

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

LARRY LOVINS, D/B/A  
APPALACHIAN HOME CENTER,  
A Kentucky Business and TRI-STATE  
HOTELS, LLC, a Kentucky Limited Liability  
Company,

Plaintiffs,

v.

JAI SAI, LLC, a West Virginia  
Limited Liability Company; NATIONAL  
REPUBLIC BANK OF CHICAGO; RIVER  
CITIES GLASS & CONSTRUCTION, LLC,  
a Kentucky Limited Liability Company,

Defendants,

v.

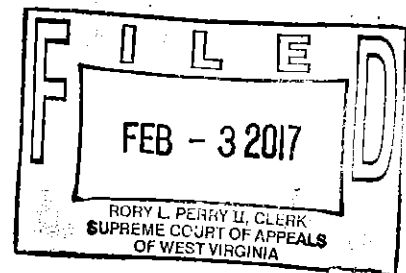
DOLATRAI PATEL, and  
AMK, LLC, a Kentucky Limited  
Liability Company,

Counterclaim Defendants.

**TO: THE HONORABLE CHIEF JUSTICE Allen H. Loughry, II**

**Jai Sai, LLC's Motion to Refer to the Business Court Division**

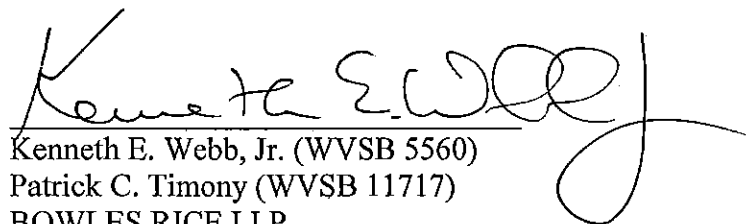
Defendant, Jai Sai, LLC ("Jai Sai"), by counsel, respectfully moves this Court to refer this litigation to the Business Court Division ("Motion to Refer"). As outlined more fully in the Memorandum of Law, the alleged facts and claims, particularly those recently asserted in the Amended Counterclaim, clearly satisfy the referral criteria set forth in the West Virginia Trial Court Rules. For this reason, this Court should grant Jai Sai's Motion to Refer and refer this litigation to the Business Court Division.



Kanawha County Circuit Court  
Civil Action No. 13-C-1796  
Judge Charles E. King

JAI SAI, LLC,

By Counsel,

A handwritten signature in black ink, appearing to read "Kenneth E. Webb, Jr.", is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Kenneth E. Webb, Jr. (WVSB 5560)

Patrick C. Timony (WVSB 11717)

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DOLATRAI PATEL, and  
AMK, LLC, a Kentucky Limited  
Liability Company,

Counterclaim Defendants.

**Memorandum of Law in Support of Jai Sai, LLC's  
Motion to Refer to the Business Court Division**

Defendant, Jai Sai, LLC ("Jai Sai"), by counsel, respectfully submits this Memorandum of Law in Support of its Motion to Refer to Business Court Division ("Motion to Refer"). As outlined more fully below and at the urging of the Circuit Court, the alleged facts and claims, particularly those recently asserted in the Amended Counterclaim, clearly satisfy the referral criteria set forth in the West Virginia Trial Court Rules. For this reason, this Court should grant Jai Sai's Motion to Refer and refer this litigation to the Business Court Division.

## Statement of Facts

On or around August 15, 2007, Ramesh Patel organized Cross Lanes Hospitality, LLC (“Cross Lanes Hospitality”) for the purpose of constructing and operating a hotel in Cross Lanes, West Virginia.<sup>1</sup> [Am. Countercl. at ¶ 7.] In furtherance of this corporate mission, on or around June 20, 2008, Cross Lanes Hospitality applied for and received a line of credit for over Five Million Dollars (\$5,000,000.00+) from The National Republic Bank of Chicago (“Bank of Chicago”). [Am. Countercl. at ¶ 8.] Cross Lanes Hospitality used this line of credit to purchase the hotel property and begin construction. Cross Lanes Hospitality contracted with Plaintiff, Tri-State Hotels, LLC (“Tri-State”), to manage this project. [Am. Countercl. at ¶¶ 9-10.] Unfortunately for Cross Lanes Hospitality, the project ended in financial disaster. Significant cost overruns caused Cross Lanes Hospitality to exhaust its entire line of credit, while only completing half of the hotel’s construction. [Am. Countercl. at ¶¶ 11-12.] In financial ruin, Cross Lanes Hospitality filed for Chapter 11 bankruptcy on March 4, 2011. [Am. Countercl. at ¶ 22.]

This bankruptcy led the Bank of Chicago to foreclose on Cross Lanes Hospitality’s hotel property. [Am. Countercl. at ¶ 23.] Interested in continuing his work, Counterclaim Defendant Dolatrai Patel (“Dolatrai”), principal of Tri-State, approached Bipin Morar (“Bipin”), Sunil Patel (“Sunil”) and Vimalkumar Patel (“Vimalkumar”) about investing in and purchasing the Cross Lanes hotel property. [Am. Countercl. at ¶¶ 16-21.] Dolatrai’s assurances and representations convinced Bipin, Sunil and Vimalkumar to form Jai Sai for the purpose of constructing and operating this hotel. [Am. Countercl. at ¶¶ 21, 24.] Jai Sai tasked Dolatrai with overseeing the completion of the project. [Am. Countercl. at ¶ 29.]

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<sup>1</sup> This Statement of Facts relies on the allegations stated in Jai Sai’s Amended Counterclaim.

Contemporaneously, Jai Sai executed a line of credit with the Bank of Chicago to fund this completion project. [Am. Countercl. at ¶ 28.]

Thereafter, without the knowledge of Jai Sai and through Tri-State and AMK, LLC (“AMK”) corporate entities that he wholly owned, Dolatrai mismanaged the project, “cooking the books” for his own financial benefit. [Am. Countercl. at ¶¶ 31-33.] Specifically, Dolatrai, through Tri-State and AMK, misrepresented the amount and scope of the construction work performed, which allowed Dolatrai and his companies to obtain withdrawals from Jai Sai’s line of credit. Part and parcel with this transaction, Dolatrai refused to pay contractors for their materials and labor which, subsequently, led to the filing of numerous mechanic’s liens against Jai Sai and its property.<sup>2</sup> Eventually, Jai Sai discovered multiple improprieties and inconsistencies in the accounting following multiple defaults on the line of credit with Bank of Chicago. [Am. Countercl. at ¶¶ 34-39.] The mismanagement required Jai Sai to increase its line of credit with Bank of Chicago by Nine Hundred Thousand Dollars (\$900,000.00). [Am. Countercl. at ¶ 40.]

### **Abbreviated Procedural History**

On June 10, 2015, this Court denied Jai Sai’s Motion to Refer because the proceeding had “been pending for over a year and in which numerous substantive motions have been decided [and it did] not require specialized treatment to improve the expectation of a fair and reasonable resolution. . . .” [See, June 10, 2015, Administrative Order.] Since the denial of this petition, this litigation has fundamentally changed.

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<sup>2</sup> To be sure, Tri-State disputes these allegations and, instead, alleges that its performed all of this work on the property. This led Tri-State to file a \$630,000.00 mechanic’s lien against Jai Sai’s property.

On June 17, 2016, Jai Sai retained Bowles Rice as counsel. [See, June 17, 2016, Agreed Order Substituting Counsel.] On August 11, 2016, Jai Sai moved for leave to amend its Counterclaim (“Motion for Leave to Amend”). [Aug. 11, 2016, Mot. for Leave to Am. Countercl.] This Amended Counterclaim added two (2) new parties to the litigation: (i) Dolatrai; and (ii) AMK. [Am. Countercl. at ¶¶ 4-5.] Additionally, the Amended Counterclaim properly defined and alleged the facts giving rise to Jai Sai’s claims of (i) fraud; (ii) negligent misrepresentation; (iii) tortious interference of contract; (iv) unjust enrichment; (v) abuse of process; and (vi) joint venture. [Am. Cmpl. at ¶¶ 43-75.] The Circuit Court granted this Motion for Leave to Amend. [See, Oct. 28, 2016, Order.] Further, the Circuit Court, on its own initiative during the October 13, 2016 hearing, recommended that the Parties refer this action to the Business Court Division. Based on this recommendation, Jai Sai requests, for a second time, that the Business Court Division assist the parties in resolving their dispute.

## **Argument**

### **A. The principal claims involve matters of significance to the transactions between Jai Sai, Tri-State and AMK.**

Rule 29.04(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). While the West Virginia Trial Court Rules never define the word transaction, 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 performed or carried out; a business agreement or exchange.” BLACK’S LAW

DICTIONARY, Transaction (9th ed. 2009). A review of the allegations and claims demonstrates that this litigation satisfies this criteria.

This matter centers on disputes arising from the construction of a hotel in Cross Lanes, West Virginia. Tri-State's claims a \$630,000.00 mechanic's lien for the services it alleges it performed on this project. [Am. Cmpl. at ¶ 66.] Conversely, Jai Sai's counterclaims that Tri-State, along with Dolatrai and AMK, manipulated the accounting records to cover-up illegitimate business practices. [Am. Cmpl. at ¶¶ 32-39.] The Amended Complaint alleges that Tri-State, Dolatrai and AMK caused Jai Sai to incur an additional Nine Hundred Thousand Dollars (\$900,000.00) in debt to complete the construction project. [Am. Cmpl. at ¶ 40.] In all, the disputes between these companies total more than One-and-a-Half Million Dollars (\$1,500,00.00). For small businesses, these transactions are beyond significant. These transactions are the lifeblood for their survival.

Additionally, commercial construction disputes are not foreign to this Court. [Sept. 24, 2014, Order - Vandalia Capital II, attached hereto as Ex. A]; [June 24, 2015, Order - Black Bear Crossing Town House Association, LLC, attached hereto as Ex. B.] Accordingly, for this reason and upon its review of the Amended Counterclaim and the oral arguments presented, the Circuit Court recommended referring this litigation to the Business Court. Therefore, West Virginia Trial Court Rule § 29.04(a)(1) allows this Court to refer this litigation to the Business Court Division and this Court should grant Jai Sai's Motion to Amend.

- 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.**

Rule 29.04(a)(2) of the West Virginia Trial Court Rules defines business litigation to include matters in which:

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 principals that may be applicable.

W. VA. TR. CT. R. 29.04(a)(2). Specialized knowledge of hotel construction and accounting “is likely to improve the expectation of a fair and reasonable resolution of the controversy. . . .” *Id.*

The heart of the dispute involves the Parties’ disagreement concerning the accounting of the construction project. As project manager, Dolatrai and/or Tri-State owed Jai Sai a duty to properly account for the work and materials. Jai Sai compiled a list of the materials and services allegedly purchased for this construction project; yet, irregularities exist concerning the benefit these materials and/or services conferred and the accounting lacked supporting documentations for the purchases. [See, Accounting, attached hereto as Ex. C.] Consequently, this litigation requires not only experienced accountants to sift through purchasing orders, invoices and receipts, but also requires expertise concerning the construction of a hotel; i.e., what supplies do you need and how many of these supplies should be purchased. This specialized knowledge on commercial and construction issues are likely to improve the fair and reasonable resolution of this controversy. Therefore, West Virginia Trial Court Rule § 29.04(a)(2) allows this Court to refer this litigation to the Business Court Division and this Court should grant Jai Sai’s Motion to Refer.

**C. The claims at issue 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 the Parties' 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 Jai Sai's Motion to Refer.

**D. The amended Trial Court Rules removed the "one year" restriction from Rule 29.06.**

In its July 23, 2015 Order, the Supreme Court of Appeals denied Jai Sai's Motion to Refer, in part, because the civil action had been pending for over a year. [July 23, 2015, Order.] The amended Trial Court Rules no longer contain this restriction. W. VA. TR. CT. R. 26.06(a)(1) (2014). Consequently, the former time restriction no longer prohibits the Business Court from accepting this matter. Therefore, the West Virginia Trial Court Rules allow this

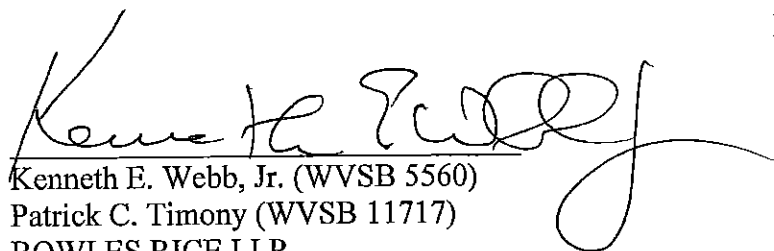
Court to refer this litigation to the Business Court Division, and this Court should grant Jai Sai's Motion to Refer.

### **Conclusion**

The allegations in this action between the Parties have significantly changed following the Circuit Court granting Jai Sai's Motion for Leave to Amend. These new allegations support this matter being referred to the Business Court for adjudication. Therefore, Jai Sai respectfully requests that this Court grant its Motion to Refer.

JAI SAI, LLC,

By Counsel,



Kenneth E. Webb, Jr. (WVSB 5560)  
Patrick C. Timony (WVSB 11717)  
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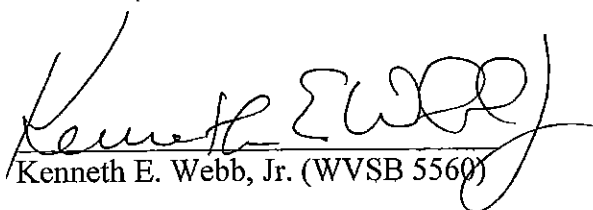
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**Certificate of Service**

I, Kenneth E. Webb, Jr., counsel for Jai Sai, LLC, do hereby certify that a true and correct copy of the *Jai Sai, LLC's Motion to Refer to Business Court Division* and *Memorandum of Law in Support* was mailed to:

J. Phillip Fraley, Esquire  
Litchfield Cavo, LLP  
99 Cracker Barrel Drive, Suite 100  
Barboursville, West Virginia 25504  
*Counsel for Tri-State Hotels, LLC*

on this the 3rd day of February 2017.

  
Kenneth E. Webb, Jr. (WVSB 5560)