

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

MAPLE LAKE CLUB, INC.  
a West Virginia corporation,

Plaintiff,

v.

Harrison County Circuit Court  
Case No. CC-17-2023-C-44  
**THOMAS A. BEDELL**, Judge

SCA EFiled: Jun 30 2023  
03:03PM EDT  
Transaction ID 70293172

BENEDUM AIRPORT AUTHORITY,  
a West Virginia corporation,  
WOLFE'S EXCAVATING, LLC,  
a West Virginia corporation, and  
THE THRASHER GROUP, INC.,  
a West Virginia corporation,

Defendants.

**TO: THE HONORABLE ELIZABETH D. WALKER, CHIEF JUSTICE**

**JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

Introduction

Pursuant to Rule 29.06 of the *West Virginia Trial Court Rules*, the Honorable Thomas A. Bedell, Judge for the Fifteenth Judicial Circuit, respectfully submits his request that the above-styled civil action currently pending in this Court be referred to the Business Court Division.

No Motion to Refer has been jointly or otherwise filed herein by any of the parties' litigant. This request is initiated solely by this presiding Judge. He verily believes the Business Court Division's process for efficiently managing and resolving litigation involving commercial issues and disputes between business organizations is better suited to serve these parties' litigant.

To the best of my knowledge and belief based upon my review of the pleadings filed to date, the various claims and defenses being asserted by the respective parties' litigant, and the issues involved qualify as "business litigation" pursuant to West Virginia Trial Court Rule 29.04(a).

#### Nature of the Action

This civil action includes three (3) particular claims by MLC, to-wit: Negligence (Count I); Interference with Riparian Rights / Unreasonable Use of Land (Count II); and Private Nuisance (Count III). As such, this action involves Commercial Torts and Disputes involving Commercial Entities as well as matters of significance between business entities with such dispute presenting or otherwise involving highly technological, engineering design, construction, environmental, and meteorologically related issues in which focused treatment is likely to improve the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles what me be applicable.

In support, this matter is deemed to contain issues significant to businesses as well as present novel or otherwise interestingly intertwined commercial issues for which specialized treatment would be helpful.

#### Basis for this Court's Request to Refer

Plaintiff, Maple Lake Club, Inc. (hereafter referred to as "MLC"), is a self-described homeowners association corporation organized and existing under the laws of the State of West Virginia and owning real property in Harrison County, West Virginia" whereupon Maple Lake is located and "has riparian rights with regard to water flowing into its premises." (See Plaintiff's *Complaint*, p. 1 at nos. 1 - 2).

Defendant, Benedum Airport Authority (hereafter referred to as “BAA”), is asserted by Plaintiff to be “a domestic non-profit corporation organized and existing under the laws of the State of West Virginia...engaged in the business of transporting and warehousing and scheduled air transportation operating in Harrison County, West Virginia... . . .also known as North Central West Virginia Airport...a public/military airport located northeast of Bridgeport...owned by Benedum Airport Authority.” (*Id.*, at nos. 3 and 6).

A pre-trial and scheduling conference was conducted in this matter on May 25, 2023, for which respective legal counsel each filed a pre-trial memorandum and appeared on behalf of the parties.

Plaintiff’s tendered contentions include:

Benedum Airport began construction of an airport expansion project [a/k/a “Move the Mountain”] in June 2021 which required moving 3,000,000 cubic feet of dirt. Defendant The Thrasher Group, Inc., was responsible for the design of the dirt removal project and the Storm Water Pollution Prevention Plan [“SWPPP”]. Defendant Wolfe’s Excavating, LLC, was contracted for excavation and responsibilities relate to the [SWPPP]. Maple Lake sits below the airport construction area and is fed by several tributaries which flow around the airport, and some drain directly into Maple Lake. During construction, the Defendants failed to control the flow of surface water coming off the airport property and allowed sediment, pollution, and other materials to discharge off site. The DEP [Department of Environmental Protection] cited Benedum Airport on multiple occasions for violating state regulations regarding the control of pollutants and stormwater discharge. These violations caused sedimentation, pollution, and other deposits to flow directly into Maple Lake. This runoff has continued to cause sediment to flow into the lake. Plaintiff suffered flooding, property damage, loss of use of property, business interruption, and diminution of property rights, ... .

(*Plaintiff’s Pre-Trial Memorandum*, p. 2 at ¶ 1).

Thrasher’s stated contentions briefly stated include:

... . The ["Move the Mountain"] Project included mass earthmoving of over 2,900,000 cubic feet of dirt to construct a new terminal and Aerotech Park for the [North Central West Virginia] Airport. Thrasher was the engineer of record for the Project. Among other tasks, Thrasher designed the Project and the...("SWPPP"), which was subsequently approved by the...("FAA") and...("WVDEP"). The allegations rely heavily on the Notices issued by the WVDEP ... .

... . Thrasher complied with the applicable laws and regulations pertaining to the Project and received all the necessary permits in conjunction with the design of the Project. ... .

(*The Thrasher Group, Inc.'s Pretrial Memorandum*, p. 1 at no. 4).

Wolfe's proffered contentions include:

In 2021, Wolfe's entered into a contract with Benedum Airport Authority for a project that was described in the contract as the "Terminal and Aerotch [sic] Mass Earthmoving." The Project was designed by Thrasher ... and Wolfe's began the work at issue in October 2021. ... .Wolfe's maintains that it performed its work in accordance with the design plans and specifications, ... . Wolfe's maintains that [Maple Lake Club, Inc.] failed to properly maintain Maple Lake and that its own negligence, combined with the numerous other construction projects located closed to Maple Lake than the Benedum Airport project, and the significant weather events in June and August 2022, caused or significantly contributed to the alleged sediment and material deposits in Maple Lake.

(*Pre-Trial Memorandum Of Defendant Wolfe's Excavating, LLC*, pp. 1 – 2 at no. 4).

Following the pre-trial and scheduling conference, this Court filed its *Pre-Trial And Scheduling Order* herein on June 12, 2023, and a counsel letter likewise filed that same day informing this presiding Judge of the parties' selection of a mediator. Nothing further has been filed on behalf of any parties' litigant and no further action taken herein by this Court save for this referral request.

Thereupon, this instant matter is now still very early in discovery as nothing more has yet been filed on behalf of any party and made a matter of record herein prior to the filing of this Judicial Motion to Refer.

Furthermore, there may well be additional issues arise during further evidentiary development and proceedings herein that include privity of contract, superseding/intervening causes, and potential at fault non-parties.

There are no known related civil actions currently pending before this Court and this presiding judge is presently unaware of any other related actions that may be filed in the future.

Accordingly, this civil action is deemed to involve multiple issues which support my *Judicial Motion to Refer Case To The Business Court Division*.

In keeping with West Virginia Rule 29.06(a)(1), copies of various pleadings herein are being provided along with this Judicial Motion to Refer.

In keeping with Rule 29.06(a)(3), this Judicial Motion to Refer is being filed this same day with the Clerk of the Harrison County Circuit Court as well as served on the parties herein through their respective legal counsel via electronic notification, to-wit: William M. Tiano, Esq., of Tiano O'Dell, PLLC, on behalf of Plaintiff; Zachary S. Dyer, Esq., of Dyer Law, on behalf of Plaintiff; Lindsey M. Saad, Esq. and Lauren E. Motes, Esq., of Dinsmore & Shohl, LLP, on behalf of Defendant, Benedum Airport Authority; Teresa J. Dumire, Esq., and Margaret E. Lewis, Esq., of Kay Casto & Chaney PLLC, on behalf of Defendant, Wolfe's Excavating, LLC; and J. Mark Adkins, Esq., Unaiza R. Tyree, Esq., and Zachary J. Rosencrance, Esq., of Bowles Rice.

In further keeping therewith, I am also providing this Judicial Motion to Refer as well as pertinent pleadings and copy of this civil action's docket sheet to the Central Office of the Business Court Division.

Conclusion

WHEREFORE, this presiding Judge respectfully moves Chief Justice Walker to grant his Judicial Motion to Refer this Harrison County Circuit Court Civil Action to the Business Court Division upon the reasons set forth *supra*.

Furthermore, in regard to expedited review, this Court does not request an expedited review under West Virginia Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a reply memorandum stating their respective position, in accordance with such Rule.

Respectfully submitted to you on June 30, 2023.

/s/ **THOMAS A. BEDELL**  
Circuit Court Judge  
15th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.