (See 2nd 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.”

11. Bui argues that designation is proper under section 7A-45.4(a)(1) because “Defendants’ counterclaims allege that Bui breached fiduciary duties to Phan and Golden Rooster, LLC, that Bui owed as a managing-member of the Company, [and] which duties are governed at least in material part by Chapter 57D of the N.C. General Statutes.” (2nd NOD 1–2 (citing Countercls. ¶¶ 37–47).)

12. The Court agrees. The Court first notes that “a party may use [a] counterclaim as the basis for a notice of designation.” *Composite Fabrics of Am., LLC v. Edge Structural Composites, Inc.*, 2016 NCBC LEXIS 11, at *8 (N.C. Super. Ct. Feb. 5, 2016). Here, Defendants’ Counterclaims are “the first pleading to raise a material issue that falls within a category that qualifies for mandatory designation under section 7A-45.4(a).” *Id.* at *9. Defendants specifically allege that Bui has breached her statutory duties as a managing-member of Golden Rooster under N.C.G.S. § 57D-3-21(b). (Countercls. ¶¶ 38–39, 43.) 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., 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 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).

13. Defendants oppose designation on two grounds, neither of which has merit.

14. First, Defendants argue that the Counterclaims “include[] no description of new material facts that are significant enough to warrant a designation as an exceptional case that requires a judge to possess ‘special areas of expertise’ as described under Rule 2.1(b) [of the General Rules of Practice for the Superior and District Courts (the “General Rules”)].” (Opp’n 1.)

15. However, Defendants’ Opposition misreads both this Court’s 12 January 2024 Order on Designation and Bui’s Second NOD. First, the Order on Designation stated that “the parties may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Superior Court Judge[]” *or* “any party [may] otherwise seek designation of this matter as a mandatory complex business case as may be provided under section 7A-45.4.” (Order Designation ¶¶ 8–9.) Here, as noted in her Response, Bui seeks designation under N.C.G.S. § 7A-45.4(a)(1) rather than under Rule 2.1 of

the General Rules. (See 2nd NOD 1; Resp. 2–3.) This argument is therefore without a factual basis. *Cf. N.C. ex rel. Stein v. Bowen*, 2022 NCBC LEXIS 2, at *3 (N.C. Super. Ct. Jan. 20, 2022) (overruling opposition to designation when opposition contested designation under 7A-45.4(a) but matter was designated pursuant to Rule 2.1 of the General Rules).

16. Defendants’ second argument fares no better. Defendants argue that designation as a mandatory complex business case is improper because “[t]his case is not complex or exceptional[,]” and the dispute involves only “basic contract issues within the scope of experience of any trial judge.” (Opp’n 2.)

17. But 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.” *Davis*, 2022 NCBC LEXIS 70, at *6–7 (cleaned up) (collecting cases). 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), Defendants’ second argument fails.

18. **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 Adam M. Conrad.

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

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