

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

PNGI CHARLES TOWN GAMING, LLC,
a West Virginia limited liability company,

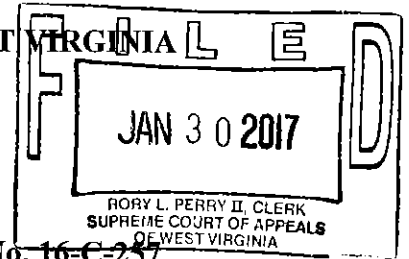
Plaintiff,

v.

YORK BUILDING PRODUCTS CO., INC.
and YORK BUILDING AGGREGATES,
LLC,

Defendants.

Civil Action No. 16-C-257
Judge John C. Yoder



**RESPONSE IN OPPOSITION TO MOTION TO REFER
CASE TO THE BUSINESS COURT DIVISION**

COME NOW the Defendants, York Building Products Co., Inc., a Pennsylvania corporation ("YBP"), and York Building Aggregates, LLC, a Pennsylvania limited liability company ("YBA") (YBP and YBA are collectively referred to as "Defendant"), by counsel, Kenneth J. Barton, Jr., Kelsey L. Swaim, and the law firm of Steptoe & Johnson PLLC and Rees Griffiths, Hunter B. Schenck, and CGA Law Firm, and hereby file their Response in Opposition to the Plaintiff's Motion to Refer Case to the Business Court Division.

LAW AND ARGUMENT

A. Standard of Law

A civil action which qualifies as "business litigation" may be referred to the Business Court Division in accordance with Rule 29 of the West Virginia Trial Court Rules. Specifically W. Va. Trial Ct. Rule 29.04 defines "business litigation" as:

- (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
- (3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

W. Va. Trial Ct. Rule 29.04(a) (2014) (emphasis added).

B. This Civil Action Does Not Require Specialized Knowledge, Expertise, Or Familiarity With A Specific Law Or Legal Principle.

The instant lawsuit is not suitable for a referral to the Business Court Division because it does not qualify as “business litigation” in accordance with W. Va. Trial Ct. Rule 29.04. Trial Court Rule 29(a) establishes the three criteria that are analyzed to determine whether a lawsuit qualifies as “business litigation” and is therefore appropriate for referral to the Business Court Division. Specifically applicable to this matter, Trial Court Rule 29(a)(2) states that, to be referred, a lawsuit must 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.” W. Va. Trial Ct. Rule 29(a).

This lawsuit presents breach of contract allegations on the part of both the Plaintiff and the Defendant. On or about March 25, 2016, the Plaintiff purchased aggregate products from YBP in order to resurface its thoroughbred horse racing track. *Compl.* ¶¶ 14, 23. Despite the Plaintiff’s acceptance of the aggregate products, the Plaintiff has failed, refused, and neglected to remit payment to the Defendant. *Countercl.* ¶ 12. As a result, the Plaintiff’s Complaint alleges breach of contract against the Defendant in connection with the transaction. Furthermore, YBP filed a Counterclaim against the Plaintiff for its failure to pay for the aggregate products.¹

The Plaintiff contends that this lawsuit presents commercial issues which require specialized treatment in order “to improve the expectation of a fair and reasonable resolution of the controversy.” Pl.’s Mot. Refer Case ¶ 8. The Plaintiff, however, does not state what “specialized treatment” is available through the Business Court Division that would not be available from the assigned circuit court judge. Even if the Uniform Commercial Code and lost profit issues raised in this lawsuit are slightly more complex than the traditional breach of contract action, those issues are not so complex that resources are required outside of the purview of the Circuit Court of Jefferson County.

Furthermore, the Plaintiff contends that specialized knowledge is required to address the “Uniform Commercial Code, a complex area of commercial law” and “complex questions of lost

¹ The Answer and Counterclaim attached as Exhibit 2 to the Plaintiff’s Motion to Refer Case to the Business Court Division is not the appropriate version. After filing the version of the document attached by the Plaintiff, the undersigned was informed by the Circuit Clerk of Jefferson County that the Answer and Counterclaim needed to be filed separately in order to trigger the payment function for the counterclaim. As such, the appropriate version of the Answer is attached hereto as **Exhibit A** and the Counterclaim of York Building Products Co., Inc. as **Exhibit B**.

profits.” Pl.’s Mot. Refer Case ¶ 8. The Plaintiff, however, does not state there is any deficiency in the knowledge or expertise of the assigned circuit court judge in handling breach of contract issues. Breach of contract matters, including those concerning commercial contracts, are relatively simple and routine matters for a seasoned circuit court judge. In fact, the issues are sufficiently straightforward that the Plaintiff demanded a jury trial to resolve them.

Accordingly, because this lawsuit does not present a subject matter which requires either specialized treatment or specialized knowledge, expertise, or familiarity with a specific legal principle, this action does not qualify as “business litigation” under Trial Court Rule 29. Therefore, the Plaintiff’s Motion to Refer Case to the Business Court Division should be denied.

CONCLUSION

WHEREFORE, the Defendants, York Building Products Co., Inc. and York Building Aggregates respectfully request that this Court deny the Plaintiff’s Motion to Refer Case to the Business Court Division.

Dated: January 27, 2017

**YORK BUILDING PRODUCTS CO., INC. and
YORK BUILDING AGGREGATES, LLC,
By Counsel**

/s/ Kelsey L. Swaim

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2017, I served the foregoing *Response in Opposition to Motion to Refer Case to the Business Court Division* with the Clerk of the Court using the E-Filing system which will send notification of such filing to the following counsel of record:

Charles F. Printz, Jr., Esq.
J. Tyler Mayhew, Esq.
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Martinsburg, WV 25402

/s/ Kelsey L. Swaim
Kelsey L. Swaim (W. Va. Bar No. 12574)