

STATE OF NORTH CAROLINA
WATAUGA COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 128

MICHAEL BRENNER; EDWIN
CUMMER; JACK ELLEDGE;
DOUGLAS GOODENOUGH;
THOMAS J.GOSDECK; ASHLEY
HOGE; WOODY HUBBARD;
RICHARD KAUFMAN; TIMOTHY
MORSE; ROBERT PRAGER; MARK
RICKS; WILLIAM WALKER; and
STEPHEN WEISHOFF,

Plaintiffs,

v.

HOUND EARS CLUB, INC.,

Defendant.

**ORDER ON PLAINTIFFS'
OPPOSITION TO DEFENDANT'S
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 Plaintiffs' Opposition to Defendant Hound Ears Club, Inc.'s (the "Club") Notice of Designation of Action as Mandatory Complex Business Case Under N.C.G.S. § 7A-45.4 (the "Opposition"). (Pls.' Opp'n Def.'s Notice Designation Action Mandatory Complex Bus. Case Under N.C.G.S. § 7A-45.4 [hereinafter "Opp'n"], ECF No. 7.)

2. Plaintiffs initiated this action on 23 March 2022, asserting claims against the Club for breach of the Club's bylaws and declaratory judgment. (*See* Compl. ¶¶ 46–55, ECF No. 3.)

3. The Club timely filed a Notice of Designation of Action as Mandatory Complex Business Case Under N.C.G.S. § 7A-45.4 (the "NOD") on 22 April 2022, asserting that this action involves a dispute under section 7A-45.4(a)(1). (Notice

Designation Action Mandatory Complex Bus. Case Under N.C.G.S. § 7A-45.4 at 1 [hereinafter “NOD”], ECF No. 4.)

4. On 27 April 2022, 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 undersigned, (Assignment Order, ECF No. 2).

5. Plaintiffs timely filed the Opposition on 10 May 2022, contending that designation of this action as a mandatory complex business case pursuant to section 7A-45.4(a)(1) is not proper. (See Opp’n ¶¶ 4–9.) The Club filed its Response to Plaintiffs’ Opposition (the “Response”) on 25 May 2022. (Resp. Pls.’ Opp’n Def.’s Notice Designation Action Mandatory Complex Bus. Case [hereinafter “Resp.”], ECF No.11.) 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 Issues to Target Corp. & Affiliates*, 2018 NCBC LEXIS 185, at *3 (N.C. Super. Ct. Dec. 4, 2018).

7. “For a case to be certified 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 dispute over the imposition of an additional assessment by the Club on certain of its equity members. Plaintiffs allege that the Club is a North Carolina non-profit corporation that owns and operates both a gated subdivision and private club with various amenities. (*See* Compl. ¶¶ 17–18.) According to the Complaint, the Club is required to provide certain services to the residents of the gated subdivision and may collect fees and assessments from the residents to pay for those services. (*See* Compl. ¶¶ 34–38.) Plaintiffs also allege that the Club sells different classes of membership in the private club to both residents and non-residents of the gated subdivision and assesses “varying degrees of operating expenses and capital assessments” depending on the type of membership. (*See* Compl. ¶¶ 25–28.)

10. Plaintiffs allege that the equity members of the Club, which include both residents and non-residents of the gated subdivision, elect the Club’s board of directors. (*See* Compl. ¶¶ 29–30.) Plaintiffs further allege that the Club’s board of directors implemented a new fee structure that improperly created three new membership classes, “Resident Members, Non-Resident Members, and Non-Member

Property Owners,” and imposed an additional assessment only on the “Non-Resident” equity members in violation of the Club’s bylaws. (*See* Compl. ¶¶ 39–42.)

11. Plaintiffs argue that designation is improper under section 7A-45.4(a)(1) because the case deals “solely with the interpretation of the [Club’s] bylaws” and the “regulation and management of the company[.]” (Opp’n ¶¶ 4, 9.) Plaintiffs additionally contend that the “Complaint does not set forth any causes of action involving violations of the law or causes of action relating to the Nonprofit Corporation Act contained in Chapter 55A[.]” (Opp’n ¶ 5.)

12. The Court disagrees. The crux of Plaintiffs’ allegations is that the Club’s board of directors “lacked any authority to create a new membership class and payment structure” or “change current equity membership status.” (Compl. ¶¶ 49–50.) Rather than base their claims and requested relief solely on the Club’s bylaws, however, Plaintiffs seek through their declaratory judgment claim not only certain undescribed “further relief” in addition to a declaratory judgment concerning the “legal status of parties under any purported contracts or writings,” (Compl. ¶ 54), but also allege that an actual controversy exists “with respect to the Club’s by-laws *and* whether the board of directors has the power and/or authority to [take certain challenged corporate action,]” (Compl. ¶ 55 (emphasis added); *see also* Prayer for Relief ¶ 3). Because Plaintiffs have drafted their Complaint in such a way to invoke an award of relief under Chapter 55A, the Complaint raises a material issue related to a dispute governing the law of corporations.

13. For the reasons noted above, Plaintiffs' contention challenging designation of this action as a mandatory complex business case under section 7A-45.4(a)(1) is without merit and the Opposition shall therefore be overruled.

14. **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” and shall proceed as a mandatory complex business case before the undersigned.

SO ORDERED, this the 26th day of May, 2022.

/s/ Louis A. Bledsoe, III

Louis A. Bledsoe, III
Chief Business Court Judge