

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JULIUS WOLFORD,

Plaintiff,

20-BCD-18

Kanawha County
No. 20-C-660
Hon. Jennifer Bailey

v.

FORM TECH CONCRETE FORMS, INC.,
a Michigan corporation,

Defendant,

and

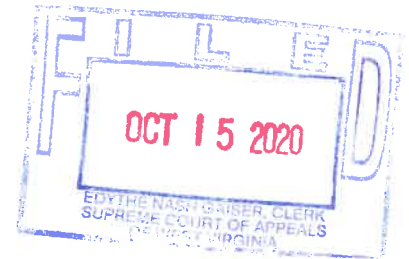
FORM TECH CONCRETE FORMS, INC.,
a Michigan corporation,

Third-Party Plaintiff,

v.

CONSTRUCTION SOLUTIONS & LEASING,
LLC PROPERTIES, a West Virginia general partnership.

Third-Party Defendant.



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

COMES NOW Plaintiff, by counsel, pursuant to West Virginia Trial Court Rule 29.06(a)(4) and herby submits the following for his response in opposition to Defendant's "*Motion to Refer the Case to the Business Court Division*" ("Motion"):

This civil action does not present any complex, novel, or other issues which require specialized knowledge or treatment from the Business Court Division. Moreover, referral to the Business Court Division will not help facilitate the parties' expectation of a fair and reasonable resolution. All claims presented in this case are akin to those which are routinely resolved in circuit court without need for

the specialized treatment reserved for complex commercial litigation and the Circuit Court of Kanawha County is well positioned to resolve this dispute in a fair, effective, and expeditious manner.

Primarily at issue are two uncomplicated contracts executed by and between Plaintiff and Defendant, with only a select few sections of the respective contracts being directly relevant to the claims and defenses asserted by the parties. The first contract, the “Asset Purchase Agreement,” is a thirteen (13) page document which sets forth, *inter alia*, the parties’ agreement on Defendant’s purchase of Plaintiff’s business and the asset transfers thereunder. None of Plaintiff’s claims arise directly from the Asset Purchase Agreement. Moreover, none of the Defendant’s counterclaims against Plaintiff arise directly from the Asset Purchase Agreement. Instead, both parties assert claims stemming from the second operative contract, the “Consulting Agreement,” with the Asset Purchase Agreement having only ancillary relevance. The only claim arguably arising directly from the Asset Purchase Agreement is Defendant’s third-party claim of tortious interference with a business contract against third-party Defendant, Construction Solutions & Leasing, LLC Properties.

The Consulting Agreement is a five (5) page document which sets forth the parties’ agreement on a consulting relationship whereby Plaintiff agreed to provide his services to Defendant in consideration for monthly consulting fees and sales commissions. Notably, the Consulting Agreement is not a complex commercial agreement between businesses; rather, it is a simple and straightforward contract between an individual and a business. Consequently, the specialized knowledge of the Business Court Division is unnecessary to ascertain the rights and responsibilities of the parties.

In its Motion, Defendant contends, *inter alia*, that the case should be referred to the Business Court Division because of “complex relationships, factual scenarios and legal issues.” Def’s Motion, p. 2. Additionally, Defendant contends this case requires specialized treatment because “the parties allege mispayment or nonpayment of sums between and among them, along with failures to accept legal duties and responsibilities ... involves voluminous documentation and complex legal issues

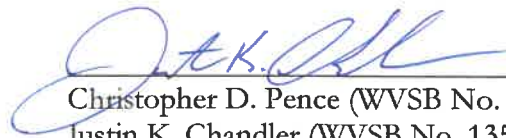
sounding *inter alia* in contract, tort, agency, employment and administrative and regulatory law.” Def’s Motion, p. 2. Defendant’s Motion misstates the issues, applicable law, and greatly overanalyzes the complexity of the case.

Simply, there are no overly complex relationships, factual scenarios or legal issues presented by this case. Instead, the essence of the dispute requires interpretation of straightforward contracts by and between only two parties and all claims are based upon well-established principals of law. It is of little significance that the parties “allege mispayment or nonpayment of sums between and among them” as this is no different than many contract and employment claims which are routinely resolved in circuit court. Although one of Defendant’s counterclaims (common law fraud) and its third-party claim (tortious interference) both sound in tort, neither claim presents a novel question of law in which resolution would be aided by a judge with specialized knowledge of complex commercial matters and both can be effectively resolved in circuit court. To the extent that the parties’ claims and defenses raise issues of administrative and/or regulatory law, those issues are ancillary and can also be effectively resolved by the Circuit Court of Kanawha County. Accordingly, transfer of this case to the Business Court Division is unnecessary and contrary to its purpose.

WHEREFORE, Plaintiff respectfully requests that the Chief Justice of the West Virginia Supreme Court of Appeals **DENY** Defendant’s Motion to refer this case to the Business Court Division.

JULIUS WOLFORD,

By Counsel:



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JULIUS WOLFORD,

Plaintiff,

Civil Action No. 20-C-660

v.

Hon. Jennifer Bailey

FORM TECH CONCRETE FORMS, INC.,
a Michigan corporation,

Defendant,

and

FORM TECH CONCRETE FORMS, INC.,
a Michigan corporation,

Third-Party Plaintiff,

v.

CONSTRUCTION SOLUTIONS & LEASING,
LLC PROPERTIES, a West Virginia general partnership.

Third-Party Defendant.

CERTIFICATE OF SERVICE

I, Justin K. Chandler, hereby certify that a true and exact copy of the foregoing *Plaintiff's Response in Opposition to Defendant's Motion to Refer Case to the Business Court Division* was served via regular U.S. mail on the 15th day of October 2020, to the following:

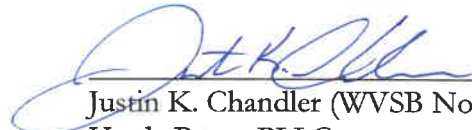
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