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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

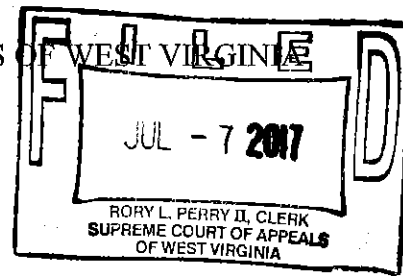
ERNEST B. DAVIS, JR. and
MAPLE RIDGE, L.L.C.,

Plaintiffs,

v.

MARCO RESOURCES LLC and
EVERETT COOK,

Defendants.



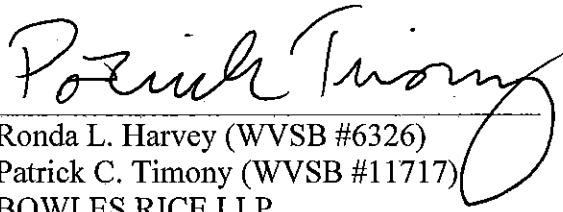
Civil Action No. 17-C-130
(Circuit Court of Raleigh County)

Plaintiffs' Motion to Refer to the Business Court Division

Plaintiffs, Ernest B. Davis, Jr. ("Mr. Davis") and Maple Ridge, LLC ("Maple Ridge"), by counsel, move this Court to refer this civil action to the Business Court Division ("Motion to Refer"). As outlined more in the Memorandum of Law in Support, this civil action involves two (2) interrelated and significant business transactions. More importantly, this civil action requires specialized knowledge, as Plaintiffs' claims depend on, in large part, understanding a complex billion-dollar international transaction. Finally, Plaintiffs satisfied all of the criteria under the Trial Court Rules to refer this civil action to the Business Court Division. Consequently, this Court should grant Plaintiffs' Motion to Refer.

MAPLE RIDGE, L.L.C and
ERNEST B. DAVIS, JR.

By Counsel


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ERNEST B. DAVIS, JR. and
MAPLE RIDGE, L.L.C.,

Plaintiffs,

v.

Civil Action No. 17-C-130
(Circuit Court of Raleigh County)

MARCO RESOURCES LLC and
EVERETT COOK,

Defendants.

**Memorandum of Law in Support of Plaintiffs' Motion to Refer to
the Business Court Division**

Plaintiffs, Ernest B. Davis, Jr. ("Mr. Davis") and Maple Ridge, LLC ("Maple Ridge"), by counsel, respectfully submit this Memorandum of Law in Support of their Motion to Refer to the Business Court Division ("Motion to Refer"). As outlined more fully below, the Complaint and underlying facts satisfy the referral criteria set forth in the West Virginia Trial Court Rules. For this reason, this Court should grant Plaintiffs' Motion to Refer and refer this litigation to the Business Court Division.

Statement of Alleged Facts

This matter involves two (2) separate, but interrelated, business disputes. The first dispute arose from a commercial lease that Defendant Macro Resources LLC ("Marco Resources") and Maple Ridge executed on or around September 25, 2015 to lease ("Lease") a building located at 801 Ragland Road, Beckley, West Virginia ("Premises"). [See, Cmpl., ¶ 8, attached hereto as Ex. A]; [Lease, § 1, attached hereto as Ex. B.] The Lease commenced on October 1, 2015; covered a term of three (3) years; and provided Marco Resources two (2) options to extend the Lease for

additional three (3) year terms. [Ex. A at ¶¶ 9-10]; [Ex. B at § 2.] Further, Marco Resources agreed to pay Maple Ridge Five Thousand Seven Hundred Twenty-One Dollars and sixty-three cents (\$5,721.63) per month for rent and further agreed to pay for the utilities it used. [Ex. A at ¶¶ 11-13]; [Ex. B at §§ 4, 7-9.] Initially, Marco Resources timely paid Maple Ridge pursuant to the terms of this Lease. [Ex. A at ¶ 15.]

On or around November 17, 2015, Defendant Everett Cook (“Mr. Cook”), managing member of Marco Resources, approached Mr. Davis, member of Maple Ridge, about an investment opportunity. [Ex. A at ¶ 16.] Specifically, Mr. Cook represented that Marco Resources needed an infusion of cash to close on several mineral leases. [Ex. A at ¶ 17.] In exchange for an investment of One Hundred Thousand Dollars (\$100,000.00), Mr. Cook promised Mr. Davis a seven-and-a-half percent (7.5%) non-voting interest in Marco Resources. [Ex. A at ¶ 18.] To entice Mr. Davis to participate in this transaction, Mr. Cook provided Mr. Davis with an asset summary of Marco Resources. [Ex. A at ¶ 19.] This asset summary represented that Marco Resources possessed approximately One Hundred Ninety-Six Million Forty-Five Thousand Dollars (\$196,045,000.00) in assets, including three (3) mineral leases. [Ex. A at ¶ 20]; [Assets Summary, attached hereto as Ex. C.] Based on this asset summary and Mr. Cook’s representations, Mr. Davis invested One Hundred Thousand Dollars (\$100,000.00) with Marco Resources. [Ex. A at ¶ 25.]

In the summer of 2016, Marco Resources began falling significantly behind in its rental payments under the Lease. [See, Sept. 16, 2016, Billing Statement, attached hereto as Ex. D.] This breach of the Lease coincided with Marco Resources’ difficulties effectuating a complex international medium term note financial transaction to purchase certain mineral interests in West Virginia. [See, May 23, 2016, email from Auerback to Ide, attached hereto as Ex. E]; [June 8,

2016, Letter of Intent, attached hereto as Ex. F.] In this transaction, an international buyer, Vulcann Gaandren BV, agreed to exchange European investment bank notes with a seller in a €5,000,000,000.00 transaction. [Ex. F]; [See, July 22, 2016, email from Auerback to Flores, attached hereto as Ex. G.]¹ Approximately €10,000,000.00 of this transaction involved Marco Recourses and its acquisition of cash to pursue and purchase mineral interests. [Ex. F.] However, issues arose finalizing this deal and, ultimately, it failed. [See, Aug. 19, 2016, Email from Auerback to Cook, attached hereto as Ex. H]; [Aug. 29, 2016, Email from Auerback to Ferguson, attached hereto as Ex. I]; [Aug. 31, 2016, Email from Auerback to Cook, attached hereto as Ex. J.] Upon information and belief, the failure of this deal precluded Marco Resources from acquiring certain mineral interests.² Because Marco Resources failed to acquire the minerals, it reneged entirely on its obligations under the Lease and investment obligations. Marco Resources and Mr. Cook's actions led Plaintiffs to commence this civil action.

Argument

A. The principal claims involve matters of significance to the transactions between the parties.

Rule 26.01(a)(1) of the West Virginia Trial Court Rules defines business litigation to include matters in which “the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities.” W. VA. TR. CT. R. 29.04(a)(1). Black's Law Dictionary defines transaction to mean “[t]he act or an instance of conducting business or other dealings; esp. the formation, performance, or discharge of a contract. Something

¹ At this time, Plaintiffs' counsel possesses only limited knowledge about this complex international transaction.

² Plaintiffs provided this Court a small sampling of some of the email communications outlining the various terms of the financing for this transaction. Plaintiffs can provide this Court with further information, if necessary.

performed or carried out; a business agreement or exchange.” BLACK’S LAW DICTIONARY, Transaction (9th ed. 2009). The Complaint alleges two (2) significant business transaction: (i) the Lease of the Premises; and (ii) the One Hundred Thousand Dollars (\$100,000.00) investment. [Ex. A at ¶¶ 8-41.]

Mr. Davis invested One Hundred Thousand Dollars (\$100,000.00) with Mr. Cook and Marco Resources to provide it with revenue to acquire mineral interests. [Ex. A at ¶¶ 20, 25]; [Ex. C.] Following this investment, Marco Recourses attempted to acquire additional financing through an international exchange of medium term notes. [Ex. F.] While Plaintiffs currently only possess a limited understanding of this transaction through some communications and the letter of intent, a cursory review of this information reveals the significance and complexity of this transaction. [Exs. E-J.] A \$100,000.00 investment and a multi-million euro cash infusion are precisely the significant transactions meant for adjudication in the Business Court.

Finally, the execution of the commercial Lease, and subsequent breach, also qualifies as a significant business transaction. The Lease afforded Marco Resources its principal office location for almost a year, until Marco Resources attempted to terminate this Lease in mid-September of 2016. [Ex. A at ¶ 34.] Further, as of the filing of the Complaint, Marco Resources owed Maple Ridge almost Forty Thousand Dollars (\$40,000.00) of back rent and utilities, not including interest. [Ex. A at ¶¶ 31, 34]; [Ex. D.] While not as large as the stakes of Mr. Davis’s investment claim, for most businesses, particularly a small business like Maple Ridge, Forty Thousand Dollars (\$40,000.00) is a significant transaction. These reasons support this Court granting Plaintiffs’ Motion to Refer.

B. The dispute presents commercial and/or technology issues for which specialized treatment is likely to improve the expectation of a fair and reasonable resolution.

This dispute presents commercial issues for which specialized treatment is likely to improve the expectation of a fair and reasonable solution. W. VA. TR. CT. R. 29.04(a)(2). The investment claim requires the Trial Court, and a jury, to delve into an international financial transaction. [Exs. E-J.] This transaction was complex and had a lot of moving parts. Based on a limited review, it appears that the intermediaries attempted this transaction at multiple times through different international buyers. [Ex. E]; [Ex. F]; [Ex. G.] It involved exchanges of multiple commercial papers, billions of euros for likely hundreds of other transactions separate and apart from the deal involving Marco Resources. [Ex. F.] Ultimately, this international financial transaction failed. Mr. Davis's investment claims hinge, in part, on understanding this deal. Particularly, what did Marco Resources and Mr. Cook know about internationally financing Marco Resources' purchase of mineral interests prior to Mr. Davis's investment. Finally, Mr. Davis's investment claims may require the Trial Court resolve issues of international discovery related to this transaction. Certainty, an understanding of commercial and technology will assist with these issues. Consequently, this factor justifies this Court granting Plaintiffs' Motion to Refer.

C. The claims are not expressly excluded under the West Virginia Trial Court Rules.

Rule 26.04(a)(3) specifically excludes certain cases from the jurisdiction of the Business Court:

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. TR. CT. R. 29.04(a)(3). As set forth in the above provision, the West Virginia Trial Court Rules do not exclude Plaintiffs' claims in this litigation. Therefore, West Virginia Trial Court Rule § 29.04(a)(3) allows this Court to refer this litigation to the Business Court Division, and this Court should grant Plaintiff's Motion to Refer.

D. Plaintiffs complied with Rule 26.06 of the West Virginia Trial Court Rules in filing their Motion to Refer.

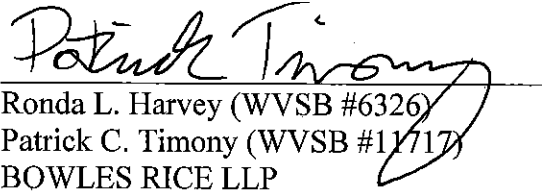
Finally, Plaintiffs complied with Rule 26.06 of the West Virginia Trial Court Rules in filing their Motion to Refer. In addition to the Complaint, Plaintiffs enclosed a copy of Defendants' Answer and docket sheet. [See, Answer, attached hereto as Ex. K]; [Docket Sheet, attached hereto as Ex. L.] For the reasons previously stated, this Court should grant Plaintiffs' Motion to Refer.

Conclusion

For the reasons set forth in this Memorandum of Law in Support, Plaintiffs respectfully request that this Court grant its Motion to Refer.

MAPLE RIDGE, L.L.C and
ERNEST B. DAVIS, JR.

By Counsel

A handwritten signature in black ink, appearing to read "Patrick Timony", is written over a horizontal line.

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