

No. 17- BCD-05

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SOUTHCO DEVELOPMENT, LLC

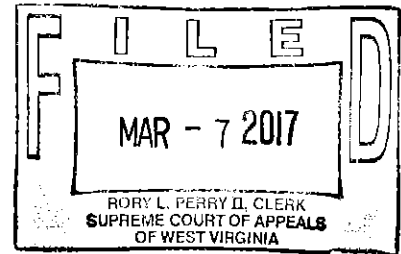
Plaintiff,

v.

Civil Action No. 16-C-575

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

Defendants.



MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Plaintiff, SOUTHCO DEVELOPMENT, LLC
By Counsel:

Debra Tedeschi Varner (WV Bar #6501)
Michael A. Secret (WV Bar #13044)

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SOUTHCO DEVELOPMENT, LLC

Plaintiff,

v.

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

Monongalia County Circuit Court
Civil Action No. 16-C-575

Defendants.

MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Plaintiff, SouthCo Development, LLC, (hereinafter "SouthCo"), by counsel, Debra Tedeschi Varner, Michael A. Secret, and the law firm of McNeer, Highland, McMunn and Varner, L.C., respectfully moves this Honorable Court to refer the above-styled case to the West Virginia Business Court Division.

1. This action involves the following counts levied against the various Defendants:
 - a. Breach of contract
 - b. Promissory Estoppel
 - c. Unjust Enrichment
 - d. Fraud
 - e. Fraudulent Misrepresentation
 - f. Tortious Interference with a Contractual and Business Relationship
 - g. Negligence
 - h. Negligent Misrepresentation
2. The allegations in this case are levied primarily against the following two business entities:

- a. The Monongalia County Development Authority (hereinafter “the MCDA”), a political subdivision organized and authorized pursuant to West Virginia Code § 7-12-7 with the purpose of promoting, developing, and advancing the business prosperity and economic welfare of Monongalia County.
- b. Larson Design Group, Inc. (hereinafter “Larson”), a Pennsylvania corporation licensed to do business in the State of West Virginia with an office in Morgantown, West Virginia.

3. These allegations are also levied against Holly Childs (hereinafter “Childs”), who, at all times relevant to the events that are the subject of this litigation, was acting as representative of the MCDA as its Director. During this time, Childs’ job duties consisted of managing economic development projects and properties to further the MCDA’s goal of advancing the business prosperity and economic welfare of Monongalia County. At all times relevant, she was compensated by the Morgantown Area Economic Partnership, of which the MCDA is a member.

4. These abovementioned counts all stem from the alleged unlawful breach of a coal extraction contract by the MCDA, by and through its agent and Director, Childs, which prevented SouthCo from completing its coal-extraction and coal-hauling duties. Childs, acting within her scope of employment and with the authority of the MCDA, made multiple representations to SouthCo that the project would be completed when, in actuality, the necessary Federal Aviation Administration environmental evaluations were never conducted. Additionally, statements from Larson further led SouthCo to believe that the project would be continued even though Larson knew or should have known that all of the prerequisites for the project’s completion had not been met.

5. In support of this motion, the movant believes that the above-styled action contains issues significant to business, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described in the attached documents.

6. As a result of these allegedly unlawful business practices by the MCDA and Larson, SouthCo incurred losses which include: outstanding expenses and costs as were required to complete the project; loans to complete the project which are now outstanding; and three outstanding coal order agreements as coordinated by their coal broker.

7. In further support of this Motion, please find attached hereto an accurate copy of the docket sheet, as well as the operative Complaint, Answers, Counterclaims and Crossclaims, as follows:

- a. [Plaintiff's] Complaint;
- b. [Larson Design Group, Inc.'s] Answer, Affirmative Defenses and Cross-Claims [against MCDA and Holly Childs] to Plaintiff's Complaint;
- c. The Defendant, Monongalia County Development Authority's Answer to the Plaintiff's Complaint and More Definite Statement, Counter-Claim [against SouthCo] and Cross-Claim [against Holly Childs and Larson Design Group, Inc.];
- d. [Holly Childs'] Answer, Affirmative Defenses and Cross-Claims [against MCDA and Larson Design Group, Inc.] to Plaintiff's Complaint;
- e. The Monongalia County Development Authority's Answer to the Cross-Claim of Larson Design Group, Inc.; and,

f. Larson Design's Answer to Cross-Claim of Monongalia County Development Authority.

8. Pursuant to Rule 29.06(a)(2), this motion is being filed after the time to answer SouthCo's Complaint has expired.

9. This action qualifies as "business litigation" as defined by Rule 29.04(a) of the West Virginia Trial Court Rules. Specifically, SouthCo's claims against the MCDA, Larson, and Childs, as set forth above, involve matters related to business operations between business entities and political subdivisions with the defined purpose of engaging in business activities.

10. Furthermore, this litigation 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 due to the need for specialized knowledge or experience in the areas of coal transportation, coal hauling agreements, and coal brokering contracts. SouthCo's alleged losses associated with this action are a direct result of alleged unlawful business practices by the MCDA and Larson, both of whom had a business relationship with SouthCo. Many of the damages deal with the complicated nature of SouthCo's coal brokering agreements with various coal companies which further necessitate the expertise provided by the West Virginia Business Court Division.

11. While Rule 29.04(a) excludes certain actions, such as consumer litigation, from its definition of "business litigation," such exclusions are inapplicable to SouthCo's principle claims as set forth in the Complaint.

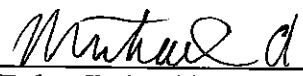
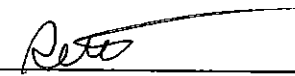
12. In regard to expedited review, SouthCo hereby DOES NOT request an expedited review under W. Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W. Va. Trial Court Rule 29.

13. At this time, there is a related collections action filed against SouthCo to collect on payments for natural gas that are in default as a result of the defendants' allegedly unlawful business practices. That action is styled *Texas Tea Fuel Services, LLC v. Steve Southern*, Civil Case No. 16-M31C-01261. In addition to this pending collection action, multiple creditors have been in contact with SouthCo to pay on the debts caused by the MCDA's and Larson's unlawful business practices which led to the wrongful shutdown of the project. These pending collection actions further necessitate review by the West Virginia Business Court Division.

WHEREFORE, the undersigned hereby MOVES, pursuant to W. Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 6th day of March, 2017.

Plaintiff, SOUTHCO DEVELOPMENT, LLC
By Counsel:


Debra Tedeschi Varner (WV Bar #6501)

Michael A. Secret (WV Bar #13044)

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Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of March, 2017, I served the foregoing "***MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION***" upon counsel of record by depositing true copies thereof in the United States mail, postage prepaid, in envelopes addressed as follows:

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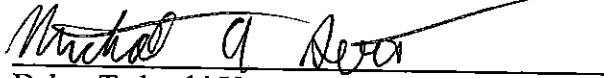
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