

After Plaintiffs filed this action in Rutherford County Superior Court, Defendants Wachovia Bank, N.A.; Bank of America Corporation; and Branch Banking & Trust Company (collectively, “Lender Defendants”) filed their notice to designate this action as a mandatory complex business case on October 14, 2008. The next day, October 15, Chief Justice Parker granted that designation. Plaintiffs and 3 of the 29 named Defendants subsequently filed oppositions to that designation.

As more fully described herein, this action was properly designated a mandatory complex business case because it involves material issues of corporate law and material issues related to the Internet and electronic commerce. At least 15 named Defendants allegedly are interrelated business entities (the “LRC Defendants”) or are the respective officers, directors, and agents of those entities; sorting through the potentially complex legal relationships among these various companies and individuals may implicate a number of different legal principles, such as veil-piercing. Additionally, the LRC Defendants have, since the filing of this lawsuit, filed a petition for bankruptcy in the Middle District of Florida. That Chapter 11 filing, made by the primary defendants in this case, is likely to increase the complexity of the matters at issue in this lawsuit.

Plaintiffs also allege that certain officers and directors of the Defendants have breached their fiduciary duties by improperly diverting their respective entities’ funds to other persons and businesses. Resolving this case will require assessing the duties and responsibilities of those officers and directors and potentially tracing misappropriated funds. In addition to raising these issues of corporate law, this action implicates electronic commerce because Plaintiffs allege that much of the illegal and misleading marketing of the Grey Rock lots was conducted via the Internet and other electronic means. Chief Justice Parker therefore properly designated this a mandatory complex business case, and this Court should retain jurisdiction.

I. Plaintiffs Inaccurately Suggest that the Complex Business Case Designation Is Supported Only By Those Defendants that Originally Sought It.

The notice to designate this action as a mandatory complex business case was filed by the Lender Defendants on October 14, 2008. Because no other Defendants subsequently filed their own notice to designate, Plaintiffs contend that only the Lender Defendants favor this Court retaining this action. *See* Plaintiffs' November 13 supporting Memorandum, pp. 3, 4, 6. However, Chief Justice Parker designated this action as a mandatory complex business case on October 15, just one day after the Lender Defendants filed their notice. Consequently, no further action was needed from other Defendants – like Scripps – who support that designation. (Tellingly, the time for filing oppositions to the designation has now passed, and only 3 of the 29 named Defendants have filed an opposition.)

Like the Lender Defendants, Scripps agrees that this action qualifies as a mandatory complex business case and was correctly designated as such by Chief Justice Parker.

II. This Action Qualifies For Mandatory Complex Business Case Designation Because It Involves Material Issues of Corporate Law and Electronic Commerce.

The Lender Defendants' October 14 notice of designation correctly stated that this case qualifies for mandatory complex business designation because it involves the law governing corporations and other business entities. Additionally, this case also qualifies for that designation because it involves the Internet and electronic commerce.

A. This case involves a material issue related to the law governing corporations and other business entities, including the law governing the duties of officers and directors.

Resolving this case will require untangling a thicket of interrelated companies and their officers and directors. At least 15 named Defendants are business entities or their respective officers, directors, or agents: Land Resource Group of North Carolina; Land Resource

Development Group, Inc.; Land Resource Group, Inc.; LR Buffalo Creek, LLC; Land Resource, LLC a/k/a Land Resource Companies, LLC; Mike Flaskey; J. Robert Ward; Paul Beidel; Rob Vacko; Mitch Ben Miller; Marie A. Fox; Southern H.O.A. Management, LLC; Clark Champion; Tammy Mikesell; and Jeanette Manner-Jones. Plaintiffs allege these businesses and individuals are all related or otherwise affiliated with each other and with other Defendants. *See* Complaint, *e.g.*, ¶ 50 (“Defendant Land Resource is the parent company of a number of subsidiaries that collectively form a company consisting of a close network of investors that tend to act as a single enterprise offering consumers various real estate properties in varying places throughout the country.”) Also named as Defendants are an unspecified number of “John Doe Officers” and “John Doe Directors” of the named business entities. Sorting through these relationships to determine who, if anyone, was responsible for any wrongdoing (and who holds any funds to which Plaintiffs may be entitled) will be a complex task, potentially involving such corporate law issues as veil-piercing, making this case well-suited for this Court’s expertise.

This case also specifically presents issues of corporate “governance” and “breach of duty of directors,” which are explicitly identified in N.C. Gen. Stat. § 7A-45.4(a)(1) as grounds for mandatory complex business designation. Plaintiffs allege some Defendant officers and directors “have diverted tens of millions of dollars from selling lots in Grey Rock to themselves and Defendant LRC’s executives, officers and directors as named herein or as described as John Doe Defendants, and additionally diverted monies to other developments or other business ventures[.]” Complaint, ¶ 154. Plaintiffs contend these officers and directors “owed a fiduciary duty to the creditors of various entities, including Plaintiffs” and that this diversion of funds violated the fiduciary duties of those officers and directors. *See* Complaint, ¶¶ 376-78. So concerned are Plaintiffs about these fund diversions that Plaintiffs ask this Court to freeze the

assets of these directors and officers and seize their passports. *See id.*, ¶¶ 303, 313. This case will require determining whether these officers and directors actually breached their duties to Plaintiffs and to their respective companies, and it will require tracing how funds may have been shuffled among various business entities and their officers and directors. These tasks are well-suited to this Court, and cases involving director duties are consequently classified as cases warranting mandatory complex business designation. *See* N.C. Gen. Stat. § 7A-45.4(a)(1) (2008).

Although Plaintiffs do not allege Scripps played a role in the alleged breaches of duty or diversion of funds by these officers and directors, resolving those allegations will determine what assets other Defendants have available to satisfy any damages awarded. Because Plaintiffs seek to hold all Defendants jointly and severally liable, Scripps has a vested interest in ensuring these issues are correctly resolved. *See* Complaint, p. 39.

B. This case involves material issues related to the Internet and electronic commerce.

This action independently qualifies for mandatory complex business designation because it involves issues related to the “Internet” and “electronic commerce.” N.C. Gen. Stat. § 7A-45.4(a)(6).¹ The transactions underlying Plaintiffs’ Complaint largely occurred through electronic commerce. Plaintiffs allege that all Defendants – including Scripps – acted in concert to market Grey Rock lots, and many of the claims rest on Plaintiffs’ contention that these lots were marketed in unfair, misleading, and illegal ways. *See* Complaint, *e.g.*, pp. 30-38.

Much of this marketing, Plaintiffs allege, occurred over the Internet and through electronic means. All Plaintiffs allegedly live out-of-state and received advertising, marketing

¹ The Lender Defendants’ notice of designation did not identify issues involving the Internet or electronic commerce as a basis for mandatory complex business designation. Nothing in N.C. Gen. Stat. § 7A-45.4 or this Court’s Rules, however, limits this Court’s consideration to only those grounds in the Lender Defendants’ notice.

materials, and other Grey Rock-related communications electronically. *See, e.g.*, Complaint, ¶ 60 (Grey Rock lots marketed using “electronic mail” and “the internet ... to target both in and out of state residents”); ¶ 62 (“Defendants advertised regarding Grey Rock ... to persons throughout the United States, by ... internet”); ¶ 80 (“representations were made in numerous marketing materials which were displayed over the internet”); ¶ 293 (“Defendants were engaged in the marketing and selling of residential real estate across state lines by use of ... wires, the internet and other advertising.”). The Internet was allegedly used, not just to market Grey Rock, but to consummate lot sales. *See* Complaint, ¶ 61 (Defendants used “electronic mail” and “the internet ... to secure execution and signature of the purchase and sale of residential lots ... along with all documents related thereto”). By Plaintiffs’ own allegations, electronic communications were central to the real estate transactions underlying this case.

This Court was created in part to develop “a substantial body of corporate law that provides predictability for business decision making.” Commentary to Rule 2.1 of the General Rules of Practice for the Superior and District Courts. The General Assembly decided it was important for electronic commerce to be included within this body of law and therefore included electronic commerce as a ground for mandatory complex business designation. This case presents questions potentially affecting electronic commerce, such as questions concerning what obligations and liabilities can arise from statements and representations made in passive Internet advertising for North Carolina real estate. Having such questions resolved in this Court will help ensure that businesses engaged in electronic commerce have a predictable and consistent body of law to guide their actions.

C. Additional factors under BCR 3.2 further support the mandatory complex business case designation.

BCR 3.2 also permits this Court to consider other factors when deciding whether to retain

a case, and those other factors support retaining this action:

A. The amount in issue. Twenty-two Plaintiffs are seeking to recover their purchase prices for at least fourteen Grey Rock lots, along with tort damages under a variety of theories, attorneys fees, and either treble or punitive damages. Plaintiffs therefore apparently seek millions of dollars in compensation and damages.

B. The degree to which the interests of justice will be advanced by adjudication of the action under the Business Court's rules and procedures. Because of the many parties and the complexity of this case, the parties involved and thus the interests of justice would benefit greatly from having a single Business Court Judge assigned to it for the duration. This case also will likely see many motions, and motions practice would be more efficient in this Court because most motions are decided without oral argument. The Rutherford County Superior Court, by comparison, would have to hold hearings on any contested motions, a potentially unwieldy task with 29 named Defendants. (The requirement of motion hearings would also slow this case's progress. Undersigned counsel has contacted the Trial Court Administrator for Rutherford County and has learned that the Rutherford County Superior Court has only two dates available for civil motions between now and the end of June 2009.) The comparatively more restrictive rules related to discovery under the Business Court Rules and the requirements for a case management conference between the parties, for a Case Management Order governing much of the procedure in the case, and for consultation between parties prior to filing motions, will also advance the interests of justice by maintaining a more controlled procedure to the matter. This should also have the effect of limiting the costs and time requirements of both the parties and the court system.

C. Any other potential impacts on the parties or the Court that would be associated with retention of the action. The factors governing discretionary complex business designations provide a useful guide for other impacts that warrant this Court retaining this matter. *See* Rule 2.1(d) of the General Rules of Practice for the Superior and District Courts. This case involves a large number of parties (22 Plaintiffs, 29 named Defendants, and an unspecified number of John Doe Defendants), and many Defendants have potentially divergent interests. For example, those Defendants only tangentially involved, or not at all involved, with the real estate transactions at issue (e.g., the Lender Defendants and Scripps) may have diverse interests from those Defendants that actively marketed lots to Plaintiffs. At least three Defendants already have asserted cross-claims against other Defendants.

This action will also entail significant amounts of pretrial discovery and motions, both because of the number of parties and because of the sheer volume of claims and allegations made by Plaintiffs (a 40-page Complaint raising 15 causes of action). The potential for significant discovery and motions is reflected by the fact that, in the 40 days since Chief Justice Parker designated this action as a mandatory complex business case, this case has already seen 49 different filings. The complex relationships among the various Defendants and the alleged diversion of funds by some Defendants will also present complex evidentiary and legal issues that are best and most efficiently resolved by this Court.

III. If this Court Determines that this Action Does Not Qualify as a Mandatory Complex Business Case, It Should Recommend that the Chief Justice Designate this Action as a Discretionary Complex Business Case Under Rule 2.1.

If this Court decides that this is not a mandatory complex business case, then Scripps requests under N.C. Gen. Stat. § 7A-45.4(f) and Rule 2.1 of the General Rules of Practice for the Superior and District Courts that this Court recommend that the Chief Justice designate this action

as a discretionary complex business case. In support of this request, Scripps incorporates by reference the grounds outlined above in support of this action's mandatory complex business case designation.

This 25th day of November, 2008.

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The undersigned counsel for Defendant Scripps Networks Interactive, Inc. hereby certifies that this Response contains no more than 7,500 words as required by BCR 15.8.

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CERTIFICATE OF SERVICE

This is to certify that on this date I served the foregoing **RESPONSE BY DEFENDANT SCRIPPS NETWORKS INTERACTIVE, INC. SUPPORTING RETENTION OF THIS ACTION BY THE BUSINESS COURT** by electronic filing as to the following parties:

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This 25th day of November, 2008.

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