

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
24CV000681-910

FERGUSON ENTERPRISES, LLC,  
Plaintiff,

v.

DAVID WILKIE; CRAIG WICKER;  
JEFFREY WARD; ROBERT WARD;  
NICHOLAS LUBISCHER; SCOTT  
DIXON II; and MARK PEAKE,  
Defendants.

**ORDER ON DESIGNATION**

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 13 February 2024 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). (Determination Order, ECF No. 1.)

2. Plaintiff Ferguson Enterprises, LLC (“Ferguson”) filed the Complaint initiating this action in Wake County Superior Court on 9 January 2024, asserting claims against all Defendants for violation of the North Carolina Unfair and Deceptive Trade Practices Act, tortious interference with business relations, and tortious interference with prospective economic advantage, and ten claims for breach of various contracts against the Defendants individually. (See Compl. ¶¶ 96–212, ECF No. 2.) Counsel for Defendants accepted service of the Complaint on 16 January 2024, (see Acceptance Serv., ECF No. 3), and timely filed a Notice of Designation (the

“NOD”) on 12 February 2024, (*see* Notice Designation [hereinafter “NOD”], ECF No. 4).

3. Defendants contend that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(8). Designation under section 7A-45.4(a)(8) is proper if the action involves a material issue related to “[d]isputes involving trade secrets, including disputes arising under Article 24 of Chapter 66 of the General Statutes.”

4. This case arises out of an employment dispute. Ferguson acquired Kennedy Culvert & Supply Company and certain of its corporate affiliates (“Kennedy”) in July 2024. (*See* Compl. ¶¶ 2, 28.) Defendants were employees of Kennedy’s Raleigh, North Carolina branch at the time of the acquisition, (*see* Compl. ¶¶ 28–29), but less than a month later, Defendants “resigned en masse to join Ferguson’s direct competitor in the waterworks industry, Consolidated Pipe & Supply Company, Inc. (“CPS”)[,]” (Compl. ¶ 3). Prior to their departure, however, Ferguson alleges that Defendants used personal hard drives or other electronic storage devices to copy thousands of files containing Ferguson’s confidential information and subsequently used that information to divert customers away from Ferguson to CPS. (*See* Compl. ¶¶ 4–5, 8, 10–11, 38, 42, 46, 50, 54, 58, 72–92.) This lawsuit followed.

5. In support of designation under section 7A-45.4(a)(8), Defendants argue that the “bases for [Ferguson’s] claims include numerous express allegations of the unlawful use and retention of ‘trade secrets.’ ” (NOD 4.) Specifically, Defendants contend that the various agreements that Defendants allegedly breached “prohibit

departing employees from taking ‘confidential information’ and ‘trade secrets’ of a ‘proprietary nature’ prior to their departure[,]” and that Defendants’ alleged unlawful use of Ferguson’s trade secrets “provides an unfair advantage to Defendants and [CPS] by steering business and sales strategies.” (NOD 4.)

6. The Court disagrees. “Although a claim for misappropriation of trade secrets frequently serves as the basis for designation under section 7A-45.4(a)(8), other types of claims . . . may also qualify for designation under this section ‘when the complaint puts the existence, ownership, or misuse of alleged trade secrets squarely in dispute.’” *Sys. Depot, Inc. v. Clement*, 2022 NCBC LEXIS 48, at \*3 (N.C. Super. Ct. May 25, 2022) (quoting *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at \*4 (N.C. Super. Ct. June 28, 2019)); see also *Cornerstone Health Care, P.A. v. Moore*, 2015 NCBC LEXIS 65, at \*7 (N.C. Super. Ct. June 22, 2015) (“[W]hether a case involves the requisite disputes falling within the statutory requirements has not been historically confined to the actual causes of action asserted in a complaint, but has also examined the underlying factual allegations.”). And while designation under this section does not depend on “the appearance or absence of magic words—such as ‘trade secret’—in the complaint[,]” *UNOX, Inc.*, 2019 NCBC LEXIS 41, at \*7, this Court “has never construed section 7A-45.4(a)(8) so broadly as to permit designation of an action as a mandatory complex business case based on claims involving generalized confidential or proprietary information,” *Sys. Depot, Inc.*, 2022 NCBC LEXIS 48, at \*3–4 (cleaned up).

7. Here, there is no claim for misappropriation of trade secrets. And while the Complaint does include references to “trade secrets,” (see Compl. ¶¶ 61, 127, 136, 145, 154, 207), Ferguson’s claims, as pleaded, put “the existence, ownership, or misuse” of Ferguson’s alleged *confidential information*, not its trade secrets, “squarely in dispute[.]” *UNOX, Inc.*, 2019 NCBC LEXIS 41, at \*4. Because “[t]he plaintiff is the master of its complaint and free to choose which causes of action it will bring[.] . . . this Court will not designate a case under section 7A-45.4 ‘merely because the pleadings include factual allegations that arguably might touch upon facts that, when read together with other allegations, might have been a basis for a claim that the plaintiff chose not to allege.’ ” *Id.* at \*6–7 (citation omitted). Accordingly, the Court concludes that this action does not involve a material issue related to disputes involving trade secrets, as required by section 7A-45.4(a)(8). See, e.g., *Auto Club Grp. v. Frosch Int’l Travel LLC*, 2022 NCBC LEXIS 138, at \*6–7 (N.C. Super. Ct. Nov. 21, 2022) (declining to designate under (a)(8) where plaintiffs chose not to allege a claim that put the existence, ownership, or misuse of alleged trade secrets at issue in their re-filed lawsuit).

8. 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.

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 the parties may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Superior Court Judge.

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 section 7A-45.4.

**SO ORDERED**, this the 14th day of February, 2024.

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