

**FILED**

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

PHILLIP ALLEN D/B/A,  
ALLEN'S JEWELRY SERVICE,

2013 JUN 13 AM 9:19

DAVID L. GAYSON, CLERK  
KANAWHA CO. CIRCUIT COURT

Plaintiff,

vs.

//

CIVIL ACTION NO. 13-C-260  
(BCD Judge Thomas C. Evans, III)

REEDS JEWELERS OF  
NORTH CAROLINA, INC.,  
a North Carolina corporation,  
and TIM HADDEN,

Defendants.

**FINDINGS OF FACT AND RECOMMENDATION TO THE CHIEF JUSTICE**

*(Re: Defendants' Motion to Refer Civil Action to the Business Court Division)*

On June 6, 2013, this civil action came on for hearing before the undersigned Circuit Judge, a Business Court Division Judge,<sup>1</sup> for a hearing pursuant to the Order of the Chief Justice to conduct a hearing and receive evidence and argument, and to make findings of fact and a recommendation, regarding the Defendants' Motion to Refer to the Business Court Division.

The Plaintiff, Phillip Allen, d/b/a Allen's Jewelry Service ("Allen") appeared by counsel, James M. Pierson and the Defendants' REEDS JEWELERS OF NORTH CAROLINA, INC. and TIM HADDEN, also appeared by counsel, Mark Adkins.

The Court having heard the arguments of respective counsel does hereby submit

<sup>1</sup> The undersigned Circuit Judge was appointed to hear this matter upon the order herein entered by Judge Christopher Wilkes, Chair of the Business Court Division.

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the following findings of fact and recommendation to the Chief Justice of the Supreme Court of Appeals of West Virginia as follows:

Findings of Fact

1. The Plaintiff operated as an independent contractor on the premises of the Charleston Town Center location of Reeds Jewelers of North Carolina, Inc. ( herein "Reeds Jewelers") in Charleston, Kanawha County, West Virginia.

Plaintiff provided jewelry service work pursuant to a written contract with the Defendant. The contract authorized Plaintiff to work on the premises of the Defendant Reeds Jewelers, Inc. at the Town Center Mall and to use machinery of Reeds Jewelers to perform jewelry service work. Such machinery included a buffing machine. The contract provided that Defendant Reeds Jewelers would pay Plaintiff a piece rate for his labor for Reeds Jewelers and to reimburse Plaintiff for materials provided to perform the service work, if any, for Reeds Jewelers' customers.

The contract was terminable by either party with or without cause.

The dispute centers around a container of "sweepings" and material from the filters of the machinery located on the premises, which was apparently collected and stored by Plaintiff over a considerable period of time.

Defendants appropriated the "sweepings" that had been collected and stored by the Plaintiff.

Defendants ended the contract with the Plaintiff thereafter when a dispute arose about the ownership of the "sweepings."

The value of the "sweepings" is alleged to have been \$19,000.00.

2. The Plaintiff asserts that this matter involves tortious conduct by the Defendants and disputes arising thereafter over the business contract between the parties.

3. That the Defendants assert that the ownership and control of business assets, and the interpretation of the contract between the parties, are the crux of this case.

4. The text of *Trial Court Rule 29.04* reads in pertinent part, as follows:

*Trial Court Rule 29.04. Definitions.*

For purposes of this Rule, the following definitions apply:

(a) "Business Litigation" — one or more pending actions in circuit court in which:

1. the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and

2. the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and .....

5. The defendants asserted that this matter is appropriate for the Business Court Division, because the validity of the plaintiff's claims will be controlled by the terms of the contract between plaintiffs and Reeds Jewelers, Inc. which raises complex issues of contract interpretation.

6. The Plaintiff argues that this case is primarily a tort case and the breach of contract is ancillary to the commission of the tort committed by the Defendant. Plaintiff further argues that this case does not present any commercial or technology issues which

makes specialized treatment necessary to improve the expectation of a fair and reasonable resolution. Further, Plaintiff asserts that there is no need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles.

Defendant TIM HADDEN is a managerial employee of Reeds Jewelers and was the employee that allegedly appropriated the "sweepings."

#### Recommendation

Certainly, this civil action involves parties engaged in a business relationship, and it is also accurate that the business contract defines the rights and obligations of each party and will be the basis for resolving this dispute. Therefore, the requirements of *Tr. Ct. Rule 29.04(a)(1)* are plainly met.

However, in order to amount to "Business Litigation" under *Tr. Ct. Rule 29.04(a)(2)*, the case must also present "commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable."

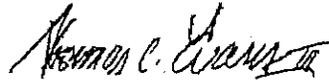
After having considered the submissions of the parties, it is recommended to the Chief Justice that the motion to refer to Business Court Division be denied. Basic rules of construction of contracts and, perhaps, general property law will be the basis for deciding the linchpin issue of the case, i.e., who owned the sweepings generated by

Plaintiffs work on Defendants' premises using Defendants' equipment and machinery pursuant to the contract existing between Plaintiff and Reeds Jewelers. There are no commercial and/or technology issues that require specialized treatment by the court. There will not be any requirement of specialized knowledge in the subject matter of the dispute nor any requirement that the Judge be familiar with some specific law or legal principles in order to provide an expeditious and fair resolution of the issues in the case.

Conclusion

Based on the foregoing, it is recommended that the Defendants' Motion to Refer to the Business Court Division be denied and overruled.

Made this the 10<sup>th</sup> day of June, 2013:



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Thomas C. Evans, III, Circuit Judge  
Fifth Judicial Circuit  
Business Court Division Judge

11/3/13  
Marilyn Adkins Esq  
James Picison Esq  
1cm: Judge Stucky