

STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 707

RAVENSAFE, LLC,

Plaintiff,

v.

NEXUS TECHNOLOGIES, INC., a
North Carolina Corporation;
EDWARD PRATHER; and EAST
WEST MANUFACTURING, LLC, a
Georgia Limited Liability Company,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 23 June 2022 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).

2. This case arises out of a failed joint venture. Plaintiff RavenSafe, LLC (“RavenSafe”), Defendant Nexus Technologies, Inc. (“Nexus”), Defendant Edward Prather (“Prather”)—Chief Executive Officer and controlling shareholder of Nexus—and several other parties entered into a settlement agreement to resolve prior disputes in July 2021. (*See* Am. Compl. ¶¶ 3, 7.) Pursuant to the settlement agreement, “RavenSafe, Nexus, and any other necessary parties agreed to begin negotiating in good faith the creation of a joint venture entity to hold ownership of disputed patents related to a renewable portable energy device[.]” (Am. Compl. ¶ 8.) As part of these negotiations, Nexus disclosed that, in addition to cashflow problems

and “other substantial financial obligations,” it had executed a 2017 loan agreement with a bank that was secured by its assets (the “Bank Loan”). (Am. Compl. ¶¶ 12–13.) In furtherance of the proposed joint venture, RavenSafe assisted Nexus in applying for a new SBA loan and obtaining an additional loan from a third-party lender (the “Bridge Loan”) to provide Nexus with “working capital and bridge financing” until the SBA loan was approved. (Am. Compl. ¶¶ 14–21.)

3. However, before Prather completed the necessary paperwork on behalf of Nexus for the SBA loan and after the Bridge Loan became due and payable, Prather and Nexus negotiated with Defendant East West Manufacturing, LLC (“East West”) to purchase the Bank Loan in January 2022. (*See* Am. Compl. ¶¶ 20–25.) Shortly thereafter, East West foreclosed on the Bank Loan “by accepting all or substantially all of the assets of Nexus in satisfaction of the collateralized debts.” (Am. Compl. ¶ 39.) As the assignee of the third-party Bridge Loan, (Am. Compl. ¶ 46), RavenSafe now seeks relief against Defendants for the failed joint venture and unpaid Bridge Loan.

4. RavenSafe filed the Complaint initiating this action in Buncombe County Superior Court on 24 February 2022, asserting a claim against Nexus for breach of contract and claims against Nexus and Prather for fraud, breach of fiduciary duty, constructive fraud, unfair and deceptive trade practices, and punitive damages. (*See* Compl. ¶¶ 25–74.) RavenSafe filed an Amended Complaint on 13 April 2022, asserting (i) a claim against Nexus for breach of contract; (ii) claims against Nexus and Prather for breach of contract, fraud, breach of fiduciary duty, constructive fraud,

and unfair and deceptive trade practices; (iii) claims against East West for tortious interference with contract and tortious interference with prospective economic advantage; and (iv) claims against all Defendants for voidable transfer under the Uniform Voidable Transactions Act, civil conspiracy, unjust enrichment/quantum meruit, and punitive damages. (See Am. Compl. ¶¶ 50–215.)

5. East West accepted service of the Amended Complaint on 24 May 2022 and timely filed the Notice of Designation of Action as Mandatory Complex Business Case (the “NOD”) on 21 June 2022, contending that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(3) and (5). (See Notice Designation Action Mandatory Complex Bus. Case 1–3 [hereinafter “NOD”].)

A. Section 7A-45.4(a)(3)

6. Designation under section 7A-45.4(a)(3) is proper if the action involves a material issue related to “[d]isputes involving antitrust law, including disputes arising under Chapter 75 of the General Statutes that do not arise solely under G.S. 75-1.1 or Article 2 of Chapter 75 of the General Statutes.”

7. In support of designation under this section, East West argues that the Amended Complaint’s “claims of civil conspiracy, tortious interference with contract, and tortious interference with prospective economic advantage involve allegations of conduct covered under N.C.[G.S.] §§ 75-1 and 75-2.” (NOD 6.) East West additionally contends that RavenSafe “asserts that negotiations and agreements between the Defendants following notice of [RavenSafe’s] business relationship and proposed joint venture with Nexus and Prather were anticompetitive acts designed to give East

West an economic advantage at [RavenSafe's] expense.” (NOD 6 (citing Am. Compl. ¶¶ 147, 170, 196–97).) The Court disagrees.

8. Although East West contends that the Amended Complaint contains allegations that the Defendants were engaged in “anticompetitive acts,” RavenSafe alleges only that East West “gained an economic advantage at [RavenSafe's] expense[,]” (Am. Compl. ¶¶ 170, 197), and “intentionally robbed [RavenSafe] of the economic opportunity to design, manufacture[,] and sell certain products . . . pursuant to the proposed . . . venture[,]” (Am. Compl. ¶ 196), which support RavenSafe's tortious interference with contract and tortious interference with prospective economic advantage claims, respectively. Furthermore, the allegations supporting the civil conspiracy and unfair and deceptive trade practices claims derive from those same allegations. (*Compare* Am. Compl. ¶¶ 107–12, 140–53; *with* ¶¶ 154–98.) Such claims sound in tort, not antitrust. Because RavenSafe has not alleged a Chapter 75 claim other than one under section 75-1.1 or otherwise invoked state or federal antitrust law, (*see generally* Am. Compl.), designation under section 7A-45.4(a)(3) is improper. *See Vertical Crop Consultants, Inc. v. Brick St. Farms LLC*, 2021 NCBC LEXIS 3, at *3 (N.C. Super. Ct. Jan. 12, 2021) (declining to designate under (a)(3) for similar reasons).

B. Section 7A-45.4(a)(5)

9. Designation under section 7A-45.4(a)(5) is proper if the action involves a material issue related to “[d]isputes involving the 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.” “[T]he material issue must relate to a dispute that is closely tied to the underlying intellectual property aspects of the intellectual property at issue” to qualify for mandatory complex business case designation under this section. *Knudson v. Lenovo Inc.*, 2022 NCBC LEXIS 11, at *2 (N.C. Super. Ct. Feb. 15, 2022) (cleaned up).

10. In support of designation under section 7A-45.4(a)(5), East West contends that the allegations in the Amended Complaint “center upon [RavenSafe’s] attempt to participate in a joint venture with Nexus for the ownership and use of Nexus’ intellectual property” such that “[w]hether [RavenSafe] had any right to participate in the potential use and ownership of that intellectual property is a material issue.” (NOD 5.) East West additionally argues that RavenSafe’s “[]voidable transfer claim against East West is based upon allegations about the value of the same intellectual property and raises questions about whether East West may continue to own those intellectual property assets.” (NOD 5.)

11. A close reading of the Amended Complaint, however, reveals that RavenSafe’s claims are focused on Nexus and Prather’s alleged breach of the settlement agreement by engaging in allegedly fraudulent conduct rather than on the underlying intellectual property aspects of the renewable portable energy device as required by section 7A-45.4(a)(5). *See Knudson*, 2022 NCBC LEXIS 11, at *3 (declining to designate under (a)(5) where claims focused on defendant’s allegedly fraudulent conduct rather than the underlying intellectual property aspects of a

patent development program); *FootCareMax, LLC v. Edge Mktg. Corp.*, 2021 NCBC LEXIS 18, at *5 (N.C. Super. Ct. Mar. 4, 2021) (concluding that designation under (a)(5) was improper where resolution of contract claims did not turn on the intellectual property characteristics of trademarks and internet domains).

12. 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.

13. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 28 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 any party may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Judge.

14. The Court's ruling is without prejudice to the right of any party to otherwise seek designation of this matter as a mandatory complex business case as provided under section 7A-45.4.

SO ORDERED, this the 27th day of June, 2022.

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