

STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23CV040664-590

DESIGN GAPS, INC.; DAVID  
GLOVER, Individually and Officer of  
Design Gaps, Inc.; and EVA  
GLOVER, Officer of Design Gaps,  
Inc.,

Plaintiffs,

v.

JOCELYN HALL, Individually and  
Owner Hall Interiors, LLC; HALL  
INTERIORS, LLC; PETERS  
CUSTOM HOMES, INC.;  
NICHOLAS PETERS, Individually  
and Owner Peters Custom Homes,  
Inc.; PETERS CUSTOM DESIGN,  
LLC d/b/a EMERALD & OAK  
DESIGN STUDIO; and MIRIAM  
PETERS, Individually and Owner  
and Manager Peters Custom Design,  
LLC,

Defendants.

**ORDER ON PLAINTIFFS'  
OPPOSITION TO DESIGNATION AS A  
MANDATORY COMPLEX BUSINESS  
CASE**

1. **THIS MATTER** is before the Court on Plaintiffs' Opposition to Designation as a Mandatory Complex Business Case (the "Opposition"). (Pls' Opp'n Designation Mandatory Complex Bus. Case [hereinafter "Opp'n"], ECF No. 10.)

2. Plaintiffs initiated this action on 20 December 2023, asserting claims (i) by Plaintiff Design Gaps, Inc. ("Design Gaps") against Defendant Jocelyn Hall ("Hall") for breach of contract and breach of fiduciary duty; against Defendants Nicholas Peters, Peters Custom Homes, Inc., Miriam Peters, and Peters Custom Design, LLC (collectively, the "Peters Defendants") for tortious interference with contract; and against all Defendants for unfair and deceptive trade practices; (ii) by all Plaintiffs

against Hall for fraud, embezzlement, and constructive fraud; and (iii) by all Plaintiffs against all Defendants for misappropriation of trade secrets under the North Carolina Trade Secrets Protection Act. (*See* Compl. ¶¶ 60–117, ECF No. 3.)

3. The Peters Defendants accepted service of the Complaint effective as of 11 January 2024, (*see* Acceptance Serv., ECF No. 4), and timely filed a Notice of Designation as a Mandatory Complex Business Case (the “NOD”) on 18 January 2024, asserting that this action involves a dispute under N.C.G.S. §§ 7A-45.4(a)(4), (5), and (8), (*see* Notice Designation Mandatory Complex Bus. Case 2 [hereinafter “NOD”], ECF No. 5).

4. On 19 January 2024, 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 Honorable Adam M. Conrad, Special Superior Court Judge for Complex Business Cases, (Assignment Order, ECF No. 2).

5. Plaintiffs timely filed the Opposition on 20 February 2024, contending that designation of this action as a mandatory complex business case is not proper under sections 7A-45.4(a)(4), (5), (8), or (h). (*See* Opp’n 6–11.) The Court has concluded that a response is unnecessary, so the matter is now ripe for determination.

6. This case arises out of a dispute between Design Gaps and its former employee, Hall. Plaintiffs allege that, during her employment with Design Gaps, Hall breached both the non-compete and non-solicitation provisions of her 2018 Business Development Agreement (the “Agreement”) with Design Gaps by forming Defendant

Hall Interiors, LLC to “misrepresent[] to . . . prospective clients and clients of Design Gaps[] that Design Gaps brokered its equipment through Hall Interiors[.]” (Compl. ¶ 93.) According to the Complaint, Hall would then “fraudulently invoice and/or have money directly paid to [her] for this equipment and/or services[.]” (Compl. ¶ 94; *see also* ¶¶ 30–35, 65.) Plaintiffs further allege that Hall breached the non-compete provision when she left Design Gaps in June 2021 to work for a direct competitor, Defendant Peters Custom Design, LLC, and shared Design Gaps’ trade secrets, specifically Plaintiffs’ customer lists, pricing formulas, and bidding formulas, with the Peters Defendants without Plaintiffs’ consent. (*See* Compl. ¶¶ 16, 28–29, 66–75.) Plaintiffs also bring a cause of action for unfair and deceptive trade practices based on common law infringement of unregistered trade dress, alleging that Defendants have “misrepresented and continue to misrepresent the true origin and source of cabinet and closet designs created and revised by Plaintiff [David] Glover[.]” (“Glover”). (Compl. ¶ 43; *see also* ¶¶ 44–59, 83–86.)

7. 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).

8. The Peters Defendants sought mandatory complex business case designation pursuant to N.C.G.S. §§ 7A-45.4(a)(4), (5), and (8). (NOD 2.) Designation under section 7A-45.4(a)(4) is proper if the action involves a material issue related to

“[d]isputes involving trademark law, including disputes arising under Chapter 80 of the General Statutes.” Designation under (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.” And designation as a mandatory complex business case 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.”

9. Plaintiffs oppose designation on two grounds, neither of which has merit.

10. First, Plaintiffs contend that this action “does not involve a material issue related to any of the disputes identified in N.C.G.S. § 7A-45.4(a)[.]” (Opp’n 6.) Although Plaintiffs acknowledge that “one of the eight claims includes a dispute involving trade secrets,” they nevertheless argue that designation under section 7A-45.4(a)(8) is improper because the misappropriation of trade secrets claim “only arose as a result of the contract between Defendant Hall and Design Gaps and the tortious interference [with] that Agreement[.]” (Opp’n 8–9.) Framing this claim as a “side issue[.]” Plaintiffs contend that this claim “does not appear to meet the requirement of materiality required by the statute.” (Opp’n 9.)

11. Plaintiffs misunderstand the requirements for designation as a mandatory complex business case under N.C.G.S. § 7A-45.4(a). In any given case, the facts

alleged may give rise to several causes of action. For each cause of action, “[a]n issue is material if the facts alleged would constitute or would irrevocably establish any material element of a claim or defense.” *All in One Maint. Serv. v. Beech Mountain Constr. Co.*, 70 N.C. App. 49, 54 (1984) (emphasis added). As long as the allegations or at least one claim in “the pleading upon which designation is based . . . raise[s] 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), designation as a mandatory complex business case is proper.

12. Here, Plaintiffs assert a claim for misappropriation of trade secrets. (Compl. ¶¶ 68–75.) Section 7A-45.4(a)(8) specifically includes “disputes arising under Article 24 of Chapter 66 of the General Statutes.” Thus, this matter is properly designated as a mandatory complex business case under section 7A-45.4(a)(8). *See Sys. Depot v. Clement*, 2022 NCBC LEXIS 48, at \*3 (N.C. Super. Ct. May 25, 2022) (“[A] claim for misappropriation of trade secrets frequently serves as the basis for designation under this section[.]”).

13. The Court further notes that designation under section 7A-45.4(a)(4) is also proper. Although Plaintiffs contend that this litigation does not “involve any disputes with respect to trademark law[.]” (Opp’n 7), Plaintiffs devote several paragraphs of the Complaint to Defendants’ alleged common law infringement of Glover’s unregistered trade dress, (*see* Compl. ¶¶ 43–59, 83–86), which forms the basis of Design Gaps’ unfair and deceptive trade practices claim. “Designation under section

7A-45.4(a)(4) is not limited to disputes arising under Chapter 80, but rather includes *all* disputes arising under trademark law, including those at common law.” *McKnight v. Wakefield Missionary Baptist Church, Inc.*, 2020 NCBC LEXIS 115, at \*5 (N.C. Super. Ct. Oct. 6, 2020). Because “[c]ommon law unfair competition includes activity ‘such as trademark or tradename infringement[ and] imitation of a competitor’s product or its appearance,’ among others, *see Vitaform, Inc. v. Aeroflow, Inc.*, 2022 NCBC LEXIS 128, at \*53–54 (N.C. Super. Ct. Oct. 27, 2022) (quoting *Stearns v. Genrad, Inc.*, 564 F. Supp. 1309, 1320 (M.D.N.C. 1983)), the Court concludes that this action is also properly designated as a mandatory complex business case under section 7A-45.4(a)(4).<sup>1</sup>

14. Plaintiffs’ second argument also lacks merit. Plaintiffs argue that, because their claim “against the Peters Defendants for tortious interference with contract . . . sound[s] in tort and seek[s] recovery for alleged personal injury[,]” (Opp’n 10), this action falls within the exception to designation for “personal injury actions grounded in tort[ ]” set out in section 7A-45.4(h), (Opp’n 9).

15. Here again, Plaintiffs misunderstand the application of this exception. Plaintiffs are correct that “[t]ortious interference with contract is considered an intentional tort claim.” (Opp’n 10 (citing *Beck v. City of Durham*, 154 N.C. App. 221, 230 (2002)).) Plaintiffs also correctly note that “[t]he term personal injury has a wide range of meanings” and can be “defined as either: ‘[A]ny harm caused to a person,

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<sup>1</sup> Because the Court concludes that this case is properly designated as a mandatory complex business case pursuant to sections 7A-45.4(a)(4) and (8), the court need not consider whether the case is properly designated under section 7A-45.4(a)(5).

such as a broken bone, a cut, or a bruise; bodily injury,’ or [a]ny invasion of a personal right, including mental suffering and false imprisonment.’” (Opp’n 10 (quoting *Misenheimer v. Burris*, 360 N.C. 260, 263 (2006)).) Said differently, “[p]ersonal injuries may be either bodily or mental[.]” *Morton v. W. Union Tel. Co.*, 130 N.C. 299 (1902).

16. But the Complaint does not, and cannot, allege that Design Gaps suffered any personal injuries as a result of the Peters Defendants’ alleged conduct. This claim is premised on the Peters Defendants’ alleged interference with the 2018 Agreement between Design Gaps and Hall. (See Compl. ¶¶ 76–82.) As a corporate entity, Design Gaps cannot suffer “bodily or mental” injuries as a result of the Peters Defendants’ alleged tortious interference with the Agreement.

17. Nor is this the type of “action[ ] for personal injury grounded in tort” which the legislature sought to exclude from mandatory complex business case designation. See, e.g., *Palmer v. Savoy*, 2020 NCBC LEXIS 55, at \*6 (N.C. Super. Ct. Apr. 27, 2020) (excepting action from mandatory complex business case designation pursuant to N.C.G.S. § 7A-45.4(h) where “gravamen” of plaintiff’s action sounded in tort, particularly including claims for assault and battery, false imprisonment, intentional and negligent infliction of emotional distress, intrusion upon seclusion, misappropriation of name or likeness, negligence and gross negligence, and product liability). As Plaintiffs acknowledge, the gravamen of their action involves “claims against the Peters Defendants for actual damages from misappropriation of Plaintiffs’ [p]roprietary [i]nformation[.]” (Opp’n 10), rather than tort claims involving

the “bodily or mental” personal injuries that section 7A-45.4(h) seeks to exclude. Thus, Plaintiffs’ second argument also 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 trademark law, including disputes arising under Chapter 80 of the General Statutes[,]” as well as “[d]isputes involving trade secrets, including disputes arising under Article 24 of Chapter 66 of the General Statutes[,]” as required by N.C.G.S. §§ 7A-45.4(a)(4) and (8), respectively, and shall proceed as a mandatory complex business case before the Honorable Adam M. Conrad, Special Superior Court Judge for Complex Business Cases.

**SO ORDERED**, this the 21st day of February, 2024.

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