

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Triton Construction, Inc.,

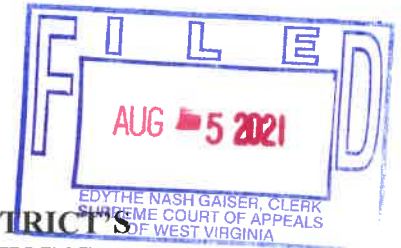
Plaintiff,

v.

Preston County Case No. 21-C-7
Judge Steven Shaffer

Gannet Fleming, Inc., and
Monongahela Conservation District,

Defendants.



**DEFENDANT MONONGAHELA CONSERVATION DISTRICT'S
REPLY TO PLAINTIFF TRITON CONSTRUCTION, INC.'S
MOTION TO TRANSFER TO BUSINESS COURT**

COMES NOW the Defendant, Monongahela Conservation District by and through counsel, Hilary M. Bright and The Bright Law Firm and file this reply in opposition to the transfer pursuant to West Virginia Trial Court Rule 29.06(a)(4) and states the following in support of its position:

1. The Business Court was created by the West Virginia Legislature with the specific purpose of handling complex business litigation matters between *business entities*. As stated in West Virginia Code §51-2-15,

the West Virginia Legislature finds that, due to the complex nature of litigation involving highly technical commercial issues, there is a need for a separate and specialized court docket to be maintained in West Virginia's most populated circuit court districts with specific jurisdiction over actions involving such commercial issues and disputes *between businesses*.

(Emphasis added).

2. As further set forth in West Virginia Trial Court Rule 29.01,

[i]n accordance with West Virginia Code §51-2-15, there is hereby adopted a process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses that includes the establishment of a

Business Court Division to handle a specialized court docket within the circuit courts.

3. Further, West Virginia Trial Court Rule 29.04 defines “business litigation” as a pending action in a circuit court in which “the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities... .” Thus, in order for a case to be before the Business Court, a party must be a business entity. In reviewing the limited purpose and function of a conservation district, the Monongahela Conservation District should not be considered a business entity for purposes of transferring the matter to the Business Court.
4. The Monongahela Conservation District is a conservation district created under the provisions of West Virginia Code §19-21A-5, 1931, as amended, and is recognized as such by the State of West Virginia. A conservation district is “a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.” W. Va. Code §19-21A-3(4). Each conservation district is comprised of specific counties through the state. The Monongahela Conservation District is comprised of land located in Marion, Monongalia, and Preston counties. Additionally, a conservation district is managed by supervisors who are elected by individuals living within their county. W. Va. Code §19-21A-6. These characteristics are unlike business entities.
5. A conservation district is created by the Legislature and therefore its purpose and powers are limited by the Legislature. A conservation district’s statutory mandate is to provide for the conservation of West Virginia’s soil and soil resources, for the control and prevention of flood water and sediment damages, and for furthering the conservation, development, utilization, and disposal of water. *See* W. Va. Code §19-21A-1(d); W. Va. Code §19-21A-

2(d). Consequently, the activities of the Monongahela Conservation District are limited to what has been authorized by the Legislature, unlike a business entity. *See* W. Va. Code §19-21A-8. Furthermore, unlike a business entity where its funding is derived from its business operations, a conservation district is funded by state, federal and local sources. As set forth in West Virginia Code, the expense of operating districts “will be provided by donations, gifts, contributions, grants and appropriations in money, services, materials, or otherwise, from the United States or any of its agencies, from the State of West Virginia or from other sources... .” W. Va. Code §19-21A-1(e); W. Va. Code §19-21A-2(e). Thus, funding for any of the statutorily authorized activities of a conservation district comes from funds provided to the district.

6. The Business Court was created for disputes between business entities, which the conservation district is not. By its limited functions, powers and resources, the Monongahela Conservation District, as a subdivision of the State of West Virginia, should not be considered a business entity for purposes of transferring the case to Business Court.

WHEREFORE, the Monongahela Conservation District respectfully requests that the request to transfer this matter to the Business Court Division be denied.

Respectfully Submitted,

**MONONGAHELA CONSERVATION
DISTRICT,**

By Counsel



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CERTIFICATE OF SERVICE

I, Hilary M. Bright, do hereby certify that I served the foregoing “ **DEFENDANT MONONGAHELA CONSERVATION DISTRICT’S REPLY TO PLAINTIFF TRITON CONSTRUCTION, INC.’S MOTION TO TRANSFER TO BUSINESS COURT**” upon the following, by mailing a copy thereof to each by United States Postal Service or by other indicated express delivery service, postage prepaid, this 4th day of August 2021.

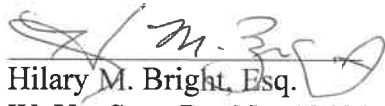
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