

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

**DOUGLAS E. GRIFFITH, JR.,
an individual, and
LEASE & RENTALS, LLC,
a West Virginia Limited
Liability Company,**

Plaintiffs,

v.

**MVB BANK, INC., a West Virginia
Corporation, and
JARROD FURGASON,
an individual,**

Defendants,

and

CHRISTOPHER P. SANDER,

Intervenor

**Civil Action No.: 20-C-231
Presiding Judge Nines**

AMENDED SCHEDULING ORDER

The following schedule is **ORDERED** by the Court in the above-styled civil action; and shall not be modified except by leave of Court. All prior Orders of Court establishing dates and deadlines for this case are hereby **VACATED**, including the Scheduling Order dated October 28, 2021, and this Amended Scheduling Order shall supersede all such prior Orders.

1. **TRIAL DATE:** Ready to be tried by **October 2024**, actual date to be determined.

 X Jury Trial Requested Bench Trial Requested

Continuance motions must be heard prior to the pre-trial conference or they will not be

considered. Trial is anticipated to last four to five days.

SDN

2. **PRE-TRIAL CONFERENCE DATE:** Nov. 7th, 2024 *(to be determined by the Court)* in the Courtroom of Barbour County @ 26 North Main Street, Philippi, WV 26416 @ 1:15pm.

At which time lead counsel must appear. All parties are **ORDERED** to exchange and deliver their respective **PRE-TRIAL CONFERENCE MEMORANDA** to the Judge's Chambers **NO LATER THAN TEN (10) BUSINESS DAYS BEFORE** the conference. **FAILURE TO COMPLY MAY RESULT IN CONTINUANCE OF TRIAL OR MONETARY SANCTIONS BEING IMPOSED.** Said memoranda are to contain at a minimum, the following:

- | | |
|--------------------------|--|
| 1. Statement of the Case | 7. Pending Motions |
| 2. Issues of Fact | 8. Motions <i>in Limine</i> |
| 3. Issues of Law | 9. All Proposed Instructions of Law
(disk as well as hard copy shall be provided to the Court.) |
| 4. Proposed Stipulations | |
| 5. Schedule of Exhibits | 10. Proposed Voir Dire |
| 6. List of Witnesses | |

Parties are to confer and provide a joint instruction charge to the Court.

SCHEDULE OF EXHIBITS:

The parties shall exchange a list of all proposed exhibits (including demonstrative) and shall make the exhibits available for viewing by counsel at least **5 work days prior to the pre-trial conference**. By the time of the pre-trial conference counsel shall have stipulated as to which exhibits shall be admitted without objection and provide a list to the Court and Clerk. The parties shall mark all exhibits by use of standard exhibit stickers and provide a list to the Court and counsel.

VIDEO DEPOSITION TO BE USED AT TRIAL

If a video deposition is to be used, all parties must be prepared to argue objections at the pre-trial conference. Thereafter, the proponent of the video deposition shall have the video edited

to reflect the court's rulings. In addition, the proponent of the video deposition must have a videographer at trial.

JURY INSTRUCTIONS

The Court desires that all counsel read all parties proposed jury instructions prior to the conference and be prepared to discuss them at the conference. The Court will not be inclined receive instructions after the pre-trial conference

3. EXPERTS DISCLOSED: Plaintiff: **March 1, 2024**
 Defendant: **April 5, 2024**
 Rebuttal: **April 26, 2024**

- A.** A Party desiring to use an expert witness must comply with the requirements of Expert Disclosure of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure. Further, by agreement and now by Order, parties shall require reports for their various experts. Each expert report shall clearly and thoroughly describe and explain the expert's opinion(s). The aforementioned reports shall be given to the opposing party/parties upon their disclosure of an expert.
- B.** The admissibility of expert testimony is subject to Rule 104(a) of the Rules of Evidence. Objection to the admissibility of expert testimony will be deemed waived if not objected to by a motion *in limine* filed **at least 10 days prior to the pre-trial and a hearing** thereon set with the Court prior to the first day of trial.
- C.** Co-designation or co-reliance upon experts must also specifically be made in writing on date of Expert Disclosure

4. EXPERT EVIDENTIARY INSPECTIONS: n/a

The parties indicated this was not applicable to this civil action.

5. DISPOSITIVE MOTIONS: WVRCP 12(b) and 56 motions shall be filed by **August 15, 2024 or no later than sixty (60) days prior to trial.**

6. AMENDMENTS, THIRD PARTY PLEADINGS, AND OTHER MATTERS NO LATER THAN: January 19, 2024.

7. FINAL FACT WITNESS LISTS EXCHANGED: May 15, 2024

This to be *bona fide* list of intended trial witnesses.

Intervenor Sander Initial Witness List: **December 15, 2023**

8. DISCOVERY REQUESTS: Plaintiff serves Defendant with final requests for admissions and/or production of documents and Defendant serves Plaintiff with final requests for requests for admissions and/or production of documents by: **May 15, 2024**

9. DISCOVERY COMPLETION DATE: June 30, 2024

All requests must be filed at least 35 days in advance of this date so that all responses may be completed by this date. All trial depositions must be completed at least 5 days before the pre-trial.

ELECTRONICALLY STORED INFORMATION DISCOVERY:

All parties and counsel shall cooperate and work diligently to agree upon the methods and conduct for discovery of electronically stored information.

All counsel are required to be informed of and understand to a reasonable degree of their client's information management systems and electronically stored information processes including how information is stored and retrieved. An attorney's lack of knowledge will not be considered as an excuse by this Court in ruling upon a motion to compel or a motion for discovery sanctions.

A party has an obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. The Court may issue sanctions for spoliation, the intentional or negligent destruction, or failure to preserve relevant electronically stored information. A party may move for an order to preserve electronically stored information upon a showing that the continuing existence and integrity of the information is threatened.

All requests made pursuant to Rule 34 of West Virginia Rules of Civil Procedure shall be construed to include information contained or stored in an electronic medium, regardless of format, unless otherwise stated.

Unless otherwise agreed upon, all production of electronically stored information shall be either in hard copy form or in the form of a compact disk (CD) utilizing a format best suited for viewing the information by the requesting party and reasonably accessible to the producing party. If the parties are unable to agree upon a format, the Court will rule upon the type of format to be used for a particular category or all discovery of electronically stored information.

If any party intends to utilize an electronic search of another party's electronically stored information or if any other issue regarding electronically stored information arises between the parties, then all counsel and *pro se* parties shall hold a conference. The requesting party shall give reasonable notice to all parties, and all counsel and *pro se* parties shall be present. The conference must be held at least 40 days prior to the completion of discovery, as set by the scheduling order in this matter.

At the conference, all counsel and *pro se* parties shall use their best efforts to reach an agreement as to the method of search, the scope of the search, the amount of searching, and the words; terms, or phrases to be used. All counsel and *pro se* parties shall utilize this conference to resolve all remaining electronic discovery issues such as the allocation of discovery costs for material not readily accessible, form of production, etc.

If, during a search or otherwise, electronically stored information that contains privileged information or attorney work product is inadvertently released in whole or part, then

If the information, document, or material, on its face, appears to be privileged or attorney work product, it shall be immediately returned,

If notice of the inadvertent disclosure is given, it shall be returned as soon as practicable, and in no case later than 10 days.

Upon returning the privileged or attorney work product material, any person to whom it has been disclosed, must destroy any copies, notes, or information derived from the material. The filing of a motion for protective order or to compel or other similarly related motion shall not affect this order.

10. MOTIONS *IN LIMINE* MUST BE FILED AT LEAST 10 DAYS BEFORE PRE-TRIAL AND WILL BE RULED UPON AT THE PRE-TRIAL CONFERENCE.

11. MEDIATION/ALTERNATIVE DISPUTE RESOLUTION:

The Court finds that this is an appropriate case for mediation or alternative dispute resolution. Therefore, pursuant to Rule 25 of the West Virginia Trial Court Rules, this case is referred to mediation or other form of dispute resolution agreed to by the parties. By order of this Court, mediation or other form of dispute resolution shall be conducted by the Honorable Christopher C. Wilkes as Resolution Judge and shall be scheduled and concluded on or before **May 1, 2024**, unless such deadline is otherwise extended by the Presiding Judge for good cause shown. The Resolution Judge shall contact the parties for the purpose of scheduling mediation/alternative dispute resolution. All counsel or *pro se* parties shall provide their email address to the Business Court Division Director at carol.miller@courtswv.gov.

Holly S. Planinsic
*Counsel for Plaintiffs Douglas E. Griffith, Jr.
and iLease & Rentals, LLC*
Herndon, Morton, Herndon & Yaeger
83 Edgington Lane
Wheeling, WV 26003
Phone: (304) 242-2300
Fax: (304) 243-0890
E-Mail: hplaninsic@hnmhy.com

Rebecca D. Pomeroy, Esq.
Brian A. Glasser, Esq.
Counsel for MVB Bank, Inc.
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301
Phone: (304) 345-6555
Fax: (304) 342-1110
E-Mail: bpomeroy@baileyglasser.com
E-Mail: bglasser@baileyglasser.com

Samuel H. Harrold III, Esq.
*Counsel for Counterclaim Defendant
Douglas E. Griffith, Jr.*
Mountain State Law
P.O. Box 2330
Clarksburg, WV 26302
Phone: (304) 715-3802
Fax: (304) 884-4259
E-Mail: sam@mountainstatelaw.com

J. Michael Benninger, Esq.
*Counsel for Counterclaim Defendants iLease
& Rentals, LLC and
Christopher P. Sander*
Benninger Law, PLLC
P. O. Box 623
Morgantown, WV 26507
Phone: (304) 241-1856
Fax: (304) 241-1857
E-Mail: mike@benningerlaw.com

12. SANCTIONS: In accordance with WVRCP 16(f), the Court may impose the full spectrum of sanctions authorized by the WVRCP if a party or party's counsel fails to obey this order or other orders of this Court including exclusion of evidence and granting of default for failure to comply.

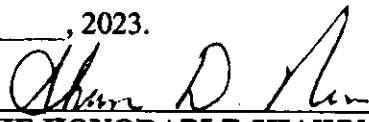
13. UNLESS AUTHORIZED BY COURT ORDER, THE ABOVE DATES ARE FINAL. No additional evidence developed as a result of deviations from the above schedule will be admissible at trial unless justice requires.

14. OBJECTIONS to the above schedule must be made to the undersigned Judge within **15 days** of the date of this Order or will be deemed waived.

15. It will be the responsibility of plaintiff or their counsel to notify opposing counsel and *pro se* parties of the existence of this scheduling order, if and when such counsel or *pro se* party appears of record.

The Clerk shall transmit certified copies to counsel of record; the Presiding Judge Shawn D. Nines; the Resolution Judge Christopher C. Wilkes; the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Martinsburg, West Virginia 25401, and *pro se* parties.

ENTER THIS 26th DAY OF May, 2023.



THE HONORABLE SHAWN D. NINES

Approved & Submitted By:

Robert P. Fitzsimmons, Esq.
*Counsel for Plaintiffs Douglas E. Griffith, Jr.
and iLease & Rentals, LLC*
FITZSIMMONS LAW FIRM, PLLC
1609 Warwood Avenue
Wheeling, WV 26003
Phone: (304) 277-1700
Fax: (304) 277-1705
E-Mail: bob@fitzsimmonsfirm.com

John J. Polak, Esq.
Mark A. Atkinson, Esq.
Counsel for W. Jarrod Furgason
Atkinson & Frampton, PLLC
2306 Kanawha Boulevard East
Charleston, WV 25311
Phone: (304) 346-5100
Fax: (304) 346-4678
E-Mail: emboles@amplaw.com
E-Mail: jjpolak@amplaw.com