

STATE OF NORTH CAROLINA  
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 3924

JAMES R. TALLEY,

Plaintiff,

v.

EARTH FARE 2020, INC. and  
DENNIS HULSING,

Defendants.

**ORDER ON DEFENDANTS'  
OBJECTION TO PLAINTIFF'S  
DESIGNATION OF THIS MATTER AS  
MANDATORY COMPLEX BUSINESS  
CASE**

1. **THIS MATTER** is before the Court on Defendants Earth Fare 2020, Inc. (“Earth Fare”) and Dennis Hulsing’s (“Hulsing”) (together, the “Defendants”) Objection to Plaintiff James R. Talley’s (“Talley”) Designation of this Matter as [a] Mandatory Complex Business Case (the “Objection”) in the above-captioned case. (Defs.’ Obj. Pl.’s Designation Mandatory Complex Bus. Case [hereinafter “Obj.”], ECF No. 8.)

2. Talley initiated this action on 20 October 2022, asserting claims against Defendants for declaratory judgment, breach of contract, violations of the North Carolina Wage and Hour Act, and unjust enrichment. (*See* Compl. ¶¶ 37–60, ECF No. 3.) Talley contemporaneously filed a Notice of Designation (the “NOD”), asserting that this action involves a dispute under N.C.G.S. § 7A-45.4(a)(2). (Notice Designation 1 [hereinafter “NOD”], ECF No. 4.)

3. On 24 October 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 the undersigned thereafter

assigned this case to the Honorable Michael L. Robinson, Special Superior Court Judge for Complex Business Cases, (Assignment Order, ECF No. 2).

4. Defendants timely filed the Objection on 28 November 2022, contending that designation of this action as a mandatory complex business case is not proper under section 7A-45.4(a)(2). (See Obj. ¶¶ 3–5.) Talley timely filed his Response to Objection (the “Response”) on 9 December 2022. (Pl.’s Resp. Obj. [hereinafter “Resp.”], ECF No. 9.) The matter is now ripe for determination.

5. 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).

6. “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).

7. Designation under section 7A-45.4(a)(2) is proper if the action involves a material issue related to “[d]isputes involving securities, including disputes arising under Chapter 78A of the General Statutes.”

8. This case arises out of a dispute between two former business partners. When Earth Fare, a specialty supermarket, filed for bankruptcy protection in

February 2020, Talley, one of its co-founders, alleges that he organized a team of former executives and investors, including Hulsing, to revive the company. (See Compl. ¶¶ 8, 12–16.) Hulsing was named CEO of Earth Fair and Talley served as Chief Sustainability Officer. (See Compl. ¶¶ 19, 22.) Talley alleges that his compensation included an equity stake in Earth Fare (the “Agreement”), consisting of “(a) stock equal to a one percent ownership interest in Earth Fare 2020 undiluted; (b) a commission equal to two percent of the major investor funds raised by [Talley] as capital for Defendants; (c) a commission equal to five percent of the local investor funds raised by [Talley] as capital for Defendants; and (d) stock options to purchase two percent of Earth Fare 2020 at a discount.” (Compl. ¶¶ 19–20.) Talley alleges that Hulsing failed to comply with the terms of the Agreement, leading Talley to resign from Earth Fare and initiate the instant action. (See Compl. ¶¶ 20, 26–30, 33–36.)

9. Defendants contend that designation pursuant to section 7A-45.4(a)(2) is improper because Talley’s “asserted claims require nothing more than a straightforward application of contract principles for their resolution[.]” (Obj. 4 (quoting *Queler v. Pridnia*, 2021 NCBC LEXIS 25, at \*5 (N.C. Super. Ct. Mar. 24, 2021)).) Rather than centered “at the core of this action[.]” Defendants argue that the securities at issue are merely tangential to the Complaint’s allegations, which sound in contract. (Obj. 4.)

10. The Court disagrees. Although Talley’s claims stem from the alleged breach of the terms of the Agreement, Talley correctly notes that “[w]hile the Court has

routinely refused to designate cases under 7A-45.4(a)(1) where . . . the dispute involves a straightforward application of contract principles, . . . subsection (a)(1) designation is for disputes involving ‘the law governing’ certain business entities whereas no such ‘law governing’ requirement appears in subsection (a)(2).” (Resp. 6 (third alteration in original) (quoting *Alessi v. Techcom, Inc.*, 2022 NCBC LEXIS 34, at \*3 (N.C. Super. Ct. Apr. 25, 2022)).)

11. The claims asserted here will require the Court to determine whether Talley was entitled to Earth Fare stock and stock options and, if so, under what circumstances and whether he has received them. As a result, the “acquisition, disposition, transfer, existence, or characteristics of the securities” are at issue in this matter, *Queler*, 2021 NCBC LEXIS 25, at \* 5, making designation under section 7A-45.4(a)(2) proper. See *Alessi*, 2022 NCBC LEXIS 34, at \*3 (concluding designation under subsection (a)(2) proper where declaratory judgment and breach of contract claims required a determination of whether plaintiff was entitled to securities); *Munroe v. Ingersoll-Rand Co.*, 2020 NCBC LEXIS 130, at \*2–3 (N.C. Super. Ct. Nov. 3, 2020) (holding designation under subsection (a)(2) proper where disposition of security instruments carried “the required nexus for designation[ ]”). *But see Queler*, 2021 NCBC LEXIS 25, at \*5 (declining to designate under subsection (a)(2) when dispute involved the alleged failure to pay commissions based on the sale of securities rather than the securities themselves).

12. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** that the Objection is **OVERRULED**. This action involves a material issue

related to “[d]isputes involving securities, including disputes arising under Chapter 78A of the General Statutes” as required by section 7A-45.4(a)(2) and shall proceed as a mandatory complex business case before the Honorable Michael L. Robinson.

**SO ORDERED**, this the 12th day of December, 2022.

/s/ Louis A. Bledsoe, III

Louis A. Bledsoe, III  
Chief Business Court Judge