

STATE OF NORTH CAROLINA
PITT COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 3680

ECA GENERAL PARTNERSHIP,
LLC,

Plaintiff,

v.

FIRST BANK and ASHLEY CAPPS,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the *Determination Order* issued on 14 February 2025 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). (ECF No. 1.)

2. Plaintiff ECA General Partnership, LLC (ECA) filed the Complaint initiating this action in Pitt County Superior Court on 12 December 2024, asserting claims against Defendants First Bank and Ashley Capps (Capps, and with First Bank, the Defendants) for negligence, gross negligence, unfair or deceptive trade practices as to First Bank, breach of fiduciary duty, negligent hiring, supervision, and retention as to First Bank, fraud in the inducement as to First Bank, and for punitive damages. (*See* Compl. ¶¶ 76–150, ECF No. 2.)

3. On 4 February 2025, Defendants timely served their Notice of Designation (NOD) along with a copy of the Complaint upon the Chief Justice and the undersigned

Chief Judge of the North Carolina Business Court by email,¹ but as of 17 February 2025, the NOD had not been filed with the Pitt County Clerk of Superior Court.²

4. This case arises out of alleged cybercrime activity. ECA has maintained various bank accounts at First Bank since 2022 for its real estate and business investment company. (Compl. ¶ 38.) According to ECA, in June 2024, First Bank received either (i) a series of emails from a cybercriminal “spoofed to look like the email address of Michael Garland, one of ECA’s two member-managers” informing First Bank that ECA had hired a new accounting firm and “that the accounting firm urgently needed access to ECA’s accounts to initiate a series of outgoing wire transactions[,]” or (ii) “communications from an individual falsely claiming that he and his accounting firm had been hired by ECA and would need access to ECA’s banking accounts” in order to initiate a series of wire transactions to a vendor. (Compl. ¶¶ 13–14, 47–48.)

5. Capps, ECA’s main point of contact at First Bank, allegedly reached out to ECA’s member-managers by text and voicemail to confirm the legitimacy of the request for access to ECA’s accounts. (Compl. ¶¶ 45, 52.) ECA alleges that despite failure to receive such confirmation, Defendants processed the cybercriminal’s request for access and sent paperwork permitting access to ECA’s bank accounts,

¹ As of 17 February 2025, Defendants had not filed a copy of the NOD with the Business Court. Therefore, the Court filed a copy on the Business Court’s docket on 18 February 2025 so it would be a part of the Business Court record. (See Notice Designation Action Mandatory Complex Bus. Case Per N.C. Gen. Stat. § 7A-45(a), ECF No. 6 [NOD].)

² Defendants note in the NOD that they were served through counsel on 8 January 2025. (NOD 4.) Defendants should have filed the NOD with the Pitt County Clerk of Superior Court no later than 7 February 2025 to be considered timely filed.

which was subsequently forged with one of the member-managers' signatures. (Compl. ¶¶ 56, 59.) According to ECA, Defendants then granted administrative access to ECA's bank accounts to individuals at the fake accounting firm, which allowed the individuals to set up a separate email address and telephone number for security notifications and two-factor authentication (2FA) related to ECA's accounts. (Compl. ¶¶ 31, 59, 61.) As a whole, ECA alleges the cybercriminal completed over \$1 million worth of transactions, transferring approximately \$560,900 to accounts outside of ECA's control over the course of approximately one week. (Compl. ¶ 68.)

6. Defendants' contention that this case is properly designated under N.C.G.S. § 7A-45.4(a)(5) is misplaced on both procedural and substantive grounds. As discussed above, Defendants failed to file the NOD and supporting documents with the Pitt County Clerk of Superior Court, as required by N.C.G.S. §§ 7A-45.4(c) and (d), within 30 days of service of the Complaint. Therefore, the NOD is untimely, and this matter is not properly designated to the Business Court as a mandatory complex business case.

7. Furthermore, even if the NOD had been timely filed with the Pitt County Clerk of Superior Court, this matter is not properly designated as a mandatory complex business case. Designation under N.C.G.S. § 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.”

8. Defendants represent in their NOD that designation is proper under N.C.G.S. § 7A-45.4(a)(5) because “First Bank’s electronic banking compliance and systems, data and security procedures are at issue in this action making this a mandatory complex business case.” (NOD 4.) According to Defendants, ECA alleges (i) “a series of fraudulent transactions” were initiated by a cybercriminal in 2024; (ii) “Defendant First Bank failed to verify the legitimacy of emails requesting access to Plaintiff’s bank account with Defendant;” and (iii) “[First Bank’s] online security measures against cybercrimes were deficient and that if reasonable, industry standard procedures with respect to security were followed, it would not have been possible for the imposter to wire funds from Plaintiff’s accounts.” (NOD 3–4.)

9. Our case law has long been clear that “[t]o qualify for mandatory complex business case designation under [section 7A-45.4(a)(5)], the material issue must relate to a dispute that is ‘closely tied to the underlying intellectual property aspects’ of the intellectual property at issue.” *Pinsight Tech., Inc. v. Driven Brands, Inc.*, 2020 NCBC LEXIS 23, at *5 (N.C. Super. Ct. Feb. 20, 2020) (quoting *Cardioentis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at *6 (N.C. Super. Ct. June 27, 2018)).

10. Conversely, where, as here, the material issues in dispute are closely tied to something other than the underlying intellectual property involved, such as contract, fraud, or tort, or “security measures,” the case does not fall within the limits of section 7A-45.4(a)(5). See *Health Logix, LLC v. US Radiology Specialists, Inc.*, 2024 NCBC

LEXIS 138, at *5–6 (N.C. Super. Ct. Oct. 18, 2024) (concluding designation under subsection (a)(5) was improper where claims were straightforward contract claims that could be resolved solely by application of contract law principles and did not require an examination of the underlying intellectual property characteristics of plaintiff's software) (compiling cases); *Ravensafe, LLC v. Nexus Techs., Inc.*, 2022 NCBC LEXIS 65, at *6–7 (N.C. Super. Ct. June 27, 2022) (declining to designate under subsection (a)(5) where claims focused on defendants' alleged breach of a settlement agreement by engaging in allegedly fraudulent conduct rather than on the underlying intellectual property aspects of a renewable portable energy device); *Knudson v. Lenovo Inc.*, 2022 NCBC LEXIS 11, at *3 (N.C. Super. Ct. Feb. 15, 2022) (declining to designate under subsection (a)(5) where claims focused on fraudulent conduct rather than on the underlying intellectual property aspects of a patent development program); *Stout v. Alcon Ent., LLC*, 2020 NCBC LEXIS 77, at *3 (N.C. Super. Ct. June 30, 2020) (declining to designate under subsection (a)(5) where claims focused on defendants' allegedly fraudulent misconduct rather than on the underlying intellectual property aspects of a book and screenplay); *Knight v. Bechtel Assocs. Prof. Corp.*, 2019 NCBC LEXIS 125, at *3 (N.C. Super. Ct. Dec. 31, 2019) (declining to designate under subsection (a)(5) where resolution of plaintiff's tort and statutory claims did not turn on the intellectual property characteristics of fiber optic cables).

11. A close reading of the Complaint in this case reveals that the material issues of the dispute are closely tied to the Defendants' alleged security procedures and

negligent conduct, rather than a failure of the underlying intellectual property characteristics of First Bank’s banking software or computer systems. From the outset of the Complaint, ECA asserts “[t]his action arises from the negligent, grossly negligent, fraudulent and willful and wonton [sic]³ conduct of Defendants which led directly to a series of fraudulent transactions initiated by a cybercriminal operating under the name ‘John Powell’ in June 2024.” (Compl. ¶ 12.) According to ECA, “[i]f Capps and First Bank had followed reasonable, industry standard procedures with respect to security, including their own security policies, it would have been impossible for the imposter to wire funds from ECA’s accounts.” (Compl. ¶ 58.) ECA contends “Defendants’ breach [of their duties] was the *sole* cause of the imposters’ ability to access ECA’s accounts. Indeed, the imposters were able to initiate wire transfers from ECA’s accounts *only* because Defendants granted them administrative user access.” (Compl. ¶ 88) (emphasis added). While the Complaint references security protocols that were either not implemented or not followed by Defendants, the Complaint does not allege that the wire transfers from ECA’s accounts to accounts outside of its control were somehow caused by the failure of First Bank’s intellectual property.

12. Based on the foregoing, the Court concludes 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.

³ “Wonton” is a type of dumpling. “Wanton” is an adjective describing inappropriate conduct.

13. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 3 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 designation as a Rule 2.1 exceptional case may be pursued with the Senior Resident Superior Court Judge if deemed appropriate.

14. 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 N.C.G.S. § 7A-45.4.

SO ORDERED, this the 18th day of February, 2025.

/s/ Michael L. Robinson
Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases