

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

CAPITAL WEALTH ADVISORS, INC.,

Plaintiff,

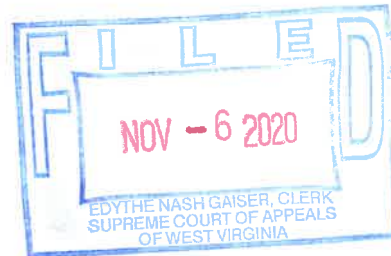
v.

THOMAS BEYNON, BENJAMIN  
STEINER, MARTIN METODIEV, AND  
CAPITAL WEALTH ADVISORS, LLC,

Defendants.

Case No.: 20-C-209

Judge James A. Matish



**DEFENDANTS' MOTION TO REFER TO THE BUSINESS COURT DIVISION**

Defendants Thomas Beynon, Benjamin Steiner, Martin Metodiev, and Capital Wealth Advisors, LLC (hereinafter, "Defendants"), by and through their counsel, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, hereby move to refer this case to the Business Court Division pursuant to West Virginia Trial Court Rule 29.06. In support of this Motion Defendants aver as follows:

1. In this civil action, Plaintiff asserts claims for Tortious Interference with a Business or Contractual Relationship, Conversion, Intentional Misrepresentation, Fraud, Civil Conspiracy, Negligent Misrepresentation, and Unjust Enrichment related to Defendants' alleged communications with CityNet, LLC, a third-party information technology company.

2. This case should be referred to the Business Court Division because it fits the definition of Business Litigation as defined in West Virginia Trial Court Rule 29.04.

3. The claims involve "matters of significance to the transactions, operations, or governance of business entities" — Plaintiff Capital Wealth Advisors, Inc. and Defendant Capital Wealth Advisors, LLC. W. Va. Trial Ct. R., 29.04(a)(1).

4. The claims present commercial and technology issues “in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy.” W. Va. Trial Ct. R., 29.04(a)(2).

5. The claims do not involve consumer litigation.

6. There is currently related litigation pending in the District Court of Appeal in and for the Second District of Florida at case number 2D20-2446.

7. Plaintiff’s first cause of action is Tortious Interference with a Business or Contractual Relationship, which involves alleged harm resulting from interference with “a contractual or business relationship or expectancy.” Torbett v. Wheeling Dollar Sav. & Tr. Co., 314 S.E.2d 166, 167 (W. Va. 1983).

8. Defendants deny that they tortiously interfered with Plaintiff’s business or contractual relationships.

9. Through this cause of action, this case involves claims significant to the transactions, operations, and governance of the corporate Parties.

10. Plaintiff also alleges that Defendants converted Plaintiff’s confidential information, that Defendants Thomas Beynon (“Mr. Beynon”) and Martin Metodiev (“Mr. Metodiev”) intentionally, or, in the alternative, negligently, misrepresented themselves to Plaintiff and that Plaintiff was harmed thereby, that Mr. Beynon and Mr. Metodiev committed fraud and harmed Plaintiff, that all Defendants conspired to harm Plaintiff, and that Plaintiff’s confidential information unjustly enriched all Defendants.

11. Defendants deny each of these allegations.

12. The basis for all Plaintiff's causes of action is that the individual Defendants improperly obtained confidential information from Plaintiff for the benefit of all Defendants, including, in particular, the corporate Defendant.

13. Therefore, every Count in Plaintiff's Complaint sets forth allegations relating to the "transactions, operations, or governance" of Plaintiff and of the corporate Defendant. W. Va. Trial Ct. R., 29.04(a)(1).

14. Moreover, this dispute presents commercial and technology issues "in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy." W. Va. Trial Ct. R., 29.04(a)(2).

15. Adjudication of this case will require specialized knowledge or expertise in the nature of the corporate Parties' estate, financial, and wealth planning and advising businesses and in information technology and the legal principles surrounding such technology.

16. Both Plaintiff and Defendants will likely need to engage experts in estate, financial, and wealth planning and advising businesses and in information technology.

17. Although West Virginia Trial Rule 29.06(a)(2) states that a Motion to Refer to the Business Court Division "shall be filed after the time to answer the complaint has expired," cases may be referred to the Division prior to this time. See Wine & Beverage Merchs. of W. Va., Inc., et al. v. Mountain State Beverage, Inc., et al., No. 17-C-91, 2017 WL 3208356 (W. Va. Cir. Ct. 2017) (Judge Sims filed a Judicial Motion to Refer to the Business Court Division, and the Motion was granted.).

18. In addition, a Motion to Refer to the Business Court Division may be filed before the time to answer the complaint has expired "[f]or good cause." W. Va. Trial Ct. R., 29.06(a)(2).

19. The purpose of the Business Court Division is “to fairly and expeditiously resolve Business Litigation ....” W. Va. Trial Ct. R., 29.05(a).

20. This case can be most fairly and expeditiously resolved if referred to the Business Division immediately.

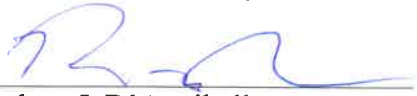
21. The Parties have prior business relationships and are also involved in ongoing litigation in Florida; therefore, all parties should be ready to proceed quickly and to seek an expeditious resolution of this matter.

22. In addition, this case can be most expeditiously handled if it is heard entirely before one judge, thus eliminating the need for multiple judges to expend time and resources learning about the relationships among the Parties and the related litigation and developing expertise in the estate, financial, and wealth planning and advising industry and in the information technology issues present in the case.

WHEREFORE, Defendants respectfully request that this Court refer the above-captioned civil action to the Business Court Division for all further proceedings.

Respectfully submitted:

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By:   
Robert J. D'Anniballe, Jr. (WV Id.: 920)  
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(304) 723-6318 *facsimile*

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(412) 263-2000  
(412) 263-2001 *facsimile*

*Counsel for Defendants,  
Thomas Beynon, Benjamin Steiner, Martin  
Metodiev, and Capital Wealth Advisors,  
LLC*

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CAPITAL WEALTH ADVISORS, INC.,

Plaintiff,

v.

THOMAS BEYNON, BENJAMIN  
STEINER, MARTIN METODIEV, AND  
CAPITAL WEALTH ADVISORS, LLC,

Defendants.

Case No.: 20-C-209

Judge James A. Matish

**PROPOSED ORDER**

NOW, this \_\_\_\_ day of \_\_\_\_\_, 2020, upon consideration of Defendants' Motion to Refer to the Business Court Division and any response thereto, it is HEREBY ORDERED that Defendants' Motion is GRANTED, and this case is referred to the Business Court Division.

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CHIEF JUSTICE TIM ARMSTEAD

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing **Motion to Refer to the Business Division and Proposed Order** on **November 2, 2020** by U.S. mail or E-mail upon the following:

Berkeley County Judicial Center  
Business Court Division  
Suite 2100  
380 W. South Street  
Martinsburg, WV 25401

Albert Marano  
Harrison County Circuit Court Clerk  
Harrison County Courthouse  
301 West Main Street  
Clarksburg, WV 26301

Judge James A. Matish  
Harrison County Courthouse  
301 West Main Street  
Clarksburg, WV 26301

John F. Gianola, Esquire  
Gianola, Barnum, Bechtel & Jecklin, L.C.  
1714 Mileground  
Morgantown, WV 26505  
*Counsel for Plaintiff,  
Capital Wealth Advisors, Inc.*

By:



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*Counsel for Defendants,  
Thomas Beynon, Benjamin Steiner, Martin  
Metodiev, and Capital Wealth Advisors,  
LLC*



CASE NO. 20-C-209

OPENED 8/18/2020

JUDGE... JAMES A. MATISH

PLAINTIFF. CAPITAL WEALTH ADISORS INC.  
VS DEFENDANT. THOMAS BEYNON

PRO ATTY.. JOHN F. GIANOLA  
DEF ATTY..

PAGE# DATE MEMORANDUM.....

00001	8/18/20	CCIS, Complaint, No Service at this time.	cls
00002	8/24/20	Summons issued to attorney for personal service on all	
00003	8/24/20	defendants.	dm
00004	9/23/20	Defs' motion to dismiss pltff's complaint	djs
00005	9/23/20	Defs' memorandum of law in support of motion to dismiss	
00006	9/23/20	pltff's complaint, COS filed by R. Anniballe Jr.	djs
00007	10/20/20	Notice scheduling telephonic pre-trial/scheduling conference	
00008	10/20/20	11/13/20 @ 3:15 pm	djs

S U M M O N S  
CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

CAPITAL WEALTH ADISORS INC.

Plaintiff

v.

20-C-209

JAMES A. MATISH

THOMAS BEYNON  
720 BEAVER ST.  
SEWICKLY PA 15142

BENJAMIN STEINER  
895 LAKE AVENUE  
GREENWICH CT 06831

MARTIN METODIEV  
12836 BRYNWOOD WAY  
NAPLES FL 34105

CAPITAL WEALTH ADVISORS, LLC  
1415 PANTHER LANE UNIT 340  
NAPLES FL 34109

Defendant

To the Above-Named Defendant(s):  
IN THE NAME OF THE STATE OF WEST VIRGINIA,

you are hereby summoned and required to serve upon  
GIANOLA, BARNUM, BECHTEL, & JECKLIN L.C.  
Plaintiff's attorney whose address is  
1714 MILEGROUND  
MORGANTOWN, WV 26505

an answer, including any related counter-claim you may have, to the  
complaint filed against you in the above-styled civil action, a true  
copy of which is herewith delivered to you. You are required to serve  
your answer within 20 days after service of this summons upon you,  
exclusive of the day of service.

If you fail to do so, judgement by default will be taken  
against you for the relief demanded in the complaint and you will be  
thereafter barred from asserting in another action any claim you may  
have which must be asserted by counter claim in the above-styled  
civil action.

DATED: 08/24/20

ALBERT F. MARANO, CLERK  
Harrison County Circuit Court  
By: Albert F. Marano, Deputy  
dm

**IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA**

**CAPITAL WEALTH ADVISORS, INC.,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 20-C-209-3**

**THOMAS BEYNON,  
BENJAMIN STEINER,  
MARTIN METHODIEV, and  
CAPITAL WEALTH ADVISORS, LLC.,**

**Defendants.**

FILED  
CIRCUIT COURT  
2020 AUG 10 PM 12:44

**COMPLAINT**

Plaintiff Capital Wealth Advisors, Inc. ("Plaintiff") brings the following causes of action against the Defendants, Thomas Beynon, Benjamin Steiner, Martin Metodiev, and Capital Wealth Advisors, LLC (collectively "Defendants").

**PARTIES**

1. Plaintiff is Florida corporation headquartered in Naples, Florida.
2. Upon information and belief, Defendant Thomas Beynon is a resident of Sewickley, Pennsylvania.
3. Upon information and belief, Defendant Benjamin Steiner is a resident of Greenwich, Connecticut.
4. Upon information and belief, Defendant Martin Metodiev, is a resident of Naples, Florida.
5. Upon information and belief, Defendant Capital Wealth Advisors, LLC is a Florida limited liability company headquartered in Naples, Florida.

## **JURISDICTION AND VENUE**

6. Damages in this matter are more than \$10,000.
7. Based on the facts stated above and herein, and the statutory and case law of West Virginia, the Circuit Court of Harrison County, West Virginia, has subject matter jurisdiction over the causes and claims asserted in this Complaint.
8. Based on the facts stated above and herein, venue is proper in the Circuit Court of Harrison County, West Virginia.
9. As shown below, this matter involves torts committed in and around Harrison County, West Virginia.
10. W. Va. Code § 56-3-33 provides that any nonresident "[c]ausing tortious injury by an act or omission in this state" shall be deemed to have appointed the West Virginia Secretary of State to be his true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him...including an action or proceeding brought by a nonresident plaintiff...for a cause of action arising from or growing out of such act or acts, and the engaging in such act or acts shall be a signification of such nonresident's agreement that any such process against him or her, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though such nonresident were personally served with a summons and complaint within this state:"
11. Such acts or omissions provide West Virginia Courts with jurisdiction over the attendant action or proceeding. W. Va. Code § 56-3-33(b).

## **FACTS**

12. Plaintiff provides estate, financial, and wealth advising and planning to clients throughout the country.

13. Defendants Thomas Beynon and Martin Metodiev worked for and with Plaintiff until 2013.

14. On April 7, 2020, Defendant Thomas Beynon contacted CityNet LLC, a Harrison County, West Virginia-based IT services company.

15. Due to his past employment with Plaintiff, Defendant Beynon was aware that CityNet LLC provided IT services to Plaintiff and that CityNet LLC assisted Plaintiff with e-mail and data storage.

16. During an April 7, 2020 call to CityNet and at multiple times thereafter, Defendant Thomas Beynon impersonated an employee of the Plaintiff.

17. Using his knowledge of Plaintiff's practices and procedures, as well as the practices and procedures of CityNet LLC, Defendants Thomas Beynon and Martin Metodiev impersonated employees of Plaintiff and used that subterfuge to obtain valuable and confidential information belonging Plaintiff.

18. Pretending to be an employee of Plaintiff, Defendant Thomas Beynon obtained Plaintiff's email archives and other sensitive information and documents from CityNet LLC.

19. Defendant Martin Metodiev assisted Defendant Thomas Beynon in obtaining said email archives and other the sensitive information and documents from CityNet.

20. Defendants Thomas Beynon and Martin Metodiev coordinated with Defendant Benjamin Steiner to obtain Plaintiff's email archives and other sensitive information and documents from CityNet LLC.

21. Upon information and belief, Defendant Beynon's subterfuge and theft of sensitive information was planned, coordinated, and facilitated by and with Defendants Steiner and Metodiev for the benefit of Defendant Capital Wealth Advisors LLC.

**COUNT I  
TORTIOUS INTERFERENCE WITH A  
BUSINESS OR CONTRACTUAL RELATIONSHIP**

22. The Plaintiff incorporates by reference every allegation contained in this Complaint into this Count.

23. Plaintiff has a contractual and business relationship with its clients.

24. Defendants are not part of such relationships.

25. Defendants Thomas Beynon and Martin Metodiev interfered with the contractual and business relationships between Plaintiff and its clients, by, *inter alia*, surreptitiously obtaining sensitive data related to Plaintiff and its clients.

26. Plaintiff was harmed by Defendant Thomas Beynon and Defendant Metodiev's interference.

**COUNT II  
CONVERSION**

27. The Plaintiff incorporates by reference every allegation contained in this Complaint into this Count.

28. Defendants willfully, wantonly, recklessly, and substantially converted the assets of Plaintiff by improperly obtaining Plaintiff's sensitive and confidential information.

29. Plaintiff did not and does not consent to the Defendants' possession of its sensitive and confidential information.

30. Plaintiff was harmed by Defendants' conversion of said assets.

**COUNT III  
INTENTIONAL MISREPRESENTATION**

31. The Plaintiff incorporates by reference every allegation contained in this Complaint into this Count.

32. Defendants Thomas Beynon and Martin Metodiev intentionally misrepresented themselves when communicating with Third Party CityNet LLC by providing false and/or concealing information to Third Party CityNet LLC.

33. Third Party CityNet LLC relied upon that false and/or concealing information.

34. That false and/or concealing information caused the Plaintiff to suffer pecuniary and other losses.

**COUNT IV  
FRAUD**

35. The Plaintiff incorporates by reference every allegation contained in this Complaint into this Count.

36. In the due course of communicating with Third Party CityNet LLC, Defendants Thomas Beynon and Martin Metodiev provided false statements intended to portray themselves as current employees of Plaintiff.

37. Those false statements were made via telephone calls and e-mails to CityNet LLC, beginning on April 7, 2020 and continuing until at least April 9, 2020.

38. Those false statements were made, *inter alia*, to Third Party CityNet LLC employee Brandi Patton.

39. On or around April 7, 2020, Defendant Beynon also coerced Ms. Patton to communicate with them via her personal cell phone.

40. On those calls on her personal cell phone, Defendant Beynon also made false statements to Ms. Patton to the detriment of Plaintiff.

41. Defendants Thomas Beynon and Martin Metodiev created or caused the creation of those statements.

42. Those statements were material to Third Party CityNet LLC and thus, to Plaintiff.

43. Defendants knew, or should have known, that the statements were material to Third Party CityNet LLC and to Plaintiff.

44. Based upon information and belief, Defendants knew that their statements were false and concealing because they falsely described or omitted information regarding Defendant Thomas Beynon and Defendant Martin Metodiev's employment status with Plaintiff.

45. Defendants intended for the statements to deceive Third Party CityNet LLC to the detriment of Plaintiff.

46. Defendants created or caused the creation of those statements for the purpose of deceiving Third Party CityNet LLC and inducing CityNet LLC to rely upon the statements to the detriment of Plaintiff.

47. Third Party CityNet LLC did rely upon the statements to the detriment of Plaintiff.



48. The Plaintiff was damaged by Defendants' false statements.

**COUNT V  
CIVIL CONSPIRACY**

49. The Plaintiff incorporates by reference every allegation contained in this Complaint into this Count.

50. Defendants were in concerted action to accomplish some purpose by unlawful means.

51. That action was to improperly and surreptitiously obtain Plaintiff's emails and other confidential and sensitive information.

52. As such, the Defendants were in a civil conspiracy.

53. As such, all of the Defendants are liable for the harm and damages caused by Defendant Thomas Beynon and Defendant Martin Metodiev's actions.

**COUNT VI  
NEGLIGENT MISREPRESENTATION**

54. The Plaintiff incorporates by reference every allegation contained in this Complaint into this Count.

55. Defendants Thomas Beynon and Martin Metodiev communicated with Third Party CityNet LLC regarding Plaintiff's confidential and sensitive information.

56. In the due course of communicating with Third Party CityNet LLC, Defendants Thomas Beynon and Martin Metodiev provided false statements which portrayed themselves as current employees of Plaintiff.

57. Defendants Thomas Beynon and Martin Metodiev failed to exercise reasonable care and/or competence in communicating that information to Third Party CityNet LLC to the detriment of Plaintiff.

58. Defendants Thomas Beynon and Martin Metodiev created or caused the creation of those statements.

59. Those statements were material to Third Party CityNet LLC and thus, to Plaintiff.

60. Defendants knew, or should have known, that the statements were material to Third Party CityNet LLC and to Plaintiff.

61. Third Party CityNet LLC did rely upon the statements to the detriment of Plaintiff.

62. The Defendants' failure to exercise reasonable care and/or competence and their breaches of their duties directly and proximately caused the Plaintiff to suffer monetary and other damages.

#### **COUNT VII UNJUST ENRICHMENT**

63. The Plaintiff incorporates by reference every allegation contained in this Complaint into this Count.

64. Plaintiff's confidential and sensitive information is valuable.

65. Defendants have enriched themselves by converting, diverting, and/or taking possession of the confidential and sensitive information of Plaintiff.

66. Defendants knowingly and voluntarily acquired, accepted, and enjoyed the value and the benefits of the assets of Plaintiff without providing services, goods, labor, materials, equipment, or services of value to Plaintiff.

67. The converting, diverting, and/or taking possession of assets of Plaintiff by Defendants constitutes an unjust enrichment to Defendants.

68. To avoid Defendants' unjust enrichment, Plaintiff is entitled to recover the value of the assets Defendants converted, diverted, and/or took possession of.

**WHEREFORE**, Plaintiff demands the following:

- a. Judgment against Defendants for damages plus interest as allowed by law;
- b. An Order requiring Defendants to certify to the Court that they have destroyed any and all sensitive, confidential, and/or proprietary information obtained from Third Party CityNet LLC.
- c. Its attorneys' fees;
- d. All costs of this action; and
- e. Any further relief which appears just and proper.

GIANOLA, BARNUM, BECHTEL,  
AND JECKLIN, LC



August 18, 2020

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