

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CVS 019408

LUKE T-L KWONG,)
)
 Plaintiff,)
)
 v.)
)
 L.E. WOOTEN & COMPANY,)
 a North Carolina Corporation, and)
 AMOS L. MOORE, JR., DAN K. BOONE,)
 V. STEPHEN PLAYER, ROBERT E. EGAN,)
 RALPH S. MOBLEY, JR. and)
 MARC REESE, individuals,)
)
 Defendants.)

PLAINTIFF'S OPPOSITION TO
DEFENDANTS' NOTICE OF
DESIGNATION OF ACTION AS A
MANDATORY COMPLEX BUSINESS
CASE UNDER N.C.G.S. §7a-45.4

COMES NOW Plaintiff, Luke T-L Kwong, by and through Counsel, Mark A.

La Mantia, La Mantia Law Offices, P.C., and pursuant to N.C.G.S. §7a-45.4 (e) and Business Court Rule 3.3 respectfully submits his opposition to Defendants' designation of this matter as a mandatory complex business case. For the reasons stated below, Plaintiff requests that this action be remanded to the Wake County Superior Court.

Plaintiff in good faith submits that this case is a relatively simple dispute over an alleged failure to make payments to Plaintiff (in the same way payments were made to others) related to Plaintiff's employment with, and stock ownership in, Defendant corporation. Any legal principles to be applied, whether under the North Carolina Wage and Hour Act (which is not a specific classification under N.C.G.S. §7A-45.4) or under the most basic concepts of North Carolina Corporate law as contained in N.C.G.S. Chapter 55)¹, are not of the type to merit

¹ It is virtually hornbook law that a company may not pay, and Directors and Officers may not authorize, dividends to some shareholders and not others holding the same class of

“complex” treatment and require any particular level of expertise or technical knowledge so as to justify the use of the Business Court’s time and resources. Because of the nature and factual posture of the case, specifically including the fact that the Plaintiff is no longer either a shareholder or employee of Defendant, there should be no requirement for any type of injunctive or emergency relief requiring more dedicated (i.e. a single Judge) judicial access and streamlined electronic processes. The documents involved should be rather limited, and it is not expected that the case would involve any substantial e-discovery or extensive electronic document production and management or technical presentations. Any factual disputes involving the practices, manner or methods of paying bonuses and/or dividends by this Defendant are Defendant and fact specific and would not be of substantial precedential value in this regard.

Additionally, given the lower level of the amount in issue (in this case likely less than \$ 65,000 *even if doubled* under the Wage and Hour statutes, excluding attorney fees), and the lack of novelty of the issues (as pointed out above and below), the Plaintiff’s initial choice of forum should be respected and the Plaintiff should not be required to risk exposure to, or initially incur, the additional procedural costs and burdens (as may be reflected both in actual costs and in attorney time) as may necessarily be associated with current Business Court rules and procedures - including, for example, the significantly increased filing fee and other costs which could be later assessed, and the various conference, briefing and other procedural requirements - in order to have his day in Court.

I. INTRODUCTION

This case was originally filed by the Plaintiff in the Superior Court of Wake County,

stock.

North Carolina, on September 21, 2009. By choice, it was not sought to be designated as a mandatory complex business and Business Court case by Plaintiff and his Counsel in conjunction with its filing, and specifically because of the cost considerations discussed above and the determination in Counsel's best judgment that the case did not involve "significant and material" issues of the law (whether governing corporations or otherwise as may be specified under N.C.G.S. §7A-45.4 and as those terms appear to have been defined and intended). The primary issues in dispute appear to be run of the mill wage and payment disputes that are routinely handled by our Superior Court Judges.

Defendants' initial Counsel, John C. Dorsey, from Manning, Fulton & Skinner, P.A., accepted service on behalf of all Defendants on September 30, 2009. Thereafter, on October 21, 2009, current Counsel from Manning, Fulton's office filed the Notice of Designation. Shortly thereafter, Mr. Cherry contacted Mr. La Mantia to discuss an extension of time for filing Defendants' answer or responsive pleading - which request was acceded to as a professional courtesy. At that time, however, Mr. La Mantia expressed some surprise about having received the designation for this case and some concern about having to file any opposition before any responsive pleading to the Complaint would be due. Nonetheless, no additional information was provided at that time about whether any particular defenses or matters to be set forth in any answer would likely be such as to require the special consideration or technical facilities of the Business Court. The Defendants' answer or responsive pleading is not presently due until November 29, 2009. As a result, the Plaintiff's Complaint is the only document framing the case at present, see *Work Place Benefits, LLC v. Lifecare, Inc.*, N.C. Bus. Court, Wake County, 08 CVS 8528 (Order granting Motion to Remand) and it involves only a single failure to pay bonus

wages or a dividend amount for the year 2008. In their Notice of Designation Defendants' only state that they will "deny all of Plaintiff's key allegations", (Defendants' Notice at Page 2). Plaintiff can not really say what Defendants' mean by "key allegations", but seriously doubts that Defendants' can earnestly deny the basic facts and circumstances of: Plaintiffs' long term (20 + years) employment history and the facts pertaining to Plaintiff's share ownership history; Plaintiff's history of solid performance; the history of payments that Plaintiff and others received each year (and at least since 2005 when the last Shareholder's Agreement was entered into); or the fact that Plaintiff did not receive either a bonus or dividend in late 2008 even though his share ownership continued through and beyond the end of the year.

In fact, it appears that the only issues that will be in dispute concern the effect, if any, of the Plaintiff's retirement in September of 2008 on any rights to receive dividend or other payments and the effect of any of the representations or omissions of various Company personnel on the Plaintiff's decision and the Company's course of dealing and employment policies and practices. The proper resolution of most, if not all, of these issues would not require any degree of particular sophistication or technical expertise in corporate law or the application of the provisions of Chapter 55.

II. Defendants' Designation and the Applicable Standards - The Interests of Justice Favor the Plaintiff's Choice of Forum and Remand is Most Appropriate in this Case.

Obviously, the Plaintiff disagrees with Defendants' designation and supporting statements in a number of respects. Perhaps most significantly, the Defendants' Notice of Designation focuses only in general terms on N.C.G.S. §7A-45.4(a)(1) and matters that involve the shareholder relationship and agreement, entirely ignoring the wage and hour issues raised,

and without including any real mention or analysis of other factors set forth in Business Court Rule 3.2 (e.g. any reference to the amount in issue, any explanation of the novelty of the issues, or other potential impacts on the parties that would merit retention). Defendants' have provided no real information to support, or for the Court to realistically evaluate, the Defendants' broad and conclusory statements that the "interests of justice will be promoted if this dispute is heard in the N.C. Business Court" and that the "determination of key legal and factual issues...will necessarily turn on the highly technical laws regarding the operation of corporations, fiduciary duties of shareholders in a corporation and agreements between the shareholders of a corporation". Certainly, not all cases involving any mention of Chapter 55 or issues of corporate law are not sufficiently "materiel" or "complex" to require the involvement and resources of the Business Court.

In addition to the specific information regarding these various standards as provided in the Plaintiff's Introduction above, including the potential adverse financial impacts to the Plaintiff of having to proceed in the Business Court and the limited amount at issue as a result of this one time fact-specific occurrence of non-payment, the Plaintiff would also submit that there is nothing highly technical about the application of the laws to this case and that the Business Court has already provided sufficient guidance regarding the wage and hour and dividend relationship matters that could be implicated in this case and that no further clarification of the "corporate" law would necessarily be warranted or helpful for a case such as this or for establishing important precedent. See e.g., *Maurer v. SlickEdit, Inc.*, 04 CVS 10527 , 2006 NCBC 1, 2006 NCBC LEXIS 1 (February 3, 2006) (finding in favor of a shareholder on her motion for liquidated damages under the North Carolina Wage and Hour Act, N.C. Gen. Stat. §

95-25.1 et seq., was proper where the corporation in the past had always made and represented ownership bonus payments in the form of wages and treated them as such.) The allegations of the Complaint do not involve novel legal theories requiring special expertise and claims for breach of contract, breach of fiduciary duty, and allegations of failure to make payment under the wage and hour laws or otherwise are claims routinely asserted in actions throughout the State.

The interests of justice would be best served by allowing the Plaintiff, who chose the appropriate forum and Court for this action, to proceed in his chosen venue for all the reasons stated above and remanding this action to the Superior Court of Wake County; thereby allowing the North Carolina Business Court, which is already quickly becoming overburdened in Wake County and elsewhere, to spend its valuable time, resources and expertise on matters of a truly complex and technical nature.

III. Conclusion

This action involves areas of law and issues routinely adjudicated by Superior Court judges throughout the State of North Carolina. This case as plead is not a complex business matter and jurisdiction before the North Carolina Business Court is not necessary or required pursuant to N.C. Gen. Stat. § 7A-45.4 and therefore Defendants' Notice of Designation of Action as a Mandatory Complex Case should be denied and the matter remanded to the Superior Court of Wake County.

This the 20th day of November, 2009.

By: /s/ Mark A. La Mantia
Mark A. La Mantia
NC State Bar No.:21482
La Mantia Law Offices, P.C.
P.O. Box 97695
Raleigh, North Carolina 27624
Telephone: (919) 676-5600
Facsimile: (919) 676-6674
E-mail: mark@lamantialaw.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE
(First Class U.S. Mail, Hand Delivery and E-mail)

THIS IS TO CERTIFY that the undersigned has this date served a copy of the foregoing *Plaintiff's Opposition to Defendants' Notice of Designation of Action as a Mandatory Complex Business Case Under N.C.G.S. §7A-45.4* upon the Attorneys listed below by depositing a true and correct copy of said document in the United States Mail, postage prepaid, to the address as follows:

Michael T. Medford, Esq.
MANNING, FULTON & SKINNER, P.A.
P.O. Box 20389
Raleigh, North Carolina 27619-0389
[E-mail: medford@manningfulton.com](mailto:medford@manningfulton.com)

William S. Cherry III, Esq.
MANNING, FULTON & SKINNER, P.A.
P.O. Box 20389
Raleigh, North Carolina 27619-0389f
E-Mail: Cherry@manningfulton.com

THIS IS TO CERTIFY that the undersigned has this date served a copy of the foregoing *Plaintiff's Opposition to Defendants' Notice of Designation of Action as a Mandatory Complex Business Case Under N.C.G.S. §7A-45.4* upon the The Honorable Ben F. Tennille to the following e-mail address and a signed original hand delivered to the Wake County Clerk of Superior Court:

The Honorable Ben F. Tennille
Chief Special Superior Court Judge for Complex Business Cases
North Carolina Business Court
E-Mail: jholmes@ncbusinesscourt.net

Wake County Clerk of Superior Court
316 Fayetteville Street
Raleigh, North Carolina 27602

This the 20th day of November, 2009.

/s/ Mark A. La Mantia
Mark A. La Mantia
North Carolina State Bar No. 21482
P.O. Box 97695
Raleigh, North Carolina 27624
Telephone: (919) 676-5600
Facsimile: (919) 676-6674
Attorney for Plaintiff