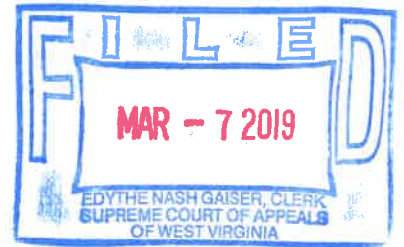


STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS



WORLDWIDE EQUIPMENT LEASING, INC.,
A Foreign Corporation,

Plaintiff/Movant,

v.

Case No. _____
Raleigh Co. Cir. Court Civil Action No. 18-C-374-H
Judge: Not Yet Assigned

CROOK BROTHERS, INC. f/k/a MULTIFRESH, INC.,
a West Virginia Corporation; CROOK BROTHERS
TRUCKING, LLC, a West Virginia Limited Liability
Company; CROOK COLD STORAGE, LLC; a West Virginia
Limited Liability Company; and Kenneth Crook,

Defendants/Respondents.

PLAINTIFF'S MOTION TO REFER THIS CIVIL ACTION TO THE BUSINESS COURT DIVISION

COMES NOW the Plaintiff, Worldwide Equipment Leasing, Inc. (hereinafter "WE"), by counsel, Mark E. Troy and The Troy Law Firm, PLLC, and pursuant to **Rule 29** of the **West Virginia Trial Court Rules** hereby requests the referral of this civil action to the Business Court Division, Region E. In support of this motion, the Plaintiff provides the following:

Background

This case arises out of the lease of fifteen (15) commercial vehicles by Crook Brothers, Inc., f/k/a Multifresh, Inc., from WE, and the termination of that agreement, by breach and otherwise. **See "Complaint,"** attached as Exhibit A. **See also "Defendants' Answer to Plaintiff's Complaint and Counterclaim,"** attached as Exhibit B, and **"Worldwide Equipment Leasing, Inc.'s Answer to the Counterclaim of Crook Brothers, Inc.,"** attached as Exhibit C. **See also "Docket Sheet"** for Civil Action No. 18-C-374-H, attached as Exhibit D. The Plaintiff, WE, asserts that

Crook Brothers, Inc., breached the agreement, while Crook Brothers, Inc. asserts breach of the very same agreement by WE. **See Exhibits A, B and C.** WE is also seeking a recovery in Raleigh County Circuit Court, Civil Action No. 18-C-374-H (in which the identical Raleigh County Circuit Court Civil Action No. 18-C-389-D was consolidated) from guarantors Crook Brothers Trucking, LLC, Crook Cold Storage, LLC, and Kenneth Crook, who signed certain agreements by which they agreed to be responsible for WE's damages incurred in the event of a default by Crook Brothers, Inc., f/k/a Multifresh, Inc., of the subject lease agreement. **See Exhibit A. See also "Order Consolidating Cases," attached as Exhibit E.**

Argument

The Plaintiff now moves for the referral of this matter to the Business Court Division for further proceedings and resolution, pursuant to **Rule 29** of the **West Virginia Trial Court Rules**.

As the Court is well-aware, **T.C.R., Rule 29.06** provides in pertinent part that:

Any party...may seek a referral of Business Litigation to the Division by filing a Motion to Refer to the Business Court Division. The motion shall identify the nature of the action(s) sought to be referred, the basis for the request and, if known, whether additional related actions are pending or may be filed in the future.

Rule 29.04 of the **Trial Court Rules** goes on to define "Business Litigation" as one or more pending actions in Circuit Court in which:

- A. the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and
- B. 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 or familiarity with some specific law or legal principles that may be applicable; and
- C. 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.

As is apparent in the attached pleadings and documents, this case is strictly a commercial lease-based civil case, involving significant commercial transactions between business entities. The Plaintiff's Complaint also raises claims arising under commercial guaranty agreements. It is also noteworthy that, pursuant to the Lease Agreement and its Schedule A, Crook Brothers, Inc. was to be deemed liable to the Plaintiff, in the event of a default by such Defendant, for the following items, among others:

- a. Costs incurred by Plaintiff for repairing damages to the vehicles;
- b. Unpaid lease amounts;
- c. Unpaid amounts for mileage (either below or in excess of guaranteed amounts);
- d. Any amount by which the net sale proceeds of the vehicles are less than the Early

Termination Value of the vehicles as set forth in Schedule A or, alternatively, if the vehicles are leased to a third party then Crook Brothers was to be liable for any reduction in rental value under the new leases; and

- e. All other costs and expenses incurred by Plaintiff in pursuing remedies stemming from such breach, including but not limited to reasonable attorney's fees. **See Exhibit A.**

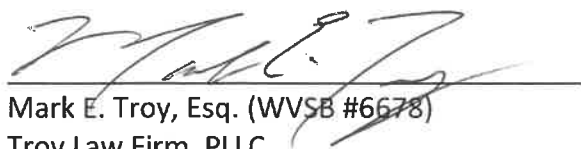
It is the position of the Plaintiff that, if awarded, certain components of these damages will involve technical, detailed and, in some instances complex or, at the very least, industry-based

calculations. The claims and the damages involved in them will also, at times, involve industry terminology, customary practices and other standards in the industry.

Finally, it should be noted that this is now a single action, following the consolidation, and no other related cases are pending or are anticipated. The dispute presents commercial issues in which specialized treatment will 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 or familiarity with the involved legal principles that are applicable. Accordingly, and in light of the fact that specialized treatment will 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 or familiarity with the legal principles that are applicable, the Plaintiff asserts that this matter is appropriate for referral to the Business Court Division, Region E, that good cause exists for such referral, and that this motion for such referral should, thus, be granted.¹

WHEREFORE the Plaintiff asserts that this civil action should be referred to the Business Court Division, Region E, pursuant to **Rule 29** of the **West Virginia Trial Court Rules**. The Plaintiff requests the right to supplement this motion through an evidentiary hearing if deemed necessary to or beneficial by the Chief Justice. Respectfully submitted,

WORLDWIDE EQUIPMENT LEASING, INC.,
By Counsel,



Mark E. Troy, Esq. (WVSB #6678)
Troy Law Firm, PLLC
222 Capitol Street, Suite 200A
Charleston, West Virginia 25301
Telephone: (304) 345-1122 Facsimile: (304) 414-5692

¹ While not a traditional item for consideration relative to this motion, it is worth noting that this case, which was once assigned to the Honorable Judge John Hutchison, has not yet been re-assigned to a new judge, thus making a referral of this case to Business Court somewhat timely.

**STATE OF WEST VIRGINIA
WEST VIRGINIA SUPREME COURT OF APPEALS**

**WORLDWIDE EQUIPMENT LEASING, INC.,
a Foreign Corporation,**

Plaintiff / Movant,

v.

**Case No.: _____
Judge: Not Yet Assigned
Raleigh County Circuit Court
Civil Action No. 18-C-374-H
(Consolidated with 18-C-389)**

**CROOK BROTHERS, INC, f/k/a MULTIFRESH, INC.,
a West Virginia Corporation; CROOK BROTHERS
TRUCKING, LLC, a West Virginia Limited Liability
Company; CROOK COLD STORAGE, LLC; a West Virginia
Limited Liability Company; AND KENNETH CROOK,**

Defendants / Respondents.

CERTIFICATE OF SERVICE

I, Mark E. Troy, hereby certify that a true and correct copy of the foregoing “**Plaintiff’s Motion to Refer this Civil Action to the Business Court Division**” has been served upon the following via First Class United States Mail, postage prepaid, on this 5th day of March, 2019:

John W. Gabhart, Esquire
Johnstone Gabhart, LLC
Post Office Box 313
Charleston, West Virginia 25321
*Counsel for Crook Brothers, Inc. f/k/a Multifresh, Inc.,
Crook Brothers Trucking, LLC, Crook Cold Storage, LLC, and Kenneth Crook*

Paul Flanagan, Clerk
Raleigh County Judicial Center
222 Main Street
Beckley, West Virginia 25801
Circuit Court Clerk for Raleigh County, West Virginia

Judge Charles Vickers
Raleigh County Judicial Center
222 Main Street
Beckley, West Virginia 25802
Judge for the Circuit Court of Raleigh County, West Virginia

Carol A. Miller, Executive Director
Berkeley County Judicial Center
Business Court Division
380 W. South Street, Suite 2100
Martinsburg, West Virginia 25401

A handwritten signature in dark ink, appearing to read 'Mark E. Troy', is positioned above a horizontal line.

MARK E. TROY, ESQ. (WVSB #6678)

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