

NORTH CAROLINA)
)
FORSYTH COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CVS 1488

ROBERT N. PULLIAM, CPA/ABV)
PLLC, as successor in interest to)
PULLIAM FINANCIAL GROUP, PLLC)
)
Plaintiff)

vs.)

AMY S. GARDNER; GARDNER)
RENTALS, LLC; JAMES GARDNER;)
AMY S. GARDNER, CPA, PLLC; and)
LINDSAY & GARDNER, CPA, LLP,)
)
Defendants)

PLAINTIFF’S OPPOSITION TO
DEFENDANTS’ NOTICE OF
DESIGNATION OF ACTION AS A
MANDATORY COMPLEX BUSINESS
CASE UNDER N.C. GEN. STAT. § 7A-
45.4

NOW COMES plaintiff, Robert N. Pulliam CPA/ABV, PLLC, as successor in interest to Pulliam Financial Group, PLLC (“plaintiff”), by and through its undersigned counsel and pursuant to N.C.G.S. § 7A-45.4 and Business Court Rule 3, and submits its opposition to defendants’ designation of this matter as a mandatory complex business case. See Notice of Designation, dated March 9, 2009. In support of its opposition to the Notice of Designation, plaintiff would show the court as follows:

1. This case is nothing more than plaintiff’s latest effort to collect a judgment now almost two years old and thus should not be litigated in the North Carolina Business Court.
2. As shown by the allegations of the complaint, plaintiff’s claims are anything but “complex” as that term is envisioned by the statute creating this court’s mandatory jurisdiction, and thus, the claims raised in the complaint do not require application of N.C.G.S. §7A-45.4(a)(1).¹
3. Contrary to defendants’ allegations, the primary legal issues in this case concern North Carolina’s Uniform Fraudulent Transfer Act and unfair trade practices statutes, which are

¹ At this point, the only substantive pleading filed is plaintiff’s complaint and, thus, it is the only pleading to which the court may look for purposes of establishing jurisdiction. See Workplace Benefits, LLC v. Lifecare, Inc., No. 08 CVS 8528, slip op. at 1-2 (N.C. Bus. Ct. July 14, 2008).

both well-settled areas of law. Thus, the primary legal issues in this case are not novel and do not concern corporate law.

4. Furthermore, the judgment on which the legal issues in this case are based was obtained in the Forsyth County Superior Court by addressing a similar fact pattern to the one presented by this case; the taking of an accounting practice and the transfer of that practice to a corporate entity. Specifically, the action underlying the judgment at issue here was tried on the theory that defendant Amy S. Gardner (“Gardner”) stole plaintiff’s accounting practice and transferred it to another accounting firm, Brendle Shaffner. Similarly, the key issue in this case is whether Gardner again transferred the accounting practice she took from plaintiff to other corporate entities in an effort to avoid plaintiff’s judgment collection efforts.² Thus, the Forsyth County Superior Court has already demonstrated that it is a proper venue for the fact pattern that this case raises.

5. In their Notice of Designation, defendants overstate the role that corporate law will play in determining the liability of defendants. In fact, the liability of defendants will primarily depend upon the application of North Carolina’s well-established Uniform Fraudulent Transfer Act (“Act”) and North Carolina’s unfair trade practices statutes. Any corporate legal issues raised in applying these laws to this case will be secondary.

6. Furthermore, corporate legal issues are frequently addressed in Superior Court and their presence in this case as secondary issues does not warrant a mandatory complex business case designation.

7. This case is simply not the type of case for which the Business Court was created. As noted in the Comments to Rule 2.2 of the General Rules of Practice, the purpose of the creation of the Business Court was to satisfy the “desirability of a state [to have] a substantial body of corporate law that provides predictability for business decision making.” See Comment to Rule 2.2 to the Rules of General Practice for the Superior Courts. This case does not involve *significant* issues of corporate law, internal corporate governance, or interpretation of applicable commercial law in the business setting. Instead, the primary issue in this case is whether defendants engaged in a scheme to fraudulently shield assets from plaintiff’s efforts to collect a

² The other major issue is whether Gardner and her husband, defendant James Gardner fraudulently conveyed rental property to defendant Gardner Rentals, LLC to prevent plaintiff from collecting against the property’s rental income.

judgment. Finally, the complaint alleges that defendants engaged in *tortious* conduct but not through corporate governance.

8. Additionally, this case does not implicate the philosophy and goals of the Business Court rules, which were created in an effort to assist and implement complex business cases. Counsel for plaintiff does not anticipate that any technology will be required in the courtroom to present either its case or defendants' case at trial. Furthermore, this case does not require substantial e-discovery and there is no need for electronic filing. See Rules 1.3 and 1.4 of the Business Court Rules.

9. In sum, if this case falls within the mandatory jurisdiction of the Business Court, it is hard to imagine how any case with corporate parties or issues would fall outside the scope of N.C.G.S. §7A-45.4(a).

WHEREFORE, plaintiff respectfully prays that defendants' Notice of Designation of Action as a Mandatory Complex Business Case under N.C. Gen. Stat. §7A-45.4 be denied, and that the case be remanded to Forsyth County Superior Court.

This the 11th day of March, 2009.

/s/ G. Gray Wilson
G. Gray Wilson

/s/ Stuart H. Russell
Stuart H. Russell
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I, Stuart H. Russell, hereby certify that on this date I served a copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' NOTICE OF DESIGNATION OF ACTION AS A MANDATORY COMPLEX BUSINESS CASE UNDER N.G. GEN. STAT. §7A-45.4** upon counsel of record by depositing a copy thereof in the United States mail in Winston-Salem, North Carolina, postage prepaid and addressed as follows:

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This the 11th day of March, 2009.

/s/ Stuart H. Russell
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