

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
BUSINESS COURT DIVISION

FILE COPY

SHONK LAND COMPANY LLC

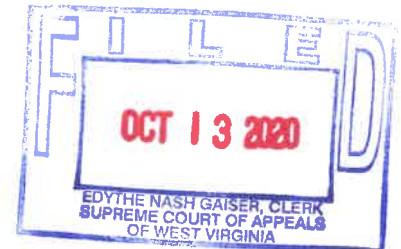
Plaintiff,

DOCKET NO. 20-BCD-17

v.

CARBON ENERGY CORPORATION, and
CARBON WEST VIRGINIA COMPANY LLC
n/k/a DP BLUEGRASS LLC,

Defendants.



**SHONK LAND COMPANY LLC'S REPLY IN OPPOSITION
TO MOTION TO REFER TO BUSINESS COURT DIVISION**

Plaintiff Shonk Land Company, LLC ("Shonk") opposes Defendants' Motion to Refer this case to the Business Court Division because the case involves a simple breach of contract, of the kind that circuit courts are well-equipped to handle. In further reply to the Motion, Shonk states as follows.

1. Shonk's Complaint in this matter alleges that Defendant Carbon West Virginia Company LLC n/k/a DP Bluegrass LLC ("CWV") breached its obligation to honor a Right of First Refusal ("ROFR") in favor of Shonk contained in two gas leases. *See Motion to Refer*, ¶¶ 1-3.
2. Carbon Energy Corporation ("CEC") specifically guaranteed CWV's obligations under the leases, including the obligation to comply with the ROFR. *Motion to Refer*, ¶ 3.
3. A ROFR is not a complex commercial transaction.
4. In fact, West Virginia has a well-developed body of law, dating to the 1920s, discussing the operation of ROFRs—sometimes called "preemptive rights"—as summarized in

John D. Stump & Associates, Inc. v. Cunningham Mem'l Park, Inc. 187 W. Va. 438, 443, 419 S.E.2d 699, 704 (1992).

5. Circuit courts across the state, specifically including the court below in the present matter, are capably suited to handle disputes involving ROFRs.

6. Defendants claim that the present case involves “complex corporate structures, complex transactional documents, and an assessment of value placed on the leased interests.”

Motion to Refer, ¶ 7.

7. It does not. Defendants acknowledge Shonk owned ROFRs on both Leases, which are contained in a single paragraph in a 4-page Lease Amendment. *Motion to Refer*, Exh. 1, p. 2.

8. Defendants further acknowledge that the claims of breach here are simple ones: (a) that they closed the transaction without honoring the ROFR, (b) that they did not provide the information that they are obligated to provide as spelled out in the ROFR language, and (c) that they did not provide Shonk the opportunity to exercise the ROFR at the price called for in the ROFR language.

9. While the claims involved in this case are between business entities, these claims do not present a “need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.” W. Va. T.C.R. 29.04(a)(2).

10. Instead, this case is a straightforward declaratory judgment action involving interpretation of a contract in which the remedy for breach has already been agreed upon by the parties. The court need only decide whether the breach occurred as alleged. This is a matter which circuit courts handle routinely.

11. In essence, this case involves interpretation of one section of a lease (which is identical in the two leases at issue) and one section of a guaranty agreement. The fact-pattern arises over a matter of days, not months. Shonk's claim seeks declaratory judgment, and since the parties have already agreed upon the remedy for the breaches alleged (termination of the leases), there are no damages issues to address.

12. In fact, this Court has refused referral in other cases presenting straightforward contractual claims. *See, e.g., Abcouwer v. Trans Energy, Inc.*, 12-C-416, 13-C-56-KAN (involving the meaning of a termination provision in a stock option agreement); *Norfolk Southern Railway Company v. Virginia Electric and Power Company, Inc.* 19-C-80-RAL (involving straightforward application of indemnity provisions in transportation contract); *Worldwide Equipment Leasing, Inc. v. Crook Brothers, Inc.*, 18-C-374-RAL (involving interpretation of commercial lease for commercial trucks).

13. This case, a straightforward declaratory judgment action involving interpretation of a ROFR—for which a well-developed body of law exists—does not require any specialized knowledge or treatment for it to be fairly or expeditiously resolved.

14. In addition, Defendants' effort to handpick their own judge should be rejected on its face, since selection of presiding judge is a role reserved for the Chair of the Business Court Division and not to the parties. In addition, the selection of Judge Wilkes may present a conflict, since Judge Wilkes conducted the settlement conference that led to the signing of the lease amendments containing the ROFRs. As a first-hand participant (who certainly conducted professional, ethical, and effective proceedings) in the negotiations leading the parties to sign the ROFR, it would be unfair to Judge Wilkes to ask him to preside in this matter under Rule 2.11 of the Code of Judicial Conduct.

For these reasons, Shonk requests that this Court deny the Motion to Refer.

**Respectfully Submitted,
SHONK LAND COMPANY LLC,
By Counsel,**



Nicholas S. Johnson (WVSB #10272)
Bailey & Glasser LLP
1055 Thomas Jefferson Street, NW
Suite 540
Washington, DC 20007
(202) 463-2101

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SHONK LAND COMPANY LLC

Plaintiff,

v.

CIVIL ACTION NO. 20-C-613

Hon. Jennifer F. Bailey

**CARBON ENERGY CORPORATION, and
CARBON WEST VIRGINIA COMPANY LLC
n/k/a DP BLUEGRASS LLC,**

Defendants.

CERTIFICATE OF SERVICE

I, Nicholas S. Johnson, do hereby certify that I have caused to be served a true and accurate copy of *Shonk Land Company LLC's Reply in Opposition to Motion to Refer to Business Court Division* on this 13th day of October, 2020, via U.S. Mail, postage prepaid, as addressed below:

William Dawson, Jr., Esquire
CAMPBELL WOODS, PLLC
P.O. Box 1835
Huntington, West Virginia 25719
Counsel for Carbon West Virginia Company LLC

Timothy M. Miller, Esquire
Robert M. Stonestreet, Esquire
BABST, CALLAND, CLEMENTS & ZOMNIR, P.C.
300 Summers Street, Suite 1000
Charleston, West Virginia 25301
Counsel for DP Bluegrass LLC

Honorable Jennifer Bailey Walker
Kanawha County Circuit Court
Kanawha County Judicial Building
111 Court Street
Charleston, West Virginia 25301



Nicholas S. Johnson (WVSB # 10272)
Bailey & Glasser LLP
1054 31st St, NW
Suite 230
Washington, DC 20007
(202) 463-2101