

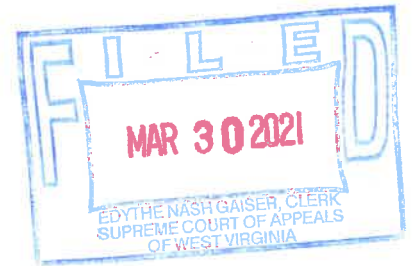
**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**RONALD LANE, INC.,  
a West Virginia Corporation,  
CHRISTOPHER LANE, and  
NORMAN LANE,**

**Plaintiffs,**

**v.**

**Circuit Court of Harrison County  
Civil Action No. 21-C-12-2  
Hon. Thomas A. Bedell**



**RONALD LANE,**

**Defendant.**

**DO NOT REMOVE  
FROM FILE**

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**RONALD LANE,**

**Plaintiff,**

**v.**

**Kanawha County Circuit Court  
Civil Action No.: 21-C-60  
Judge Tera L. Salango**

**CHRISTOPHER LANE,  
NORMAN LANE, and  
RONALD LANE, INC.,  
a West Virginia Corporation,**

**Defendants.**

Submitted By:

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**TO: THE HONORABLE CHIEF JUSTICE**

**JOINT MOTION TO REFER CASES TO THE BUSINESS COURT DIVISION**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Ronald Lane, Inc., a West Virginia corporation, Christopher Lane and Norman Lane, Plaintiffs in Civil Action No. 21-C-12-2 (Circuit Court of Harrison County) and Defendants in Civil Action No. 21-C-60 (Circuit Court of Kanawha County), by the undersigned counsel, and Ronald Lane, Plaintiff in Civil Action No. 21-C-60 (Circuit Court of Kanawha County) and Defendant in Civil Action No. 21-C-12-2 (Circuit Court of Harrison County), by the undersigned counsel, respectfully request the above-styled cases be referred to the Business Court Division – Region “A”.

These actions are related, and both arise from and relate to disputes regarding corporate transactions and business dealings involving a closely-held corporation headquartered in Harrison County, West Virginia. The causes of action alleged include declaratory relief between a business entity and a former shareholder, as well as claims relating to breach of contract, real estate leases and transactions, liability of shareholders, internal affairs of a commercial entity, commercial torts, and real property issues. Specifically, they involve claims for declaratory judgment regarding interpretation of agreements entered into among the corporation, its shareholders, and its former shareholders; breach of contract; declaratory judgment to quiet title; and various claims arising from transactions involving a shareholder and the corporation.

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, such as the scope and extent of the corporate opportunity doctrine which prohibits corporate officers from usurping the opportunities of the corporations they serve.

Ronald Lane formed Ronald Lane Pipeline Construction, Inc. in 1981 and later changed its name to Ronald Lane, Inc. (hereinafter “RLI”). He served as President of RLI until on or about October 26, 2020. He owned all 100 shares of voting stock and all 900 shares of non-voting stock until November 2014, when he transferred 100 shares of non-voting stock to his brother, Norman Lane, and to each of his children, Eric Lane, Tracy Lane Lancaster, and Christopher Lane. In 2016, RLI bought back the non-voting stock held by Eric Lane and Tracy Lane Lancaster. On November 24, 2018, RLI amended its Articles of Incorporation to increase the non-voting stock to 9,900 shares. Ronald Lane then transferred thirty-three shares of voting stock to Christopher Lane and thirty-three shares of voting stock to Norman Lane. Ronald Lane also transferred to Norman Lane and Christopher Lane additional non-voting shares so that, between November 24, 2018 and November 16, 2020, Norman Lane owned a total of 2,683 non-voting shares and Christopher Lane owned 1,250 non-voting shares, with Ronald Lane owning the 5,967 non-voting shares.

In the summer of 2020, a dispute arose among the shareholders. On October 26, 2020, Christopher Lane and Norman Lane voted to remove Ronald Lane as President. The parties engaged in mediation and entered into a Term Sheet and Stock Purchase Agreement. On November 17, 2020, Ronald Lane conveyed the remainder of his voting and non-voting stock to Christopher Lane and Norman Lane. The parties were unable to resolve certain disputes regarding certain real properties located in Harrison, Ritchie, and Calhoun counties. The parties agreed to toll all actions until January 15, 2021.

On January 15, 2021, Christopher Lane, Norman Lane, and Ronald Lane, Inc. filed suit against Ronald Lane in Harrison County stemming from those disputes. The Summons and Complaint have yet to be served in that case. On January 20, 2021, Ronald Lane filed suit in the

Circuit Court of Kanawha County seeking enforcement of and declaratory relief pertaining to the Term Sheet that was entered into by the parties in Charleston.

Each of these actions involve the very type of actions for which the Business Court was created: Litigation involving commercial issues and disputes among business entities and business persons. W. Va. Tr. Ct. R. 29.01. Specifically, these claims at issue here involve disputes arising from the ownership of a closely-held corporation and transactions involving shareholders of a closely-held corporation. Both actions involve complex legal and factual issues relating to interpretation and application of West Virginia corporate law, in addition to real estate law as it applies to a corporation and its shareholders. None of the claims fall within the categories of civil actions that are specifically excluded from the Business Court by Rule 29.04(a).

The relief requested in this Motion to Refer will not prejudice any party and no efficiencies will be lost. No scheduling order has been entered in either case, no orders have entered in either case, and no discovery has been undertaken. The sole filing is a motion to dismiss for improper venue or transfer of venue in the Kanawha County action, and again, with regard to the Harrison County action, the Complaint and Summons have not been served. Moreover, the venue issue will be moot upon removal, as all parties consent to assignment to Region “A” (encompassing Harrison County, the principal place of business of Ronald Lane, Inc.).

Finally, these actions involve ongoing business operations – including which parties are entitled to manage leasehold interests and collect rents on an ongoing basis. The Business Court, with benefit of both a Presiding Judge and a Resolution Judge, is particularly well-suited to manage these actions so as to achieve resolution in a timely and efficient manner. The Business Court was designed precisely for cases like these. Accordingly, the Parties respectfully request that this

Motion to Refer be granted and that both civil actions be referred to Region “A” of the Business Court Division.

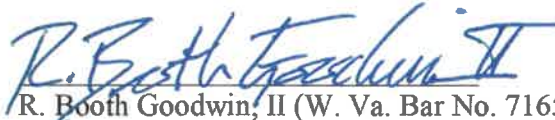
In further support of this Motion, please find attached hereto an accurate copy of: 1) the Complaint filed in Civil Action No. 21-C-12-2 (Circuit Court of Harrison County), which is attached as Exhibit A; 2) the Amended Complaint filed in Civil Action No. 21-C-60 (Circuit Court of Kanawha County), which is attached as Exhibit B; 3) The Motion to Dismiss and Memorandum in Support filed by Defendants in Civil Action No. 21-C-60 (Circuit Court of Kanawha County), which is attached as Exhibit C; 4) Plaintiff’s Response to Defendants’ Motion to Dismiss in Civil Action No. 21-C-60 (Circuit Court of Kanawha County), which is attached as Exhibit D; and 5) the Docket Sheets for both the Harrison County Action and the Kanawha County Action, which are attached collectively as Exhibit E.

**WHEREFORE**, the undersigned hereby jointly MOVE, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the Supreme Court of Appeals of West Virginia to refer this case to the Business Court Division – Region “A”.

Respectfully submitted, this 30<sup>th</sup> day of March 2021

**RONALD LANE**

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 *By RSP w/ permission*

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

**RONALD LANE, INC.,  
a West Virginia corporation,  
CHRISTOPHER LANE, and  
NORMAN LANE,**

**Plaintiffs,**

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**CHRISTOPHER LANE,  
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**Defendants.**

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## **INDEX OF DOCUMENTS FOR JOINT MOTION TO REFER TO BUSINESS COURT**

- Exhibit A:** Complaint in Harrison County Action, Civil Action No. 21-C-12-2
- Exhibit B:** Complaint in Kanawha County Action, Civil Action No. 21-C-60
- Exhibit C:** Defendants Christopher Lane, Norman Lane, and Ronald Lane, Inc.'s Motion to Dismiss, or in the alternative, Motion to Transfer
- Exhibit D:** Plaintiff Ronald Lane's Response to Defendants' Motion to Dismiss, or in the alternative, Motion to Transfer
- Exhibit E:** Docket Sheets
1. 21-C-12-2
  2. 21-C-60

**Exhibit A to:**

**Joint Motion to Refer Cases to the  
Business Court Division**

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

RONALD LANE, INC., a West Virginia  
corporation, CHRISTOPHER LANE, and  
NORMAN LANE

Plaintiffs,

v.

RONALD LANE

Defendant.

Case No.: 21-C-12-2

Complaint

COMES NOW, the Plaintiffs, Ronald Lane, Inc., a West Virginia Corporation, Christopher Lane and Norman Lane by and through their undersigned counsel, and bring this Complaint against Defendant, Ronald Lane, as follows:

**I. Parties**

1. Plaintiff Ronald Lane, Inc. ("RLI" or "the Company") is a West Virginia Corporation with its principal place of business at 339 Wilsonburg Road, Clarksburg, West Virginia 26301.
2. Plaintiff Christopher Lane is an adult individual residing in Clarksburg, West Virginia.
3. Plaintiff Norman Lane is an adult individual residing in Orma, West Virginia.
4. Defendant Ronald Lane is an adult individual residing in Shinnston, West Virginia.

## **II. Introduction/Background**

5. Defendant Ronald Lane is a former shareholder, officer and director of RLI, and was a shareholder, officer and director of RLI at all relevant times for purposes of the allegations in this Complaint.

6. Prior to January 31, 2014, Defendant Ronald Lane was the sole shareholder of RLI.

7. On or about January 31, 2014, Defendant Ronald Lane executed a Shareholder Agreement, whereby Tracy Lancaster, Eric Lane, Christopher Lane and Norman Lane became non-voting shareholders of RLI, ("the 2014 Shareholder Agreement").

8. Defendant Ronald Lane retained one hundred percent (100%) of the voting shares of RLI pursuant to the 2014 Shareholder Agreement.

9. Tracy Lancaster and Eric Lane withdrew as shareholders of RLI and their shares in the Company were redeemed by the Company on or about August 31, 2017.

10. RLI was under the adverse domination of Defendant Ronald Lane at all times prior to at least November 14, 2018, during which time Defendant Ronald Lane controlled RLI and acted, at various times, adversely to the interests of the Company.

11. At all times prior to at least November 14, 2018, Defendant Ronald Lane, as sole voting shareholder and as President of RLI, controlled the Company's financial information and records, and limited the access of non-voting shareholders to that information.

12. On or about November 14, 2018, Plaintiffs Christopher Lane and Norman Lane and Defendant Ronald Lane, (all of the then remaining shareholders of RLI), entered into a Restated and Amended Shareholder's Agreement ("the 2018 Shareholder's Agreement").

13. In recognition of their contributions to the success of RLI and as an inducement for them to remain as shareholders, officers and employees of the Company, Norman Lane and

Christopher Lane were allocated thirty-three (33) voting-shares each, of the one hundred (100) voting-shares in the Company, while Ronald Lane, who had ceased working in the business on a full-time basis, retained the remaining thirty-four (34) voting shares pursuant to the 2018 Shareholder's Agreement.

14. Defendant Ronald Lane, as President of RLI, continued to control and limit the access of other shareholders to corporate financial and other information, even after the execution of the 2018 Shareholder's Agreement.

15. Defendant Ronald Lane, as President of RLI, was frequently absent from the Company in 2018 and 2019, spending considerable time at his Florida home.

16. Defendant Ronald Lane's performance as President of RLI became increasingly erratic in 2018 and thereafter, such that, on multiple occasions, he engaged in intentional, reckless and/or grossly negligent conduct deleterious to the business of RLI, which harmed the Company's reputation, value and significantly diminished the Company's goodwill.

17. Following the amendment of the Shareholder's Agreement in November 2018, the other shareholders of RLI began to discover that Defendant Ronald Lane had been unilaterally diverting monies, material and man hours from RLI to his personal use on a large scale.

18. Following the amendment of the Shareholder's Agreement in November 2018, the other shareholders of RLI also eventually discovered that Defendant Ronald Lane had, on several occasions, usurped corporate opportunities of RLI and instructed the Company's accountants to "bonus" or lend him amounts necessary to purchase, in his own name, individually, unimproved land identified by the Company for development ("development properties").

19. After purchasing such development properties with funds surreptitiously "bonused," advanced or loaned to him from the Company's accounts, Defendant Ronald Lane

falsely represented and implied to the other shareholders that the properties were assets of RLI, and the Company's investment in each of these development properties, although understated, was carried, and still remains, as a corporate asset on the Company books.

20. Thereafter, and in reliance upon the misrepresentations, omissions, actions and/or false implications made by Defendant Ronald Lane, RLI spent millions of dollars improving the development lands nominally owned by Ronald Lane, individually.

21. These improvements to the development properties nominally owned by Ronald Lane, individually, were improved at the significant expense of RLI and at the express direction of Defendant, Ronald Lane.

22. Upon learning of the actions of Defendant Ronald Lane, Shareholder Christopher Lane confronted Defendant Ronald Lane regarding some of the Defendant's past acts of misfeasance and malfeasance in 2019 and demanded mediation pursuant to a dispute resolution mechanism set forth in paragraph 31 of the Amended Shareholder's Agreement.

23. Defendant Ronald Lane declined and refused to participate in mediation.

24. In July of 2020, with the disputes between himself and the other shareholders unresolved, Defendant Ronald Lane expressly invoked paragraph 31(b) of the Amended Shareholder's Agreement ("Option to Demand Purchase or Sale at Designated Price") and made an offer to buy or sell shares to shareholders Norman Lane and Christopher Lane on July 31, 2020.

25. Defendant Ronald Lane's offer to buy or sell shares valued the Company at \$1289.51 per share "as established by the company's CPA firm and valued as of December 31, 2019." A true and correct copy of Ronald Lane's July 31, 2020 offer to buy or sell shares (the "Offer Letter") is attached hereto and incorporated herein as Exhibit "1".

26. The valuation of the Company in Defendant Ronald Lane's Offer Letter included the Company's investment in those development properties nominally titled in Ronald Lane's name, individually, each of which was carried on the books of the Company, although understated in value, as a corporate asset at the time Defendant Ronald Lane made his offer to buy or sell shares. These development properties nominally titled in Defendant Ronald Lane's name, individually, are identified as follows:

- a. In Ritchie County, West Virginia, those parcels known and referred to within the Company as "Cairo," conveyed by Deed to Ronald Lane, individually, by Deed dated December 20, 2013, and recorded in the office of the Clerk of the County Commission of Ritchie County, West Virginia in Deed Book No. 323, at Page 916, and more particularly described as follows:
  - i. Grant District, Map 58, Parcel 47.1, Near Cairo 40 x 138 x 120 x 85 x 40 x 150, Lots #56 – 59 SUR., ;
  - ii. Grant District, Map 58, Parcel 48, Near Cairo (Douglas Addition), 85 x 120 TR #17;
  - iii. Grant District, Map 58, Parcel 50, Douglas Addition, Lots 53-54-55, 156 x 156 x 130 x 150; and
  - iv. Grant District, Map 58, Parcel 51, Near Cairo 150 x 348 x 153 x 320, Lots # 46-47-48-49-50-51-52.
- b. In Ritchie County, West Virginia, those parcels known and referred to within the Company as "Ellenboro," conveyed by Deed to Ronald Lane, individually, by Deed dated February 4, 2006, and recorded in the office of the Clerk of the County Commission of Ritchie County, West Virginia in Deed Book No. 294, at Page 526, and more particularly described as follows:
  - i. Clay District, Map 24, Parcel 33, Husher's Run 24.25 AC SUR & ½ OGM B; and
  - ii. Clay District, Map 24, Parcel 38, Husher's Run 19.50 AC FEE.
- c. In Harrison County, West Virginia, those parcels known and referred to within the Company as "Sun Valley conveyed by Deed to Ronald Lane, individually, by Deed dated July 10, 2013, and recorded in the office of the Clerk of the County Commission of Harrison County, West Virginia in Deed Book No. 1514, at Page 1165, and by Deed to Ronald Lane, individually, by Deed dated August 23, 2013, and recorded in said Clerks' in Deed Book No. 1557, at Page 244, and more particularly described as follows:

- i. Coal Outside District, Map 305, Parcel 5, 59.28 AC Limestone;
  - ii. Coal Outside District, Map 305, Parcel 5.6, 1 Lot (4.25 AC) Limestone; and
  - iii. Coal Outside District, Map 305, Parcel 6.6, 1.32 +/- AC South of Rt 50.
- d. In Harrison County, West Virginia, those parcels known and referred to within the Company as "Wilsonburg," conveyed by Deed to Ronald Lane, individually, by Deed dated September 21, 2011, and recorded in the office of the Clerk of the County Commission of Harrison County, West Virginia in Deed Book No. 1478, at Page 94, and by Deed to Ronald Lane, individually, by Deed dated April 17, 2013, and recorded in said Clerks' in Deed Book No. 1509, at Page 1307, and by Deed to Ronald Lane, individually, by Deed dated January 11, 2012, and recorded in said Clerks' in Deed Book No. 1482, at Page 305 and more particularly described as follows:
- i. Coal Outside District, Map 286, Parcel 84.2, 14.92 AC NR RT 50 Limestone;
  - ii. Coal Outside District, Map 286, Parcel 98, 2.65 AC Abandoned Parkersburg Branch R/R; and
  - iii. Coal Outside District, Map 286, Parcel 82, 2.72 AC Limestone.
- e. In Calhoun County, West Virginia, those parcels known and referred to within the Company as "Arnoldsburg" conveyed by Deed to Ronald Lane, individually, by Deed dated January 21, 1982, and recorded in the office of the Clerk of the County Commission of Calhoun County, West Virginia in Deed Book No. 142, at Page 156, and by Deed to Ronald Lane, individually, by Deed dated June 3, 1988, and recorded in said Clerk's office in Deed Book No. 161, at Page 453, and more particularly described as follows:
- i. Lee District, Map 23, Parcel 39.6-6001, 24.72 AC SUR WF Lane Warehouses & 4.93 AC;
  - ii. Lee District, Map 23, Parcel 39.6-6002, 24.72 AC SUR WFB Miller Excavating & 19.79 AC; and
  - iii. Lee District, Map 23, Parcel 51.2, 1 AC SUR WF.

(collectively referred to herein as the "RLI Developments").

27. The valuation given the Company in Defendant Ronald Lane's buy/sell offer also included the value of the RLI "Headquarters" building, generally known as 339 Wilsonburg Road, Clarksburg, West Virginia 26301 " conveyed by Deed to Ronald Lane, Inc. by Deed dated August

3, 2015, and recorded in the office of the Clerk of the County Commission of Harrison County, West Virginia in Deed Book No. 1559, at Page 229, and more particularly described as Coal Outside District, Map 286, Parcel 84.1, 7.68 AC NR RT 50 Limestone (Rental), (referred to herein as the "RLI Headquarters") which property was deeded in the name of the Company and which, like the RLI Developments, was treated by the Company as a corporate asset at all time material hereto.

28. RLI spent significant sums improving the Headquarters Building at the express direction of Defendant, Ronald Lane.

29. RLI has spent significant sums in maintaining the development properties and the Headquarters and has incurred significant costs and expenses in utility costs, taxes, insurance and other expenses associated with these properties.

30. Upon information and belief, the Company, with Defendant Ronald Lane as President, never issued a form 1099 or W-2 to Defendant Ronald Lane, identifying or valuing the millions of dollars invested by the Company in improving or maintaining the RLI Developments, as income to Defendant Ronald Lane.

31. Upon information and belief, Defendant Ronald Lane has never paid state or federal income taxes on the millions of dollars invested by the Company in the RLI Developments or the RLI Headquarters building.

32. In response to Defendant Ronald Lane's Offer Letter (Exhibit "1"), Shareholders Norman Lane and Christopher Lane elected to purchase all of Defendant Ronald Lane's shares in RLI at the valuation selected and set by Defendant Ronald Lane in the July 31, 2020 Offer Letter.

33. Shareholders Norman Lane and Christopher Lane notified Defendant Ronald Lane, in writing, of their election to purchase Defendant Ronald Lane's shares in RLI at the valuation selected and set by Defendant Ronald Lane on or about August 27, 2020.

34. In accordance with and pursuant to the 2018 Amended Shareholder's Agreement, Ronald Lane, thereafter, sold one hundred percent (100%) of his shares in RLI, voting and non-voting, to Norman Lane and Christopher Lane on or about November 17, 2020.

35. Ronald Lane, RLI, Norman Lane and Christopher Lane entered into a Standstill and Tolling Agreement on or about October 28, 2020, pursuant to which all applicable statutes of limitations applicable to the claims of RLI, Norman Lane and Christopher Lane against Defendant Ronald Lane were tolled until November 16, 2020.

36. Ronald Lane, RLI, Norman Lane and Christopher Lane entered into a subsequent Tolling Agreement on or about November 13, 2020 pursuant to which all applicable statutes of limitations were tolled until January 15, 2021.

### **III. The Acquisition of the RLI Developments and RLI Headquarters**

37. RLI, at all times material hereto, was engaged, *inter alia*, in the business of "pipelining," i.e., constructing pipelines and similar work for the oil and gas and other industries.

38. RLI also is and has been in the business of commercial real estate development.

39. RLI's development strategy is and has been to acquire largely undeveloped land in strategic locations and perform the required earth and site work to construct commercial buildings, typically to suit the needs of tenants or prospective tenants.

40. RLI's commercial development work is and was, at all times material hereto, a central part of the Company's business.

**IV. The Company's Investment in the RLI Developments and RLI Headquarters**

**A. The "Cairo" Property**

55. At Cairo, the Company performed, at great expense to it, work including, but not limited to, debris demolition and removal, placed stone, supplied Company employees and materials, contributed stone as partial consideration for the purchase price of this property, and paid all applicable property taxes, insurance, utilities, fuel costs and maintenance costs on the Cairo properties up through and including the present.

56. The cost to the Company of the improvements to and maintenance of the Cairo parcels was and is substantial.

57. The Fair Market Value of the Cairo parcel(s), after the Company's investment therein, has increased substantially.

58. Defendant Ronald Lane paid nothing out of pocket for any of the described improvements, taxes, costs or utilities on the Cairo properties, with the exception of the 2020 taxes.

**B. The "Ellenboro" Property**

59. At Ellenboro, the Company performed, at great expense to it, work including, but not limited to, earthwork, installing infrastructure and utilities, constructed buildings, hired sub-contractors, supplied Company employees and materials, and paid all applicable property taxes, insurance, utilities, fuel costs and maintenance costs on the Ellenboro properties up through and including the present.

60. The cost to the Company of the improvements to and maintenance of the Ellenboro parcels was and is substantial.

41. In fact, by 2019, commercial development work had become RLI's most significant source of revenue, given the deleterious effects of Defendant Ronald Lane's erratic behavior on the Company's work constructing pipelines for the oil and gas industry.

42. Unbeknownst to the other shareholders, and without any resolution or direction by the Board of Directors, Defendant Ronald Lane had, on numerous occasions, unilaterally directed the Company's accountants to "bonus" or loan him funds from the Company with which to purchase, in Ronald Lane's own name, certain undeveloped real estate, identified by the Company for acquisition and development.

43. Defendant Ronald Lane used the corporate funds disbursed to him to purchase the RLI Developments.

44. The Company additionally purchased the RLI Headquarters for use as its corporate headquarters and center of operations.

45. RLI Headquarters has at all times been titled/deeded in the Company's name.

46. The Company has, from the date(s) of acquisition until the present, treated all of the properties described above, including the RLI Developments and the RLI Headquarters, as corporate assets.

47. The Company has, from the date(s) of acquisition, paid all applicable property taxes on each of the RLI Developments and RLI Headquarters.

48. The Company has, from the date(s) of acquisition until the present, performed all required maintenance and upkeep on each of the RLI Developments and RLI Headquarters, using Company personnel, material and equipment.

49. The Company has, from the date(s) of acquisition until the present, paid all applicable utility bills for service to the RLI Developments and RLI Headquarters, unless paid by a tenant of the Company.

50. The Company has, from the date(s) of acquisition until the present, paid all applicable insurance premiums for the RLI Developments and RLI Headquarters.

51. The Company, at the direction of Defendant Ronald Lane, expended considerable expense, including personnel (payroll), equipment, material and outside contractor expenses in improving the RLI Developments and RLI Headquarters.

52. Defendant Ronald Lane contends that he, individually, and his son, former RLI shareholder and Vice-President Eric Lane, entered into an oral agreement whereby Ronald Lane acknowledged the Company's interest in the investment, expenditures and improvements made by the Company in the RLI Developments created by the Company on raw land deeded to Ronald Lane, individually.

53. Defendant Ronald Lane contends that the terms of the alleged oral agreement provide that Ronald Lane, individually, is to be paid twenty percent (20%) of rents received from tenants leasing the RLI Developments, while the Company is to retain eighty percent (80%) of such rents.

54. Defendant Ronald Lane has released any and all claims to rents received from the tenants at the RLI Developments on or prior to November 13, 2020. See, November 13, 2020 Term Sheet, a true and correct copy which is attached hereto and incorporated herein as Exhibit "2".

61. The Fair Market Value of the Ellenboro parcels, after the Company's investment therein, has increased substantially.

62. Defendant Ronald Lane paid nothing out of pocket for any of the described improvements, taxes, costs or utilities on the Ellenboro properties, with the exception of the 2020 taxes.

**C. The "Sun Valley" Property**

63. At Sun Valley, the Company performed, at great expense to it, work including, but not limited to, earthwork, installing infrastructure and utilities, constructed buildings, hired sub-contractors, supplied Company employees and materials, and paid all applicable property taxes, insurance, utilities, fuel costs and maintenance costs on the Sun Valley properties up through and including the present.

64. The cost to the Company of the improvements to and maintenance of the Sun Valley parcels was and is substantial.

65. The Fair Market Value of the Sun Valley parcels, after the Company's investment therein, has increased substantially.

66. Defendant Ronald Lane paid nothing out of pocket for any of the described improvements, taxes, costs or utilities on the Sun Valley properties, with the exception of the 2020 taxes.

**D. The "Wilsonburg" Property**

67. At Wilsonburg, the Company performed, at great expense to it, work including, but not limited to, earthwork, installing infrastructure and utilities, constructed buildings, hired sub-contractors, supplied Company employees and materials, and paid all applicable property taxes,

insurance, utilities, fuel costs and maintenance costs on the Wilsonburg properties up through and including the present.

68. The cost to the Company of the improvements to and maintenance of the Wilsonburg parcels was and is substantial.

69. The Fair Market Value of the Wilsonburg parcels, after the Company's investment therein, has increased substantially.

70. Defendant Ronald Lane paid nothing out of pocket for any of the described improvements, taxes, costs or utilities on the Wilsonburg properties, with the exception of the 2020 taxes.

**E. The "Arnoldsburg" Property**

71. At Arnoldsburg, the Company performed, at great expense to it, work including, but not limited to, earthwork, installing infrastructure and utilities, constructed buildings, hired sub-contractors, supplied Company employees and materials, and paid all applicable property taxes, insurance, utilities, fuel costs and maintenance costs on the Arnoldsburg properties up through and including the present.

72. The cost to the Company of the improvements to and maintenance of the Arnoldsburg parcels was and is substantial.

73. The Fair Market Value of the Arnoldsburg parcels, after the Company's investment therein, has increased substantially.

74. Upon information and belief, Defendant Ronald Lane paid nothing out of pocket for any of the described improvements, taxes, costs or utilities on the Arnoldsburg properties, with the exception of the 2020 taxes.

**F. RLI Headquarters**

75. The Company purchased the building used as RLI Headquarters on or about August 3, 2015.

76. The RLI Headquarters property is properly deeded to the Company, Ronald Lane, Inc. See Deed recorded in Deed Book 1559, Page 229, a true and correct copy of which is attached hereto and incorporated herein as Exhibit "5".

77. The RLI Headquarters property has been treated by the Company as a corporate asset since its acquisition in 2015.

78. The Company has paid all applicable property taxes on the RLI Headquarters property at all times since its acquisition.

79. Defendant Ronald Lane, as a shareholder and President of RLI, represented to the other shareholders that RLI Headquarters was owned by the Company.

80. Defendant Ronald Lane testified, under oath, at a hearing conducted in the Circuit Court of Harrison County in Civil Action No. 20-P-165 on September 30, 2020 that RLI Headquarters is owned by the Company.

81. Defendant Ronald Lane now claims, in connection with the sale of his shares in RLI and his exit from the Company, that he purchased RLI Headquarters as an individual.

82. At the time that RLI Headquarters was purchased, the Company had shareholders other than Ronald Lane.

83. RLI Headquarters was identified by the Company as meeting the Company's operational needs and the corporate decision was made to acquire the property.

84. Purchase of RLI Headquarters was a corporate opportunity of the Company.

85. The Board of Directors of the Company never approved the acquisition of RLI Headquarters by Ronald Lane, individually.

86. The shareholders of RLI, other than Ronald Lane, were never informed that RLI Headquarters was to be purchased by Ronald Lane, individually.

87. At RLI Headquarters, the Company performed, at great expense to it, work including, but not limited to, earthwork, installing infrastructure and utilities, constructed buildings, hired sub-contractors, supplied Company employees and materials, and paid all applicable property taxes, insurance, utilities, fuel costs and maintenance costs on the RLI Headquarters property up through and including the present.

88. The cost to the Company of the improvements to and maintenance of the Headquarters parcel was and is substantial.

89. The Fair Market Value of the Headquarters parcel, after the Company's investment therein, has increased substantially.

90. Defendant Ronald Lane paid nothing out of pocket for any of the described improvements, taxes, costs or utilities on the Headquarters property.

**Count I – Quiet Title**

91. Paragraphs 1 through 90, inclusive, are incorporated herein by reference as though more fully set forth at length herein.

92. Plaintiffs are informed and believe that Defendant Ronald Lane claims an interest in the RLI Developments and RLI Headquarters adverse to Plaintiffs herein.

93. The claims of Defendant Ronald Lane are without any right whatsoever, and Defendant Ronald Lane has no legal or equitable right, claim, or interest in said property.

94. Plaintiffs therefore seek a declaration that title to each of the RLI Developments and to RLI Headquarters is vested in Plaintiff RLI alone and that the Defendant Ronald Lane be declared to have no estate, right, title or interest in the subject properties and that said Defendant be forever enjoined from asserting any estate, right, title or interest in the subject properties adverse to Plaintiffs herein.

WHEREFORE, Plaintiffs pray for judgment against Defendant Ronald Lane as follows:

- 1) For an order compelling said Defendant to transfer legal title and possession of the RLI Developments to Plaintiff RLI herein;
- 2) For a declaration and determination that Plaintiff RLI is the rightful holder of title to the RLI Developments and RLI Headquarters and that Defendant Ronald Lane be declared to have no estate, right, title or interest in said properties;
- 3) For a judgment forever enjoining said Defendant Ronald Lane from claiming any estate, right, title or interest in the RLI Developments and RLI Headquarters;
- 4) Alternatively, for a Declaration, Order or Decree either requiring Ronald Lane to convey the RLI Developments to RLI, with just, equitable and fair payment to Ronald Lane from RLI for the value of the unimproved real estate or, for a Declaration, Order or Decree requiring Ronald Lane to make fair payment to RLI for the value of the improvements made by RLI to the RLI Developments and reimbursement for all sums paid by RLI with respect to the RLI Developments;
- 5) For costs of suit and attorney fees herein incurred; and
- 6) For such other and further relief as this Honorable Court may deem to be just and proper under the circumstances.

**Count II Equity/Partition**

95. The foregoing paragraphs 1 through 94, inclusive, are incorporated herein by reference as though more fully set forth at length herein.

96. To the extent that Defendant Ronald Lane is deemed to be the owner of the RLI Developments or the RLI Headquarters Plaintiff RLI has an equitable claim to an interest in those properties, as improved by the Company at the Company's expense.

97. In each instance, i.e., at Cairo, Ellenboro, Sun Valley, Wilsonburg and Arnoldsburg, as well as at RLI Headquarters, should it be determined that Defendant Ronald Lane is the owner thereof, which contention is expressly denied, then and in that event, Defendant Ronald Lane knowingly and intentionally directed the use of RLI company monies, material and personnel to perform earth and site work, construct buildings and otherwise develop and maintain the RLI Developments and the RLI Headquarters.

98. In each instance, Defendant Ronald Lane, knowing that the RLI Development parcels were titled to him, individually, directed Company personnel and/or the Company's outside accountants not to track Company expenditures or investment in the RLI Developments or otherwise properly ascribe the expenditure to the RLI Developments.

99. In each instance, Defendant Ronald Lane, knowing that the RLI Development parcels were titled to him, individually, represented to other shareholders that the RLI Developments were Company assets and that the improvement of the RLI Developments would inure to the benefit of the Company and its shareholders.

100. In each instance, Defendant Ronald Lane, knowing that the RLI Development parcels were titled to him, individually, never disclosed to the other shareholders that he intended for the Company to develop, improve and maintain the RLI Developments for his personal benefit.

101. In each instance, Defendant Ronald Lane made no personal, out of pocket contribution to the development, improvement or maintenance of the RLI Developments or the RLI Headquarters.

102. In each instance, the Defendant Ronald Lane, upon information and belief, has never declared the value of the improvements made to the RLI Developments as his own personal income, nor has he paid federal or state income tax on the value of such improvements.

WHEREFORE, Plaintiffs pray for judgment against Defendant Ronald Lane as follows:

1) For a Declaration, Order and/or Decree compelling and directing Defendant Ronald Lane to transfer legal title and possession of the RLI Developments to Plaintiff RLI herein;

2) For a Declaration, Order and/or Decree and determination that Plaintiff RLI is the rightful holder of title to the RLI Developments and RLI Headquarters, and that Defendant Ronald Lane herein, be declared to have no estate, right, title or interest in said properties;

3) For a Declaration, Order and/or Decree forever enjoining Defendant Ronald Lane from claiming any estate, right, title or interest in RLI Developments and RLI Headquarters;

4) Alternatively, for a Declaration, Order or Decree either requiring Ronald Lane to convey the RLI Developments to RLI, with just, equitable and fair payment to Ronald Lane for the value of the unimproved real estate or, for a Declaration, Order or Decree requiring Ronald Lane to make fair payment to RLI for the value of the improvements made by RLI to the RLI Developments and reimbursement for all sums paid by RLI with respect to the RLI Developments;

5) For costs of suit and attorney fees herein incurred; and

6) For such other and further relief as this Honorable Court may deem to be just and proper under the circumstances.

### Count III – Estoppel in Pais

103. Plaintiffs incorporate the foregoing paragraphs 1 through 102, inclusive, as though the same were more fully set forth at length herein.

104. Defendant Ronald Lane represented to the other shareholders of RLI, namely, Chris Lane and Norman Lane, that the RLI Developments and RLI Headquarters were Company projects and would provide for the retirement of RLI shareholders.

105. Defendant Ronald Lane concealed from the other shareholders of RLI the fact that the RLI Development properties were titled in his name, individually.

106. Defendant Ronald Lane directed the Company's accountants to carry the Company's investment in the RLI Development properties, although understated, on the books of RLI, as Company assets, knowing that the real estate was titled in his name, individually.

107. The shareholders of RLI other than Defendant Ronald Lane were unaware, while the Company was investing millions of dollars into the RLI Developments, that the RLI Developments were titled to Ronald Lane, individually.

108. Defendant Ronald Lane concealed the fact that the RLI Developments were titled in his name, individually, from the other shareholders of RLI in order to induce them to allow RLI to invest millions of dollars in the RLI Developments.

109. Defendant Ronald Lane represented to the other shareholders that the RLI Developments were RLI Company projects, that would be the shareholders' "retirement" in order to induce them to allow RLI to invest millions of dollars in the RLI Developments.

110. Defendant Ronald Lane instructed the Company's accountants to carry the Company's investment in the RLI Developments, although understated, on the books of the Company and caused the Company to otherwise treat the RLI Developments as Company assets.

111. Defendant Ronald Lane now asserts that RLI Headquarters, presently and accurately titled in the Company's name, was purchased by him, individually, and should be titled in his name, which contention is expressly denied.

112. Plaintiffs were induced by and relied to their detriment upon Defendant Ronald Lane's fraudulent misrepresentations and material omissions to invest millions of dollars into the RLI Developments.

113. Similarly, if it is determined that RLI Headquarters should be titled in Defendant's name, individually, Plaintiffs were induced by and relied to their detriment upon defendant Ronald Lane's fraudulent misrepresentations and material omissions to invest millions of dollars into RLI Headquarters.

114. Defendant Ronald Lane treated the RLI Developments and RLI Headquarters in all respects as the property of Plaintiff RLI, from the time of their acquisition through and including in his offer to buy or sell shares of July 31, 2020, in which he included the value of the RLI Developments and RLI Headquarters in his valuation of the Company.

115. In each instance, the Defendant Ronald Lane made no personal, out of pocket contribution to the development, improvement or maintenance of the RLI Developments or RLI Headquarters.

116. In each instance, Defendant Ronald Lane, upon information and belief, has never declared the value of the improvements made to the RLI Developments or RLI Headquarters as his own personal income, nor has he paid federal or state income tax on the value of such properties or improvements.

117. Defendant Ronald Lane, in making his July 31, 2020 offer to buy or sell shares in RLI, expressly included the value of the RLI Developments and the RLI Headquarters in his valuation of the Company.

118. Shareholders Norman Lane and Christopher Lane relied upon Defendant Ronald Lane's valuation of the Company in deciding to exercise their rights to purchase Ronald Lane's shares in RLI at the price set by him, which included the value of the RLI Developments and the RLI Headquarters.

119. Defendant Ronald Lane, by his conduct as described above, is and should be estopped from claiming ownership of the RLI Developments or RLI Headquarters.

WHEREFORE, Plaintiffs pray for judgment against Defendant Ronald Lane as follows:

- 1) For a Declaration, Order and/or Decree compelling and directing Defendant Ronald Lane to transfer legal title and possession of the RLI Developments to Plaintiff RLI herein;
- 2) For a Declaration, Order and/or Decree and determination that Plaintiff RLI is the rightful holder of title to the RLI Developments and RLI Headquarters, and that Defendant Ronald Lane herein, be declared to have no estate, right, title or interest in said properties;
- 3) For a Declaration, Order and/or Decree forever enjoining Defendant Ronald Lane from claiming any estate, right, title or interest in RLI Developments and RLI Headquarters;
- 4) Alternatively, for a Declaration, Order or Decree either requiring Ronald Lane to convey the RLI Developments to RLI, with just, equitable and fair payment to Ronald Lane for the value of the unimproved real estate, or for a Declaration, Order or Decree requiring Ronald Lane to make fair payment to RLI for the value of the improvements made by RLI to the RLI Developments and reimbursement for all sums paid by RLI with respect to the RLI Developments;
- 5) For costs of suit and attorney fees herein incurred; and
- 6) For such other and further relief as this Honorable Court may deem to be just and proper under the circumstances.

#### **Count IV- Unjust Enrichment**

120. Plaintiffs incorporate the foregoing paragraphs 1 through 119, inclusive, are incorporated herein by reference as though more fully set forth at length herein.

121. In each instance at the RLI Developments, i.e., at Cairo, Ellenboro, Sun Valley, Wilsonburg and Arnoldsburg, as well as at RLI Headquarters, should it be determined that the RLI Developments and/or RLI Headquarters are owned by Defendant Ronald Lane, individually, which contention is expressly denied, then and in that event, the Company, through a reasonable

mistake of fact and in good faith, performed earth and site work, erected buildings, performed maintenance, and paid property taxes, utility bills, insurance, and incurred other costs and expenses entirely upon land titled in the name of Defendant Ronald Lane, individually, with reasonable belief that such land was owned by RLI and that such work and expenditures would inure to the benefit of the Company.

122. In each instance at the RLI Developments, i.e., at Cairo, Ellenboro, Sun Valley, Wilsonburg, and Arnoldsburg, as well as at the RLI Headquarters, Defendant Ronald Lane represented to the other shareholders of RLI, that the RLI Developments and RLI Headquarters were assets of Plaintiff RLI and that the funds, material and manhours invested by the Company into the RLI Developments and RLI Headquarters were Company projects, the improvement and development of which would inure to the benefit of the Company and its shareholders.

123. Defendant Ronald Lane, during that time that he controlled the Company, represented to Plaintiffs Norman Lane and Christopher Lane that the RLI Developments and RLI Headquarters were assets of the Company.

124. RLI consequently paid most, if not, all of the applicable property taxes and insurance on each of the RLI Developments and RLI Headquarters and one hundred percent of the costs of improving, developing and maintaining them.

125. RLI and its shareholders, Christopher Lane and Norman Lane, worked in good faith in improving and developing the RLI Developments and RLI Headquarters, in the reasonable belief that the RLI Developments and RLI Headquarters were Company assets and that such work and expenditures would inure to the benefit of the Company.

126. In each instance, Defendant Ronald Lane stood by and accepted the value of the Company's investment in the RLI Developments, and, if applicable, RLI Headquarters, knowing

that RLI and its other shareholders were acting in good faith, believing they were improving Company assets.

127. Defendant Ronald Lane in fact represented to the other shareholders, on multiple occasions, that the RLI Developments would be the shareholders' "retirement."

128. To the extent that Defendant Ronald Lane now claims the ownership of the RLI Developments and, if applicable, RLI Headquarters, to the exclusion of Plaintiff RLI, Defendant has been unjustly enriched.

129. Plaintiff RLI, under these circumstances, is entitled to receive from Defendant Ronald Lane the value of the improvements made by RLI to the RLI Developments and reimbursement for all sums paid by RLI with respect to the RLI Developments, or, alternatively, Defendant Ronald Lane should be compelled to surrender title to the RLI Developments to the Company upon payment of the value of each of the unimproved parcels of land in the state as they existed before Plaintiff RLI undertook to improve and develop them.

130. Plaintiff RLI, under these circumstances, and if RLI Headquarters is determined to belong to Defendant Ronald Lane, which contention is expressly denied, is entitled to receive from Defendant Ronald Lane the value of the improvements made by RLI to RLI Headquarters and reimbursement for all sums paid by RLI with respect to RLI Headquarters, or, alternatively, to the confirmation of RLI's title in RLI Headquarters.

WHEREFORE, Plaintiffs pray for judgment against Defendant Ronald Lane as follows:

- 1) For a Declaration, Order and/or Decree compelling and directing Defendant Ronald Lane to transfer legal title and possession of the RLI Developments to Plaintiff RLI herein;
- 2) For a Declaration, Order and/or Decree and determination that Plaintiff RLI is the rightful holder of title to the RLI Developments and RLI Headquarters, and that Defendant Ronald Lane herein, be declared to have no estate, right, title or interest in said properties;

- 3) For a Declaration, Order and/or Decree forever enjoining Defendant Ronald Lane from claiming any estate, right, title or interest in RLI Developments and RLI Headquarters;
- 4) Alternatively, for a Declaration, Order or Decree either requiring Ronald Lane to convey the RLI Developments to RLI, with just, equitable and fair payment to Ronald Lane for the value of the unimproved real estate or, for a Declaration, Order or Decree requiring Ronald Lane to make fair payment to RLI for the value of the improvements made by RLI, and reimbursement for all sums paid by RLI with respect to the RLI Developments and RLI Headquarters;
- 5) For costs of suit and attorney fees herein incurred; and
- 6) For such other and further relief as this Honorable Court may deem to be just and proper under the circumstances.

**Count V – Conversion**

131. Plaintiffs incorporate the foregoing paragraphs 1 through 130 by reference as though more fully set forth at length herein.

132. Defendant Ronald Lane directed the use of RLI funds, material and personnel in the improvement of the RLI Developments and, if applicable, RLI Headquarters, intending to keep the improvements so made as his personal property, to the exclusion of the Company.

133. Defendant Ronald Lane directed the use of RLI funds, material and personnel in the improvement of the RLI Developments and, if applicable, RLI Headquarters, under the false pretense that the RLI Developments were and would be assets of RLI.

134. In acting as described, Defendant Ronald Lane has wrongfully exerted dominion over the property of RLI in denial of the rights of RLI.

135. Defendant Ronald Lane has tortiously converted to his own use the property of RLI and wrongfully appropriated such property to his own use, exercising a claim of right in the RLI Developments in opposition to the rights of RLI.

136. Plaintiffs have suffered damages in an amount to be determined at trial as a direct and proximate result of Defendant's unlawful conversion of Plaintiff's assets.

WHEREFORE, Plaintiffs demand judgment against Defendant Ronald Lane in an amount to be determined at trial, plus costs of suit, attorney fees and such further relief as this Honorable Court may deem to be just and proper under the circumstances.

**Count VI – Breach of Fiduciary Duty**

137. Plaintiffs incorporate the foregoing paragraphs 1 through 136, by reference as though more fully set forth at length herein.

138. Defendant Ronald Lane, as a shareholder, director and officer (President and/or Treasurer) of Plaintiff RLI, owed a fiduciary duty to the Company and its shareholders.

139. Under West Virginia law, officers of a corporation must perform their duties in good faith, with the care that a person in a like position would reasonably exercise under similar circumstances, and in a manner that the officer reasonably believes to be in the best interests of the Company. W.Va. Code §31D-8-842.

140. Under West Virginia law, directors of a corporation must perform their duties in good faith and in a manner the director reasonably believes to be in the best interests of the Company. W.Va. Code §31D-8-830.

141. Defendant Ronald Lane served as President and/or Treasurer of RLI at all times material until his removal as President and Treasurer on or about October 26, 2020.

142. Defendant Ronald Lane served as Director of RLI at all times material until his removal as Director on or about November 17, 2020.

143. Defendant Ronald Lane contends that, as President and/or Treasurer and Director of RLI, he entered into an oral agreement with the Company by which he, individually, would

acquire certain parcels of undeveloped land, with monies advanced to him by the Company as "bonuses" or "loans," with such parcels to be improved and developed by the Company, using Company funds, employees and resources.

144. The properties in question are the "RLI Developments," and, if applicable, RLI Headquarters.

145. Defendant Ronald Lane further contends that, as to the RLI Developments, he entered into an oral agreement with the Company to share the rental income produced by the properties, in their improved and developed state, with the Company on an eighty percent/twenty percent split, with the Company receiving eighty percent and Defendant Ronald Lane, individually, receiving twenty percent.

146. No agreement between the Company and Defendant Ronald Lane for the Company to bonus and/or loan Defendant Ronald Lane funds with which to purchase the parcels upon which the Company created the RLI Developments was ever approved by the Board of Directors of the Company nor is any such agreement reflected in any motion, resolution or other official action taken by the Directors or Shareholders of the Company.

147. No agreement between the Company and Defendant Ronald Lane for the allocation of rents from the RLI Developments, whether in the ratio of eighty percent to twenty percent or otherwise, was ever approved by the Directors of the Company nor is any such agreement reflected in any motion, resolution or other official action taken by the Directors or Shareholders of the Company.

148. Defendant Ronald Lane, to the extent that he purported to enter into the "bonus/loan" agreement(s) or the "eighty/twenty" agreement on behalf of the Company, as its

President or Director with himself, as an individual, breached his fiduciary duty to the Company and other shareholders and engaged in impermissible self-dealing.

149. Ronald Lane further contends, apparently, that RLI is entitled only to recoup, through this eighty percent/twenty percent split, such amounts as the Company has expended in improving and developing the RLI Developments, and, if applicable, the RLI Headquarters.

150. Defendant Ronald Lane also contends that RLI Headquarters, which was acquired by the Company in 2015, was somehow intended to have been titled in Defendant Ronald Lane's name, individually.

151. To the extent that Defendant Ronald Lane, as President, Treasurer and Director of RLI, claims to have entered into an agreement with the Company by which RLI would again "bonus" or "loan" Ronald Lane the funds necessary to purchase RLI Headquarters in his own name, no such agreement was ever disclosed to the other shareholders, no such agreement was ever approved by the Directors of the Company, nor is any such agreement reflected in any motion, resolution or other official action taken by the Directors or Shareholders of the Company.

152. Defendant Ronald Lane, to the extent that he purported to enter into agreement for the acquisition of RLI Headquarters to be purchased by him, individually on behalf of the Company, as its President and/or Treasurer and Director with himself, as an individual, breached his fiduciary duty to the Company and engaged in impermissible self-dealing.

153. Defendant Ronald Lane, as President, Treasurer and Director of RLI, wasted the assets of RLI by wrongfully directing the use of Company assets for his personal enrichment, as described.

154. As a direct and proximate result of the Defendant Ronald Lane's breaches of fiduciary duty and improper self-dealing, Plaintiffs have suffered damages as shall be proven at trial.

155. Any agreement purportedly entered into by Defendant Ronald Lane, individually and Ronald Lane, as President, Treasurer and/or Director of RLI, regarding the RLI Developments and/or the RLI Headquarters is and should be void *ab initio*.

WHEREFORE, Plaintiffs demand judgment against Defendant Ronald Lane in an amount to be determined at trial, plus costs of suit, attorney fees and such further relief as this Honorable Court may determine to be just and proper under the circumstances.

**Count VII- (In the Alternative) Usurpation of Corporate Opportunity**

156. Plaintiffs incorporate the foregoing paragraphs 1 through 155, by reference as though more fully set forth at length herein.

157. Plaintiff RLI purchased RLI Headquarters on or about August 3, 2015.

158. At the time of the acquisition of RLI Headquarters in 2015, Defendant Ronald Lane was the President and/or Treasurer and Director of Plaintiff RLI and, as such, owed a fiduciary duty to the Company and its shareholders.

159. The Company identified RLI Headquarters as suitable for the Company's needs.

160. The shareholders and officers of the Company directed Company personnel to acquire RLI Headquarters for the Company.

161. The Company, at the time that it identified RLI Headquarters as suitable for the Company's needs, had the necessary resources to purchase RLI Headquarters.

162. The acquisition of RLI Headquarters was a business opportunity which the Company was financially able to undertake.

163. The acquisition of RLI Headquarters was, from its nature, in the line of the Company's business and was of practical advantage to it.

164. The acquisition of RLI Headquarters was an opportunity in which the Company had an interest or a reasonable expectancy.

165. Defendant Ronald Lane contends that RLI Headquarters was acquired by him, individually, notwithstanding the fact that the deed recorded in Deed Book 1559 at page 229 identifies the grantee as Plaintiff RLI.

166. Defendant Ronald Lane contends that he, as President and/or Treasurer or Director of RLI, caused the Company to issue a loan to him of monies sufficient to purchase RLI Headquarters and that he purchased RLI Headquarters as a personal asset, with the monies lent to him by the Company.

167. RLI Headquarters, contrary to Defendant Ronald Lane's assertions, was purchased by and is owned by the Company.

168. If, however, as Defendant Ronald Lane contends, RLI Headquarters was, in fact, purchased by him, individually, which contention is expressly denied, then and in that event, Defendant Ronald Lane by taking the opportunity to purchase RLI Headquarters for himself wrongly advanced his own self-interest, in conflict with the interest of RLI and its shareholders.

169. Plaintiffs have sustained damages, in an amount to be determined at trial, as a direct and proximate result of Defendant Ronald Lane's usurpation of the corporate opportunity of RLI to purchase RLI Headquarters.

WHEREFORE, Plaintiffs demand judgment against Defendant Ronald Lane in an amount to be determined at trial, plus costs of suit, attorney fees and such further relief as this Honorable Court may deem to be just and proper under the circumstances.

**County VIII – Breach of Contract**

170. Plaintiffs incorporate the foregoing paragraphs 1 through 169 by reference as though more fully set forth at length herein.

171. Defendant Ronald Lane was, at all times material hereto, a shareholder in RLI and a party first to the 2014 Shareholder Agreement and then the 2018 Restated and Amended Shareholder's Agreement.

172. Defendant Ronald Lane was obligated, as a party to each of the shareholder agreements, to comply with the terms thereof.

173. Each of the shareholder agreements contains a non-compete clause, by which the shareholders, including Defendant Ronald Lane, agreed not to compete with the Company.

174. Each of the shareholder agreements require company and/or director approval before purchasing property in excess of a certain dollar amount.

175. Each of the shareholder agreements is deemed to impose, as a matter of law, an implied covenant of good faith and fair dealing on the part of the shareholders.

176. Defendant Ronald Lane, as a shareholder, officer, director and employee of RLI, was contractually obligated to act in the best interests of the Company and comply with the terms of the shareholder agreements.

177. Defendant Ronald Lane breached the shareholder agreements and the implied covenant of good faith and fair dealing as described above.

178. Plaintiffs have sustained damages, in an amount to be determined at trial, as a direct and proximate result of Defendant Ronald Lane's breaches of contract.

WHEREFORE, Plaintiffs demand judgment against Defendant Ronald Lane in an amount to be determined at trial, plus costs of suit, attorney fees and such further relief as this Honorable Court may deem to be just and proper under the circumstances.

**Count IX – Declaratory Judgment**

179. Plaintiffs incorporate the foregoing paragraphs 1 through 178 by reference as though more fully set forth at length herein.

180. Defendant Ronald Lane was a signatory to and was bound by the January 31, 2014 Shareholder Agreement and the November 14, 2018 Restated and Amended Shareholder's Agreement.

181. Each of the Shareholder Agreements imposed upon Defendant Ronald Lane a contractual obligation of good faith and fair dealing.

182. Each of the Shareholder Agreements imposed upon Defendant Ronald Lane an obligation not to compete with RLI.

183. Plaintiff requests a Declaration, pursuant to the Uniform Declaratory Judgments Act, West Virginia Code §55-13-1 et seq., of the respective rights of RLI and Defendant Ronald Lane in the RLI Developments and the RLI Headquarters pursuant to the January 31, 2014 Shareholder Agreement and the November 14, 2018 Restated and Amended Shareholder's Agreement.

WHEREFORE, Plaintiffs pray for judgment against Defendant Ronald Lane as follows:

- 1) For a Declaration, Order and/or Decree compelling and directing Defendant Ronald Lane to transfer legal title and possession of the RLI Developments to Plaintiff RLI herein;
- 2) For a Declaration, Order and/or Decree and determination that Plaintiff RLI is the rightful holder of title to the RLI Developments and the RLI Headquarters, and that Defendant Ronald Lane herein, be declared to have no estate, right, title or interest in said properties;

3) For a Declaration, Order and/or Decree forever enjoining Defendant Ronald Lane from claiming any estate, right, title or interest in RLI Developments and the RLI Headquarters;

4) Alternatively, for a Declaration, Order or Decree either requiring Ronald Lane to convey the RLI Developments to RLI, with just, equitable and fair payment to Ronald Lane for the value of the unimproved real estate or, for a Declaration, Order or Decree requiring Ronald Lane to make fair payment to RLI for the value of the improvements made by RLI to the RLI Developments, and if applicable, the RLI Headquarters, and reimbursement for all sums paid by RLI with respect to the RLI Developments and, if applicable, the RLI Headquarters;

5) For costs of suit and attorney fees herein incurred; and

6) For such other and further relief as this Honorable Court may deem to be just and proper under the circumstances.


**JURY DEMAND**

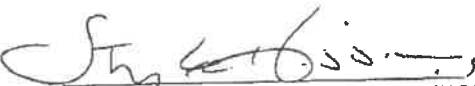
Plaintiffs, Ronald Lane, Inc., Christopher Lane and Norman Lane hereby demand a trial by jury on each and every claim set forth in this Complaint where a jury is available as a matter of West Virginia law.

**RONALD LANE, INC.,  
CHRISTOPHER LANE, AND  
NORMAN LANE,**  
*By counsel:*



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**BREWER & GIGGENBACH, PLLC**

**ATTORNEYS AT LAW**

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July 31, 2020

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RE: Our Client: Ronald Lane

VIA EMAIL (dtaylor@margolisedelstein.com & john.gianola@yahoo.com)  
& UNITED STATES MAIL

Gentlemen:

The current situation with Ronald Lane, Inc. cannot continue. The company sustained significant losses last year and is losing money in the current year. Communications have completely broken down between the principals and it is basically a stalemate with no one being able to agree on any decision to move the company forward.

Therefore, my client is prepared to purchase the outstanding shares of voting and non-voting stock held by Norman Lane and Christopher Lane. While various issues have been in dispute, the parties have been unable to resolve these differences. Therefore, Ronald Lane is prepared to purchase the outstanding 2,716 shares of stock held by Norman Lane. This includes 33 voting shares, as well as 2,683 non-voting shares. Ronald Lane is also prepared to purchase Christopher Lane's 33 voting shares and 1,250 non-voting shares for a total of 1,283 shares of stock.



BREWER & GIGGENBACH, PLLC  
ATTORNEYS AT LAW

Daniel M. Taylor, Jr., Esq.  
John F. Gianola, Esq.  
July 31, 2020  
Page 2

Ronald Lane is prepared to pay a per share value of \$1,289.51 as established by the company's CPA firm and valued as of December 31, 2019.

Ronald Lane is prepared to pay Norman Lane \$3,502,309.16 based on a per share value of \$1,289.51.

Ronald Lane is prepared to pay to Christopher Lane \$1,654,441.33 for his 1,283 shares based on a per share value of \$1,289.51.

Ronald Lane is prepared to move forward to arrange for the necessary financing to complete the purchase of this stock in a reasonable timeframe. The value of the stock was established as of December 31, 2019. It is likely much higher than the per share value would presently be given the company's current financial situation.

This proposal is in accordance with paragraph 31(b) of the Ronald Lane, Inc. Amended and Restated Shareholders' Agreement dated November 14, 2018.

In accordance with paragraph 31(c) Ronald Lane is prepared to sell all of his 6,001 shares of voting and non-voting stock at the per share value of \$1,289.51.


We are prepared to discuss the specific arrangements for the transfer of the shares of stock to Ronald Lane for the price quoted above. Please respond in writing with your response to the offer to purchase the voting and non-voting stock for each of your clients within the thirty (30) days provided for within the shareholders' agreement. The value of Ronald Lane's 6001 shares of voting and non-voting stock, based on the per share valuation of \$1,289.51 is \$7,738,349.51. If either of your clients decide to purchase Ronald's stock, please advise us accordingly with the terms of payment and a proposed schedule. It is clear that the company cannot continue in its present fashion with a deadlock and stalemate on virtually every issue. The company continues to lose money every day. The pipeline industry is in disarray, and the value of this stock and, in fact, the value of the entire company is declining on a daily basis.

BREWER & GIGGENBACH, PLLC  
ATTORNEYS AT LAW

Daniel M. Taylor, Jr., Esq.  
John F. Gianola, Esq.  
July 31, 2020  
Page 2

Please share this proposal with your clients as soon as possible and we will await your response.

Sincerely,

A handwritten signature in dark ink, appearing to read "William C. Brewer". The signature is fluid and cursive, with the first name "William" and last name "Brewer" clearly distinguishable.

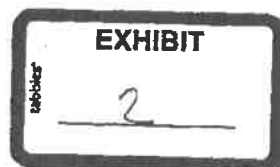
William C. Brewer

WCB:mlw

cc: Ronald Lane (via email & U. S. Mail, w/encl.)

TERM SHEET

1. Ron Lane will sell his stock in RLI to Christopher Lane and Norman Lane for \$7,738,349.51 with payment terms being a 10% down payment (\$773,835) at closing, and delivery of a promissory note bearing interest at the rate of .89% per annum for the balance secured by a deed of trust and assignment of rents (each in form customarily acceptable to lending institutions) on the RLI real property in Ritchie County. RLI, Chris Lane and Norman Lane will indemnify Ron Lane for any claim made by Jim Shafer for failure to pay Shafer under that certain promissory note between Chris Lane and Jim Shafer made on or about August 25, 2020. If the parties fail to pay on the promissory note as provided, the rents from said real property shall be immediately paid to Ron Lane as provided for in the assignment of rents and the tenants shall then be directed to pay such rents directly to Ron Lane for so long as the default is not cured.
2. The closing shall occur at Gianola, Barnum, Bechtel & Jecklin, L.C. on November 17, 2020 at 1:00 pm. Parties and attorneys may attend virtually.
3. The 24 acre more or less "top portion" of the Alpaca property (including the area containing the current security gate and the triangle depicted on the attached map marked "A", less an area not to exceed 3 acres from the portion of the map marked "B" to be definitively determined by survey) is transferred to Ron Lane personally in exchange for



waiving rents due owing to Ron Lane through November 13, 2020 under the "80/20 Split" rental agreement between the parties. The deed to the Alpaca property shall be delivered within two business days from delivery of the survey thereof to counsel for RLI. The costs of survey and transfer taxes shall be split evenly between Ron Lane and RLI. Property taxes shall be prorated at closing on a calendar year basis.

The deeds will include access right of ways and utilities (electric, water, sewer, gas, communications) easements for Ron Lane and RLI in a location and manner reasonably agreed upon by RLI and Ron Lane.

4. Ron Lane retains his cellular phone and phone number shall be transferred to a personal account as directed by Ron Lane.
5. The 1994 Ford F-150 (RLI asset number L183) previously used by the father of Ron Lane and Jeep Scrambler will be transferred to a family trust.
6. Ronald Lane, Inc. will transition to a new company name within ninety (90) days.
7. Indemnify and hold harmless agreement to the benefit of Ron Lane for financial obligations of RLI and all litigation against RLI excluding claims arising from Ron Lane's gross negligence or willful misconduct; notwithstanding any of the above, such exclusion shall not apply to any currently pending litigation of RLI RLI shall maintain or require tenants to maintain existing CGL coverage with RLI named as an additional insured.


8. The Huntington Bank debt, which Ron Lane has personally guaranteed, shall be paid by November 30, 2020.
9. Mutual releases of all claims between and among all shareholders and RLI except for appropriate ownership and claims related to real property.
10. Ron Lane shall have exclusive access to the "car room" for a reasonable period of time not to exceed 365 days after all real property issues are resolved. Ron Lane agrees not to access any other portions of headquarters or interact with company employee during business hours. No party shall pay nor be entitled to rent for said access and usage for the first 180 days after which reasonable monthly rent shall be paid.
11. Waiver of the non-compete and non-solicitation provision of the Amended and Restated Shareholder Agreement with respect to Ron Lane concerning any business other than pipeline construction work.
12. Retain Ron Lane on RLI health insurance through December 31, 2020 under the same terms he has currently.
13. The parties acknowledge and agree the sole outstanding issues between them are limited to the appropriate ownership and claims related to the following pieces of property:
  - a. Sun Valley Development in the name of Ron Lane;
  - b. Wilsonburg Corporate Headquarters and adjacent properties;
  - c. Ellenboro/Ritchie Center property;
  - d. Cairo Property; and

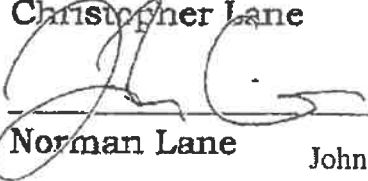
- e. Prior Company Headquarters including land with storage buildings and former used car lot properties at Arnoldsburg.
- 14. Any rent paid or payable following the execution of this agreement due for the following properties shall be collected by RLI and apportioned and paid 80% to RLI and 20% to Ron Lane under the "80/20 Split" rental agreement between the parties monthly until the resolution of the issues identified in Paragraph 13. The properties subject to this agreement are:
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  - b. Wilsonburg properties held in the name of Ron Lane;
  - c. Ellenboro/Ritchie Center property held in the name of Ron Lane;
  - d. Cairo Property; and
  - e. Prior Company Headquarters and former used car lot properties at Arnoldsburg.
- 15. RLI and its remaining principals shall cooperate to effectuate any and all of the above.
- 16. The Amended and Revised Standstill and Tolling Agreement shall in all other respects be extended until January 15, 2021 until replaced by mutual agreement of the parties.
- 17. RLI operations may continue to have unimpeded access to and use of the Wilsonburg Corporate Headquarters and adjacent properties, including, but not limited to, use and access of the paint shop, concrete pad, "7-11 yard," "pipeyard," and fuel/wash/environmental facility, for a reasonable

time not to exceed 365 days following the resolution of the disputes identified in Paragraph 13.

18. Wherever currently situated, RLI personal property may remain and/or be stored at its present location until a reasonable time not to exceed 365 days following the resolution of the disputes identified in Paragraph 13. No party shall pay nor be entitled to rent for said access and usage for the first 180 days after which reasonable monthly rent shall be paid.

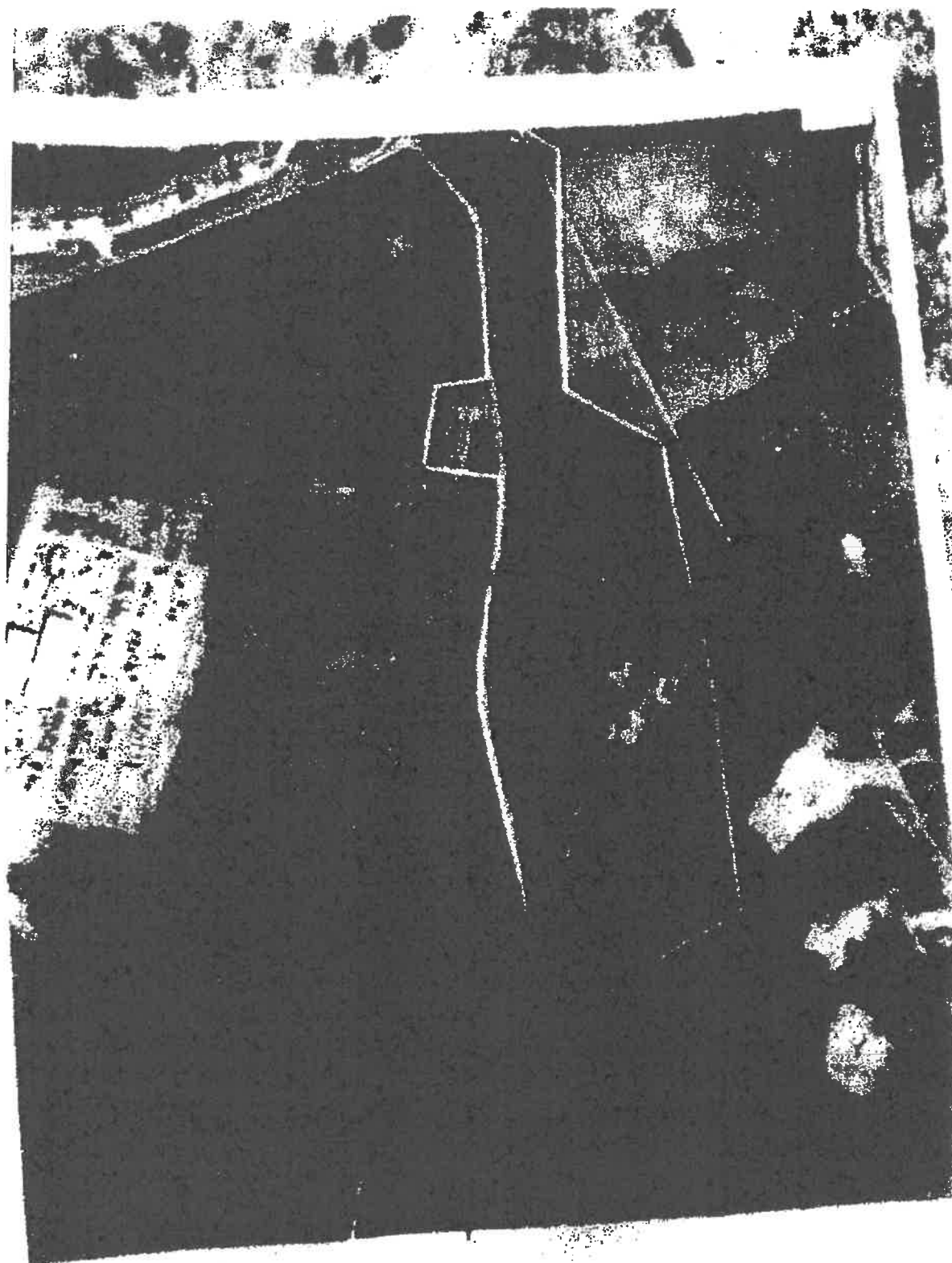
 11-13-20  
Ron Lane

  
Christopher Lane

  
Norman Lane John Gianola by  
permission  
Ronald Lane, Inc.

By: 

Its: President



BOWLES, RICE, McDAVID, GRAFF & LOVE  
7000 HAMPTON CENTER, STE K  
MORGANTOWN, WV 26505-1720

BK1559 PG1229

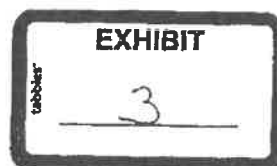
BOOK Mission to Refer Exhibit A  
PAGE 229

Susan J Thomas  
HARRISON County 12:06:13 PM  
Instrument No 201500041047  
Date Recorded 08/07/2015  
Document Type DEED  
Pages Recorded 3  
Book-Page 1559-229  
Recording Fee \$11.00  
Transfer Tax \$1,990.00  
Additional \$25.00

THIS DEED, Made this the 3rd day of August, 2015, by and between FAMILY ALUMINUM, LLC, a West Virginia limited liability company, party of the first part, GRANTOR, and RONALD LANE, INC., a West Virginia corporation, party of the second part, GRANTEE.

WITNESSETH: That for and in consideration of the total sum of Ten Dollars (\$10.00), cash in hand paid, the receipt of which is hereby acknowledged, the said Grantor, FAMILY ALUMINUM, LLC, a West Virginia limited liability company, does hereby grant and convey, with Covenants of GENERAL WARRANTY, unto the said Grantee, RONALD LANE, INC., a West Virginia corporation, all of that certain lot or parcel of real estate, together with any buildings and improvements situate thereon and appurtenances thereunto belonging, situate, lying and being in Coal District, Harrison County, West Virginia, and more particularly bounded and described as follows, to-wit:

Beginning at a 3/4" Iron rebar found on the northerly right-of-way line of Harrison County Route 50/40 and a line of a parcel of land owned by Family Aluminum, LLC (Tax Map 28, Parcel 84, Deed Book 1449, Page 1231); Thence, with said right-of-way and said Family Aluminum, LLC for three (3) courses, South 74° 05' 29" West a distance of 605.36 feet to an iron rod with cap found; Thence, North 15° 41' 54" West, a distance of 20.00 feet to a 3/4" iron rebar found; Thence, South 74° 13' 36" West, a distance of 235.69 feet to an iron rod with cap found on a corner of a parcel of land now or formerly owned by Thelma M. Reynolds (Tax Map 305 Parcel 18, Will Book 108 Page 334); Thence, leaving said right-of-way and with said Reynolds for two (2) courses, North 25° 26' 12" West, a distance of 232.54 feet to a stone found; Thence, North 68° 08' 55" East, a distance of 481.47 feet to a stone found on a corner to a 14.92-acre tract of land owned by Family Aluminum, LLC (Tax Map 286, Parcel 83, Deed Book 1449, Page 1231) previously described; Thence, leaving said Reynolds and with said Family Aluminum, LLC (Parcel 83) for one (1) course, North 44° 16' 04" East, a distance of 700.69 feet to a 5/8" iron rebar found; Thence, leaving said Family Aluminum, LLC (Parcel 83) and through said Family Aluminum, LLC (Parcel 84) for five (5) courses, South 24° 53' 36" East, a distance of 104.33 feet to a 3/4" iron rebar found; Thence, South 07° 50' 10" West, a distance of 136.26 feet to a 3/4" iron rebar found; Thence, South 23° 43' 17" West, a distance of 137.13 feet to a 3/4" iron rebar found; Thence, South 53° 13' 25" West, a distance of 101.91 feet to a 3/4" iron rebar found; Thence, South 18° 36' 40" East, a distance of 278.92 feet to the Place of Beginning, containing 7.68 acres, MORE OR LESS, as shown on a plat prepared by Michael R. Hyman, P.S. 983, of Thrasher Engineering, dated September 2011 and entitled Plat of Survey for Ronald Lane showing 14.92 AC± & 7.68 AC± Tracts of Land on the lands of Family Aluminum, LLC which is made a part of the descriptions



contained in this instrument by reference for descriptive and all other pertinent purposes (hereinafter the "Plat");

Together with a non-exclusive right-of-way or easement forty (40) feet in width for (i) vehicular and pedestrian ingress, egress and regress to and from Harrison County Route 9 also known as Wilsonburg Road, (ii) installing, constructing, improving, extending, maintaining, operating, inspecting, repairing, removing, replacing, reinstalling, reconstructing, re-improving and re-extending roadbed improvements, if any, and (iii) installing, constructing, improving, extending, maintaining, operating, inspecting, repairing, removing, replacing, reinstalling, reconstructing, re-improving and re-extending any utilities necessary or convenient to serve the aforesaid 7.68-acre tract and adjoining property, the center-line of said right of way or easement being more particularly described as follows:

Beginning at a point on an easterly line of a 7.68 tract of land previously described, which bears South 18° 36' 40" East, a distance of 62.99 feet to a 3/4" rebar found, being the southeastern corner of said 7.68-acre tract; Thence, running for three (3) lines through a 6.85 acre tract of land owned by Family Aluminum, LLC (Tax Map 286 part of Parcel 84, Deed Book 1449 Page 1231), North 79° 25' 38" East, a distance of 212.19 feet to a point; Thence, North 78° 56' 00" East, a distance of 276.04 feet to a point; Thence, North 70° 36' 02" East, a distance of 217.97 feet to the Point of Terminus on the southwesterly right of way line of Harrison County Route 9, which bears South 41° 57' 40" East, a distance of 32.90 feet to a 3/4" rebar found, being a corner of a 6.85-acre tract of land.

Being part of the same real estate as was conveyed from Seth Wilson, Esq., acting in his capacity as substitute or successor trustee, to Family Aluminum, LLC, a West Virginia limited liability company, by Substitute or Successor Trustee's Deed, dated June 28, 2010 and recorded in the Office of the Clerk of the County Commission of Harrison County, West Virginia, in Deed Book No. 1449, at Page No. 1231.

This conveyance is made subject to all exceptions, reservations, easements, restrictions, rights-of-way, covenants and conditions as contained in prior deeds of conveyance and other instruments of record for said real estate or as would be apparent upon a physical inspection of the real estate or upon an accurate survey thereof.

The Grantor warrants that it has no knowledge or reason to believe that the subject property or its substrata contains an underground storage tank which is regulated by the provisions of the West Virginia Underground Storage Tank Act, W. Va. Code Section 22-17-19.

The subject real estate is assessed upon the Land Books of Harrison County, West Virginia, for the year 2015 in the Coal-Outside District, as follows:

BK1559 PG0231

FAMILY ALUMINUM LLC  
TAX MAP 286, PARCEL 84.1  
7.68 AC NR RT 50 LIMESTONE  
(RENTAL)

**DECLARATION OF CONSIDERATION OR VALUE**

The undersigned does hereby declare, under penalty of fine and imprisonment, that the total consideration paid for the real estate conveyed by the document to which this declaration is appended is \$450,000.00.

**DECLARATION OF RESIDENT STATUS**

The undersigned Grantor hereby certifies under penalty of perjury, that it is a "resident entity" as such term is defined by West Virginia Code Chapter 11, Article 21, Section 71b, and, therefore, is exempt from any state income tax withholding requirements imposed thereby.

WITNESS the following signature and seal:

FAMILY ALUMINUM, LLC  
a West Virginia limited liability company

BY John L. Eddy, Sr.  
John L. Eddy, Sr., its Manager

STATE OF WEST VIRGINIA  
COUNTY OF HARRISON, to-wit:

The foregoing instrument was acknowledged before me this 5th day of August, 2015, by John L. Eddy, Sr., in his capacity as Manager of FAMILY ALUMINUM, LLC, a West Virginia limited liability company, for and in behalf of said limited liability company as the official act thereof by exercise of authority duly granted.

Michelle Underwood  
Notary Public

My commission expires:

July 7, 2019



This instrument prepared by Seth Wilson, Esq., BOWLES RICE LLP, 7000 Hampton Center, Morgantown, WV 26505-1720, (304) 285-2500.  
SW/als  
7224121.1

**Exhibit B to:**

**Joint Motion to Refer Cases to the  
Business Court Division**

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

**RONALD LANE,**

**Plaintiff,**

FILED  
2021 JAN 20 PM 2:05  
CLERK  
KANAWHA COUNTY CIRCUIT COURT

v.

**Civil Action No.**

21-C-60

**CHRISTOPHER LANE,  
NORMAN LANE, and  
RONALD LANE, INC.,  
a West Virginia corporation,**

**Defendants.**

**COMPLAINT**

Plaintiff, Ronald Lane, by and through counsel, for its Complaint against Defendant, Ronald Lane, Inc., states and alleges as follows:

1. This action arises from and relates to an agreement entered into in Charleston, Kanawha County, West Virginia, by and between Plaintiff, Ronald Lane ("Plaintiff") and Defendants Christopher Lane, Norman Lane, and Ronald Lane, Inc.
2. Plaintiff is an individual and a resident of the State of West Virginia.
3. Defendants Christopher Lane and Norman Lane ("Individual Defendants") are individuals and residents of the State of West Virginia. The Individual Defendants have transacted business in Kanawha County, most notably negotiation and mediation leading to the agreement by and among Plaintiff and Defendants that is the subject of this action.
4. Ronald Lane, Inc. ("RLI") is a corporation organized and existing under the laws of the State of West Virginia with its principal place of business in Harrison County that owns property and transacts business in Kanawha County, including negotiation and mediation leading to the agreement by and among Plaintiff and Defendants that is the subject of this action.

5. Plaintiff incorporated RLI in 1981. Until 2014, he owned all 100 shares of voting stock and all 900 shares of non-voting stock. In 2014, Plaintiff gifted 100 shares of non-voting stock to each of his brother, Norman Lane, and his children, Eric Lane, Tracy Lane Lancaster, and Christopher Lane. In 2016, RLI bought back the non-voting stock held by Eric Lane and Tracy Lane Lancaster. On November 24, 2018, Plaintiff then gifted thirty-three shares of voting stock to each Individual Defendant.

6. In the summer of 2020, a dispute arose among the shareholders, and on or about October 26, 2020, Individual Defendants voted to remove Plaintiff as President of RLI. As part of a partial resolution of disputes among the shareholders and RLI, on November 17, 2020, Plaintiff for consideration conveyed the remainder of his voting and non-voting stock to Christopher Lane and Norman Lane.

7. On October 28, 2020, the parties entered into a Standstill and Tolling Agreement (the “Standstill Agreement”). As part of the Standstill Agreement, the parties agreed to engage in mediating with G. Nicholas Casey, Esq., a lawyer/mediator located in Charleston, West Virginia. Further, the parties agreed that mediation would take place at the offices of Goodwin & Goodwin, LLP, in Charleston. Subsequently the parties and their respective counsel participated in negotiations and mediation in Charleston.

8. Counsel for the parties participated an in-person conference with Mr. Casey on November 3, 2020. The parties appeared in person for mediation on November 11, 12, and 13, 2020.

9. At the conclusion of the mediation, the parties entered into two agreements: (a) a “Term Sheet” (attached hereto as Exhibit A) and (b) an Amended and Revised Standstill and Tolling Agreement (“Revised Standstill Agreement”).

10. At the mediation the parties reached agreement on certain issues and memorialized these agreements in the Term Sheet.

11. The Term Sheet includes an agreement whereby a portion of property known as the “Alpaca Property” would be transferred from RLI to Plaintiff. The Term Sheet expressly states that the portion to be conveyed would include “the area containing the current security gate and the triangle depicted on the attached map[.]” The inclusion of the area containing the security gate and the area depicted as “A” was material to Plaintiff for purposes of ensuring privacy and providing an area for construction of a building to store vehicles that Plaintiff agreed to move from properties claimed by RLI. In exchange for this area, Plaintiff agreed to convey up to three acres in the area depicted as “B.”

12. The Term Sheet provides that the two areas, depicted as “A” and “B” would be determined by a survey. Subsequently a survey was prepared by Michael Hyman, a licensed surveyor. The survey reflects the subdivision of the tract into two parcels, one to be conveyed to Plaintiff and the other to be retained by RLI. Both tracts are accessible across a right of way referred to as “Alpaca Way.” The Harrison County Planning Commission approved the subdivision as shown on the survey.

13. Counsel for Plaintiff prepared a deed reflecting the parcel as shown on the survey and comporting with the Term Sheet.

14. Defendants, through counsel, have refused to execute the deed. Rather, RLI’s counsel has tendered a deed that varies in significant and material respects from the Term Sheet and the survey. In particular, the deed presented by and on behalf of Defendants allows RLI to use property within the bounds of the security gate and maintain a right of way over the portion depicted as “A.” This proposed right of way interferes with Plaintiff’s development and enjoyment

of the property, in particular preventing him from constructing a building as he intended and allows others access beyond the security gate.

15. Even without a right of way through the security gate and through the portion depicted as “A”, RLI would continue to have access to the parcel that the parties agreed would be retained by RLI.

16. In exchange for Defendants’ promise to convey the portion of the Alpaca Farm described in the Term Sheet, Plaintiff released and waived claims to monies principally in the form of rents due and owing to him by RLI through November 13, 2020, and for reimbursement of amounts Plaintiff expended to improve the Alpaca Farm. The value of the rents exceeds \$650,000, and the amount of monies expended exceeds \$45,000.

17. As a result of Defendants’ failure to abide by the terms of the Term Sheet, Plaintiff has sustained damages in the amount of lost rents and monies expended on improvements to the Alpaca Farm.

#### **COUNT ONE – BREACH OF CONTRACT**

18. All allegations and statements contained above are incorporated by reference as if restated herein verbatim.

19. The Term Sheet constitutes a binding agreement by and between Plaintiff and Defendants.

20. Plaintiff has performed and/or tendered performance of all of his obligations under the Term Sheet.

21. Defendants have failed to perform their obligations under the Term Sheet and have repudiated the agreement.

22. As a direct and proximate result of Defendants' breach, Plaintiff has suffered damages by virtue of having released his claims to rents due and owing and claims for monies expended on improvements to the Alpaca Farm.

**COUNT TWO – UNJUST ENRICHMENT**

23. All allegations and statements contained above are incorporated by reference as if restated herein verbatim.

24. Defendants are attempting to retain rents collected by RLI on properties owned by Plaintiff that are due and owing to Plaintiff.

25. Plaintiff expended monies for improvements on the Alpaca Farm which inure to the benefit of Defendants as a result of their failure and refusal to execute the deed that comports with the terms and conditions of the Term Sheet.

26. As a direct and proximate result of the foregoing, Plaintiff is entitled to restitution so as to prevent Defendants from being unjustly enriched at Plaintiff's expense.

**COUNT THREE – TORTIOUS INTERFERENCE WITH CONTRACTUAL  
RELATIONS (Defendant Christopher Lane)**

27. All allegations and statements contained above are incorporated by reference as if restated herein verbatim.

28. Defendant Christopher Lane is aware of the existence of Plaintiff's valid and enforceable contract rights under the Term Sheet.

29. Defendant Christopher Lane has caused and induced RLI to breach the agreement.

30. Defendant Christopher Lane is acting with malicious intent to deprive Plaintiff of his rights under the Term Sheet and to force Plaintiff to expend attorney's fees to litigate his rights under the Term Sheet.

31. Defendant Christopher Lane is acting in his own self-interest with purpose of harming Plaintiff and not in the interests of RLI.

32. As a direct and proximate result of Defendant Christopher Lane's actions, Plaintiff has suffered monetary damages, anguish and inconvenience, and expenses.

WHEREFORE, Plaintiff, Ronald Lane, prays for the following:

- (1) Judgment in the amount of \$695,000 or such amount as may be established at trial;
- (2) An award of attorney's fee and costs; and
- (3) such further relief as the Court may deem appropriate.

Plaintiff demands a jury trial on all issues triable by jury.

**RONALD LANE,**

By Counsel:



R. Booth Goodwin II (WVSB #7165)  
Richard D. Owen (WVSB # Bar No. 2794)  
Tammy J. Owen (WVSB # Bar No. 5552)  
GOODWIN & GOODWIN, LLP  
300 Summers Street, Ste. 1500  
Charleston, WV 25301  
Phone: (304) 346-7000  
Fax: (304) 344-9692  
Email: rbg@goodwingoodwin.com  
rdo@goodwingoodwin.com  
tjo@goodwingoodwin.com

L. Dante' diTrapano (WVSB # 6778)  
Calwell Luce diTrapano, PLLC  
Law and Arts Center West  
500 Randolph Street  
Charleston, WV 25302  
Phone: (304) 343-4323  
Facsimile: (304) 344-3684  
Email: dditrapano@cldlaw.com

## TERM SHEET

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  - d. Cairo Property; and

- e. Prior Company Headquarters including land with storage buildings and former used car lot properties at Arnoldsburg.
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Ron Lane 11-13-20

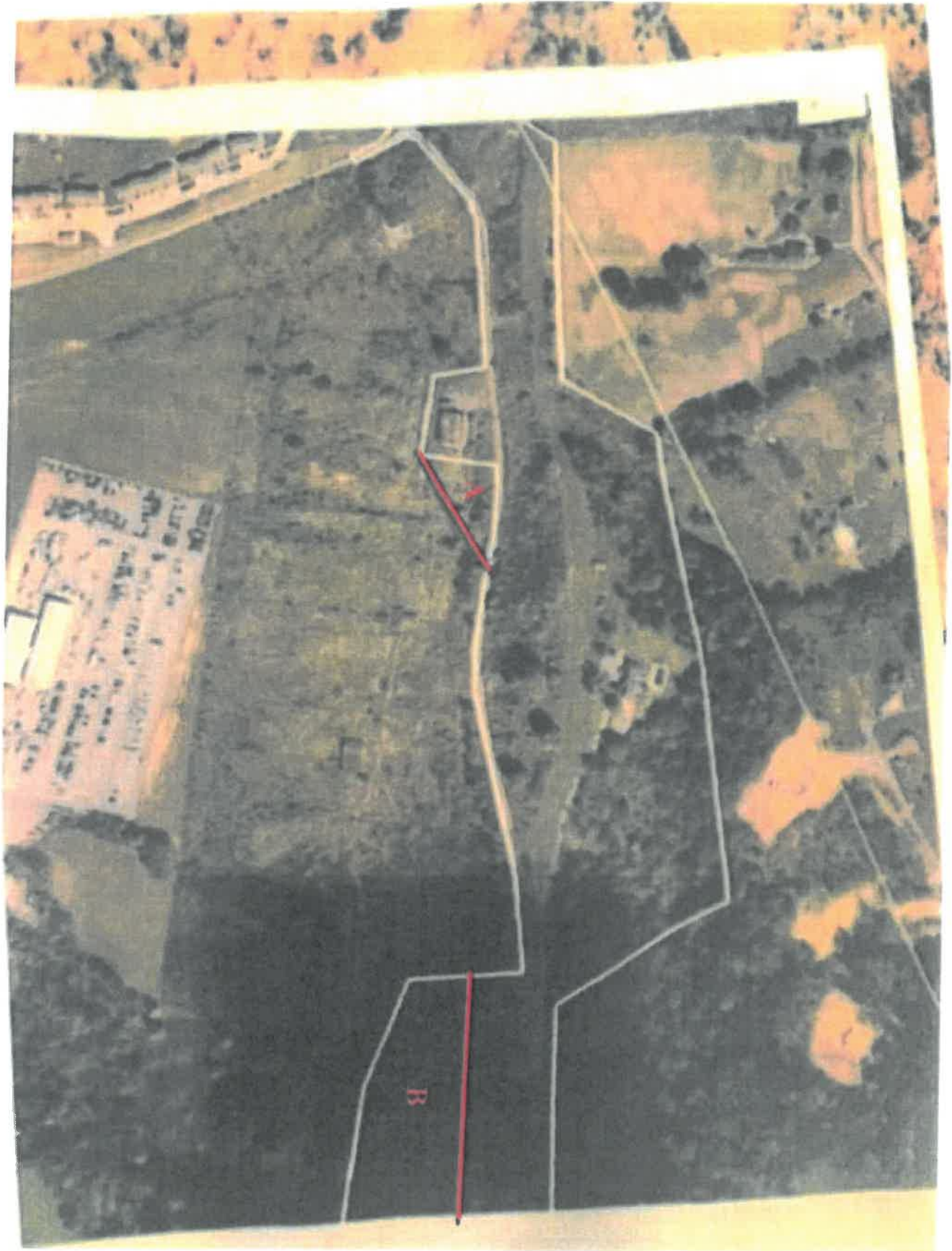
  
Christopher Lane

  
Norman Lane

John Gianola by  
permission  
Ronald Lane, Inc.

By: 

Its: 



**Exhibit C to:**

**Joint Motion to Refer Cases to the  
Business Court Division**

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

**RONALD LANE,**

**Plaintiff,**

**vs.**

**Civil Action No. 21-C-60**

**Judge Tera Salango**

**CHRISTOPHER LANE,  
NORMAN LANE, and  
RONALD, LANE, INC.,  
a West Virginia Corporation,**

**Defendants.**

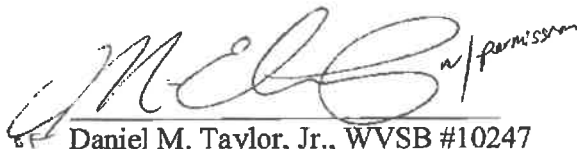
**DEFENDANTS CHRISTOPHER LANE, NORMAN LANE  
AND RONALD LANE, INC.'S MOTION TO DISMISS, or  
in the alternative, MOTION TO TRANSFER**

COME NOW Defendants Christopher Lane, Norman Lane and Ronald Lane, Inc., (hereinafter "Defendants") by counsel, pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure and West Virginia Code § 56-1-1, and move this Court to dismiss the Plaintiff's Amended Complaint for improper venue. Defendants further move, in the alternative, to transfer this matter to the Circuit Court of Harrison County, West Virginia pursuant to W. Va. Code § 56-9-1.

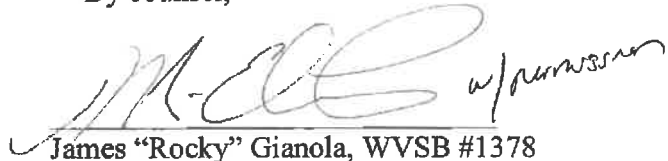
Defendants bring this motion because venue in the Circuit Court of Kanawha County is improper for this present civil suit. The allegations and underlying issues from which Plaintiff's claims derive are all more properly connected to Harrison County. In further support, Defendants incorporate by reference their *Memorandum of Law in Support of Defendants Christopher Lane, Norman Lane and Ronald Lane, Inc. 's Motion to Dismiss, or in the alternative, Motion to Transfer* filed contemporaneously herewith.

WHEREFORE, Defendants Christopher Lane, Norman Lane and Ronald Lane, Inc. respectfully request that this Honorable Court grant their Motion to Dismiss, or in the alternative, Motion to Transfer and enter an Order dismissing Plaintiff's Amended Complaint against them with prejudice, and/or grant such other and further relief as this Court deems just and proper.

**CHRISTOPHER LANE,  
NORMAN LANE, and  
RONALD LANE, INC.,**  
By counsel,



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*Counsel for Ronald Lane, Inc.*

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

**RONALD LANE,**

**Plaintiff,**

**vs.**

**Civil Action No. 21-C-60  
Judge Tera Salango**

**CHRISTOPHER LANE,  
NORMAN LANE, and  
RONALD, LANE, INC.,  
a West Virginia Corporation,**

**Defendants.**

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS CHRISTOPHER LANE, NORMAN LANE  
AND RONALD LANE, INC.'S MOTION TO DISMISS, or  
in the alternative, MOTION TO TRANSFER**

COME NOW Defendants Christopher Lane, Norman Lane and Ronald Lane, Inc., (hereinafter "Defendants") by counsel, pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure and West Virginia Code § 56-1-1, and move this Court to dismiss the Plaintiff's Amended Complaint for improper venue, or in the alternative, transfer this matter to the Circuit Court of Harrison County, West Virginia pursuant to W. Va. Code § 56-9-1. In support of their Motion, Defendants state as follows:

**Introduction**

Venue in the Circuit Court of Kanawha County is improper for this present civil action. The allegations and underlying issues from which Plaintiff's claims derive are all more properly ascribed to Harrison County. While Plaintiff does attempt to craft his Amended Complaint in a manner to support this erroneous and illogical choice of forum – judicial economy, longstanding legal principals, and common sense dictate that Kanawha County Circuit Court is not the appropriate venue.

**Factual Background**

The present matter stems from disputes between the parties pertaining to Ronald Lane, Inc., a West Virginia corporation (hereinafter “RLI”). More specifically, the claims brought in Plaintiff’s Amended Complaint almost exclusively center on the resolution of unresolved disputes regarding the transfer of a portion of RLI’s real property, containing Plaintiff’s residence, in Harrison County, West Virginia to the Plaintiff and Defendants’ recently-filed civil complaint against the Plaintiff in the Circuit Court of Harrison County.

**The Parties**

Defendant RLI is a West Virginia Corporation with its principal place of business in Harrison County, West Virginia. As detailed in the Amended Complaint, Plaintiff Ronald Lane was removed as RLI’s President in October 2020. (*See* Amended Complaint, at ¶6). Plaintiff resides in Harrison County, West Virginia and is a former shareholder of RLI. Defendant Christopher Lane is a Harrison County, West Virginia resident and is RLI’s President and sole shareholder. Defendant Norman Lane is a resident of Calhoun County and former officer and shareholder of RLI.

**Prior Petition**

Prior to Plaintiff’s removal as President of RLI, and prior to the events upon which his Amended Complaint are based, in September 2020, Plaintiff Ronald Lane filed a Petition for Judicial Dissolution and Injunctive Relief in the Harrison County Circuit Court pursuant to West Virginia Code § 31D-14-1431(b) seeking an order appointing receivers for and ultimately dissolving RLI. (*See* Petition for Dissolution, attached hereto as Exhibit 1). Defendants filed Motions to Dismiss Ron Lane’s Petition. Following the September 30, 2020 hearing in that matter, Harrison County Circuit Judge Christopher McCarthy denied Ron Lane’s request for

injunctive relief. The remaining matters in Ron Lane's Harrison County Petition for Dissolution were the subject of a mediation held in November 2020.

Within Plaintiff's Amended Complaint, the reference(s) to the prior dispute and the subsequent "Standstill and Tolling Agreement" refer, in part, to the disputes raised within the Plaintiff's aforementioned Harrison County Petition as well as the subsequent actions taken by the parties in response to that Petition. (See Am. Compl., at ¶¶6-8). Likewise, the parties participated in mediation and entered into a "Term Sheet", that is the primary basis for Plaintiff's Amended Complaint, in relation to these prior disputes that Plaintiff, at least in part, initially brought before the Circuit Court of Harrison County. Having previously heard arguments from these same parties on these previous matters, the Harrison County Circuit Court is familiar with the disputes. On November 23, 2020, the Harrison County Circuit Court entered an Agreed Order Dismissing [*Ronald Lane's*] Petition.

#### **Mediation and Term Sheet**

On November 11-13, 2020, the parties participated in mediation to attempt to resolve all of the remaining disputes between the parties. The Defendants agreed to employ the services of Plaintiff's suggested mediator, G. Nicholas Casey, Esq. As another courtesy to Plaintiff, the Defendants also agreed to conduct the in-person mediation at the offices of Plaintiff's current counsel in Charleston, West Virginia.

At the conclusion of the three-day mediation, the parties agreed upon an eighteen (18) point Term Sheet. Central to Plaintiff's current allegations, Item No. 3 on the Term Sheet focused specifically on a parcel of property identified as the "Alpaca Property." (See Am. Compl., at ¶¶11-16). The Alpaca Property is a tract of land consisting of approximately 55.61 acres situate in Harrison County, West Virginia, and it was acquired by RLI by Deed in 2018.

Subsequent to acquiring the property, Ronald Lane renovated the residence on the Property using RLI equipment, materials and labor and moved into that residence upon completion of the renovations. RLI has owned the Alpaca Property since acquiring it in 2018, and access to the property is over and across a forty foot (40') right of way known as Alpaca Way. Item No. 3 in the Term Sheet states as follows:

The 24 acre more or less "top portion" of the Alpaca property (including the area containing the current security gate and the triangle depicted on the attached map marked "A", less an area not to exceed 3 acres from the portion of the map marked "B" to be definitively determined by survey) is transferred to Ron Lane personally in exchange for waiving rents due owing to Ron Lane through November 13, 2020 under the "80/20 Split" rental agreement between the parties. The deed to the Alpaca property shall be delivered within two business days from delivery of the survey thereof to counsel for RLI. The costs of survey and transfer taxes shall be split evenly between Ron Lane and RLI. Property taxes shall be prorated at closing on a calendar year basis.

The deeds will include access right of ways and utilities (electric, water, sewer, gas, communications) easements for Ron Lane and RLI in location and a manner reasonably agreed upon by RLI and Ron Lane.

*See* Term Sheet, attached as Exhibit A to Am. Compl., at Item No. 3.

The second Term Sheet Item referenced within Plaintiff's Amended Complaint is Item No. 13. (Am. Compl., at ¶¶19-20.) This term detailed some items that were left unresolved in the mediation. Specifically, this Item identified several properties still subject to issues of "appropriate ownership and claims" that had yet to be resolved between them. (Term Sheet, at Item No. 13). The properties identified therein are: (1) Sun Valley Development (located in Harrison County, WV); (2) Wilsonburg Corporate Headquarters and adjacent properties (located in Harrison County, WV); (3) Ellenboro/Ritchie Center (located in Ritchie County, WV); (4) Cairo Property (located in Ritchie County, WV); and (5) Prior company headquarters including land with storage buildings and former used car lot properties at Arnoldsburg (located in

Calhoun County, WV). (Id.) As identified by Plaintiff within his Amended Complaint, the Defendants filed suit [on January 15, 2021] in the Circuit Court of Harrison County to resolve ownership issues and other claims involving these properties (Am. Compl., at ¶20.)

In summary, Plaintiff's Amended Complaint stems from the still unresolved Harrison County-based RLI's corporate disputes. RLI's current sole shareholder and officer, Defendant Christopher Lane, is a resident of Harrison County. Defendant RLI is headquartered in Harrison County. Defendant Norman Lane is a resident of Calhoun County. Plaintiff Ronald Lane is a resident of Harrison County. The Alpaca Property at issue within Plaintiff's Amended Complaint is located in Harrison County. More specifically, Plaintiff's allegation of breach with regard to the Alpaca Property is the result of RLI's supposed failure to deliver a deed for this property for recording in the office of the Clerk of the County Commission of Harrison County, W.V. Finally, the second breach of the Term Sheet that Plaintiff alleges, i.e. the filing of the Harrison County Complaint by RLI with regard to the remaining properties and related claims stemming from the same, occurred in Harrison County.

#### **STANDARD OF REVIEW**

"The proper method of raising the question of improper venue is by a motion to dismiss under Rule 12(b)." *Hansbarger v. Cook*, 177 W. Va. 152, 157, 351 S.E.2d 65, 71 (1986) (internal citation omitted). Generally, the decision of whether to dismiss for improper venue lies in this Court's discretion. Syl. Pt. 1, *United Bank Inc. v. Blosser*, 218 W. Va. 378, 383, 624 S.E.2d 815, 820 (2005).

West Virginia venue statute, § 56-1-1(b), provides that:

Whenever a civil action or proceeding is brought in the county where the cause of action arose under the provisions of subsection (a) of this section, if no defendant resides in the county, a defendant to the action or proceeding may move the court before

which the action is pending for a change of venue to a county where one or more of the defendants resides and upon a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by the change of venue, the court may grant the motion.

“W. Va. Code § 56-1-1(b) is the exclusive authority for a discretionary transfer or change of venue and any other transfer or change of venue from one county to another within West Virginia that is not explicitly permitted by the statute is impermissible and forbidden.” Syllabus Pt. 1, *State ex rel. Riffle v. Ranson*, 195 W.Va. 121, 464 S.E.2d 763 (1995). Moreover, the “plaintiff’s choice [of forum] is no longer the dominant factor that it” once was. *State ex rel. Thornhill Grp., Inc. v. King*, 759 S.E. 2d 795, 801 (W. Va. 2014) (quoting *State ex rel. Smith v. Maynard*, 454 S.E.2d 46, 52 (W. Va. 1994)).

### **ARGUMENT**

#### **I. KANAWHA COUNTY IS AN IMPROPER VENUE FOR THIS CIVIL ACTION BECAUSE KANAWHA COUNTY HAS NO NEXUS TO THE ACTUAL SUBJECT MATTER OF THE SUIT.**

This case should be dismissed pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure due to the Plaintiff’s inability to support venue within the Circuit Court of Kanawha County. As noted above, the subject matter of this suit has only threadbare connections to Kanawha County. In order to support a plaintiff’s choice in venue, the West Virginia venue statute, in relevant part, provides the basic elements that must be met:

(a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:

(1) Wherein any of the defendants may reside or the cause of action arose...;

(2) If a corporation be a defendant, wherein its principal office is or wherein its mayor, president, or other chief officer resides; or if its principal office be not in this state ... wherein it does business; or if [a West Virginia corporate defendant's) principal office [is] located outside of this state and which has no office or place of business within the State, the circuit court of the county in which the plaintiff resides;

(3) If it is to recover land or subject it to a debt, where the land or any part may be...

W. Va. Code § 56-1-1. By filing in Kanawha County, a county in which no Defendant resides or is otherwise located, rather than in Harrison County where the actual action arose and most of the subject property and interests lie, Plaintiff has filed his Amended Complaint in an improper venue. By all reasonable accounts, it should be clear that Harrison County, West Virginia is the proper venue for this matter.

In drafting our venue statute, our legislature placed primacy on the venue being proper in the circuit court where defendants and corporate defendants may reside or otherwise maintain their principal place of business. W.V. Code § 56-1-1(a)(1) and (2). Harrison County is the home of individual Defendant and RLI President and sole shareholder, Christopher Lane, and Harrison County is the principal place of business of the corporate defendant, RLI. It is also the county of residence for Plaintiff Ronald Lane.

As detailed above, the parties and the subject matter of the alleged breaches included in the Amended Complaint not only relate to Harrison County parties, but also specifically involve Harrison County land interests. On its surface, Plaintiff's Amended Complaint fails to meet these most basic venue requisites.

Beyond failing to meet these basic elements, Plaintiff's choice in venue creates unnecessary burdens on the Kanawha County Circuit Court and on the Defendants. Requiring RLI and the other Defendants to participate in litigation in Kanawha County is unwarranted,

inefficient, and simply unjust. Not only will the Defendants be subjected to unnecessary expenses to defend this action, trial itself will be substantially hindered.

Central to Plaintiff's allegations is the unsettled resolution of the Alpaca Property in Harrison County. The key reason that this mediation term has not been resolved is because of a dispute regarding proper access rights to this real estate. While the merits of RLI and the other Defendants' defenses to these allegations are not at issue in this present motion, it must be noted that proper juror consideration of this issue will likely require a complete jury view of the property. It is impractical and inefficient to expect a Kanawha County jury to be sent to Harrison County to view this evidence at trial. Without this viewing, however, the Defendants are substantially prejudiced.

In contrast, the Circuit Court of Harrison County would have jurisdiction over the parties in this civil action. The Plaintiff was a former shareholder and President of the Harrison County-based RLI. The business disputes giving rise to this action (as well as related litigation) all stem from the parties' operations in and around Harrison County. The situs of the property most prominently at issue in this matter is Harrison County. Likewise, the separate civil action for which Plaintiff claims was an additional breach of the Term Sheet was filed by all of the Defendants in Harrison County. Not only *can* the Harrison County Circuit Court exercise jurisdiction over all parties in this instant Kanawha County Suit, it is the only logical and appropriate venue in which to do so.

These facts demonstrate that the Circuit Court of Harrison County is not only a more convenient venue for *all* parties, but it is also the most appropriate location to oversee the just and efficient judicial resolution of the Plaintiff's claims. The same cannot be said of Kanawha County, which holds no significance to the parties or the Plaintiff's claims. Therefore, based on

these basic underlying facts alone, dismissal for improper venue is justified in this action. RLI's arguments are amplified, however, when Plaintiff's allegations are given even more scrutiny.

**II. THE FACTS RELEVANT TO THE ALLEGED BREACHES OF THE DEFENDANTS DO NOT SUPPORT VENUE IN KANAWHA COUNTY.**

Plaintiff attempts to carefully craft his allegations to essentially assert that the mediation of the business dispute between the parties in Kanawha County justifies his choice of a Kanawha County venue. This is simply without merit.

It has been long understood that "the place where the cause of action arises in a breach of contract claim for purposes of venue selection [is] based on the tripartite aspects of a contractual claim (formation, breach, and damages)...." *State ex rel. Thornhill Grp., Inc. v. King*, 233 W. Va. 564, 570, 759 S.E.2d 795, 801 (2014). In *Thornhill*, the Supreme Court of Appeals of West Virginia recognized that "the facts relevant to a particular breach of contract claim will govern which of those three potential venue selections are appropriate in a given case." *Id.* This same analysis should be applied to the matter at hand.

As stated previously, the only nexus between Plaintiff's claims and Kanawha County is that the latter was the selected location for the parties' voluntary mediation. Should the Court permit this civil action to continue in the Circuit Court of Kanawha County, the Defendants will effectively be punished for extending a prior courtesy by agreeing to a mediation location that Plaintiff requested. There are no other ties or connections to Kanawha County for these parties. Likewise, there are no connections between the alleged breach and damages to the same. While Plaintiff may assert that venue is appropriate in Kanawha County because RLI owns real property in Kanawha County, that property is not at issue between the parties.

**A. VENUE IS IMPROPER BECAUSE TWO OF PLAINTIFF'S CLAIMS DIRECTLY RELATE TO OWNERSHIP INTERESTS IN HARRISON COUNTY REAL ESTATE.**

Counts I and II of Plaintiff's Amended Complaint allege that the Defendants breached the mediation Term Sheet by failing to deliver a deed to the Alpaca Property. While the Defendants maintain that certain conditions precedent to this conveyance have not been met, namely mutual agreement on access right of ways, nonetheless, the alleged breach of the agreement centers on the Plaintiff's assertion that RLI failed to convey the property in the manner the Plaintiff alleges was required. (*See* Am. Compl., at ¶¶11-16). Again, the property at issue is located within Harrison County, and any deed conveying the same would be recorded in Harrison County. The breach that Plaintiff alleges to have occurred did not transpire in Kanawha County. To the contrary, the alleged breach all centers on the parties' inability to agree or otherwise fulfill the specified terms which required action to be taken in Harrison County. The Plaintiff's improper actions in attempting to refuse to permit the Defendants to travel across a portion of Alpaca Way, which Defendants' have used the entire time that RLI has owned the Alpaca Property to access this property, is the genesis behind Plaintiff's allegation of Defendants' supposed breach of the Term Sheet.

Plaintiff's alleged damages have no correlation to Kanawha County. As asserted, Plaintiff claims that certain monies, principally in the form of rents due and for funds expended to improve the Alpaca Property, were to be waived in exchange for the conveyance of this Harrison County property, per the details of this particular item of the Term Sheet. (*Id.*, at ¶16.) To be clear, no injuries occurred in this matter. The Plaintiff's allegation is one of monetary damage that he claims to have incurred from an alleged breach of the Term Sheet. In simplest terms, Plaintiff alleges that he has foregone the collection of certain funds credited to the

Harrison County-based RLI in exchange for the conveyance of a portion of the Harrison County property that has yet to be finalized.

These alleged damages have no cognizable connection to Kanawha County. Rather, the elements of Plaintiff's claims focus on the actions and inactions of the parties in Harrison County. If Plaintiff suffered any damages, which Defendants adamantly dispute, he suffered them in Harrison County. From a practical perspective, all evidence that Plaintiff will need to establish in support of his damages will come from Harrison County. Namely, the property most at issue is in Harrison County; RLI's records are in Harrison County; and importantly, the parties, and majority of the witnesses, including the Plaintiff, live in Harrison County.

Plaintiff attempts to frame these alleged breaches as arising out of Kanawha County simply because that was the location of where the mediation occurred, and the Term Sheet was drafted in a Charleston office. As our Court has held in *Thornhill*, the facts relevant to the alleged breach should determine proper venue. Here, the relevant facts demonstrate that Kanawha County has no correlation to the claims, and is, therefore, not a proper venue to resolve these claims.

**B. VENUE IS IMPROPER BECAUSE TWO OF PLAINTIFF'S CLAIMS DIRECTLY RELATE TO A CIVIL ACTION FILED IN HARRISON COUNTY WITH REGARD TO REAL ESTATE SITUATE IN HARRISON, RITCHIE AND CALHOUN COUNTIES.**

The second alleged breach centers on the filing of a civil action in Harrison County. Here, Plaintiff alleges that the filing of a civil action to resolve ownership and other claims relating to additional properties, none of which are situate in Kanawha County, constitutes a breach of the Term Sheet. (*See* Am. Compl., at ¶¶32-36.) This allegation only further demonstrates that Kanawha County is an improper venue.

As previously discussed, Plaintiff alleges that the Term Sheet was violated when RLI, in an effort to preserve its civil claims, filed suit in the Circuit Court of Harrison County to resolve ownership issues and claims relating to the following specific properties: (1) Sun Valley Development (located in Harrison County, WV); (2) Wilsonburg Corporate Headquarters (located in Harrison County, WV); (3) Ellenboro/Ritchie Center (located in Ritchie County, WV); (4) Cairo Property (located in Ritchie County, WV); and (5) The prior company headquarters and properties (located in Calhoun County, WV). As identified within the Term Sheet, these properties were earmarked as remaining issues that were unresolved by the mediation held in November 2020. (*See* Term Sheet, at Item No. 13.) This Item specifically detailed that “the parties acknowledge and agree the sole outstanding issues between them are limited to the appropriate ownership and claims related to” the identified properties. (*Id.*)

The Defendants filed suit prior to the Plaintiff filing the instant action to explicitly resolve ownership issues and claims related to these properties. They have done so in the Circuit Court of Harrison County.

Within Count III and, at least partially, within Count IV of Plaintiff’s Amended Complaint, Plaintiff alleges that the filing of the Harrison County civil suit constitutes a breach of the Term Sheet. (*Am. Compl.*, at ¶¶32-40.) Plaintiff seeks damages for the loss of potential claims and potential additional attorney’s fees. (*Id.*, at ¶36.) Plaintiff further seeks declaratory judgment in this matter, which, in relevant part, calls for this Court to release Plaintiff from the claims and allegations made in the Harrison County Complaint. When the same venue analysis is performed on this alleged breach as was performed on his other Counts above, the Plaintiff’s circular logic is further exposed.

First, there can be no reasonable argument that the alleged breach took place anywhere other than in Harrison County. That is where the Defendants' Complaint was filed. That Complaint deals specifically with several tracts of real property situate in Harrison County and several parcels situate in Ritchie and Calhoun Counties. A cursory review of the facts of this related litigation should demonstrate that judicial economy, or the "convenience" element identified within W.V. Code § 56-1-1, would be better served if this instant matter was also resolved in Harrison County.

Notwithstanding these issues, however, basic elements of Plaintiff's claims show that Kanawha County is an improper venue. The act that is the supposed catalyst for the breach was the filing of a Harrison County pleading. The damages alleged specifically reference expenses to be paid defending the same Harrison County civil action. By Plaintiff's own allegations, the actual breach and damages have (or will) occur in Harrison County. The only tie between these claims and Kanawha County is, again, that the latter was the location where the Term Sheet was negotiated.

Plaintiff's final claim appears to be a catch-all allegation directed at Defendant Christopher Lane. (Am. Compl., at ¶¶42-47.) In it, Plaintiff alleges that the abovementioned breaches were in some way wrongfully induced by Defendant Christopher Lane. While the merits of this claim will assuredly be strongly contested by the Defendants, the actual acts, breaches, or other harms alleged by Plaintiff Ronald Lane all relate back to the same two issues: 1) Unresolved issues involving the Alpaca Property in Harrison County, and 2) Unresolved issues central to the civil suit instituted by the Defendants in Harrison County. Therefore, as with the other claims presented within the Amended Complaint, Kanawha County is an improper venue to resolve these claims.

**III. SHOULD THE COURT DETERMINE THAT DISMISSAL IS NOT PROPER, DEFENDANTS MOVE, IN THE ALTERNATIVE, TO TRANSFER THIS MATTER TO THE CIRCUIT COURT OF HARRISON COUNTY.**

West Virginia Code § 56-9-1 provides this Court with the discretion to remove or otherwise transfer a civil action to a more appropriate venue should good cause be shown. In full, the Code provides:

A circuit court, or any court of limited jurisdiction established pursuant to the provisions of section 1, article VIII of the constitution of this state, wherein an action, suit, motion or other civil proceeding is pending, or the judge thereof in vacation, may on the motion of any party, after ten days' notice to the adverse party or his attorney, and for good cause shown, order such action, suit, motion or other civil proceeding to be removed, if pending in a circuit court, to any other circuit court, and if pending in any court of limited jurisdiction hereinbefore mentioned to the circuit court of that county: Provided, That the judge of such other circuit court in a case of removal from one circuit to another may decline to hear said cause, if, in his opinion, the demands and requirements of his office render it improper or inconvenient for him to do so.

W. Va. Code. § 56-9-1.

This situation presents the very “good cause” showing required as a predicate for a transfer of the matter to a different circuit court. As discussed hereinabove, there is virtually no connection between the Plaintiff’s chosen forum and this action. As such, for the same rationale and arguments presented that would support dismissal of this action, Defendants move in the alternative to transfer this matter to the more appropriate venue: The Circuit Court of Harrison County. RLI’s current sole shareholder and officer, Defendant Christopher Lane, is a resident of Harrison County. Defendant RLI is headquartered in Harrison County. Defendant Norman Lane is a resident of Calhoun County. Plaintiff Ronald Lane is a resident of Harrison County. The Alpaca Property at issue within Plaintiff’s Amended Complaint is located in Harrison County. More specifically, Plaintiff’s allegation of breach with regard to the Alpaca Property is the result

of RLI's supposed failure to deliver a deed for this property for recording in the office of the Clerk of the County Commission of Harrison County, W.V. Finally, the second breach of the Term Sheet that Plaintiff alleges, i.e. the filing of the Harrison County Complaint by RLI with regard to the remaining properties and related claims stemming from the same, occurred in Harrison County.


### **CONCLUSION**

Venue in the Circuit Court of Kanawha County is improper for this present civil suit. The allegations and underlying issues from which Plaintiff's claims derive are all more properly connected to Harrison County. In order to proceed in Kanawha County, this Court will need to find that the location where a mediation term sheet is executed is a sufficient basis to require Harrison County parties to resolve disputes over real estate and business interests in Harrison, Ritchie and Calhoun Counties. However, judicial economy, longstanding legal principals, and common sense dictate that Kanawha County Circuit Court is not the appropriate venue.

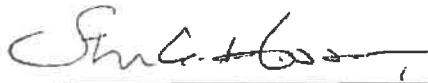
Therefore, based on the foregoing, and pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure and West Virginia Code § 56-1-1, Defendants move this Court to dismiss the Plaintiff's Amended Complaint, or in the alternative, transfer this matter to the Circuit Court of Harrison County, West Virginia pursuant to West Virginia Code § 56-9-1.

WHEREFORE, Defendants Christopher Lane, Norman Lane and Ronald Lane, Inc. respectfully request that this Honorable Court grant their Motion to Dismiss, or in the alternative, Motion to Transfer and enter an Order dismissing Plaintiff's Complaint against them with prejudice, and/or grant such other and further relief as this Court deems just and proper.

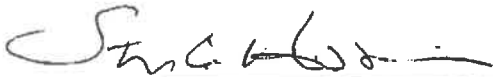
**CHRISTOPHER LANE,  
NORMAN LANE, and  
RONALD, LANE, INC.,**  
By counsel,

 , WITH PERMISSION

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 , WITH PERMISSION

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*Counsel for Ronald Lane, Inc.*

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

RONALD LANE  
Petitioner,

v.

Case No.: 20- P-165-1

RONALD LANE, INC.,  
Respondent.

**PETITION FOR JUDICIAL DISSOLUTION OF  
RONALD LANE, INC. AND INJUNCTIVE RELIEF PURSUANT  
TO WEST VIRGINIA CODE §31D-14-1431(b)**

Now comes Ronald Lane, by counsel, pursuant to West Virginia Code §§31D-14-1430 and 31D-14-1431(b) and petitions this Court for injunctive relief, the appointment of co-receivers, and for dissolution of Ronald Lane, Inc. The following is set forth in support of this Petition:

1. Petitioner Ronald Lane organized Ronald Lane Pipeline Construction, Inc. in 1981. In 1999, the corporate name was changed to Ronald Lane, Inc. ("RLI").
2. RLI is a West Virginia for profit corporation in the business of pipeline construction, right-of-way clearing and reclamation, drilling, trucking, and real estate development. RLI's principal place of business is located in Clarksburg, Harrison County, West Virginia.
3. RLI filed its Amended and Restated Articles of Incorporation with the West Virginia Secretary of State on December 2, 2013.

BREWER  
&  
GIGGENBACH, PLLC  
ATTORNEYS AT LAW  
MORGANTOWN, WV

FILED  
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4. Ronald Lane is the founder and President of RLI. Ronald Lane started RLI with minimal equipment and capital. He persevered in the pipeline industry and built RLI into a successful multi-million-dollar operation with a solid reputation.

5. RLI is a closely held corporation. RLI has authorized 10,000 shares of stock. This includes 100 shares of voting stock and 9,900 shares of non-voting stock.

6. Presently, RLI has three Shareholders who also serve on the Board of Directors and as corporate officers. Ronald Lane is the President of RLI and he owns 34 shares of voting stock and 5,967 shares of non-voting stock. Christopher Lane is the Vice-President of RLI, and he owns 33 shares of voting stock and 1,250 shares of non-voting stock. Norman Lane is the Secretary of RLI, and he owns 33 shares of voting stock and 2,683 shares of non-voting stock.

7. Ronald Lane wanted his three children and brother to share in and build upon his success. He gifted 100 shares of non-voting stock to his brother Norman Lane; his son Eric Lane, his daughter Tracy Lancaster; and his son Christopher Lane. On January 31, 2014, Ronald Lane entered a Shareholder Agreement with Norman Lane, Eric Lane, Tracy Lancaster, and Christopher Lane. At that time, RLI had authorized 100 shares of voting stock and 900 shares of non-voting stock. Ronald Lane owned 100 shares of voting stock and 500 shares of non-voting stock. Eric Lane, Tracy Lancaster, Christopher Lane, and Norman Lane each owned 100 shares of non-voting stock.

8. The purpose of the 2014 Shareholder Agreement was to provide for continuity of operations and ownership of RLI, and to establish purchase rights and obligations with regard to shares of the non-voting shareholders.

9. In 2016, Eric Lane and Tracy Lancaster informed Ronald Lane that they could no longer work at RLI due to the unprofessional and divisive behavior of their brother Christopher Lane. Eric Lane and Tracy Lancaster left RLI and they sold their shares of non-voting stock back to RLI. The working environment at RLI continued to deteriorate after Eric Lane and Tracy Lancaster left, because of Christopher Lane's divisive, aggressive, and unprofessional behavior.

10. In November 2018, RLI amended and restated its Articles of Incorporation. It authorized 9,900 shares of non-voting stock and 100 shares of voting stock. At this time, Ronald Lane gifted 33 shares of voting stock to both Christopher Lane and Norman Lane. Further, Ronald Lane gifted additional non-voting stock to Christopher Lane and Norman Lane thereby giving Christopher Lane a total of 1,250 non-voting shares and Norman Lane a total of 2,683 non-voting share.

11. On November 14, 2018, Ronald Lane, Christopher Lane, and Norman Lane entered into an Amended and Restated Shareholder's Agreement. The Amended and Restated Shareholder's Agreement ("Amended Agreement") replaced the 2014 shareholder agreement in its entirety. A copy of the Amended and Restated Shareholders Agreement is attached as Exhibit 1.

12. The Amended Agreement established that the operation of RLI would be managed by the Board of Directors. The Board of Directors of RLI consists of the

corporate officers and holders of voting stock, namely, Ronald Lane, Norman Lane, and Christopher Lane.

13. The Amended Agreement requires unanimous agreement of the Board of Directors for the sale of all or any part of RLI; the recapitalization, merger, or reorganization of RLI; a change in salary or bonus amount of any shareholder; changes in the terms of any consulting agreement between RLI and a retired shareholder; any changes to the Amended Agreement; and the transfer of shares not otherwise permitted by the Amended Agreement.

14. The Amended Agreement requires majority approval of the Board of Directors for: any single purchase exceeding \$20,000 and a group of related purchases exceeding \$100,000.00; any single sale exceeding \$20,000.00 and any group of related sales exceeding \$100,000.00; incurring debt to RLI that exceeds \$100,000.00; and submitting and accepting bids for a contract or group of contracts that exceeds \$1,000,000.00.

15. The Amended Agreement places certain restrictions and conditions on the sale and transfer of voting and non-voting stock of RLI. The Amended Agreement addresses eight circumstances in which a shareholder's stock might be transferred or sold, including: permitted lifetime transfers, a lifetime sale, death of a shareholder, voluntary termination of employment, retirement of a shareholder, termination for cause of a shareholder, disability, bankruptcy, and divorce.

16. The Amended Agreement defines "cause" as any willful or grossly negligent act that causes financial or reputational harm to the RLI. Further, "cause" is

defined as a continued breach of the Shareholder's duties and obligations arising under an employment contract, employment relationship with RLI, or any written rule, regulation or policy of RLI for a period of five days following his receipt of written notice of the violation.

17. The Amended Agreement provides two mechanisms to resolve shareholder disputes: mediation and the purchase of stock by another shareholder(s).

18. Petitioner instituted the present action because: 1) disputes have arisen between the Shareholders regarding the operation and management RLI, they cannot resolve them, and irreparable harm to RLI and its Shareholders is threatened; 2) the actions of Christopher Lane and Norman Lane are oppressive; and 3) Christopher Lane and Norman Lane are misapplying and wasting assets of RLI.

19. Christopher Lane has engaged in and continues to engage in oppressive, divisive and unprofessional behavior causing damage to RLI's reputation, the financial well-being of RLI, and the interests of the other Shareholders. Christopher Lane cannot or will not have rational discussions about RLI's operations and serious financial status. He takes actions without the agreement of the other Shareholders.

20. Christopher Lane has been physically aggressive to his father Ronald Lane, intentionally undermined Ronald Lane's position at RLI, and engaged in other physically aggressive and unprofessional behavior. Christopher Lane causes dissension and discord among RLI employees, and several employees have resigned because of his conduct. Moreover, Christopher Lane seeks to fire or force out any

employee that he perceives to support his father Ronald Lane. Christopher Lane's behavior makes it impossible to communicate in a rational manner about important decisions regarding RLI's operation and financial status. His behavior is oppressive, and it has caused and/or contributed to the Shareholders' impasse.

21. Christopher Lane has caused financial harm to RLI by wasting and misapplying the company's assets and by using corporate money to finance his personal lifestyle and cover his personal expenses.

22. On several occasions, Christopher Lane has taken a substantial amount of money out of RLI to finance personal purchases and fund his personal lifestyle. In some instances, he characterizes these payments as a loan from the company. For real estate purchases alone, the outstanding balance owed by Christopher Lane to RLI presently stands at Four Hundred Eighty-Two Thousand Seven Hundred Fifty-Three Dollars and 29/100 (\$482,753.29). However, to date, he has not made a single payment to RLI in satisfaction of this loan or other advances and funds used for his personal enjoyment.

23. In May 2020, Christopher Lane authorized a payment of Two Hundred Twenty-Four Thousand Dollars (\$224,00.00) to himself for what he claimed to be back wages. This payment was made in addition to his weekly salary of Six Thousand Dollars (\$6,000.00). Christopher Lane did not seek approval from the other Shareholders before issuing this payment to himself. Christopher Lane has not provided any records or other justification of this entitlement to this money. Christopher Lane took this money with knowledge that RLI was in serious financial

trouble. His actions triggered one of RLI's lenders to call in its loan, and thus, were to the financial detriment of RLI and the interests of the other Shareholders.

24. Christopher Lane routinely uses RLI's corporate credit card to cover lavish dinners, parties, and other luxuries. This behavior has continued despite RLI's dire financial circumstances.

25. Norman Lane has misapplied and wasted assets of RLI.

26. Norman Lane has taken and continues to take personal property from RLI, including, 80-90 loads of stone, gravel, steel pipe, PVC pipe, pipe fittings, fuel, steel fencing, steel fencing posts, paint, large metal secured storage pods, furniture, hand-held equipment and other personal property owned by RLI to his personal hunting camp located in Calhoun County, West Virginia. Norman Lane has taken a substantial amount of personal property from RLI, and he has not paid RLI for any of it. In addition to the personal property taken, there is presently Eighty-One Thousand Two Hundred Ninety-One Dollars (\$81,291.00) owed to the company for money that he took from the company for the payment of personal taxes. However, to date he has not made a single payment for satisfaction of this loan.

27. Norman Lane has used and continues to use equipment owned by RLI to develop and improve real property owned by him in Calhoun County, West Virginia. He has utilized equipment owned by RLI and persons utilized by RLI to complete this personal project. Norman Lane has expended hundreds of hours of machine time and RLI employee time. All of this was of substantial monetary value, and Norman Lane has not paid RLI for any of this time.

28. RLI is in serious financial trouble with mounting debt, a loss of cash flow, and depreciating assets. RLI is currently struggling to make pay roll. The Shareholders have weekly meetings. Without fail Ronald Lane has asked Christopher Lane and Norman Lane to address RLI's outstanding debt and faltering financial status. However, they refuse and the Shareholders remain deadlocked. At present, the Shareholders cannot even communicate and make rational decisions about RLI's operation and management.

29. On July 30, 2020, Counsel for Ronald Lane sent a correspondence to Christopher Lane and Norman Lane setting forth Ronald's plan for reducing expenses and paying of RLI's debt. This correspondence is attached as Exhibit 2. On August 25, 2020, a follow-up correspondence was sent, which again advised Christopher Lane and Norman Lane RLI's serious financial situation. This correspondence is attached as Exhibit 3. Moreover, in a July 31, 2020, correspondences concerning Ronald Lane's offer to purchase the stock of the other Shareholders, these concerns were repeated. To date, Christopher Lane and Norman Lane have not responded to these letters, and they have not otherwise offered a plan to reduce RLI's expenses and debt.

30. In 2019, RLI lost approximately Two Million Dollars (\$2,000,000.00), and it is projected to lose another Two Million Dollars (\$2,000,000.00) this year. Despite this serious financial crisis and Ronald Lane's repeated requests, the Shareholders remain deadlocked and they cannot agree on a solution to pay off RLI's debt and improve its financial status.

31. RLI has a line of credit with MVB Bank valued at Three Million Seven Hundred Forty-Five Thousand Dollars (\$3,750,000.00). Due to the poor financial performance of RLI, this line of credit was not renewed. The current outstanding principal is Two Million Seven Hundred Thousand Dollars (\$2,700,000.00). An extension obtained by Ronald Lane expired on September 8, 2020. The bank just granted an extension, based on Ronald Lane's personal guarantee requiring that this loan be paid in full on or before November 8, 2020. The bank has stated it will not grant any additional extensions. If an additional extension cannot be obtained, MVB will be free to pursue collection of the unpaid amount, including pursuing the personal guarantee of Ronald Lane. Ronald Lane is a personal guarantor on the loan agreement with MVB. A copy of the original Business Loan Agreement and the Change in Terms Agreement with MVB Bank are attached as **Exhibit 4** and **Exhibit 5**. Ronald Lane has pleaded with the other Shareholders to take appropriate action to address this outstanding debt, including but not limited to liquidating RLI's equipment to satisfy the debt. Christopher Lane and Norman Lane refuse to take any meaningful action to avoid collection on this debt.

32. In the past few years, RLI has relied substantially on the line of credit from MVB to fund its day-to-day operations. The line of credit was canceled due to the poor performance of the company. RLI does not have a substantial and/or reliable cash flow that is sufficient to cover its operating expenses, thus, because the line of credit has been canceled RLI will face serious financial issues going forward regardless of whether the loan from MVB is paid in full.

33. RLI has a loan with Huntington National Bank with an original amount of One Million One Hundred Thousand Dollars (\$1,100,000.00) and a current balance of Five Hundred Ninety-Four Thousand Dollars (\$594,000.00). Ronald Lane is a personal guarantor on this loan agreement. A copy of the original loan agreement and Commercial Guaranty are attached and collectively identified as **Exhibit 6**. Ronald Lane was notified on August 14, 2020, that this loan is in default; however, he was able to negotiate an extension to November 3, 2020. A copy of the correspondence notifying Ronald Lane of the default, and a copy of the correspondence confirming the extension and the terms of the extension are attached as **Exhibit 7** and **Exhibit 8**.

34. Huntington National Bank demanded repayment because of the \$224,000.00 distribution Christopher Lane made to himself in May 2020. As can be expected, Huntington National Bank questioned such a large distribution to an officer/shareholder when the company was generating substantial losses. Previously, RLI had not defaulted on an obligation owed to a bank or any other creditor. However, due to the current deadlock between the Shareholders and Christopher Lane's self-serving behavior, the bank questioned RLI's ability to meet its obligation to Huntington National Bank.

35. In addition to the MVB loan and the Huntington National Bank loan, RLI has numerous other loans that have been taken out to finance vehicles and equipment. The total amount that is due collectively from these smaller loans is One Million One Hundred Ninety-Nine Thousand Seven Hundred Sixty-Four Dollars and 20/100 (\$1,199,764.20). Ronald Lane is a personal guarantor on each of these loans.

The total amount of indebtedness that Ronald Lane is personally at risk for as a personal guarantor for the benefit of RLI is Four Million Four Hundred Ninety-Three Thousand Nine Hundred Forty-One Dollar and 88/100 (\$4,493,941.88).

36. RLI owns approximately Twelve Million Dollars (\$12,000,000.00) worth of equipment, pipeline specialty equipment and other heavy machinery. This equipment is not being operated and it is depreciating in value. Further, there are monthly maintenance costs, taxes, and insurance fees to maintain it. Over the past eighteen months, Ronald Lane has made repeated requests to liquidate this equipment and realize its true value but Christopher Lane and Norman Lane refused. This caused RLI to lose thousands of dollars due to depreciation. In fact, it was only after MVB canceled RLI's credit line that Christopher Lane and Norman Lane agreed to begin selling equipment.

37. RLI owns numerous vehicles that were purchased for use by RLI employees. Now, the number of company vehicles owned by RLI greatly exceeds its number of employees. These vehicles also depreciate in value, and there are monthly maintenance costs, taxes, insurance, and registration fees incurred by RLI. However, despite RLI's financial hardships, Christopher Lane and Norman Lane refuse to sell any of these vehicles to help reduce the debt and monthly liabilities of RLI.

38. In consideration of RLI's financial difficulties, Ronald Lane reduced his personal salary to Three Thousand Dollars (\$3,000.00) per week. However, Christopher Lane and Norman Lane refuse to reduce their salaries. Christopher Lane receives Five Thousand Two Hundred Fifty Dollars (\$5,250.00) per week and Norman

Lane receives Six Thousand Dollars (\$6,000.00) per week. Christopher Lane receives \$5,250 per week, because he pays his personal babysitter from RLI's account.

39. Christopher Lane's refusal to address the debt of RLI is illogical, oppressive, and flies in the face of normal rational business decision making. His actions are motivated by personal grudges he holds against his father and his brother Eric Lane. Christopher Lane's actions are now and have been to the detriment of RLI's financial well-being, RLI's reputation in the community, and the interests of the other Shareholders.

40. Norman Lane's refusal to address the debt of RLI and reduce its monthly expenses is illogical and oppressive. His actions are to the detriment of RLI's financial well-being, RLI's reputation in the community, and the interests of the other Shareholders.

41. The Shareholders are at a complete and total stalemate, and they cannot agree on even the simplest of matters. Communications between them have broken down. The deadlock between the Shareholders will result in irreparable harm to RLI and the interests of the Shareholders.

42. On November 8, 2019, Christopher Lane sent a correspondence to Ronald Lane and Norman Lane. In the letter, Christopher Lane falsely accused Ronald Lane of gross misconduct and he identified disputes that he believed needed to be resolved by the Shareholders.

43. Ronald Lane, Norman Lane, and Christopher Lane have engaged in and/or attempted to mediate the disputes that exist between them without success.

In fact, the relationship between the Shareholders has only deteriorated further since the November 8, 2019, letter was sent.

44. In an attempt to overcome the Shareholders' deadlock and repair RLI's financial status, in a correspondence dated July 31, 2020, Ronald Lane offered to purchase all of the voting and non-voting shares of both Christopher Lane and Norman Lane at a price of One Thousand Two Hundred Eighty-Nine Dollars and 51/00 (\$1289.51) per share. In the alternative, Ronald Lane offered to sell all of his voting and non-voting shares at the same price. A copy of this correspondence is attached as Exhibit 9.

45. Christopher Lane and Norman Lane refused Ronald Lane's substantial, fair and reasonable offer. On August 27, 2020, Norman Lane offered to purchase Ronald Lane's shares at the stated price of \$1,289.51 per share; however, Norman Lane did not communicate his proposed terms of the sale. Nor did he identify the number of shares he was willing to purchase.

46. On August 27, 2020, Christopher Lane declined Ronald Lane's offer to purchase his shares. Christopher Lane offered to purchase Ronald Lane's 6001 shares for a price of \$1,289.51 per share or a total of \$7,738,349.51. Christopher Lane proposed paying 10% down, and thereafter, making quarterly payments for nine years with minimum interest accruing. However, Christopher Lane refuses to collateralize the unpaid balance. Christopher Lane's refusal to collateralize the note is commercially unreasonable on its face. On September 11, 2020, Ronald Lane informed Christopher Lane that he cannot agree to accept an unsecured promissory note for the

unpaid balance on the purchase of his shares. A copy of this correspondence is attached as **Exhibit 10**.

47. More recently, Norman Lane and Christopher Lane informed Ronald Lane that they each intend to purchase one half of Ronald Lane's shares at a rate of \$1,289.51 per share. Norman Lane and Christopher Lane propose paying 10% down and thereafter making 36 quarterly payments secured by a promissory note. However, neither have agreed to collateralize the unpaid balance of approximately Seven Million Dollars (\$7,000,000.00). It is unconscionable to expect Ronald Lane to accept an unsecured promissory note valued at Seven Million Dollars that is to be paid out over fifteen years. Moreover, it is absurd to expect him to accept this offer when he is personally liable for over Four Million Dollars (\$4,000,000.00) of debt owed by RLI, as this would give him personal exposure of over Eleven Million Dollars (\$11,000,000.00).

48. The sale and transfer of shares between the Shareholders is at an impasse and cannot be resolved. This compounds RLI's financial crisis and the Shareholders' ability to receive their equity in RLI.

**COUNT I - INJUNCTIVE RELIEF**

49. Petitioner incorporates and restates the allegations set forth in Paragraphs 1-45 of this Petition.

50. In an action brought to dissolve a corporation pursuant to West Virginia Code §31D-14-1430, a circuit court may grant certain relief until a full hearing can be held. In this regard, West Virginia Code §31D-14-1431(b) states:

A circuit court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the circuit court directs, take other action required to preserve the corporate assets wherever located and carry on the business of the corporation until a full hearing can be held.

51. Petitioner respectfully submits that there are ample grounds for the Court to intervene before a full hearing is held in this matter. As set forth above, if the Court does not intervene immediately, RLI and its Shareholders will suffer irreparable harm.

52. A loan from MVB Bank with an outstanding balance of Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) is past due and MVB Bank is threatening to take action to collect the loan. Petitioner Ronald Lane is a personal guarantor on this loan.

53. A loan from Huntington National Bank with an outstanding balance of Five Hundred Ninety-Four Thousand Dollars (\$594,000.00) is past due, and the bank has provided an extension to November 3, 2020. Ronald Lane is a personal guarantor on this loan. If the loan is not repaid, the bank will move to collect on this loan. The Shareholders have not been able to reach an agreement on how to pay off this substantial debt.

54. The Shareholders are deadlocked and they cannot reach an agreement to resolve RLI's financial crisis or the sale of stock to resolve their disputes.

55. Petitioner seeks the immediate appointment of co-receivers, Ronald Lane and Thomas Fluharty. Petitioner submits this is necessary in this matter to liquidate RLI's assets, pay off RLI's debt, and prevent irreparable damage to RLI and

its Shareholders. Ronald Lane has significant institutional knowledge of RLI having founded RLI and served as its President for close to forty years. Ronald Lane has significant knowledge of RLI's assets and liabilities and substantial relationships with its lenders. Additionally, Petitioner seeks the appointment of Thomas Fluharty as a co-receiver to work in unison with Ronald Lane. Mr. Fluharty is a respected attorney who is admitted to practice before the Bar of this Court. Mr. Fluharty has significant commercial knowledge having served many years as a trustee in both United States Bankruptcy Courts in West Virginia. Mr. Fluharty has also served and continues to serve as a receiver in matters similar to the instant one.

#### COUNT II - DISSOLUTION

56. Petitioner incorporates and restates the allegations set forth in Paragraphs 1-52 of this Petition.

57. West Virginia Code §31D-14-1430(2) authorizes a circuit court to dissolve a corporation in a proceeding brought by a shareholder when:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted.

58. Petitioner seeks dissolution of RLI pursuant to West Virginia Code §§31D-14-1430(2)(A), (B), and (C).

59. As set forth above, RLI is managed and operated according to the terms of an Amended Agreement between its Shareholders. The Shareholders are deadlocked. They cannot meaningfully or rationally communicate about the management and operation of RLI, they cannot reach an agreement to pay of the substantial debt of RLI, and they cannot reach an agreement on the sale of stock to resolve their disputes.

60. Christopher Lane and Norman Lane are and have misapplied and wasted the corporate assets of RLI.

61. Christopher Lane's conduct is divisive and oppressive and it is taken to the detriment of RLI and the interests of its other Shareholders.

62. Norman Lane's behavior is oppressive and it is taken to the detriment of RLI and the interests of its other Shareholders.

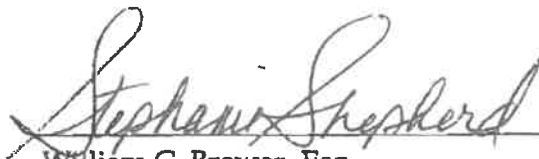
63. Further, in an action brought under West Virginia Code §31D-14-1430, a circuit court "may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation." W.Va. Code §31D-14-1432(a). Further, "[t]he circuit court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers: (1) The receiver: (A) May dispose of all or any part of the

assets of the corporation wherever located, at a public or private sale, if authorized by the circuit court; and (B) may sue and defend in his or her own name as receiver of the corporation in all circuit courts of this state[.]” W.Va. Code §31D-14-1432(c)(1).

64. Petitioner seeks the appointment of co-receivers. Petitioner submits that the appointment of these co-receivers is necessary to preserve the corporate assets of RLI, liquidate certain assets, pay off debt, and reduce expenses and outflows of cash to prevent immediate and irreparable harm to RLI and its Shareholders.

WHEREFORE, based on the foregoing Petitioner Ronald Lane prays this Court will grant him injunctive relief, appoint co-receivers pursuant to West Virginia Code §31D-14-1431(b), order the dissolution of RLI, grant him attorney fees and costs, and grant him any other relief the Court deems appropriate.

RESPECTFULLY SUBMITTED,  
RONALD LANE, PETITIONER,  
BY COUNSEL.



William C. Brewer, Esq.

WV State Bar No. 448

Stephanie J. Shepherd, Esq.

WV State Bar No. 9716

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&  
GIGGENBACH, PLLC  
ATTORNEYS AT LAW  
MORGANTOWN, WV

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

RONALD LANE,

Plaintiff,

vs.

Civil Action No. 21-C-60  
Judge Tera Salango

CHRISTOPHER LANE,  
NORMAN LANE, and  
RONALD, LANE, INC.,  
a West Virginia Corporation,

Defendants.

CERTIFICATE OF SERVICE


I, Matthew D. Elshiaty, Esquire, do hereby certify that on the 17<sup>th</sup> day of February, 2021, served a true and correct copy of *Defendants Christopher Lane, Norman Lane and Ronald Lane, Inc.'s Motion to Dismiss, or in the alternative, Motion to Transfer and Memorandum of Law in Support of Defendants Christopher Lane, Norman Lane and Ronald Lane, Inc.'s Motion to Dismiss, or in the alternative, Motion to Transfer* upon the following by first class mail, postage prepaid, at the addresses listed below:

Booth Goodwin, Esq.  
Goodwin & Goodwin, LLP  
300 Summers Street, Suite 1500  
Charleston, WV 25301  
*Counsel for Ronald Lane*

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Calwell Luce diTrapano, PLLC  
Law and Arts Center West  
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*Counsel for Christopher Lane*

James "Rocky" Gianola, Esq.  
John Gianola, Esq.  
Gianola Barnum Bechtel & Jecklin, L.C.  
1714 Mileground  
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*Counsel for Norman Lane*



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Ext. 326

February 17, 2021

Ms. Cathy S. Gatson  
Circuit Clerk of Kanawha County  
Kanawha County Judicial Building  
P.O. Box 2351  
111 Court Street  
Charleston, WV 25301

Re: Ronald Lane vs. Christopher Lane, et al.  
Civil Action No. 21-C-60

Dear Clerk Gatson:

Enclosed for filing please find *Defendants Christopher Lane, Norman Lane and Ronald Lane, Inc.'s Motion to Dismiss or in the alternative, Motion to Transfer and Memorandum of Law in Support of Defendants Christopher Lane, Norman Lane and Ronald Lane, Inc.'s Motion to Dismiss, or in the alternative, Motion to Transfer.*

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Matthew D. Elshiaty

MDE/kln

Enclosure

xc: The Honorable Tera Salango  
Booth Goodwin, Esq. & L. Dante' diTrapano, Esq.  
Daniel M. Taylor, Esq. & Kyle T. McGee, Esq.  
James "Rocky" Gianola, Esq. & John Gianola, Esq.

**Exhibit D to:**

**Joint Motion to Refer Cases to the  
Business Court Division**

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

**RONALD LANE,**

**Plaintiff,**

**v.**

**Civil Action No.: 21-C-60**  
**Judge Tera L. Salango**

**CHRISTOPHER LANE,  
NORMAN LANE, and  
RONALD LANE, INC.,  
a West Virginia Corporation,**

**Defendants.**

**PLAINTIFF RONALD LANE'S RESPONSE TO**  
**DEFENDANTS' MOTION TO DISMISS, or in the alternative,**  
**MOTION TO TRANSFER**

Kanawha County is a proper venue for this case, and the Court should deny the Motion to Dismiss or Transfer (the "Motion")<sup>1</sup> of Defendants Christopher Lane, Norman Lane, and Ronald Lane, Inc., ("Defendants"). First and foremost, this action is a contract action in which Ronald Lane ("Mr. Lane") seeks at least two forms of relief: (1) damages caused by Defendants' breach of a Term Sheet (the "Contract"); and (2) a declaration on the interpretation and meaning of the Contract to govern all parties' performance going forward. Defendants admit—multiple times—that the Contract was executed in Kanawha County. Defs' Brief at 3, 6, 9, 13 & 15. But they wrongly claim that this connection is insufficient for venue to lie in Kanawha County. That incorrect claim is the basis of the Motion, without which the Motion falls apart.

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<sup>1</sup> Due to the nature of the claims asserted in this action, all of which involve commercial disputes between a corporation and its respective shareholders and officers, Plaintiff Ronald Lane contemplates filing a motion to the Supreme Court of Appeals of West Virginia to refer this action to the business court division. This Response is filed in case the relief in the contemplated motion to refer is not ultimately granted, in which case this action should remain before this Court, as explained in greater detail in the text of this Response.

Under well-settled West Virginia law, venue for a contract action may be proper in more than one county, and one of those counties is where the Contract was executed. Syl. Pt. 1, *State ex rel. Thornhill Group, Inc. v. King*, 233 W. Va. 564, 759 S.E.2d 795 (2014) (providing that where contract claim arises is based, in part, on place of contract formation); Syl. Pt. 1, *State ex rel. Galloway Group v. McGraw*, 227 W. Va. 435, 711 S.E.2d 257 (2011) (holding that venue for breach of contract claims is proper in county where contract was formed) (quotations omitted); Syl. Pt. 3, *Wetzel Cty. Savings & Loan Co. v. Stern Bros. Inc.*, 156 W. Va. 693, 698, 195 S.E.2d 732, 738 (1973) (same). *See also Jones v. Main Island Creek Coal Co.*, 84 W. Va. 245, 99 S.E. 462 (1919) (finding venue proper in Cabell County, where contract was formed, even though both breach and damages occurred elsewhere).

In and of itself, the fact that the Contract was executed in Kanawha County is enough to make venue in this Court proper. However, contract formation is not the only connection this case has to Kanawha County:

- In addition to being executed here, the Contract was negotiated and drafted in Charleston during a three-day mediation attended in-person by all parties to this case at the law offices of Goodwin & Goodwin, LLP (Defs' Brief at 3);
- G. Nicholas Casey, who presided over the mediation, is the sole unbiased potential witness who may be called to testify on the parties' intended interpretation and meaning of the Contract at the time the Contract was executed. His practice is located in Kanawha County, and his testimony may prove especially valuable with regard to the declaratory judgment claim in Count IV (*Id.*);
- The Contract has multiple provisions calling for legal services, which will likely be performed, at least in part, by Mr. Lane's counsel in Charleston (*See generally*, Compl. at Ex. A); and
- The Deed referenced in Paragraphs 13 and 23 through 27 of the Complaint and bargained for in Paragraph 3 of the Contract was drafted in this county.

That is, the Contract was negotiated, drafted, executed, and partly performed in Charleston. In addition, one of the key witnesses who might be called in this case, and indeed, the *only* unbiased

potential witness who can testify on the intended interpretation and meaning of the Contract, is in Kanawha County. Accordingly, Defendants' argument that the connection between this case and Kanawha County is "threadbare" falls flat. Defs' Brief at 6.

In addition to being wrong on the connection between this case and Kanawha County, Defendants invite this Court to err by applying an inapplicable statute, W. Va. Code § 56-9-1, to transfer this case to Harrison County. Relief under that statute is available only upon a showing by Defendants of "prejudice" to such a degree that the moving party might be denied a fair trial. *State ex rel. Riffle v. Ranson*, 195 W. Va. 121, 124 n.4, 464 S.E.2d 763, 766 n.4 (1995). Defendants have not, and cannot, make such a showing here.

Had Defendants requested transfer under the correct statute (which they did not), W. Va. Code § 56-1-1(b), their request would be unsuccessful. Under the plain text of this statute, Defendants must show that transfer would better convenience the parties *and* witnesses, as well as better serve the ends of justice. Defendants cannot make this showing because, among other reasons, a key witness, and indeed, the sole unbiased potential witness who can testify on the Contract's intended interpretation and meaning, is in Kanawha County. If this case were transferred to Harrison County, the same inconvenience Defendants complain of in the Motion would befall this witness.

All Defendants might have shown is that litigating in Harrison County would be more convenient for them—which can conceivably be said for any case where the defendant does not reside in the forum county. Defendants' convenience-based argument is made even more unremarkable and unconvincing by the fact that Ronald Lane, Inc., owns real estate in Kanawha County, as evidenced by tax receipts from the Kanawha County Sheriff's Tax Office, attached as "Exhibit A." Simply, Defendants have not made a showing sufficient to override the plaintiff's

choice of forum, which is relevant to a transfer of venue analysis under W. Va. Code § 56-1-1(b). *State ex rel. Smith v. Maynard*, 193 W. Va. 1, 7 n.10, 454 S.E.2d 46, 52 n.10 (1994).

In sum, Defendants make no request in the Motion that may be granted. Kanawha County is a proper venue, and Defendants have made no showing that would justify transfer of this case to another county. The Motion should be denied.

### **ARGUMENT**

This is a contract action. Despite Defendants' efforts to obscure the issues, it is not an action to determine title to or the ownership of land (such as a claim seeking ejectment or to quiet title). Therefore, the venue provision for land actions does not apply. *Ray v. Hey*, 183 W. Va. 521, 524-25, 396 S.E.2d 702, 705-06 (1990) (citing *McConaughy v. Bennett's Ex'rs.*, 60 W. Va. 172, 40 S.E. 540 (1901)).

The proper focus of the venue analysis in this case is where the cause of action "arose" under W. Va. Code § 56-1-1(a)(1):

(a) any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:

(1) Wherein any of the defendants may reside or the cause of action arose . . .

*See also* Syl. Pt. 2, *Banner Printing Co. v. Bykota Corp.*, 182 W. Va. 488, 388 S.E.2d 844 (1989) (providing that, where defendant is a corporation, venue lies where cause of action arose, in additions to locations specified in W. Va. Code § 56-1-1(a)(2)). Defendants themselves appear to recognize this fact—that venue in this case is determined by where the cause of action arose. Defs' Brief at 7.

For the reasons explained in greater detail below, this case arises in multiple counties, Kanawha being one of them. Accordingly, this case cannot be dismissed for improper venue, nor should it be transferred to another county under any statute.

***A. Venue is Proper in Kanawha County.***

Defendants heavily imply that Harrison County is the only proper venue for this contract action because that is where they breached the Contract from. Their argument is squarely contradicted by West Virginia law, under which a breach of contract action “arises from” *any* of the following counties:

1. *Where the contract was made, that is, where the duty came into existence;*
2. *Where the breach or violation of duty occurs; or*
3. *Where the manifestation of the breach – substantial damage occurs.*

Syl. Pt. 3, *Wetzel Cty. Savings & Loan Co.*, 156 W. Va. 693, 698, 195 S.E.2d 732.<sup>2</sup> That is, “the person who brings a civil action for a breach of contract *has the choice of bringing it in the county where the contract is made* or the county where the contract is breached, or the county where the damage occurs.” *Id.* at 698, 195 S.E.2d at 738 (emphasis added). *See also Jones*, 84 W. Va. 245, 99 S.E. 462 (cited with approval by *Wetzel* and finding venue proper in Cabell County because the contract was formed there, even though said contract was performed and breached only outside of Cabell County, neither party lived in Cabell County while the contract was being performed or when it was breached, and the substantial damages were suffered outside of Cabell County).

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<sup>2</sup> The fact that *Wetzel* predates the 1986 amendments to the venue statutes does not affect its validity. Syl. Pt. 1, *State ex rel. Thornhill Group, Inc. v. King*, 233 W. Va. 564, 759 S.E.2d 795 (2014) (holding that Syllabus Point 3 of *Wetzel* was not impacted by the 1986 amendments to the venue statutes); Syl. Pt. 1, *State ex rel. Galloway Group*, 227 W. Va. 435, 711 S.E.2d 257 (quoting Syllabus Point 3 of *Wetzel*); *McGuire v. Fitzsimmons*, 197 W. Va. 132, 475 S.E.2d 132 (1996) (relying on Syllabus Point 3 of *Wetzel* in drafting virtually identical syllabus point for venue in legal malpractice actions).

There is zero dispute that the Contract was made in Kanawha County. The Complaint alleges that the Contract was negotiated in-person and executed during a three-day mediation at the Goodwin & Goodwin, LLP law offices in Charleston, WV. Compl. ¶¶ 7-8. The Defendants admit this fact multiple times in their brief. *See* Defs' Brief at 3, 9, 13, and 15. They even confess that where the Contract was formed is a crucial fact in this venue analysis: "In order to proceed in Kanawha County, this Court will need to find that the location where a [contract] is executed is a sufficient basis to" allow the parties to litigate this contract dispute in Kanawha County. *Id.* at 15. Under Syllabus Point 3 of *Wetzel*, as well as West Virginia precedent stretching back to 1919 (*Jones*), that is precisely correct – the fact that the Contract was formed in Kanawha County is grounds to find that venue is proper in Kanawha County.

However, contract formation is not the only connection this case has to Kanawha County. For example, the deed bargained for under Paragraph 3 of the Contract was drafted in Kanawha County. Compl. ¶ 13. And other terms of the Contract provide for legal services that will likely be carried out in a cooperative effort, at least in part, from counsel for Mr. Lane's law offices in Charleston, West Virginia. Contract at ¶¶ 3 (providing that parties will review and reasonably agree upon access rights of ways and utility easements for subject property); 7 (providing that parties will enter into indemnification and hold harmless agreements for Ronald Lane's benefit); 9 (parties will mutually release claims except for purposes of disputing ownership and title to real property); and 16 (negotiating, drafting, and executing a subsequent Standstill and Tolling Agreement upon expiration of the term of the agreement currently in place). That is, Kanawha County is connected to this case, not just in terms of contract formation, but of contract performance as well.

Defendants cite only one case in opposing venue in Kanawha County, *State ex rel. Thornhill Group, Inc.*, 233 W. Va. 564, 759 S.E.2d 795. That case is cited for the proposition that venue in contract actions is based, in part, on the place of contract formation. Brief at 9. As explained above, the facts underlying contract formation, as well as some of the facts relating to performance under the Contract, occurred in Kanawha County.

Notably, the facts of this case are significantly different than the *Thornhill* facts in multiple respects. First, there is no doubt that all parties to this case met in-person, negotiated, drafted, and executed the Contract in Kanawha County. By contrast, the *Thornhill* contract was not negotiated or drafted in the forum county, and there was no record evidence supporting the plaintiff's allegation that he accepted the contract over the telephone from there. *Id.* at 571, 759 S.E.2d at 802. That is, the *Thornhill* contract might not have been formed in the forum county. Second, the legal services called for by the Contract were and will likely continue to be performed, at least in part from Kanawha County, whereas performance under the *Thornhill* contract was to be performed solely at the defendant's place of business outside of the forum county. *Id.*

And third, the Contract is still in effect, and Mr. Lane brings this case, in part, to seek a declaratory judgment on the interpretation and meaning of the Contract. *See, e.g.*, Compl. ¶¶ 37-41. Unlike in *Thornhill*, where the contract claim was predicated solely on the alleged breach (that occurred two years before the claim was filed), a pivotal focus of this action is to obtain a declaration to govern the parties' performance under the Contract going forward (again, likely to occur partly in Kanawha County). *State ex rel. Thornhill Group, Inc.*, 233 W. Va. at 571, 759 S.E.2d at 802.

Under well-established West Virginia case law, venue in a contract case may lie in the county where the contract was formed. There is zero dispute that the Contract was formed in

Kanawha County. In addition, the Contract was negotiated in-person by all parties over a three-day period in Charleston. As if that were not enough to establish proper venue in Kanawha County (it is), legal services pursuant to the Contract were performed and will likely continue to be performed, at least in part, from Kanawha County, and the only unbiased potential witness on the Contract's meaning is located here. It is beyond dispute that the connection between this case and Kanawha County is substantial and that venue before the Court is proper.

***B. The Relief Defendants Seek Under W. Va. Code § 56-9-1 is not Available in this Case.***

Next, Defendants ask the Court to transfer this case under W. Va. Code § 56-9-1. The Court has no such discretion under the facts of this case.

First, W. Va. Code § 56-9-1 may be invoked only for "good cause," that is, "when the . . . the prejudice [to the moving party] is such that unless abated will deprive the parties of a fair trial." *State ex rel. Riffle*, 195 W. Va. at 124 n.4, 464 S.E.2d at 766 n.4 (brackets added). The level of prejudice necessary to show good cause under W. Va. Code § 56-9-1 has been described as follows:

Historically, *good cause* in the context of this statute means the moving party must demonstrate prejudice. *See Pittsburgh, Wheeling & Ky. R. Co. v. Applegate & Son*, 21 W. Va. 172 (1882). The *good cause* referred to in this section applies to situations where the judge is disqualified, *see Forest Coal Co. v. Doolittle*, 54 W. Va. 210, 46 S.E. 238 (1903); where an uninterested and unbiased jury cannot be found in the circuit where the suit was originally filed, *see Ingersoll v. Wilson*, 2 W. Va. 59 (1867); or where the clerk of the court is a party litigant. *See Hunter v. Beckley Newspapers Corp.*, 129 W. Va. 302, 40 S.E.2d 332 (1946).

*Id.* (emphasis in original).

Defendants have provided no good cause showing, as required under W. Va. Code § 56-9-1. They cannot claim that the Honorable Judge presiding over this case is disqualified. Moreover, finding an uninterested or unbiased jury would likely be easier in Kanawha County than in

Harrison, Ritchie, or Calhoun Counties, where potential jurors are more likely to personally know the parties. And finally, the Clerk of the Court is not a party litigant. Simply, there is no “good cause” in this case that triggers W. Va. Code § 56-9-1. Relief under that statute must be denied.

Moreover, the Supreme Court of Appeals has made clear that W. Va. Code § 56-9-1 does not apply when the prerequisites of W. Va. Code § 56-1-1(b) have been met:

W. Va. Code, 56-1-1(b) (1986), exclusively controls a transfer decision where its prerequisites have been met; namely, the forum selected is where the cause of action arose, and the defendant resides in another county and requests the case be transferred to that county.

Syl. Pt. 3, *State ex rel. Smith*, 193 W. Va. 1, 454 S.E.2d 46 (finding circuit court committed reversible error by applying W. Va. Code § 56-9-1 when cause of action arose out of forum county and no defendant resided there).

This case arises from Kanawha County, and the Defendants reside elsewhere. Therefore, W. Va. Code § 56-1-1(b) exclusively controls whether this case may be transferred, and W. Va. Code § 56-9-1, the statute under which Defendants seek relief, does not apply.

Even if Defendants had requested relief under W. Va. Code § 56-1-1(b), their request would be unsuccessful. By its plain text, W. Va. Code § 56-1-1(b) requires a showing that Harrison County “would better afford convenience to the parties litigant and the witnesses likely to be called, and [that] the ends of justice would be better served by the change of venue[.]” (brackets added). Here, all Defendants can show is that it would be more convenient for them to litigate this matter in Harrison County, which sets this case apart from no other case where the defendant is not a resident of the forum county. Moreover, the Defendants’ claimed inconvenience is made even more unremarkable and unconvincing by the fact that Ronald Lane, Inc., owns real estate in Kanawha County.

In any event, the sole unbiased potential witness that can testify on the intended interpretation and meaning of the Contract is in Kanawha County. Moving this case to Harrison County would inconvenience him, the potential witness, no less than any perceived inconvenience complained of by Defendants in the Motion. Accordingly, Defendants fail to make a showing that litigating this case in Harrison County would better convenience the parties *and* witnesses likely to be called. In addition, Defendants do not allege, much less provide support for the proposition that the ends of justice would be better served by moving this case to Harrison County.<sup>3</sup>

Finally, Defendants imply that the Court should pay no deference to Mr. Lane's choice of Kanawha County as the forum for litigating this dispute. Under West Virginia law, the plaintiff's choice of forum is relevant to a transfer analysis under W. Va. Code § 56-1-1(b), even if it is not the dispositive factor it once might have been. *State ex rel. Smith*, 193 W. Va. at 7 n.10, 454 S.E.2d at 52 n.10. And in interpreting the parallel federal transfer of venue statute, 28 U.S.C. § 1404, federal courts<sup>4</sup> have similarly noted that: "With regard to the question of change of venue, a district court is required to weigh the factors involved and '***unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.***'" *Collins v. Straight, Inc.*, 748 F.2d 916, 921 (4th Cir. 1984) (quoting *Gulf Oil v. Gilbert*, 330 U.S. 501, 508 (1946)) (emphasis added). Indeed: "There is ordinarily a strong presumption in favor of plaintiff's choice of forum. . . . ***A plaintiff's choice of forum is often the most important factor in a transfer of***

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<sup>3</sup> Elsewhere in their Brief, Defendants suggest that a jury view may be appropriate. Defs' Brief at 8. It is unclear whether this point was made to argue that transfer would better serve the ends of justice. However, just for the sake of argument, Defendants offer no reason why a jury view would be necessary regardless of where this case is litigated, in light of alternatives, such as a survey of the subject tract or visual aids.

<sup>4</sup> West Virginia traditionally gives substantial weight to federal decisions on matters of civil procedure. *Hardwood Grp. v. LaRocco*, 219 W. Va. 56, 61 n.6, 631 S.E.2d 614, 619 n.6 (2006). Indeed, "Our interpretation of W. Va. Code, 56-1-1(b) is similar to the analysis the United States Supreme Court gave 29 U.S.C. § 1404 (1948))." *State ex rel. Smith*, 193 W. Va. at 8, 454 S.E.2d at 53.

*venue analysis.” Accreditation Comm’n for Health Care, Inc. v. NextLOGIK, Inc.*, No. 5:20-CV-46-M, 2020 U.S. Dist. LEXIS 150579, at \*14-15 (E.D.N.C. Aug. 20, 2020) (emphasis added and quotations, citations, and brackets omitted) (rejecting defendant’s argument that case should be transferred because forum district has little connection with case).

W. Va. Code § 56-9-1 may not be used to transfer this case to Harrison County because Defendants cannot show the good cause required to invoke that statute. Moreover, discretionary transfer under any other statute is inappropriate. All Defendants can show is that it would better convenience them to litigate this case outside of this county, but they ignore the fact that litigating this case in Kanawha County would better convenience the sole unbiased potential witness that can testify on the interpretation and meaning of the Contract. The relief requested by Defendants must be denied.

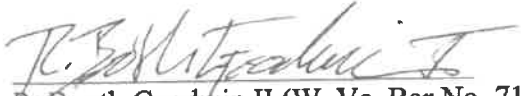
### **CONCLUSION**

Defendants request the Court to err in their favor by finding that this case does not arise from Kanawha County, when clear West Virginia case law establishes that it does. Moreover, transfer to Harrison County is not proper under any statute. Accordingly, the Honorable Court should deny the Motion.

Respectfully submitted,

**RONALD LANE**

By Counsel:



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*Counsel for Ronald Lane*

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

**RONALD LANE,**

**Plaintiff,**

**v.**

**Civil Action No.: 21-C-60  
Judge Tera L. Salango**

**CHRISTOPHER LANE,  
NORMAN LANE, and  
RONALD LANE, INC.,  
a West Virginia Corporation,**

**Defendants.**

**CERTIFICATE OF SERVICE**

I, R. Booth Goodwin, II, hereby certify that a true and exact copy of the foregoing **PLAINTIFF RONALD LANE'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS, or in the alternative, MOTION TO TRANSFER** has been served upon opposing counsel of record via electronic mail and U.S. Mail, postage prepaid this 25th day of March, 2021, as follows:

Daniel M. Taylor, Jr., Esq.  
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Morgantown, WV 26501  
*Counsel for Ronald Lane, Inc.*

A handwritten signature in dark ink, appearing to read "R. Booth Goodwin II", is written over a horizontal line.

R. Booth Goodwin II (W. Va. Bar No. 7165)  
GOODWIN & GOODWIN, LLP  
(304) 346-7000

**Exhibit A to:**

**Plaintiff Ronald Lane's Response to  
Defendant's Motion to Dismiss, or in  
the Alternative, Motion to Transfer**

**Kanawha County Sheriff's Tax Office****Kanawha County Real Property**

Tax Year: 2020  
 Ticket #: 0000061887  
 District: 15 - ELK

Account Number: 06310486  
 Taxpayer I.D.:

Property Owner	Property Description
RONALD LANE INC P O BOX 90 ARNOLDSBURG, WV 25234 Lending Institution:	1A NEWHOUSE BR Map/Parcel: 44 / 0065 0000 0000 Lot Size: Acreage: Book: 2496 Page: 0586

Tax Class: 3  
 Homestead Exemption: None  
 Back Tax: None  
 Exoneration: None  
 Prior Delinquents: None  
 Special Disposition: None

**ASSESSMENT:**

Assessment	GROSS	NET	TAX (1/2 Year)
Land	390	390	
Building	0	0	
Total	390	390	4.92

**DUE:** First Half: 4.96 If paid by: 10/31/2020 Second Half: 4.80 If paid by: 03/01/2021 Total Due: 9.76 If paid by: 10/31/2020

**PAYMENTS RECEIVED:**

	First Half	Second Half
Net	.00	.00
Discount	.00	.00
Interest	.00	.00
Total	.00	.00
Date	none paid	none paid

Please Remit Payment (if any) to: Kanawha County Sheriff's Tax Office  
 409 Virginia Street East  
 Room 120  
 Charleston, WV 25301

Or call (304) 357-0210 with questions.

# Kanawha County Sheriff's Tax Office

## Kanawha County Real Property



Tax Year: 2020  
Ticket #: 0000061885  
District: 15 - ELK

Account Number: 06310510  
Taxpayer I.D.:

Property Owner	Property Description
RONALD LANE INC P O BOX 90 ARNOLDSBURG, WV 25234 Lending Institution:	3A NEWHOUSE BR Map/Parcel: 44 / 0063 0000 0000 Lot Size:                      Acreage: Book: 2496                      Page: 0586

Tax Class: 3  
Homestead Exemption: None  
Back Tax: None  
Exoneration: None  
Prior Delinquents: None  
Special Disposition: None

### ASSESSMENT:

Assessment	GROSS	NET	TAX (1/2 Year)
Land	1100	1100	
Building	0	0	
Total	1100	1100	13.86

**DUE: First Half: 13.96 If paid by: 10/31/2020 Second Half: 13.51 If paid by: 03/01/2021 Total Due: 27.47 If paid by: 10/31/2020**

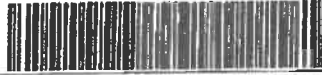
### PAYMENTS RECEIVED:

	First Half	Second Half
Net	.00	.00
Discount	.00	.00
Interest	.00	.00
Total	.00	.00
Date	none paid	none paid

Please Remit Payment (if any) to: Kanawha County Sheriff's Tax Office  
409 Virginia Street East  
Room 120  
Charleston, WV 25301  
Or call (304) 357-0210 with questions.

# Kanawha County Sheriff's Tax Office

## Kanawha County Real Property



Tax Year: 2020  
Ticket #: 0000061891  
District: 15 - ELK

Account Number: 06297651  
Taxpayer I.D.:

Property Owner	Property Description
RONALD LANE INC P O BOX 90 ARNOLDSBURG, WV 25234 Lending Institution:	2 29/100A NEW HOUSE BRANCH W S I-77 Map/Parcel: 44 / 0069 0000 0000 Lot Size: Acreage: Book: 2515 Page: 0618

Tax Class: 3  
Homestead Exemption: None  
Back Tax: None  
Exoneration: None  
Prior Delinquents: None  
Special Disposition: None

### ASSESSMENT:

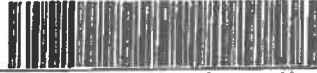
Assessment	GROSS	NET	TAX (1/2 Year)
Land	660	660	
Building	0	0	
Total	660	660	8.32

**DUE:** First Half: 8.38 If paid by: 10/31/2020 Second Half: 8.11 If paid by: 03/01/2021 Total Due: 16.49 If paid by: 10/31/2020

### PAYMENTS RECEIVED:

	First Half	Second Half
Net	.00	.00
Discount	.00	.00
Interest	.00	.00
Total	.00	.00
Date	none paid	none paid

Please Remit Payment (if any) to: Kanawha County Sheriff's Tax Office  
409 Virginia Street East  
Room 120  
Charleston, WV 25301  
Or call (304) 357-0210 with questions.

**Kanawha County Sheriff's Tax Office****Kanawha County Real Property**

Tax Year: 2020  
 Ticket #: 0000061884  
 District: 15 - ELK

Account Number: 06268193  
 Taxpayer I.D.:

Property Owner	Property Description
RONALD LANE INC P O BOX 90 ARNOLDSBURG, WV 25234 Lending Institution:	4-5/10A NEWHOUSE BR SW SIDE I-77 Map/Parcel: 44 / 0061 0000 0000 Lot Size: Acreage: Book: 2496 Page: 0584

Tax Class: 3  
 Homestead Exemption: None  
 Back Tax: None  
 Exoneration: None  
 Prior Delinquents: None  
 Special Disposition: None

**ASSESSMENT:**

Assessment	GROSS	NET	TAX (1/2 Year)
Land	1600	1600	
Building	0	0	
Total	1600	1600	20.16

**DUE: First Half: 20.31 If paid by: 10/31/2020 Second Half: 19.66 If paid by: 03/01/2021 Total Due: 39.97 If paid by: 10/31/2020**

**PAYMENTS RECEIVED:**

	First Half	Second Half
Net	.00	.00
Discount	.00	.00
Interest	.00	.00
Total	.00	.00
Date	none paid	none paid

Please Remit Payment (if any) to: Kanawha County Sheriff's Tax Office  
 409 Virginia Street East  
 Room 120  
 Charleston, WV 25301  
 Or call (304) 357-0210 with questions.

# Kanawha County Sheriff's Tax Office

## Kanawha County Real Property



Tax Year: 2020  
Ticket #: 0000061892  
District: 15 - ELK

Account Number: 06250541  
Taxpayer I.D.:

Property Owner	Property Description
RONALD LANE INC P O BOX 90 ARNOLADSBURG, WV 25234 Lending Institution:	37A M/L PT TRACT 2 NEWHOUSE BRANCH Map/Parcel: 44 / 0071 0000 0000 Lot Size: Acreage: Book: 2515 Page: 0622

Tax Class: 3  
Homestead Exemption: None  
Back Tax: None  
Exoneration: None  
Prior Delinquents: None  
Special Disposition: None

### ASSESSMENT:

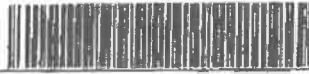
Assessment	GROSS	NET	TAX (1/2 Year)
Land	7040	7040	
Building	0	0	
Total	7040	7040	88.69

**DUE:** First Half: 89.36 If paid by: 10/31/2020 Second Half: 86.47 If paid by: 03/01/2021 Total Due: 175.83 If paid by: 10/31/2021

### PAYMENTS RECEIVED:

	First Half	Second Half
Net	.00	.00
Discount	.00	.00
Interest	.00	.00
Total	.00	.00
Date	none paid	none paid

Please Remit Payment (if any) to: Kanawha County Sheriff's Tax Office  
409 Virginia Street East  
Room 120  
Charleston, WV 25301  
Or call (304) 357-0210 with questions.

**Kanawha County Sheriff's Tax Office****Kanawha County Personal Property**

Tax Year: 2020  
 Ticket #: 0000334922  
 District: 15 - ELK

Account Number: 03759547  
 Taxpayer I.D.:

Property Owner	Property Description
RONALD LANE INC RESERVE O & G RI P O BOX 90 ARNOLDSBURG, WV 25234	00 1818 5985 9050 00 1818 6003 8303 00 1818 6004 5748 00 1818 5986 2492

Homestead Exemption: None  
 Back Tax: None  
 Exoneration: None  
 Prior Delinquents: None  
 Special Disposition: None

**ASSESSMENT:**

Assessment	GROSS	NET	TAX (1/2 Year)
Class 1	0	0	.00
Class 2	0	0	.00
Class 3	25594	25594	322.44
Total	25594	25594	322.44

**DUE:** First Half: 324.86 If paid by: 10/31/2020 Second Half: 314.38 If paid by: 03/01/2021 Total Due: 639.24 If paid by: 10/31/2020

**PAYMENTS RECEIVED:**

	First Half	Second Half
Net	.00	.00
Discount	.00	.00
Interest	.00	.00
Total	.00	.00
Date	none paid	none paid

Please Remit Payment (if any) to: Kanawha County Sheriff's Tax Office  
 409 Virginia Street East  
 Room 120  
 Charleston, WV 25301  
 Or call (304) 357-0210 with questions.

Exhibit A

**Copies of  
Trial Court Rule 6.04  
Legal Authorities Cited in:**

**Plaintiff Ronald Lane's Response to  
Defendant's Motion to Dismiss, or in  
the Alternative, Motion to Transfer**

**Accreditation Comm'n for Health Care, Inc. v. NextLOGiK, Inc.**

United States District Court for the Eastern District of North Carolina, Western Division

August 20, 2020, Decided; August 20, 2020, Filed

Case No. 5:20-CV-46-M

**Reporter**

2020 U.S. Dist. LEXIS 150579 \*; 2020 WL 4913280

ACCREDITATION COMMISSION FOR HEALTH CARE,  
INC., Plaintiff, v. NEXTLOGiK, INC., Defendant.

**Prior History:** Accreditation Comm'n for Health Care,  
Inc. v. NextLOGiK, Inc., 2020 U.S. Dist. LEXIS 87800  
(E.D.N.C., May 19, 2020)

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**Judges:** RICHARD E. MYERS II, UNITED STATES  
DISTRICT JUDGE.

**Opinion by:** RICHARD E. MYERS II

## **Opinion**

### **OPINION AND ORDER**

This matter is before the Court on Defendant  
NextLOGiK, Inc.'s "Motion to Dismiss or, in the  
alternative, Motion to Transfer Venue." [DE-31 (the

"Motion").] Defendant invokes *forum non conveniens*,  
Federal Rule of Civil Procedure 12(b)(3), 28 U.S.C. §  
1406(a), and 28 U.S.C. § 1404(a) in support of its  
Motion, arguing that venue is proper and more  
convenient in the United States District Court for the  
District of Maryland and dismissal or transfer is  
warranted. For the reasons set forth below, dismissal is  
not warranted and the Court, in its discretion, declines to  
transfer the case to the District of Maryland. The Motion  
is DENIED.

#### **I. Factual Background**

The facts alleged in the pleadings and the parties'  
declarations may be summarized as follows. [See DE-  
19 ("Amended Complaint" or "AC"); DE-32-2 (Def.'s  
Dec. [\*2] of Ed Mooers); DE-50 (Pl.'s Dec. of Jillian  
Piccicuto); DE-51 (Pl.'s Dec. of Jose Domingos); DE-52  
(Pl.'s Dec. of Robert Gardner).]<sup>1</sup>

Plaintiff Accreditation Commission for Health Care, Inc.  
("ACHC" or "Plaintiff") is a non-profit accreditation  
service provider incorporated under the laws of North  
Carolina with its principal office located in Cary, North  
Carolina. [AC ¶ 8.] Defendant NextLOGiK, Inc.  
("NextLOGiK" or "Defendant") is a software-technology  
company incorporated in Maryland with its principal  
office in Columbia, Maryland. [AC ¶ 9; DE-32 at 2.] In  
September 2017, Plaintiff contracted with Defendant to  
develop, provide, and service a customized  
management software system to support Plaintiff's  
accreditation and business operations, including in this  
District. [AC ¶ 2; DE-49 at 13.]

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<sup>1</sup>The Court may consider evidence outside the pleadings  
when considering the instant Motion. See, e.g., Aggarao v.  
MOL Ship Mgmt. Co., 675 F.3d 355, 366 (4th Cir. 2012) ("On  
a motion to dismiss under Rule 12(b)(3), the court is permitted  
to consider evidence outside the pleadings." (citation  
omitted)); Mitchell v. Norfolk S. Ry. Co., No. 2:15CV00002,  
2015 U.S. Dist. LEXIS 120417, 2015 WL 5285827, at \*1 n.2  
(W.D. Va. Sept. 8, 2015) ("When reviewing a motion to  
transfer under § 1404(a), the court may consider evidence  
outside the pleadings.").

### A. Requests for Proposal and Contract Execution

In early 2017, Plaintiff issued a request for proposals ("RFP"), seeking vendors which could develop new management software for its business. [AC ¶ 21.] Defendant responded, and on or about April 24, 2017, representatives of NextLOGiK traveled to ACHC's Cary offices to discuss the RFP. [AC ¶ 22-23.] In May 2017, [\*3] Plaintiff selected Defendant as the 'winner' of the RFP process. [AC ¶ 26.] Thereafter, the parties negotiated a contract; NextLOGiK's then-CEO signed the contract on September 5, 2017, and Plaintiff's then-Vice President of Finance and Operations executed the contract from Plaintiff's Cary offices on September 11, 2017. [AC ¶¶ 26-27.] The contract included a provision whereby the parties agreed that any dispute involving the contract "be governed by and construed in accordance with the laws of the State of Maryland." [DE-32 at 5; DE-32-1 at § 11.6.]

### B. Performance of the Contract

The contract described a cooperative development process and provided that the parties would meet and discuss Plaintiff's needs so that Defendant could develop an effective software tailored to Plaintiff's business operations. [AC ¶ 31.] The parties agreed that Plaintiff could use the software and that Defendant would support Plaintiff's use thereof for a term of eight years, with three one-year renewal options. [AC ¶¶ 29, 35.]

Between October 2017 and October 2019, representatives of NextLOGiK visited ACHC's Cary offices approximately ten times to meet with Plaintiff's representatives and perform work on the contract, [\*4] and ACHC visited NextLOGiK's Maryland offices once. [DE-49 at 6-7; DE-50; DE-52.] Plaintiff estimates that its employees, based in Cary, North Carolina, spent approximately 2,000 hours working on the contract between September 2017 and February 2020. [DE-49 at 6; DE-50 ¶ 12.] Defendant states that its portion of the contract performance and software development occurred at its Maryland offices, and that the software was stored on servers in Baltimore, Maryland. [DE-32 at 3-4.]

Plaintiff alleges that Defendant missed a series of performance deadlines and provided an incomplete and unsatisfactory software product. On December 27, 2019, Plaintiff sent Defendant a Notice of Breach, describing Defendant's alleged material breaches and giving Defendant thirty days to cure the same. [AC ¶ 109-10.] Defendant allegedly failed to cure the noted

breaches within the thirty-day period, and Plaintiff initiated this action on February 6, 2020. [AC ¶ 111.]

### II. Motion to Dismiss

In the portion of Defendant's Motion seeking dismissal, Defendant *cites forum non conveniens*, Federal Rule of Civil Procedure 12(b)(3), and 28 U.S.C. § 1406(a). The Court addresses each in turn.

#### A. *Forum Non Conveniens*

Defendant first cites the general proposition that "[t]he doctrine of [\*5] *forum non conveniens* permits a court to dismiss an action over which it has jurisdiction when there is an adequate alternative forum in which the case can be more conveniently heard," and argues that the federal district court in Maryland is a more convenient alternative forum. [DE-32 at 7.]

But, the doctrine of *forum non conveniens* does not apply where, like here, a party seeks to transfer a case from one federal district court to another federal district court. "The common-law doctrine of *forum non conveniens* has continuing application [in federal courts] only in cases where the alternative forum is abroad, and perhaps in rare instances where a state or territorial court serves litigational convenience best." Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 430, 127 S. Ct. 1184, 167 L. Ed. 2d 15 (2007) (brackets in original) (citations and internal quotation marks omitted); see also Deb v. SIRVA, Inc., 832 F.3d 800, 805 (7th Cir. 2016) ("Today, the doctrine applies in the federal courts only when the other jurisdiction is a foreign one." (footnote omitted)). Defendant's Motion does not refer to any state or foreign forum; instead, Defendant refers only to transfer to the United States District Court for the District of Maryland, and the Court declines to read any other request into the Motion. [See, e.g., DE-32 at 1 ("to the [\*6] United States District Court for the District of Maryland, Northern Division"), 7 ("transfer to the United States District Court for the District of Maryland"), 9 ("justify transfer to the District of Maryland"), 11 ("District of Maryland").] Instead, transfers between two federal courts are accomplished through the federal transfer statute, 28 U.S.C. § 1404, which Defendant also invokes here. See Sinochem Int'l Co., 549 U.S. at 430 ("For the federal court system, Congress has codified the doctrine and has provided for transfer, rather than dismissal, when a sister federal court is the more convenient place for trial of the action." (citing 28 U.S.C. § 1404(a))). Defendant's attempt to seek this relief through *forum non conveniens* is denied as improper.

B. Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a)

Defendant next invokes Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406(a), arguing that venue is proper in the District of Maryland and that the Court should transfer the matter under § 1406(a) because the location of key witnesses and evidence "constitutes an impediment to a decision on the merits in the transferor district but would not be an impediment in the transferee district." [DE-32 at 8 (citing Porter v. Groat, 840 F.2d 255, 257-58 (4th Cir. 1988)); see also *id.* at 11.]

1. Legal Standard

Discussion of Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406(a), however, is incomplete without reference to the applicable venue statute, here, 28 U.S.C. § 1391(b), the general federal [\*7] venue statute.<sup>2</sup> These provisions provide a tripartite framework through which courts may determine whether venue is wrong or improper and whether dismissal or transfer is required. First, Fed. R. Civ. P. 12(b)(3) permits a litigant to move for dismissal when venue is "improper"; second, and similarly, § 1406(a) states that where "venue [is] in the wrong division or district" the court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought"; finally, § 1391(b), the general federal venue statute, establishes where venue is proper. In other words, Rule 12(b)(3) and § 1406(a) provide for the dismissal or transfer of an action when venue is "wrong," see § 1406(a), or "improper," see Rule 12(b)(3), and whether venue is wrong or improper is determined by the applicable federal venue statute, here, § 1391(b).

The Supreme Court, in *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, described this framework:

Section 1406(a) and Rule 12(b)(3) allow dismissal only when venue is 'wrong' or improper.' Whether venue is 'wrong' or 'improper' depends exclusively on whether the court in which the case was brought satisfies the requirements of federal venue laws . . . . This question—whether venue is 'wrong' or

'improper'—is [\*8] generally governed by 28 U.S.C. § 1391. . . . When venue is challenged, the court must determine whether the case falls within one of the three categories set out in § 1391(b). If it does, venue is proper; if it does not, venue is improper, and the case must be dismissed or transferred under § 1406(a).

571 U.S. 49, 55, 134 S. Ct. 568, 187 L. Ed. 2d 487 (2013) (footnotes omitted). Where the requirements of the federal venue statute, § 1391(b), are satisfied, dismissal pursuant to Rule 12(b)(3) and § 1406(a) is not warranted; if, instead, the venue requirements are not met, transfer or dismissal is required. See, e.g., WCC Cable Inc. v. G4S Tech. LLC, No. 5:17-CV-00052, 2017 U.S. Dist. LEXIS 208728, 2017 WL 6503142, at \*5 (W.D. Va. Dec. 15, 2017) ("A court may only invoke Section 1406(a) when venue is 'wrong' under Section 1391(b)—that is, a district other than those districts in which Congress has provided by its venue statutes that the action may be brought." (citing *Atl. Marine*, 571 U.S. at 58) (internal quotation marks omitted)); S. Coal Corp. v. IEG PTY, Ltd., No. 2:14CV617, 2016 U.S. Dist. LEXIS 24853, 2016 WL 8735622, at \*2 (E.D. Va. Feb. 26, 2016) ("According to the Supreme Court, the proper analysis to when venue is challenged for dismissal is to look only to whether the case falls within one of the categories of § 1391(b) only." (citing *Atl. Marine*, 571 U.S. at 55-56)). § 1391(b), in turn, provides that venue is proper in:

- (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is [\*9] located;
- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
- (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

"In [the Fourth] [C]ircuit, when venue is challenged by a motion to dismiss, the plaintiff bears the burden of establishing that venue is proper." SAMI-Systematic Analysis Mgmt. Inc. v. Omnivore Acquisitions, LLC, No. CV RDB-19-2904, 2020 U.S. Dist. LEXIS 65273, 2020 WL 1863292, at \*2 (D. Md. Apr. 14, 2020) (citation and internal quotation marks omitted). "Like a motion to dismiss . . . in deciding a motion to dismiss [for improper venue], all inferences must be drawn in favor of the

<sup>2</sup>"Section 1391 governs 'venue generally,' that is, in cases where a more specific venue provision does not apply. Cf., e.g., § 1400 (identifying proper venue for copyright and patent suits)." *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49, 55 n.2, 134 S. Ct. 568, 187 L. Ed. 2d 487 (2013).

plaintiff, and the facts must be viewed as the plaintiff most strongly can plead them." *Id.* (citation and internal quotation marks omitted). "A plaintiff need only make a prima facie showing of proper venue in order to defeat a motion to dismiss." *ARCpoint Fin. Grp., LLC v. Blue Eyed Bull Inv. Corp.*, No. 6:18-CV-00235-AMQ, 2018 U.S. Dist. LEXIS 101528, 2018 WL 2971205, at \*2 (D.S.C. June 13, 2018) (citation omitted); see also *Roy v. Home Depot, U.S.A., Inc.*, No. 7:17-CV-239-BO, 2018 U.S. Dist. LEXIS 237619, 2018 WL 6588514, at \*2 (E.D.N.C. July 20, 2018) [\*10] ("plaintiff must make a prima facie showing of jurisdictional basis" (citation omitted)).

## 2. Analysis

Plaintiff asserts that it has carried its burden at this stage because (1) pursuant to § 1391(b)(2), a substantial part of the events occurred in this District and (2) pursuant to § 1391(b)(1), Defendant is a resident of this judicial district, and venue is, therefore, proper. [DE-49 at 9.] Defendant does not address whether venue is improper in this District, but, instead, simply argues that venue is also proper in the District of Maryland.

Plaintiff argues that a substantial part of the events occurred in this district, and the Court agrees. In determining where substantial events or omissions occurred, "a court should not focus only on those matters that are in dispute or that directly led to the filing of the action. Rather, it should review the entire sequence of events underlying the claim." *Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004) (citations omitted). Here, Plaintiff states that its only offices are in this District, that the RFPs were drafted in this District, that Defendant visited the District to solicit the contract, that the operative contract was executed in this District, that Plaintiff's employees [\*11] spent thousands of hours in this District working on tasks related to the contract, that Defendant's representatives visited Plaintiff's Cary offices eleven times pursuant to the contract, that the software at issue was to be used by Plaintiff to manage its operations in this District, and that the parties contemplated that Defendant would provide ongoing support to Plaintiff in this District. This is a sufficient prima facie showing to establish proper venue and defeat the motion to dismiss. Cf. *AC Controls Co., Inc. v. Pomeroy Computer Res., Inc.*, 284 F. Supp. 2d 357, 358-59 (W.D.N.C. 2003) (holding a "substantial part of the events giving rise to this dispute occurred in Charlotte, North Carolina" where "Plaintiff . . . a North Carolina corporation, placed an order . . . to purchase

an eBusiness Suite of software from Defendant" and an additional defendant was hired to "provide [plaintiff] with consulting services to implement the software"); *Hardee's Food Sys., Inc. v. Rosenblatt*, 44 F. Supp. 2d 767, 770 (E.D.N.C. 1998) (finding venue was proper where "[t]he license agreements in question took effect upon their acceptance and execution by Hardee's in North Carolina. The omissions which are the focus of this case are Defendants' alleged failures to pay certain fees into Hardee's Treasury Department in Rocky Mount, North Carolina."). Defendant has provided [\*12] no argument to the contrary. Because Plaintiff has satisfied its burden of establishing venue under § 1391(b)(2), the Court need not address Plaintiff's arguments concerning § 1391(b)(1).<sup>3</sup>

Instead, Defendant argues that "[a]ssuming, *arguendo*,

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<sup>3</sup> Were this Court to consider whether venue has also been established under § 1391(b)(1) because Defendant is a resident of this District, it would also likely find venue proper. Under § 1391(b)(1), a corporate defendant is "deemed to reside" in "any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question." § 1391(b)(1), (c)(2); see also *Roy*, 2018 U.S. Dist. LEXIS 237619, 2018 WL 6588514, at \*1. Here, Defendant appears to have waived any objection to personal jurisdiction by failing to raise it in the instant Motion. See *Safety Equip. Inst. v. Signature Lacrosse, LLC*, 438 F. Supp. 3d 685, 688 (E.D. Va. 2020) ("a defendant may not rely on an objection to improper venue under Rule 12(b)(3) to advance and thereby preserve an objection to personal jurisdiction under Rule 12(b)(2)"); *ABC Phones of N. Carolina, Inc. v. Yahyavi*, No. 5:20-CV-0090-BR, 2020 U.S. Dist. LEXIS 128867, 2020 WL 4208923, at \*2 (E.D.N.C. July 22, 2020) ("A party waives its personal jurisdiction defense if it does not raise it at the time it files a Rule 12 motion or an answer, whichever is first."). Because Defendant has apparently waived its defense of personal jurisdiction, the Defendant has consequently "ipso facto consented to venue under § 1391(b)(1)". It is, after all, "subject to personal jurisdiction with respect to the civil action in question." 14D Wright & Miller, Fed. Prac. & Proc. Juris. § 3811.1 (4th ed.) (footnote omitted); see also *Duke Energy Indus. Sales, LLC v. Massey Coal Sales Co.*, No. 5:11-CV-00092, 2011 U.S. Dist. LEXIS 116059, 2011 WL 4744907, at \*2 (S.D.W. Va. Oct. 7, 2011) (finding that where defendant waived defense of personal jurisdiction, venue was also proper under § 1391(b)(1)); *Dakota Provisions, LLC v. Hillshire Brands Co.*, 226 F. Supp. 3d 945, 960 (D.S.D. 2016) (same); but see *Powell v. Monarch Recovery Mgmt., Inc.*, No. 15-CV-2162 (MKB), 2016 U.S. Dist. LEXIS 7728, 2016 WL 8711210, at \*2-3 (E.D.N.Y. Jan. 22, 2016) (declining to find venue proper under § 1391(b)(1) where defendant had waived defense of personal jurisdiction).

venue is proper, the Fourth Circuit has held that transfers can be made pursuant to 28 U.S.C. § 1406(a) when there is "an impediment to a decision on the merits in the transferor district but [] not . . . in the transferee district." [DE-32 at 8 (citing Porter, 840 F.2d at 257-58).] In Porter v. Groat, the Fourth Circuit interpreted the text of § 1406(a)—"wrong division or district"—broadly and held that, even where venue is otherwise proper, "§ 1406(a) [] authorizes the transfer of a case to any district, which would have had venue if the case were originally brought there, for any reason which constitutes an impediment to a decision on the merits in the transferor district but would not be an impediment in the transferee district." 840 F.2d at 258 (emphasis added); see also Taylor v. City & Cty. of Honolulu, No. 7:16-CV-410-D, 2017 U.S. Dist. LEXIS 130196, 2017 WL 3526660, at \*4 (E.D.N.C. Aug. 16, 2017) ("Even if venue is proper in the transferor court, transfer may be made under section 1406(a) for any reason which [\*13] constitutes an impediment to a decision on the merits." (citing, *inter alia*, Porter, 840 F.2d at 257-58)).

Defendant cites Porter and argues that "[t]he location of key witnesses" and evidence in the District of Maryland constitute such an impediment. [DE-32 at 8.] However, the sort of "impediment[s] to a decision on the merits" Porter implicates—including statute of limitations issues, Porter, 840 F.2d at 258, or lack of personal jurisdiction, Binks v. Collier, No. DKC 19-0732, 2020 U.S. Dist. LEXIS 14771, 2020 WL 4333862, at \*3 (D. Md. Jan. 28, 2020)—are not present here. Rather, Defendant cites purported difficulties based on the location of evidence and witnesses, a consideration more properly before the Court in a motion to transfer venue under the federal transfer statute, § 1404(a). See § 1404(a) ("For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought. . . .").

### III. Motion to Transfer

The crux of Defendant's Motion is that the Court, in its discretion, should transfer the case to the District of Maryland pursuant to 28 U.S.C. § 1404(a). [DE-32 at 12-27.] Because the transfer would, at most, "simply shift the inconvenience from one party to another," the motion to transfer is denied. See Elec. Sys. Prot. Inc. v. Innovolt, Inc., No. 5:09-CV-464-FL, 2010 U.S. Dist. LEXIS 70942, 2010 WL 2813503, at \*2 (E.D.N.C. July 14, 2010) [\*14] (citation omitted).

#### A. Legal Standard

28 U.S.C. § 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." § 1404(a). District courts in the Fourth Circuit consider four factors when deciding whether a change of venue is warranted: "(1) the weight accorded to plaintiff's choice of venue; (2) witness convenience and access; (3) convenience of the parties; and (4) the interest of justice." Trustees of the Plumbers & Pipefitters Nat'l Pension Fund v. Plumbing Servs., Inc., 791 F.3d 436, 444 (4th Cir. 2015). "As a court considers such factors, it is mindful that the ultimate decision of whether transfer is appropriate is not reached by cataloguing the weighted result of each factor, but rather is within the 'art of judging.'" Golden Corral Franchising Sys., Inc. v. GC of Vineland, LLC, No. 5:19-CV-255-BO, 2020 U.S. Dist. LEXIS 45887, 2020 WL 1312863, at \*2 (E.D.N.C. Mar. 17, 2020) (citation omitted).

#### B. Analysis

Defendant has raised serious arguments in favor of transfer, but, in light of the weight accorded to Plaintiff's choice of forum, the Court finds that the case should be retained in this District.

##### 1. Plaintiff's Choice of Forum

"[T]here is ordinarily [\*15] a strong presumption in favor of plaintiff's choice of forum." Bourne v. McNealy-Minor, No. 7:19-CV-236-FL, 2020 U.S. Dist. LEXIS 53641, 2020 WL 1491549, at \*5 (E.D.N.C. Mar. 27, 2020) (citations and internal quotation mark omitted). "A 'plaintiff's choice of forum is often the most important factor in a transfer of venue analysis.'" Hunter v. Mountain Commerce Bank, No. 1:15cv1050, 2016 U.S. Dist. LEXIS 132923, 2016 WL 5415761, at \* 11 (M.D.N.C. Sept. 28, 2016) (citation omitted).

Defendant argues that Plaintiff should not be afforded the strong presumption in favor of its choice of forum because this District has "little connection with the operative facts of the lawsuit" and Maryland "has a stronger relationship to the dispute or operative facts." [DE-32 at 14 (citations omitted).] But, the facts alleged are as significantly connected to the District of Maryland as they are to the Eastern District of North Carolina: Defendant's main office is located in Maryland—Plaintiff's is located in Cary, North Carolina; Defendant developed the software predominantly in Maryland—Plaintiff dedicated over 2,000 hours of employee time to tasks in connection with the contract in this District;

Defendant's representatives visited Plaintiff's office in Cary eleven times, including the initial solicitation meeting—Plaintiff's representatives visited Defendant's [\*16] office in Maryland once; and the ultimate goal of the project was the production of a custom software for use in this District. "[T]he plaintiff's initial choice of forum is entitled to deference and 'should rarely be disturbed.'" *WPB Partners, LLC v. Old Republic Nat. Title Ins. Co.*, No. 5:12-CV-132-F, 2013 U.S. Dist. LEXIS 21283, 2013 WL 395112, at \*4 (E.D.N.C. Jan. 31, 2013) (citations omitted); see also *Longo v. Trojan Horse Ltd.*, 992 F. Supp. 2d 612, 619 (E.D.N.C. 2014) ("The Court is also mindful that 'a plaintiff's choice of forum is a paramount consideration . . . that . . . should not be lightly disturbed.'" (citation omitted)). Defendant has provided no compelling reason to retreat from that deference.

## 2. Witness Convenience and Access and Convenience of the Parties

The Court jointly addresses witness convenience and access and the convenience of the parties and finds that they are neutral considerations here. Defendant argues these interests would be served by transfer because Defendant intends to rely on non-party witnesses based in Maryland that are beyond this Court's subpoena power, its party witnesses all reside in Maryland, and key documentary evidence is in Maryland. [DE-32 at 15-19.]

First, a barebone assertion that Defendant has non-party witnesses present in Maryland does not support transfer. Instead, Defendant [\*17] must identify the specific non-party witnesses, "demonstrate 'whether th[ose] witness[es] [are] willing to travel to a foreign jurisdiction,'" *Samsung Elecs. Co. v. Rambus, Inc.*, 386 F. Supp. 2d 708, 719 (E.D. Va. 2005) (citation omitted), and proffer details concerning the materiality of any non-party testimony, *Elec. Sys. Prot. Inc.*, 2010 U.S. Dist. LEXIS 70942, 2010 WL 2813503, at \*2 ("The lack of such a proffer makes a comparison of 'key witnesses' residing in the different forums difficult" (citations omitted)). See also *Triangle Grading & Paving, Inc. v. Rhino Servs., LLC*, No. 1:19CV486, 2020 U.S. Dist. LEXIS 76121, 2020 WL 2086188, at \*19 (M.D.N.C. Apr. 30, 2020) ("To carry its burden the moving party must demonstrate whether its witnesses are willing to travel to a foreign jurisdiction. . . . Though Defendants contend, not unreasonably, that more witnesses are located in Georgia, they do not offer the court a specific example of any Georgia witness who is unwilling to travel to North Carolina. The [] factor, therefore, weighs in favor of denying the motion." (citation and internal

quotation marks omitted)). Defendant has generally identified the non-party witnesses as "former employee[s]" who may "address a variety of issues, including allegations that the additional work" was necessary [DE-32 at 4, 17], but Defendant does not indicate whether those witnesses would be unwilling to appear voluntarily [\*18] in this District [DE-32 at 16-17] nor does Defendant discuss the materiality of any specific testimony, particularly in light of the fact that Defendant's current employees who worked on the software at issue could presumably testify to the same facts concerning its development [DE-32-2 ¶ 23 ("The substantial majority of the Software Product design and licensing team was composed of approximately sixteen (16) NextLOGiK full-time employees . . . some of whom are former employees" (emphasis added))]. Given the limited extent of Defendant's showing, the presence of non-party witnesses in Maryland does not tip the scale in favor of transfer.

Second, concerning party witnesses and the convenience of the parties, while Defendant is certainly correct that transfer to the District of Maryland would be more convenient for it and its own party witnesses, it would be equally inconvenient for Plaintiff and Plaintiff's party witnesses, all of whom work or reside in this District. [DE-49 at 8 ("All of ACHC's key party witnesses work at its offices in this District.")]; see *Nuvotronics, LLC v. Luxtera, Inc.*, No. 7:13CV00478, 2014 U.S. Dist. LEXIS 46169, 2014 WL 1329445, at \*5 (W.D. Va. Apr. 2, 2014) (declining to transfer under § 1404(a) and finding that, absent more, transfer [\*19] would "merely shift[] the balance of inconvenience to the plaintiff where one defendant had its "headquarters, operations, and employees" and the other defendant had "a satellite office" and a "sales office" in the proposed transferee district, but plaintiff's "principal place of business and relevant records" were in the Western District of Virginia).

Finally, Defendant argues that all of the key documentary evidence, including the software product at issue, is in Maryland, and therefore transfer is appropriate. [DE-32 at 15-16.] However, Plaintiff asserts that it, too, "possesses material documentary evidence in this District" and that, in any event, the location of such evidence is unimportant because it is electronic and easily transferable. [DE-49 at 21.] Defendant concedes that at least some of the relevant information, stored on its servers in Maryland, is electronically transferable. [DE-32 at 16 ("assuming, *arguendo*, NextLOGiK possesses [Plaintiff's] proprietary information, all information is stored on NextLOGiK's

Maryland site server and can be electronically transmitted to ACHC from the Maryland site."); 3-4 ("Software product-at-issue . . . stored on NextLOGiK servers located [\*20] in Baltimore, Maryland.").] Without more, the Court is unable to determine which party has (and which district contains) relatively more material evidence and witnesses. Further, much of the documentary evidence—including the software at issue and information provided between the two parties—appears to be electronic and transferable. See Abbot Grp., LLC v. Hobie Cat Co., No. 107CV156, 2007 U.S. Dist. LEXIS 46829, 2007 WL 1853413, at \*3 (W.D.N.C. June 26, 2007) ("[T]he court finds this factor to be neutral inasmuch as electronically stored data is just as accessible in Asheville, North Carolina, as it would be in Oceanside, California."). The location of evidence does not alter the balance in favor of transfer.

### 3. Interest of Justice

Defendant's most compelling argument is that because the contract at issue contains a Maryland choice-of-law provision, the case should be transferred to the District of Maryland, a court more familiar with the governing law. [DE-32 at 24.] The presence of a choice-of-law clause is, at most, a factor weighing in favor of transfer. See Hunter, 2016 U.S. Dist. LEXIS 132923, 2016 WL 5415761, at \* 11 ("A choice-of-law clause alone, however, is insufficient to justify a transfer of venue"). But, there is no reason this Court cannot apply Maryland contract law to the instant case. See JTH Tax, Inc. v. Lee, 482 F. Supp. 2d 731, 739 (E.D. Va. 2007) (holding, on a § 1404(a) motion to transfer, that even if state law [\*21] of proposed transferee court applied to the dispute, "the interest of justice does not weigh in favor of transfer" because "[t]his court can familiarize itself with either Illinois or Iowa law, if it is required to do so. As previously stated by this court, '[t]he nature of federal practice requires the Court to routinely interpret laws from jurisdictions across the nation.'" (citation omitted)). The presence of a choice-of-law provision weighs in favor of transfer.<sup>4</sup>

<sup>4</sup> Defendant makes a few additional arguments, none of which weigh in favor of transfer. For example, Defendant cites statistics showing that at the end of 2019 the time to disposition for civil cases in the District of Maryland was 1.2 months shorter than in the Eastern District of North Carolina and argues that the interest of justice would be served by a quicker resolution of this matter there. [DE-32 at 20.] But, more recent data, as of June 30, 2020, has shown a significant decrease in the difference between times to disposition in the district courts at issue—to 0.1 months. See

### 4. Defendant has Failed to Overcome the Presumption in Favor of Plaintiff's Choice of Forum

In sum, Plaintiff's choice of forum weighs in favor of retaining the matter in this District, the convenience and access of the witnesses and parties is neutral, and the presence of a choice-of-law provision weighs in favor of transfer. The ultimate question thus becomes whether the choice-of-law provision—favoring transfer—overcomes Plaintiff's choice of forum—favoring retention. In light of the strong presumption in favor of Plaintiff's choice of forum, it does not. Cf. Hunter, 2016 U.S. Dist. LEXIS 132923, 2016 WL 5415761, at \*11 ("Therefore, while the choice-of-law provisions may weigh in favor of Defendants' motion, this is insufficient to overcome the presumption in favor [\*22] of Plaintiff's choice of forum."); Bourne, 2020 U.S. Dist. LEXIS 53641, 2020 WL 1491549, at \*6-7 (declining to transfer case and holding that "the potential application of California law weigh[s] in favor of transfer," but "alone" was "not sufficient to warrant relief"). The cases Defendant cites in support of its motion to transfer either involve a forum-selection clause, see e.g., Generation Cos., LLC v. Holiday Hospitality Franchising, LLC, No. 5:15-CV-220-FL, 2015 U.S. Dist. LEXIS 156680, 2015 WL 7306448 (E.D.N.C. Nov. 19, 2015), or contain other factors weighing in favor of transfer, see, e.g., Stokes v. Southeast Hotel Properties, 877 F. Supp. 986 (W.D.N.C. 1994) (*inter alia*, plaintiff moved to transfer and sources of proof were in transferee district), neither of which is present here. As a practical matter, a choice-of-law provision is not a forum-selection provision, which is instead "given controlling weight in all but the most exceptional cases." Vault, LLC v. Dell Inc., No. 1:18-CV-00633, 2019 U.S. Dist. LEXIS 1622, 2019 WL 113726, at \*3 (M.D.N.C. Jan. 4, 2019) (internal quotation marks omitted) (citing Atl. Marine, 571 U.S. at 59-60). Defendant did not bargain for a forum-selection clause, and the Court declines to enforce the choice-of-law provision as if it had.

United States Courts, Federal Court Management Statistics—Comparison Within Circuit (June 2020), [https://www.uscourts.gov/sites/default/files/data\\_tables/fcms\\_n\\_a\\_distcomparison0630.2020.pdf](https://www.uscourts.gov/sites/default/files/data_tables/fcms_n_a_distcomparison0630.2020.pdf). One court in our District recently denied an attempt to transfer a case citing docket congestion on the same basis. In Bourne, Judge Flanagan wrote: "As noted by plaintiff, the addition of a new colleague to the court's bench renders stale defendant's caseload statistics for this district. Defendant's suggestion that the court has not immediately benefitted from the presence of an additional district court judge is uninformed and unpersuasive." See Bourne, 2020 U.S. Dist. LEXIS 53641, 2020 WL 1491549, at \*6. This Court agrees.

2020 U.S. Dist. LEXIS 150579, \*22

IV. Conclusion

For the foregoing reasons, the Motion [DE-31] is  
DENIED.

SO ORDERED, this the 20th day of August, 2020

/s/ Richard E. Myers II

RICHARD E. MYERS II

UNITED STATES DISTRICT JUDGE

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End of Document

**Exhibit E to:**

**Joint Motion to Refer Cases to the  
Business Court Division**

Motion to Refer Exhibit E

CASE NO. 21-C-12

OPENED 1/15/2021

JUDGE... JUDGE THOMAS A. BEDELL

PLAINTIFF. RONALD LANE INC A WV CORP  
VS DEFENDANT. RONALD LANE

PRO ATTY.. STEPHEN G. HIGGINS  
DEF ATTY..

PAGE# DATE MEMORANDUM.....

00001 1/15/21 CCIS, Complaint w/exh, No Summons at this time. cls

CASE 21-C-60 KAYANNA PAGE 1  
RONALD LANE vs. CHRISTOPHER LANE

LINE	DATE	ACTION
1	01/20/21	# CASE INFO SHEET; COMPLAINT W/EXH; ISSUED SUM & 3 CPYS; P FEE;
2		RCPT 584598; \$245.00
3	02/03/21	# SUM W/ACCEPTANCE OF SERVICE (1/21/21 SP) AS TO RONALD LANE
4		INC
5	02/04/21	# CASE INFO SHEET; AND C W/COS
6	02/08/21	# SUM W/ACCEPTANCE OF SERVICE (1/21/21 SP) AS TO CHRISTOPHER
7		LANE
8	02/08/21	# SUM W/ACCEPTANCE OF SERVICE (1/21/21 SP) AS TO NORMAN LANE
9	02/22/21	# D'S MOT TO DIS OR ALTERNATIVE MOT TO TRANSFER; MEMO OF LAW
10		IN SUPP OF MOT W/EXH & COS
11	03/26/21	# P'S RESP TO D'S MOT TO DIS OR ALTERNATIVE MOT TO TRANSFER
12		W/EXH & COS

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

**RONALD LANE, INC.,  
a West Virginia corporation,  
CHRISTOPHER LANE, and  
NORMAN LANE,**

**Plaintiffs,**

**v.**

**Circuit Court of Harrison County  
Civil Action No. 21-C-12-2  
Hon. Thomas A. Bedell**

**RONALD LANE,**

**Defendant.**

---

**RONALD LANE,**

**Plaintiff,**

**v.**

**Kanawha County Circuit Court  
Civil Action No.: 21-C-60  
Judge Tera L. Salango**

**CHRISTOPHER LANE,  
NORMAN LANE, and  
RONALD LANE, INC.,  
a West Virginia Corporation,**

**Defendants.**

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## CERTIFICATE OF SERVICE

I hereby certify that I have served true and exact copies of the foregoing **JOINT MOTION TO REFER CASES TO THE BUSINESS COURT DIVISION** via hand delivery and/or U.S. Mail, this 30<sup>th</sup> day of March, 2021, addressed as follows:

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A handwritten signature in blue ink, reading "R. Beoth Goodwin, II". The signature is fluid and cursive, with a prominent "II" at the end.

R. Beoth Goodwin, II (W. Va. Bar No. 7165)

Goodwin & Goodwin, LLP

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