



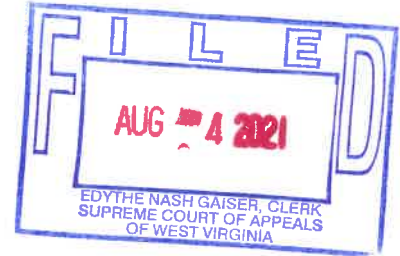
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Lonnie Hannah, Circuit Clerk
Mingo County Courthouse
78 East Second Avenue,
Room 232
PO Box 435
Williamson, WV 25661

August 2, 2021

Re: **Moore Chrysler, Inc. v. Thornhill Chrysler**
Circuit Court of Mingo County, WV
Civil Action No. 21-C-21
Our File No. 6500-2663



Dear Mr. Hannah:

Please cause the enclosed **Objection to Defendant's Motion to Refer the Matter to the Business Court Division** to be placed in the appropriate Court file. The attorneys of record have been served with a copy of the same.

If you have any questions, please feel free to call.

Very truly yours,

A handwritten signature in cursive script that reads 'C Bailey'.
Charles R. Bailey

Enclosure

cc: Honorable Miki Jane Thompson
Johnnie E. Brown, Esq.
Edythe Nash Gaiser, Clerk of Court of the Supreme Court of Appeals of West Virginia

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.

Plaintiff,

v.

THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

Civil Action No. 21-C-21

Honorable Miki Jane Thompson

**OBJECTION TO DEFENDANT'S MOTION TO REFER THE
MATTER TO THE BUSINESS COURT DIVISION**

NOW COMES the Plaintiff, Moore Chrysler, Inc., responding to the Motion of the Defendant Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram ("Thornhill Motor") to Refer Case to the Business Court Division. The Plaintiff ("Moore Chrysler") objects to the referral of this matter to the Business Court Division for the reasons explained below.

The primary basis for Moore Chrysler's objection to the referral to the Business Court is that the Defendant Thornhill Motor has, and continues to, employ every procedural rule to delay the ability of Moore Chrysler to successfully move forward with a hearing on a preliminary injunction. Moore Chrysler alleges, inter alia, that it is being irreparably harmed now, and will be harmed in the future, by the actions of Thornhill Motor by its violation of W. Va. Code § 17A-6A-3(4). The crux of Moore Chrysler's Complaint is that Thornhill Motor established a temporary Fiat Chrysler automobile dealership in Logan County, West Virginia for the sole purpose of eventually moving into a geographical area within Logan County for which Moore Chrysler has the exclusive rights to sell Fiat Chrysler automobiles. The conduct of Thornhill Motor violates W. Va. Code § 17A-6A-3, et seq.

Before requesting a hearing on a preliminary injunction, Plaintiff propounded a Request for Production of Documents on March 4, 2021, immediately after the Verified Complaint, Petition for Declaratory Judgment and Motion for Injunctive Relief (“Complaint”) was filed. Despite reservations in doing so, Plaintiff agreed to withhold filing a motion to compel responses to discovery until a hearing was held on Defendant’s motion to transfer the venue from the Circuit Court of Mingo County to the Circuit Court of Logan County, West Virginia. That Motion was briefed, and oral argument was held on May 11 2021. The Circuit Court of Mingo County, after taking the matter under advisement, denied Defendant’s Motion for a Change of Venue. (The history of the discovery issue is set forth in a letter dated June 11, 2021, Exhibit 1). Thereafter, on July 2 2021, Plaintiff Moore Chrysler filed a Motion to Compel the Responses to Requests for Production of Documents. Thornhill Chrysler, on July 8 2021, filed its Answer to the Verified Complaint, Petition for Declaratory Judgment and Motion for Injunctive Relief (“Complaint”). On July 12, 2021, Thornhill Chrysler filed a Motion to Refer the Case to the Business Court Division. On the same day, Thornhill Chrysler filed a Motion for Protective Order requesting the Circuit Court of Mingo County hold in abeyance the duty of Thornhill Motor to respond to Plaintiff’s - discovery that has been pending since March 4, 2021 - until this Court makes its decision regarding the referral to Business Court. The Circuit Court of Mingo County, West Virginia, on July 29 2021, following a hearing on the motion to compel, exercised its discretion pursuant to Rule 29.06(b) to delay the duty of the Defendant to respond to discovery for a period of 45 days to give this Court the opportunity to rule on the motion to refer. Bear in mind that the discovery was propounded on March 4, 2021 and now discovery may not be due until sometime after Sept 13, 2021 even though the Plaintiff is seeking temporary injunctive against the Defendant. The documents requested by the Defendant such as a lease for the temporary Logan County facility, dealership agreement, business licenses, etc. are

readily available to Defendant.

It is reasonably clear that Thornhill Motor would not have filed a motion to refer this matter to Business Court had the Judge of the Circuit Court of Mingo County ruled in favor of the Defendant and transferred this matter to the Circuit Court of Logan County, West Virginia. The Defendant's initial pleading did not ask for referral to the Business Division but a change of venue. The Motion to Refer this Matter to Business Court made following the denial of the change of venue is Defendant's second attempt to forum shop and to further delay Plaintiff from obtaining the documents that are necessary to properly move forward with the temporary injunction against the Defendant Thornhill Motor.


Presently, Thornhill Motor continues to sell cars within the geographic area that Moore Chrysler has an exclusive right and Moore Chrysler does, and continues, to suffer irreparable harm. While this dispute could reasonably be interpreted within the jurisdiction of the Business Court, the referral will only add delay and harm to the Plaintiff. The creation of the Business Court division was not designed to be used as a weapon to delay the prosecution of actions and to serve as a forum shopping mechanism. No reason exists that the Judge of Circuit Court of Mingo County cannot fairly and appropriately adjudicate this matter. The circuit court is fairly adjudicating this matter, treating each litigant with the respect and dignity. The Defendant did not appeal the decision of the Circuit Court of Mingo County denying its Motion for Change of Venue; therefore, a reasonable inference can be drawn that it did not believe it had a realistic opportunity to have it reversed. Rather, it used the referral to the Business Court division as another means to avoid responding to discovery and to alter the effect of the decision denying the motion to change venue. As stated before, it is reasonably clear this referral would not have been made had venue been transferred to the Circuit Court of Logan County, West Virginia where the Defendant has a business presence. While the

venue will remain in Mingo County, the referral to a business court judge will essentially restart the clock further delaying the plaintiffs claim. Again, the Business Court was not designed to promote this type of procedural wrangling. Plaintiff has made no claim the Judge of the Circuit Court of Mingo County is biased or otherwise not suited to preside over this matter.

WHEREFORE, for good cause shown, the Plaintiff respectfully prays that this Court to immediately deny the referral to Business Court and allows this matter to proceed before the Circuit Court of Mingo County, West Virginia, who has been presiding over this matter since the onset.

MOORE CHRYSLER, INC.,

By Counsel,



Charles R. Bailey (WV Bar #0202)
John P. Fuller (WV Bar #9116)
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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.

Plaintiff,

v.

**Civil Action No. 21-C-21
Honorable Miki Jane Thompson**

**THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,**

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing **Objection to Defendant's Motion to Refer the Matter to the Business Court Division** was served upon the following parties by U.S. Mail on this 2nd day of August, 2021:

Johnnie E. Brown
Pullin Fowler Flanagan Brown & Poe PLLC
901 Quarrier Street
Charleston, WV 25301
Email Address: jbrown@pffwv.com
Attorney For: Thornhill Chrysler Motor Car, Inc.



**Charles R. Bailey (WV Bar #0202)
John P. Fuller (WV Bar #9116)
BAILEY & WYANT, PLLC
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Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222**

VIA ELECTRONIC MAIL ONLY

June 11, 2021

Johnnie E. Brown
Pullin Fowler Flanagan Brown & Poe PLLC
901 Quarrier Street
Charleston, WV 25301

Re: **Moore Chrysler, Inc. v. Thornhill Chrysler**
Circuit Court of Mingo County, WV
Our File No. 6500-2663


Dear Mr. Brown:

As you are aware, by certificate of service date March 5, 2021, Plaintiff's served "Plaintiff Moore Chrysler, Inc. First Set of Request for Production of Documents to Defendant Thornhill Motor Car Inc., d/b/a Thornhill Chrysler Dodge Jeep Ram." Under the West Virginia Rules of Civil Procedure responses to the same were due Tuesday, April 6, 2021. By correspondence of Friday, April 9, 2021, sent via U.S. Mail and electronic mail, I requested that Defendant please provide a response to the written discovery requests. By correspondence of April 12, 2021, Defendant took the position that they believe there were exceptions with regard to answering pending discovery when a motion to dismiss was pending particularly with regard to qualified immunity and/or venue questions. In light of the hearing on the motion to dismiss set for May 11, 2021, it was agreed that nothing would be done at that time.

However, it is now June 11, 2021, approximately one month since the hearing on the motion to dismiss took place and we are awaiting the Court's decision as to whether the matter will proceed in Mingo County or be transferred to Logan, County, WV. As it is my understanding of the Rules of Civil Procedure, particularly those with regard to discovery, are the same in Logan County, WV as they are in Mingo, County, WV, I do not believe that there is any reason that we cannot proceed with these discovery requests at this time. I will stipulate, and by this correspondence do stipulate, that the Defendant is not waiving any venue argument or submitting to the venue of the Circuit Court of Mingo County, WV by responding to these discovery requests. To that end, I would request that Defendant, having had these discovery requests in their possession for approximately three (3) months at this point, please provide written responses by Friday, June 25, 2021. To the extent that Defendant is not amendable to this arrangement, I would request that you please respond with your position in writing.

Please consider this a good faith attempt to resolve a discover dispute pursuant to the West Virginia Rule of Civil Procedure.

My kindest regards,


John P. Fuller

JPF/lf

