

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

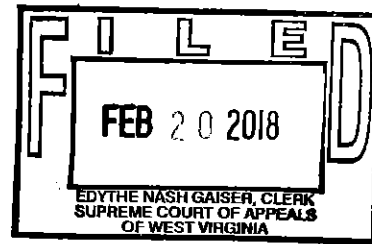
STOCKMEIER URETHANES
U.S.A., INC.,
a West Virginia corporation,

Plaintiff,

v.

ROGER SMITH,

Defendant.



Civil Action No. 17-C-349-2
(Honorable Thomas A Bedell)

**PLAINTIFF'S REPLY IN OPPOSITION TO DEFENDANT'S MOTION
TO REFER CASE TO THE BUSINESS COURT DIVISION**

Comes now, Plaintiff Stockmeier Urethanes U.S.A., Inc., by the undersigned counsel and, pursuant to Rule 29.06(a)(4) of the West Virginia Trial Court Rules, hereby replies in opposition to *Motion of the Defendant to Refer Case to the Business Court Division* filed on February 2, 2018.

Defendant's request to transfer this case to the Business Court Division is both improper and improvident. This matter, which involves a dispute between an employee and his former employer, has been pending in Harrison County Circuit Court since November 2017. Despite Defendant's suggestions to the contrary, no legal basis exists to transfer this case from the circuit court, because the case fails to meet the requirements of West Virginia Trial Court Rule 29 and W.Va. Code § 51-2-15. As such, Defendant's motion must be denied.

I. DISCUSSION OF LAW

Because This Case Does Not Involve “Business Litigation” and Because Defendant Roger Smith is Not a “Business Entity,” This Case is Ineligible for Transfer to the Business Court Division.

Defendant erroneously claims that “referral of this case to the Business Court Division is appropriate as the principal claims involves matters of significance to be transactions, operations, as well as governance between business entities and senior management employees.” [See Defendant’s Motion at 1–2.] To the contrary, this case does not qualify for transfer, pursuant to the requirements of Trial Court Rule 29 and West Virginia law.

1. This case does not involve “Business Litigation.”

“Business Litigation” as defined in Trial Court Rule 29 pertains to principal claims which “involve matters of significance to the transactions, operations, or governance *between business entities . . .*”, T.C.R. 29.04(a)(1) (emphasis added), so long as the criteria of Rule 29.04(a)(2) and (3) also are satisfied.

Defendant’s motion, which focuses on subdivisions (a)(1) and (2) of Rule 29.04, ignores the disqualifying aspects of subdivision (a)(3). Matters satisfy the third prong to qualify as “Business Litigation” only if

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. T.C.R. 29.04(a)(3) (emphasis added).

First, the principal claims – including Plaintiff’s claims regarding the West Virginia Uniform Trade Secrets Act and breach of contract, as well as Defendant’s age discrimination counterclaim - are employer-employee suits, and “employee suits” are not “Business Litigation.” *See* W.Va. Code T.C.R. 29.04(a)(3). Second, the remaining principal claim raised by Defendant in his counterclaim – alleging defamation – is a “personal injury” claim, which also is not “Business Litigation.” *Id.* Thus, Defendant’s motion fails because the case does not qualify as “Business Litigation.”

2. Because Defendant Roger Smith is not a “Business Entity,” this case is not a dispute between businesses.

Additionally, this case does not qualify for transfer to the Business Court Division because Defendant Roger Smith is not a “Business Entity.” As stated in the preamble of Trial Court Rule 29, the Business Court Division was adopted solely “for efficiently managing and resolving litigation involving commercial issues and *disputes between businesses . . .*” W.Va. T.C.R. 29.01 (emphasis added). This language is reiterated in the West Virginia Code, which states that the Business Court Division was created for “actions involving such commercial issues and *disputes between businesses.*” W. Va. Code § 51-2-15(a) (emphasis added).

Defendant Roger Smith is not a “business entity.” Defendant’s motion recognizes this critical distinction, referring to him as the “former CEO and Senior Advisor of the plaintiff.” [*See* Defendant’s Motion at 1.] Nevertheless, Defendant suggests that this matter is “not a standard employee suit . . .” [*See id.* at 2.] In doing so, Defendant ignores that the Trial Court Rules plainly reserve Business Court only for disputes between business entities — not for disputes between employees and their former employers. Likewise, Defendant’s assertion is inconsistent with his later concession that “the counterclaim contains elements which may typically be contained in civil actions *by employees . . .*” [*See* Defendant’s Motion at 3.]

(emphasis added). Because this case does not involve a dispute between businesses, the requirements of Trial Court Rule 29 for this case to be transferred to the Business Court Division are not satisfied.

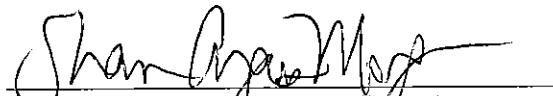
II. CONCLUSION

All pending allegations remain within the purview and jurisdiction of the Harrison County Circuit Court¹ and can be properly resolved in it. Therefore, the Harrison County Circuit Court is the appropriate venue to adjudicate these causes of action.

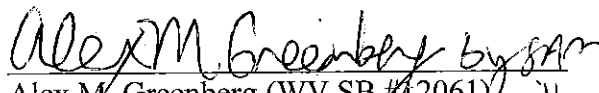
WHEREFORE, because the requirements of Trial Court Rule 29 are not satisfied, as discussed above, this Court should deny *Motion of the Defendant to Refer Case to the Business Court Division* and allow this case to proceed in Harrison County Circuit Court.

Respectfully submitted this 15th day of February, 2018.

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¹ In Judge Bedell's Reply Memorandum to Defendant's motion, he states that he "is fully able to preside over these matters competently, efficiently, and with more than adequate expectation for a fair, reasonable and final resolution of the controversies alleged by and between the parties in this Civil Action." [See Judge Bedell's Reply at 3.]

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2018, I served the foregoing *“Plaintiff’s Reply in Opposition to Defendant’s Motion to Refer Case to the Business Court Division”* on the following counsel of record by depositing a true copy thereof in the United States mail, postage prepaid, in an envelope addressed as follows:

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