

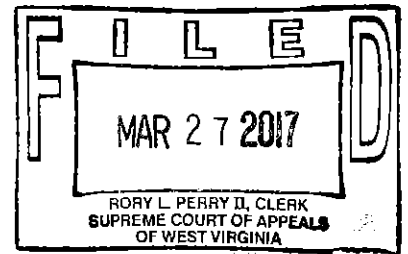
IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

SOUTHCO DEVELOPMENT, LLC,

Plaintiff,

Vs.

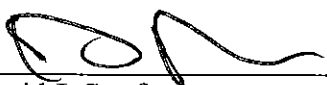
Monongalia County
Case No. 16-C-575
Gaujot, Judge



MONONGALIA COUNTY DEVELOPMENT
AUTHORITY, LARSON DESIGN GROUP, INC.,
and HOLLY CHILDS,

Defendants.

DEFENDANT, HOLLY CHILDS' REPLY MEMORANDUM
TO PLAINTIFF'S MOTION TO REFER MATTER TO BUSINESS COURT DIVISION



David J. Straface
WV State Bar #3634
John R. Angotti
WV State Bar #5068
Angotti & Straface, L.C.
274 Spruce Street
Morgantown, WV 26505
(304) 292-4381
Counsel for Defendant, Holly Childs

The Defendant, Holly Childs, an individual, by her counsel, David J. Straface and John R. Angotti, in response to the Motion to Refer Matter to the Business Court Division filed herein, says as follows:

1. Said Defendant contends that this case is not proper for the Business Court as it does not involve a complex commercial litigation case between business entities.

2. Defendant, Holly Childs, states that the plaintiff filed this action in the Circuit Court of Monongalia County, West Virginia, alleging several causes of action including breach of contract, promissory estoppel, unjust enrichment, fraud, fraudulent misrepresentation, tortious interference with a contractual and business relationship, negligence against Monongalia County Development Authority (MCDA); and negligent misrepresentation and fraudulent misrepresentation against Larson Design Group, Inc.

3. Plaintiff alleges causes of action against Defendant, Holly Childs, an individual, for fraudulent misrepresentation and negligence.

4. Defendant, Holly Childs, states that at all times relevant herein she was an employee and agent of the Defendant, Monongalia County Development Authority (MCDA) and acted within the scope of her authority as such and there has been no allegations or contentions that she acted outside the scope of her employment.

5. The Defendant, Holly Childs, an individual, further contends that she has statutory immunity from liability under West Virginia Code § 29-12A-5(b).

6. Defendant, Holly Childs, an individual, further states that she is not a business entity and has had no business relationship or contractual relationship with the Plaintiff.

7. The Business Court Division was created to handle disputes involving commercial issues and disputes between businesses. See West Virginia Trial Court Rules 29.01.

8. Business Litigation is defined in West Virginia Court Rules (29.04) as one or more pending actions in the 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 of 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.

9. In this case the facts surrounding Plaintiff's claims do not involve the high level of complexity, novel issues, issues involving specialized treatment in which Judges would receive specialized training nor is it a case that needs complex discovery and scheduling orders or case management techniques.

10. Accordingly this case does not meet the criteria for removal to the Business Court Division. Defendant, Holly Childs, is an individual and thus the allegations against her do not constitute a dispute between business entities, and as an individual she is entitled to a trial by jury. The Honorable Phillip D. Gaujot, Judge of the Circuit Court of Monongalia County, West Virginia, is capable to preside over this matter, and a jury can adequately decide the issues herein.

WHEREFORE, the Defendant, Holly Childs, respectfully requests that the Court DENY the Plaintiff's Motion to Refer this Matter to the Business Court Division.

HOLLY CHILDS,

By Counsel



David J. Straface
WV State Bar #3634
John R. Angotti
WV State Bar #5068
Angotti & Straface, L.C.
Counsel for Defendant, Holly Childs
274 Spruce Street
Morgantown, WV 26505
(304) 292-4381

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2017, a true and correct copy of the foregoing Defendant, Holly Childs' Reply Memorandum to Plaintiff's Motion to Refer Matter to the Business Court Division, on counsel of record listed below, by depositing the same in the United States Mail, postage prepaid, as follows:

Roy L. Perry, II, Clerk
Supreme Court of Appeals of West Virginia
State Capitol, Room E-317
Charleston, WV 25305

Hon: Phillip D. Gaujot, Judge
Circuit Court of Monongalia County
Monongalia County Justice Center
75 High Street, Suite 32
Morgantown, WV 26505

Jean Friend, Clerk
Circuit Court of Monongalia County
Monongalia County Justice Center
75 High Street, Suite 12
Morgantown, WV 26505

The Central Office of the Business Court Division
Berkeley County Judicial Center
Business Court Division
Suite 2100
380 W. South Street
Martinsburg, WV 25401

Debra Tedeschi Varner, Esq.
Michael A. Secret, Esq.
McNeer, Highland, McMunn & Varner
400 West Main Street
P. O. Drawer 2040
Clarksburg, WV 26302-2040
Counsel for SouthCo Development LLC

James A. Gianola, Esq.
Gianola, Barnum, Bechtel & Jackson
1714 Mileground
Morgantown, WV 26505
Counsel for Monongalia County Development Authority

Paul M. Mannix, Esq.
Marcus & Shapira, LLP
One Oxford Centre, 35th Floor
301 Grant Street
Pittsburgh, PA 15219-6401
Counsel for Defendant, Larson Design Group, Inc.



David J. Straface
John R. Angotti
Angotti & Straface, L.C.
Counsel for Defendant, Childs