

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JPMORGAN CHASE BANK, N.A.,

Petitioner/Defendant,

v.

SCA Action No. 22-675
Civil Action No. 22-C-56
Circuit Court of Boone County
Judge Stacy L. Nowicki-Eldridge

TURNER EXCAVATING, INC.,

Respondent/Plaintiff,

v.

BLACKHAWK SUB, LLC,
1ST TRUST BANK, INC., and
JOHN DOE.

Respondents/Defendants.

PLAINTIFF'S MOTION IN OPPOSITION TO
REFER CASE TO BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules ("Trial Court Rules"), Turner Excavating, Inc., by counsel, Matthew M. Hatfield, hereby files *Plaintiff's Motion In Opposition To Refer Case To Business Court Division* ("Response Motion"). This case does not involve commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution (i.e., this case does not meet the criteria of "Business Litigation" as defined in Rule 29.04(a) of the Trial Court Rules). Rather, this is a simple, straight-forward dispute over Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) wherein the allegations against JPMorgan Chase Bank, N.A.

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(“Chase”) involve a claim for negligence and constructive fraud¹. Accordingly, the Boone County Circuit Court is more than capable of handling this matter and, therefore, defendant Chase Bank’s and defendant Trust Bank’s² motion to refer to the Business Court should be denied.

I. Business Court – Generally

According to the West Virginia Judiciary website (www.courtswv.gov), “[c]ases which have a high level of complexity, novel issues, or other issues requiring specialized treatment are likely to land on the Business Court docket if requested. The Business Court Judges recognize that business cases present matters that differ from other types of cases . . . ”. This case does not present a high level of complexity, novel issues or any other issue requiring specialized treatment. Additionally, this case does not differ from other types of cases typically heard by the Circuit Court Judges within this State. Rather, this case alleges “run of the mill” negligence and constructive fraud causes of action against defendants Chase and Trust and breach of contract, negligence and constructive fraud causes of action against defendant Blackhawk. There are, literally, thousands of cases heard by the Circuit Court Judges of this State on a yearly basis wherein the allegations, at least in part, involve breach of contract, negligence and constructive fraud. This case is no different and should be handled by the Boone County Circuit Court Judge.

II. Facts

Turner Excavating, Inc. (“Turner” and/or “plaintiff”) is a family owned and operated business located in Boone County, West Virginia wherein it provides excavating services to the

¹ Likewise, the allegations against defendant 1st Trust Bank, Inc. (defendant Trust Bank”) involve negligence and constructive fraud and the allegations against defendant Blackhawk Sub, LLC (“defendant Blackhawk”) involve breach of contract, negligence and constructive fraud as further explained below.

² Defendant Trust Bank filed a very brief motion “joining” defendant Chase Bank’s motion to refer to the Business Court. Defendant Trust bank did not raise any additional argument. Thus, this response is intended to address the position advanced by both defendants Chase and Trust Bank.

coal mining industry, among others. See the print-out from the West Virginia Secretary of State's Office attached as Exhibit 1 and the Complaint at paragraphs 1 and 12. On or about March 17, 2021, the plaintiff and defendant Blackhawk entered into a written agreement wherein the plaintiff agreed to provide excavating services to the said defendant at various coal mines in Boone County, West Virginia. Id. at paragraphs 11, 12 and 13. Defendant Blackhawk, in turn, agreed to pay the plaintiff for the services provided. Id. Thereafter, the plaintiff provided the excavating services as agreed upon on various dates through June, 2021, however, defendant Blackhawk did not pay all monies due for the said services rendered. Id. at paragraphs 11 and 14.

The plaintiff and defendant Blackhawk then entered into a Settlement Agreement wherein the said defendant agreed to pay the plaintiff in monthly installments in the amount of Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) until the amount owed was paid in full. Id. at paragraph 15. Defendant Blackhawk did not make the initial installment payment to the plaintiff or unto the plaintiff's establish bank account at United Bank. Id. at paragraph 18. Rather, it "wired" the initial installment payment from defendant Trust Bank to an account with defendant Chase Bank purportedly belonging to a fictitious entity known as "Belo Consulting" in Sugarland, Texas. Id. at paragraph 19. Defendant Chase Bank, upon information and belief, flagged the account purportedly belonging to "Belo Consulting" as being fraudulent and/or not associated with the plaintiff and advised defendant Trust Bank. Id. at paragraphs 19 and 20. Nevertheless, defendant Trust Bank again "wired" the money to account purportedly belonging to "Belo Consulting" with defendant Chase Bank which accepted the said wire transfer of Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62). Id. at paragraphs 21, 22 and 23. The entity known as "Belo Consulting" then closed its account with Chase Bank and, upon information and belief, kept the funds. Id. at paragraph 24.

Clearly, the plaintiff was not associated with any entity known as “Belo Consulting” and did not conduct business in Sugarland, Texas, all of which was known and/or should have been known to all defendants. Id. at paragraph 26.

III. Response to Argument

- A. This action does not meet the criteria for “Business Litigation” because it does not involve commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution

As set forth above, this is a “run of the mill” type case involving allegations negligence and constructive fraud against defendants Chase and Trust and allegations of breach of contract, negligence and constructive fraud against defendant Blackhawk. Additionally, this case, for all intents and purposes, essentially involves a singular “wire” transaction for the sum certain amount of \$57,324.62. Circuit Court Judges across this State handle very similar cases on a daily basis.

Defendant Chase argues this case presents commercial and technological issues in which specialized treatment is necessary due to the potential application of the West Virginia Uniform Commercial Code (“UCC”) and the certain rules governing interbank payment systems. Defendant Chase is incorrect. First, defendant Chase does not cite one case in support of its position. Second, the application of the UCC does not present commercial and technological issues which requires specialized knowledge. In fact, Circuit Court Judges throughout this State deal with application of the UCC on a regular basis (e.g. consumer cases, etc.). The mere fact the UCC may apply in certain instances herein does not make this a highly complex case; does not present novel issues; and does not require specialized knowledge to reach a fair resolution. Simply put, this case does not meet the criteria for “Business Litigation” as set forth in Rule 29.04(a) of the Trial Court Rules.

B. This is not the kind of matter typically handled by the Business Court

The West Virginia Judiciary website (www.courtswv.gov) contains a listing of the recent decisions issued by the Business Court. A review of the said decision(s) clearly demonstrates this case does not present a high level of complexity, novel issue or other issues requiring specialized treatment. The most recent decisions contained on the website are set forth below:

1. BB Land LLC, et al. v. Blackrock Enterprises LLC, et al. (Pleasants County Civil Action No. 18-C-2). The Final Judgment Order indicates this case involved leasing agreements related to acquisition of oil and gas interests. Further, this case involved multiple tracts of property belonging to multiple owners; the expenditure of approximately \$150 million dollars to drill and operate wells; buyout prices upon dissociation; etc. Given the complexity of the case, the trial was split into a Phase 1 and Phase 2.
2. Axiall Corporation, et al. v. National Union Fire Insurance Company of Pittsburgh, PA, et al. (Marshall County Civil Action No. 19-C-59). The Order Granting Defendants' Motion For Partial Summary Judgment To Enforce The Pennsylvania Jury's Natrium Plant Damages Verdict And Apply Natrium Plant Property Damage Deductible indicates this matter surrounds an insurance coverage dispute involving 13 different insurance policies arising out of property damage sustained at Axiall's plant in Marshall County, West Virginia. This case involved, in part, issue of collateral estoppel arising out of a jury trial in Pennsylvania; allegations the insurers breached their insurance contracts and engaged in bad faith; and a dispute involving approximately \$300 million dollars.
3. Markwest Liberty Midstream & Resources, LLC v. J.F. Allen Company, et al. (Wetzel County Civil Action No. 16-C-82). The Judgment Order (consisting of 153 pages) indicates this case involves a dispute arising out of the construction of a hybrid retaining wall at a natural gas processing plant in Wetzel County. The plaintiff retained J.F. Allen Company ("Allen") to build the said retaining wall. Allen then retained a number of subcontractors to perform various tasks ranging from design, construction and quality control. Thus, there were a number of parties to this litigation; multiple causes of actions were being pursued by multiple parties; and multiple counter-claims and cross-claims were also being pursued. Following the trial, millions of dollars were awarded in costs, damages (consisting of lost profits, etc.), and interest among numerous parties.

This case is vastly different than BB Land, Axiall, and Markwest. Particularly, it does not involve a dispute concerning millions (or tens of millions of dollars or hundreds of millions of dollars) like BB Land, Axiall, and Markwest. Rather, this case involves a dispute over \$57,324.62. This case does not involve multiple expenditures, buyout provisions, or the need for a multi-phase

trial like BB Land; does not involve over a dozen defendants or the application of collateral estoppel issues due to a trial addressing the same subject matter in a different jurisdiction like Axiall; or does not involve multiple counter-claims, cross-claims etc. like Markwest. Additionally, this matter does not entail a high level of complexity, novel issues or require specialized treatment to reach a fair disposition. Rather, it involves straight-forward causes of action involving a singular transaction of \$57,324.62.

WHEREFORE, Based upon all the above, this case does not meet the criteria for “Business Litigation” as set forth in Rule 29.04 & Rule 29.06 of the Trial Court Rules and, therefore, this Court should deny the motion to refer to the Business Court.

TURNER EXCAVATING, INC.,
By Counsel

/s/ Matthew M. Hatfield
MATTHEW M. HATFIELD (WVSB #8710)
Hatfield & Hatfield, PLLC
Post Office. Box 598
Madison, West Virginia 25130
304-369-1162
Counsel for Plaintiff

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CERTIFICATE OF SERVICE

I, Matthew M. Hatfield, counsel for plaintiff, do hereby certify that I have this the 19th day of September, 2022, provided via e-file a true copy of the foregoing *Plaintiff's Motion In Opposition To Refer Case To Business Court Division* unto the following:

Samuel R. Burns, Boone Co. Circuit Clerk
Boone County Courthouse
Madison, WV 25130

Andrew P. Smith (WVSB #12338)
Steptoe & Johnson, PLLC
P. O. Box 2195
Huntington, WV 25722-2195
Counsel for JPMorgan Chase Bank

Shane Harvey (WVSB #6604)
Jackson Kelly PLLC
P. O. Box 553
Charleston, WV 25332
Counsel for Blackhawk Sub, LLC

Berkeley County Judicial Center
Business Court Division
380 W. South Street, Suite 2100
Martinsburg, WV 25401

The Honorable Stacy L. Nowicki-Eldridge
Boone County Courthouse
Madison, WV 25130

/s/ Matthew M. Hatfield
MATTHEW M. HATFIELD (WVSB #8710)
Hatfield & Hatfield, PLLC
221 State Street. Suite 101
Post Office Box 598
Madison, West Virginia 25130
(304) 369-1162
Counsel for Defendant