IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

JAMES R. LEACH

Plaintiff,

v.

Case No.: 17-C-110
Judge Jason Wharton

ALEX LYON & SON
SALES MANAGERS & AUCTIONEERS, INC.

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

On January 18, 2018, came the Plaintiff, James R. Leach, by counsel, Matthew Carlisle and the law firm of Theisen Brock, LPA, and the Defendant Alex Lyon & Son Sales Managers & Auctioneers, Inc. by counsel, George Cosenza, for a hearing on Plaintiff's Motion for Summary Judgment. After reviewing the Motion and Response of Defendant Alex Lyon & Son Sales Managers & Auctioneers, Inc., this Court granted additional time for further briefing on the issues presented in Plaintiff's Motion for Summary Judgment. After reviewing all briefing submitted in this matter and considering arguments of counsel presented at the hearing, the Court finds that Plaintiff's Motion for Summary Judgment should be and hereby is **GRANTED** and Defendant's Motion for Summary should be and hereby is **DENIED.** In support of this ruling, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The following facts are not in dispute in this matter, having been admitted and testified to by all parties, and this Court thereby expressly finds the following:

1. On May 21, 2016, Defendant Alex Lyon & Son, Sales Managers & Auctioneers, Inc., which is owned and operated by Alex Lyon, had organized and advertised an absolute

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real estate auction of a piece of real estate on 17th Street in front of the Ohio River, off of Grand Central Avenue in Vienna, West Virginia.

2. The advertisement set for the terms and conditions of the auction and were clear and unambiguous.

3. The terms and conditions that govern the auction, set forth in the advertisements, were to protect both the seller and the bidder.

4. The auction was advertised as an "absolute" sale, with a minimum opening bid of $200,000.00.

5. According to this term, once the minimum bid was offered, the real estate had to be sold to the highest bidder and the owner could not withdraw the real estate from sale.

6. All of the advertisements for the auction, both written and online, set for the remaining terms of the auction, requiring all bidders to provide a "Cash or Company Check" in the amount of ten percent (10%) of the minimum bid of $200,000.00 and a "Bank Letter of Guarantee" from a financial institution indicating their ability to pay the balance of the proceeds on the real estate if the bidder was successful at auction to qualify to bid on the property.

7. All bidders were also required to sign a Bidder's Registration Agreement, binding them to the terms of the auction.

8. The advertisement provided that the terms and conditions of the auction could only be modified by a statement at the auction.

9. Defendant's employees present on the day of the auction issued the Bidder Registration Agreements and were responsible to ensure that all bidders were qualified under the terms and conditions of the auction prior to bidding.

10. The terms of the auction also provided that the advertised terms would control each auction and could only be modified by an oral statements made on the day of the auction.

11. The only oral statements made prior to the sale were pertinent facts relating to the property itself, and that bidding would commence upon receipt of the opening minimum bid amount of $200,000.00.

12. Defendant agreed the terms of the auction required that 10% deposit must be provided prior to being allowed to bid, but that Alex Lyon could grant a "permanent bidder" special permission to waive the terms of the auction.

13. A permanent qualified bidder would have a "permanent bid number" issued to these customers on green paddles, and Alex Lyon must initial the bid card to have the requirements waived, which allows them to bid at an auction without having to qualify.

14. In order to allow the permanent bidder to bid, one of Defendant's employees that registered the bidders had to see the initialed card if they did not personally know the permanent bidder prior to each auction.

15. Even if there were a "permanent bidder" bidding, Defendant would make no announcement prior to the auction that the terms had been waived for the permanent bidder, and, in fact, would not allow other bidders to know of the modification of the terms of the auction.

16. The absolute auction began at 1:00 p.m.

17. The Plaintiff, Jim Leach, attended the auction, arriving at approximately 9:00 a.m.

18. Plaintiff had obtained the appropriate letter of credit from Williamstown Bank as well as a cashier's check in the amount of $20,000.00 as the required 10% deposit, in order to qualify as a bidder to the absolute auction.

19. Plaintiff successfully qualified to bid on the real estate and was given a bidder's registration card.

20. No other bidder had qualified or registered to bid on the property by submitting the required bid qualification documents to Defendant's employee on the day of the auction, including Kurt Lerch.

21. The Defendant's employee registering bidders did not know any permanent bidders at the auction and confirmed just prior to the start of the auction that no other bidder had registered for the auction of the real estate.

22. The Defendant could not produce any permanent bid card for Kurt Lerch, and Kurt Lerch did not have a permanent bid card or a bid card from the day of the auction.

23. No one was allowed to bid without a bid card, either one issued on the day of the auction or a permanent bid card.

24. The bidding began at 1:00 p.m, conducted by Alex Lyon.

25. The Defendant did not make any statement prior to the auction that would alter the written terms and conditions of the sale.

26. Plaintiff was not aware of either any policy of the Defendant's that allowed persons to bid as permanent bidders nor that any other bidder would be allowed to bid at the auction.

27. When the auction began, before Leach could offer an opening bid of $200,000.00, Mr. Lerch started the bidding at the minimum bid.

28. Plaintiff engaged in competitive bidding with Mr. Lerch and, after approximately 30 seconds of bidding, Plaintiff secured the high bid at $265,000.

29. No other person either qualified to bid or bid on the real estate.

30. Defendant admitted that no other bidder had qualified to bid prior to the auction by providing the required deposit and bank letter of credit on the day of the auction, including Mr. Lerch.

31. Because Mr. Lerch was allowed to bid on the real estate, Plaintiff's high bid on the property was $265,000.00, and the higher bid increased the commission fees to Defendant for the sale.

32. Had Mr. Lerch not been allowed to bid, Plaintiff would have been the successful bidder at $200,000.00, as there were no other bids from any other pre-qualified bidders per the terms set forth by Defendant.

33. Plaintiff advised Defendant in writing of his objection, preserved all rights to dispute the conduct of the absolute auction, and then signed the sales agreement per the terms of the sale to purchase the property on May 21, 2016.

34. On March 17, 2017, Plaintiff filed an action for breach of contract, breach of contract as a third party beneficiary, negligence, negligence per se, unjust enrichment, fraud and specific performance, alleging damages as a result of allowing an unqualified bidder to bid at the auction.

CONCLSIONS OF LAW

I. Standard of Review

The standard of review for summary judgment is set forth in Rule 56 of the West Virginia Rules of Civil Procedure, which provides, in part, "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

The West Virginia Supreme Court of Appeals has held on numerous times that "[a] A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." *Chafin v. Gibson,* 578 S.E.2d 361, 365 (W.Va. 2003).

Summary judgment is "'designed to effect a prompt disposition of controversies on their merits without resort to a lengthy trial,' if there essentially 'is no real dispute as to salient facts' or if it only involves a question of law." *Larew v. Monongahela Power Co.*, 487 S.E.2d 348, 351, 199 W.Va. 690, 694 (1997) citing *Williams v. Precision Coil, Inc.,* 194 W.Va. 52, 58, 459 S.E.2d 329, 335 (1995); *Painter v. Peavy,* 192 W.Va. 189, 192 n. 5, 451 S.E.2d 755, 758, n. 5 (1994); *Oakes v. Monongahela Power Co.,* 158 W.Va. 18, 22, 207 S.E.2d 191, 194 (1974).

However, "a genuine issue does not arise unless there is sufficient evidence favoring the non-moving party for a reasonable jury to return a verdict for that party." The non-moving party must come forward with facts sufficient to defeat summary judgment, and not simply blanket allegations. *Stonewall Jackson Memorial Hosp. Co. v. American United Life Ins. Co.,* 206 W.Va. 458, 466, 525 S.E.2d 649, 657 (1999). The evidence submitted by the non-moving party

must be more than a mere scintilla of evidence and cannot be conjectural or problematic. *Williams v. Precision Coil, Inc.*, 194 W.Va. at 59, 459 S.E.2d at 336.

The only relevant issue in this matter is whether the advertisement by Defendant and the conduct by the parties constitutes a contract, which is a question of law for the Court to determine, and, if so, whether Lyon breached that contract.

II. Breach of Contract

This case involves the forming of a contract by advertisements for an auction of real estate. Defendant alleged that the auction was one "with reserve," and, therefore, the advertised auction materials were not an offer to sell property but only an invitation to bid on the property. Thus, no contract was formed between Plaintiff and Defendant. Plaintiff, on the other hand, alleged that the type of auction is irrelevant as a contract was formed between Plaintiff and Defendant, with the terms and conditions as set forth in the advertising material, at the latest, when the Plaintiff won the bid as the high bidder. Plaintiff also alleged that the auction was "without reserve," or an "absolute auction," which terms are synonymous, and each bid formed a new contract between the parties.

The Court finds no authority from our Supreme Court of Appeals of West Virginia directly on point, but there is direct authority from other jurisdictions on the issues involved, which this Court finds instructive. Although, after review of the relevant caselaw, the Court agrees with the Plaintiff's assertions that the type of auction is irrelevant to this matter as Plaintiff was high bidder and, therefore, the type of auction only sets the timing of the formation of the contract between the auctioneer and the bidder, nevertheless the Court also finds, to the extent it is relevant, that the auction was an absolute auction and will address this issue first.

a. Auction

A public auction is specifically defined in W.Va. Code §19-2c-1(e) as "any public sale of real or personal property when offers or bids are made by prospective purchasers and the property is sold to the highest bidder."

There are two different types of auctions, "with reserve" or "without reserve," which is also known as an "absolute auction" (hereinafter referred to as absolute auction). The type of auction is determined by the terms of the auction as set forth in the advertising material. *Pyles v. Goller*, 109 Md. App. 71, 85, 674 A.2d 35, 42 (1996), citing Restatement (Second) § 28(2); 7 Am.Jur.2d §§ 14 & 17. The distinguishing difference between the two types of auctions is whether the owner of the property has the right to withdraw the property for sale before the final bid and the gavel falls. *Pitchfork Ranch Co. v. Bar TL*,.615 P.2d 541, 541 (Wy. 1980). "In every case, the distinction is whether the seller has the right to withdraw the property prior to the completion of the auction, regardless of the bidding." *Id.*.

In an auction "with reserve," an owner may withdraw the property at any time, as long as he has not accepted a bid. *Id.* at 548. In an absolute auction, once the auction starts, or when the minimum bid is offered, the owner cannot withdraw the property from the auction. *Id*:, *Pyles,* 109 Md. App. at fn 6, 674 A.2d at fn 6. "[A]fter the auctioneer calls for bids on an article or lot, that article or lot <u>cannot be withdrawn</u> unless no bid is made within a reasonable time." *Pitchfork,* 615 P.2d at 548 (emphasis added).

When an auctioneer uses language that would lead a bidder to believe that he is promising to sell the property to the highest bidder, the auction would be held to be an absolute auction. *Pitchfork*, 615 P.2d 541 at 550, citing Williston on Contracts, Third Edition s 29, pp. 76-77, entitled, "Formation of Contract at Auction."

Furthermore, even if an auction begins as one that is "with reserve," that is, has a minimum bid, once the minimum bid is reached, if it is then advertised as an "absolute" auction, it then becomes an absolute auction. *Dry Creek Cattle Co. v. Harriet Bros. Ltd. Partnership*, 908 P.2d 399, 402 (Wyo. 1995). In other words, when an auction is advertised as an absolute auction once a condition precedent of a minimum bid has been satisfied, it becomes an absolute auction once the minimum bid is reached. *Id.*

Both Plaintiff and Defendant have represented to this Court that the auction was advertised as an "absolute auction" with a minimum opening bid of $200,000.00, and, once that bid was offered, the owner had to accept any bid and could not withdraw the real estate from the auction after the opening minimum bid. Furthermore, the language of the advertisement as an "absolute auction," with an opening minimum bid, would fairly lead a bidder to believe the opening bid could not be less than $200,000.00 and, thus, if anyone offered the minimum bid, the seller would be bound to sell the property to the highest bidder.

Although there was a minimum bid, the Court finds that the undisputed facts in this matter show that there is no genuine issue as to any material fact that this auction was an absolute auction at the beginning of the auction when the minimum opening bid of $200,000.00 was offered.

The Court therefore finds as a matter of law that this auction was an absolute auction.

b. Contract

As this Court holds that the auction in this matter was an absolute auction, the formation of the contract would be governed by the law of such auction.[1]

In an absolute auction, a contract is formed between the bidder and the auctioneer with every bid, until a higher bid is offered. *Pitchfork,* 615 P.2d at 548. The advertising material is an offer from the auctioneer to sell the property at the price bid by the highest bidder and the bidder accepts the offer with his bid. *Pyles,* 109 Md. App. at 80, 674 A.2d at 40. "A contract is formed with each bid, and the seller may not withdraw the property once any legitimate bid has been submitted, but is absolutely committed to the sale once the bid has been entered." *Washburn v. Thomas*, 37 P.3d 465, 467 (Co. App. 2001). In this matter, the "legitimate bid" was the opening bid of $200,000.00 and the seller, at that point, was "absolutely committed to the sale once the bid has been entered."

As this Court held, this was an absolute auction and, as such, a contract was formed between Plaintiff and Defendant upon every bid that Plaintiff made, from his first bid to his final bid that was accepted by the owner and the terms and conditions of each contract formed were set forth in the advertising material by the Defendant.

The majority of cases involving auctions hold, without differentiating between the type of auction involved, that auction terms and conditions can be set by advertising material by the

[1] However, this Court recognizes that, even had the auction been "with reserve," its decision would not have changed. Because Plaintiff was the high bidder and his bid was accepted, a contract was formed between Plaintiff and Defendant and Plaintiff had the right to sue Defendant for breach of the advertised terms and conditions of the auction. "We think the auctioneer who puts up for sale upon such a condition pledges himself that the sale shall [adhere to the terms and conditions of the sale]; or, in other words, contracts that it shall be so; and that this contract is made with the highest bona fide bidder; and, in case of a breach of it, that he has a right of action against the auctioneer." *Pitchfork*, 615 P.2d at 551. In a "with reserve" auction, "[t]he contract becomes complete only when the bid is accepted, this being ordinarily denoted by the fall of the hammer." *Dry Creek Cattle Co. v. Harriet Bros. Ltd. Partnership*, 908 P.2d 399, 402 (Wyo. 1995)

seller and these terms and conditions are binding unless there is an effective modification by the auctioneer. *Pyles*, 109 Md. App. at 85, 674 A.2d at 42 (1996), citing Restatement (Second) § 28(2); 7 Am.Jur.2d §§ 14 & 17; *cf. Erie Coal & Coke Corp. v. United States,* 266 U.S. 518, 520, 45 S.Ct. 181, 181-82, 69 L.Ed. 417 (1925) (holding that conditions of a sale set in an advertisement were binding); *Sullivan v. Mosner,* 266 Md. 479, 491, 295 A.2d 482 (1972) (stating that a written agreement may be modified by a subsequent oral modification), *Love v. Basque Cartel,* 873 F.Supp. 563, 569 (U.S. Dist. Ct. Wyo. 1995).

Once the seller has set forth the terms and conditions of the auction, the bidders may rely on those advertised terms and both the bidder and the seller are bound by those advertised terms. *Love*, 873 F.Supp. at 570 citing 7A C.J.S. Auction & Auctioneers § 9b (1980). *See also Kivett v. Owyhee County*, 58 Idaho 372, 74 P.2d 87, 92 (1937) ("Printed conditions under which a sale proceeds are binding on both buyer and seller, and cannot be varied, although they may be explained by verbal statements of the auctioneer made at the time of the sale.")

The terms and conditions set forth in the advertisement for the auction, both written and online, were clear, unambiguous and undisputed, requiring all bidders to provide a "Cash or Company Check" in the amount of ten percent (10%) of the minimum bid of $200,000.00 and a "Bank Letter of Guarantee" from a financial institution indicating their ability to pay the balance of the proceeds on the real estate if the bidder was successful at auction to qualify to bid on the property. The Defendant's advertisements also specifically stated that the terms of the advertisement can only be modified by a statement at the auction.

Thus, this Court finds that both the Plaintiff and the Defendant were bound by the terms and conditions in the original printed advertising material that formed the contract and the

Defendant could not alter the terms of that contract by allowing a bidder that did not qualify under the terms to bid without an effective modification of the original terms and conditions.

It is undisputed that the second bidder in the auction did not abide by the written contract as set forth in the advertisement material, and, therefore was not a qualified bidder, but, nevertheless, Defendant permitted the second bidder to participate in the auction and bid on the real estate.

The Court therefore finds as a matter of law that Defendant breached the contract with the Plaintiff when it allowed an unqualified bidder to bid at the auction, unless there was an effective modification of the contract.

III. Modification of the contract

Defendant alleged that the second bidder at the auction, Kurt Lerch, was a permanent bidder with it and, as such, the advertised terms and conditions of the auction were automatically waived for him, effectively modifying the contract. Even if this waiver were a valid modification of the terms and conditions of the auction as written in the advertising materials, it is undisputed that this waiver was not communicated to Plaintiff either before or on the day of the auction.

Defendant further represented that any waiver of terms and conditions stated the bidding requirements would not be published in the printed terms and conditions of the sale and that, in fact, other bidders would not be "allowed" to know about "preferred" or "privileged" bidders who would be exempt from the published terms and conditions of the real estate sale; that it was an "in-house" policy.

There is a split of authority whether the terms of an auction can be modified by oral statements that conflict with the original terms. *Love*, 873 F.Supp. at 571 citing 7A C.J.S.

Auction & Auctioneers § 9b (1980). "The general rule seems to be that the printed conditions of an auction may not be modified by the auctioneer at the time of the auction." *Id.*

However, many jurisdictions do allow oral modifications, but any modification must be communicated to all bidders of the auction. "[D]eclarations of the auctioneer subsequent to and at variance with the advertised procedures cannot change the printed terms of such advertisements unless the purchaser has knowledge of the modification." *Love,* 873 F.Supp. at 571, citing 7 Am.Jur.2d Auctions and Auctioneers § 15 (1980).

The Court believes that the West Virginia Supreme Court would allow oral modifications as long as the auctioneer gives the bidders reasonable notice of any modification. *Citizens Telecommunications Company of West Virginia v. Sheridan*, 239 W.Va. 67, 73, 799 S.E.2d 144, 150 (2017).

The Defendant could have modified the advertised terms of the auction, but those modifications "must be announced by the auctioneer in the form of a public statement so that all the bidders know of, or should have known of, the changes in the auction." *Pyles*, 109 Md. App. at 85, 674 A.2d at 42, citing Restatement (Second) § 28(2); 7 Am.Jur.2d § 14. "A public announcement requirement helps ensure that all bidders 'stand on equal footing' with respect to the auction." *Pyles*, 109 Md. App. at 86, 674 A.2d at 43, citing 7 Am.Jur.2d § 19, at 374.

It is undisputed that the second bidder at the auction, Kurt Lerch, did not provide either the 10% deposit or the bank letter of credit to qualify to bid on the day of the auction, and, thus, did not qualify to bid based upon the advertised terms of the contract.

It is also undisputed, as the Defendant admitted that there was no announcement made prior to the auction that could effectively modify the published terms of the auction with regard to these permanent bidders, and thus, no notice to the other bidders at the auction, namely

Plaintiff, of the waiver of terms and conditions of auction for permanent bidders. In fact, Defendant would not allow other bidders to know of such waiver.

Although the testimony of the Defendant, his registrar at the auction and Mr. Lerch were contradictory with regard to whether and how Mr. Lerch became a permanent bidder, and, thus, this Court cannot say that Mr. Lerch was pre-qualified to bid without abiding by the contract terms. Defendant allowed Mr. Lerch to bid without notice of any modification of the contract to Plaintiff. Thus, even if Mr. Lerch were a permanent bidder with Defendant, Defendant would still be required to provide Plaintiff notice of that waiver before allowing Mr. Lerch to bid.

Without prior notice to Plaintiff of the waiver of the terms for Mr. Lerch, there was no effective modification of the contract between Plaintiff and Defendant.

Without an effective modification of the terms of the contract, as Plaintiff was the only bidder to provide both the deposit and the bank letter of credit, he was the only qualified bidder.

Defendant was bound by the written terms of his advertisement which formed the contract, without discretion to waive them at will and, by allowing another bidder to bid without abiding by the terms, Defendant breached the contract with Plaintiff.

IV. West Virginia Precedent

Although this case involves an auction, which appears to have specific legal precedent in other jurisdictions, there is no legal precedent directly on point in West Virginia. However, there is authority from our West Virginia Supreme Court that the conduct between Plaintiff and Defendant constituted a unilateral contract and that Defendant breached that contract.

A unilateral contract is one where there is a promissory offer by one party and the other party accepts by acting to perform on the promise. *Citizens Telecommunications Company of West Virginia v. Sheridan*, 239 W.Va. 67, 73, 799 S.E.2d 144, 150 (2017).

The Court in *Citizens* found that a unilateral contract was formed between Frontier Communications and its customers when Frontier made an offer to provide internet service through an advertisement that offered the terms and conditions of the service, which the customers accepted by paying for the service. *Id.* at 150.

The Court finds the facts of *Citizen* to be on point. Defendant promised that only qualified bidders who met the terms and conditions of the sale would be able to bid on the real estate and Plaintiff accepted the terms by providing the 10% deposit and the bank letter of credit in order to become a qualified bidder. Defendant's consideration was a commitment to allow only qualified bidders to bid on the real estate and Plaintiff's consideration was providing the deposit and letter of credit, thereby properly bidding on the real estate. Thus, a unilateral contract was formed between Plaintiff and Defendant.

A unilateral contract may be modified by the offeror, but only on reasonable notice to the offeree, as well as additional consideration for the modification. *Id.* at 150.

For the same reasons that this Court found there was no modification of any contract formed by the advertising materials for an auction, the Court finds that there was no modification of any unilateral contract between Defendant and Plaintiff.

This Court finds that Defendant breached the contract with the Plaintiff.

V. Bid Restriction

Defendant's assertion that Plaintiff engaged in bid restriction is not germane to the determination of the purely legal controversy presently before this Court.

The allegations of bid restriction, even assuming *arguendo* that they are true for purposes of Defendant's Motion for Summary Judgment, can neither support summary judgment for Defendant nor preclude summary judgment for Plaintiff because the legal question at issue is

whether the conduct of Defendant breached the contract formed with Plaintiff by the advertising materials and the conduct of Plaintiff and a third party is not relevant to that issue.

Again, even assuming *arguendo* that they are true for purposes of Defendant's Motion for Summary Judgment, the alleged conduct did not, in any way, affect the auction or invalidate the contract between Plaintiff and Defendant as Mr. Lerch and Plaintiff both engaged in bidding, and Plaintiff was successful as high bidder. "[A] sale will be set aside where a person, desirous of purchasing, prevents others by his improper conduct from bidding against him; but a mere attempt of a purchaser to prevent another person from bidding will not render the sale invalid, if such attempt has not been successful." *Love* at 571.7A C.J.S. Auction & Auctioneers § 14 (1980).

Although disputed by the Plaintiff, even if Plaintiff had engaged in the alleged conduct, and Mr. Lerch had been persuaded not to bid, the remedy for such conduct would be to invalidate the contract of sale of the land between Plaintiff and the property owner, not invalidate the contract between Plaintiff and Defendant. *Id.*

Notwithstanding the foregoing, the allegations of bid restriction by Kurt Lerch are found to be contradictory and not credible, lacking any factual basis, and, therefore, even if relevant to the issue in this matter, would not show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

CONCLUSION

WHEREFORE, based upon the foregoing, this Court hereby **ORDERS, ADJUGES and DECREES** as follows:

1. Defendant's Motion for Summary Judgment is **DENIED** and its objections and exceptions to this ruling are noted and preserved;

2. Plaintiff's Motion for Summary Judgment is **GRANTED**;

3. A judgement is rendered in the amount of $65,000 in favor of the Plaintiff for the excess purchase price paid by Plaintiff;

4. A judgement is rendered in the amount of the excess auction commission fees of $3,867.50 due to the excess purchase price paid by Plaintiff for the property;

5. Post judgement interest;

6. Prejudgment interest;

7. Costs of this action to be calculated by the clerk; and

Judgment is **GRANTED** in favor of the Plaintiff and the clerk is hereby directed to mail this **ENTRY** to all counsel of record and to dismiss this case from the Court's docket with prejudice. This is a final appealable **ORDER** pursuant to Rule 54(b)

ENTER: April 5, 2018

JASON WHARTON, JUDGE.

Prepared by:

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STATE OF WEST VIRGINIA
COUNTY OF WOOD, TO-WIT:

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 6 day of April 2018, as fully as the same appears to me of record.

Given under my hand and seal of said Circuit Court, this the 6 day of April 2018.

Carole Jones
Clerk of the Circuit Court of
Wood County, West Virginia
By: [illegible], Deputy