

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SAVANNAH 605, LLC,
KINZER BUSINESS REALTY, LTD.
and FULTON T. McELROY
IRREVOCABLE TRUST

SCA EFiled: Sep 02 2022
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Transaction ID 68024982

Plaintiffs,

v.

EAST EQUIPMENT CO., LLC,
and GARY RASH

Mingo County Circuit Court
CIVIL ACTION NO.: 22-C-37
Honorable Miki Thompson

Defendants.

**PLAINTIFFS SAVANNAH 605, LLC, KINZER BUSINESS REALTY,
LTD. AND FULTON T. McELROY IRREVOCABLE TRUST'S
MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

NOW COMES, Plaintiffs Savannah 605, LLC, Kinzer Business Realty, Ltd. and Fulton T. McElroy Irrevocable Trust (collectively "Plaintiffs"), by and through their undersigned counsel, Howard M. Persinger, III, and Persinger & Persinger, L.C., and pursuant to *Rule 29.06* of the *West Virginia Trial Court Rules*, respectfully request that this civil action be referred to the Business Court Division. In support of this Motion, Plaintiffs state as follows:

FACTUAL BACKGROUND

1. This litigation arises out of the contractual relationships between Plaintiffs, as lessors, and East Equipment Co., LLC, as lessee, and Gary Rash, as guarantor. The relationships of the parties are governed by a Lease effective June 1, 2016, between Savannah 605, LLC, as Landlord, and East Equipment Co., LLC, as Tenant, later amended to add Kinzer Business Realty, Ltd. and Fulton T. McElroy Irrevocable Trust as Landlords.

2. The lease relates to a parcel of property located on Route 52 South, Williamson, Mingo County, West Virginia, which was to be used by defendants as a mine equipment repair shop.

3. After receiving leave of the Court by Order dated July 25, 2022, Plaintiffs filed their Amended Complaint in the Circuit Court of Mingo County, West Virginia, asserting claims for breach of the lease and guarantee against defendant. See Amended Complaint, attached hereto as **Exhibit A**. Specifically, Plaintiffs allege that defendants have breached the Lease by (1) failing to make several rental payments in 2019, and then ceasing payment of monthly rental payments altogether in 2020 (see Amended Complaint ¶¶XVII); (2) utilizing the property for storing equipment, supplies, waste, trash and other items related to its operation; (see Amended Complaint ¶¶XVIII); and (3) causing damage to the Premises (see Amended Complaint ¶¶XX). The Amended Complaint alleges that Defendants ceased paying any rent in January 2020, continue to use the property to store mining equipment, and other items and have caused damage to the property for which they are liable for cleanup costs. Plaintiffs have also alleged that defendant Gary Rash is liable for the obligations of defendant East Equipment Co., LLC, under the terms of a Guaranty Agreement entered into on or about October 3, 2015. (See Amended Complaint at ¶¶XV.)

4. Defendants filed their Answer to Amended Complaint on August 3, 2022. See Defendants' Answer to Amended Complaint, attached hereto as **Exhibit B**. In their Answer, Defendants allege that Plaintiffs have barred Defendants access to the leased property such that they may remove valuable property owned by Defendants including an IMCO miner, a prefabricated building and electric poles, wires and equipment. (See

Answer to Amended Complaint at ¶18). They further assert unjust enrichment as an affirmative defense. (See Answer to Amended Complaint at ¶43.)

5. Resolving Plaintiffs' claims will likely require interpretation of the Lease and Guaranty as well as an understanding of the specialized and technical uses for which the leased property was leased. While the Mingo County Circuit Court is certainly capable of handling this dispute, this matter presents precisely the type of commercial dispute particularly suited for the Business Court Division, as contemplated by *West Virginia Trial Court Rule 29*.

LEGAL STANDARD

6. The West Virginia Business Court Division has jurisdiction to efficiently manage and resolve "litigation involving commercial issues and disputes" between parties engaged in business transactions. *W.Va.T.C.R. 29.01*.

7. Specifically, the Business Court Division, upon proper referral and transfer by the Chief Justice of the Supreme Court of Appeals, may properly preside over and adjudicate "Business Litigation," which is defined as:

[O]ne or more pending actions in circuit court in which:

1. the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and
2. the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and
3. the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance

disputes relating to bad faith, or disputed in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

W.Va.T.C.R. 29.04(a)(1)-(3).

8. A party may file a motion to refer a case to the Business Court Division “after the time to answer the complaint has expired.” *W.Va.T.C.R. 29.06(1)(2).*

ARGUMENT

9. As evidenced by the issues raised in the attached Amended Complaint and Answers, this civil action constitutes “Business Litigation” as defined by *West Virginia Trial Court Rule 29.04* and should be appropriately resolved by the Business Court Division.

10. The Business Court Division was created to hear precisely this type of complex commercial dispute. This matter involves specialized and complex commercial issues surrounding the parties’ rights and obligations. Resolution of this matter will require interpreting and applying the language of the Lease and Guaranty and the subsequently executed subleases, assignments, and other contracts as well as an understanding of the specialized and technical mining equipment and related operations concerning the leased property.

11. Moreover, this matter does not involve any claims excluded from the definition of “Business Litigation” by *Rule 29.04(a)(3)* of the *West Virginia Trial Court Rules*.

12. Plaintiffs state that there are no related actions currently pending.

13. As required by *West Virginia Trial Court Rule 29.06(1)(1)*, a copy of the Amended Complaint is attached hereto as ***Exhibit A***, Defendants' Answer to Amended Complaint is attached hereto as ***Exhibit B***, and the docket sheet is attached hereto as ***Exhibit C***.

14. Plaintiffs do not request an expedited review under *West Virginia Trial Court Rule 29.06(a)(4)*. All affected parties may file a memorandum stating their respective positions in accordance with *West Virginia Trial Court Rule 29*.

CONCLUSION

WHEREFORE, for the forgoing reasons, Plaintiffs respectfully request that the Chief Justice of the West Virginia Supreme Court of Appeals refer this case to the Business Court Division.

**SAVANNAH 605, LLC, KINZER
BUSINESS REALTY, LTD, and
FULTON T. McELROY
IRREVOCABLE TRUST,
By Counsel,**

/s/ Howard M. Persinger, III
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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SAVANNAH 605, LLC,
KINZER BUSINESS REALTY, LTD.
and FULTON T. McELROY
IRREVOCABLE TRUST

Plaintiffs,

v.

EAST EQUIPMENT CO., LLC,
and GARY RASH

Defendants.

Mingo County Circuit Court
CIVIL ACTION NO.: 22-C-37
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CERTIFICATE OF SERVICE

I, Howard M. Persinger, III, hereby certify that on the 2nd day of September, 2022, the foregoing, "***Plaintiffs Savannah 605, LLC, Kinzer Business Realty, Ltd. and Fulton T. McElroy Irrevocable Trust's, Motion to Refer Case to the Business Court Division***" has been made upon the following interested parties via U.S. Mail, postage prepaid on this the 2nd day of September, 2022, addressed as follows:

Nathan D. Brown, Esq.
Ferrell & Brown, PLLC
Post Office Box 401
Williamson, WV 25661
*Counsel for Defendants,
East Equipment Co., LLC & Gary Rash*

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

Honorable Miki Thompson
Mingo County Circuit Court
Second Avenue
Williamson, WV 25661

Lonnie Hannah, Clerk
Mingo County Circuit Clerk
Second Avenue
Williamson, WV 25661

/s/ Howard M. Persinger, III
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N THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

**SAVANNAH 605, LLC,
KINZER BUSINESS REALTY, LTD.
and FULTON T. McELROY
IRREVOCABLE TRUST**

Plaintiffs,

v.

CIVIL ACTION NO.: 22-C-37

**EAST EQUIPMENT CO., LLC,
and GARY RASH**

Defendants.

AMENDED COMPLAINT

Now comes plaintiff, Savannah 605, LLC, Kinzer Business Realty, LTD, and Fulton T. McElroy Irrevocable Trust (hereafter collectively "Savannah, et al."), by undersigned counsel, Howard M. Persinger, III, and Persinger & Persinger, L.C., and for its Amended Complaint, avers as follows:

-I-

At all times relevant herein, plaintiff Savannah 605, LLC, was a West Virginia limited liability company with its principal offices located at 114 Monongalia Street, Charleston, Kanawha County, West Virginia.

-II-

At all times relevant herein, plaintiff Kinzer Business Realty, LTD, was a Kentucky limited partnership authorized to conduct business in the State of West Virginia, with its principal offices located at 1555 Ky Rt 80, Prestonsburg, Kentucky

Exhibit A

41653, and an additional owner of the Premises (hereafter defined) as reflected in the “Third Amendment to Lease Agreement” referred to in -VIII- below.

-III-

At all times relevant herein, plaintiff Fulton T. McElroy Irrevocable Trust was a Virginia Trust dated October 23, 1985, and its address was c/o Union Bank & Trust, Trustee, Wealth Management Division, 4805 Lassen Lane, Fredericksburg, Virginia 22408, and an additional owner of the Premises (hereafter defined) as reflected in the “Third Amendment to Lease Agreement” referred to in -VIII- below.

-IV-

At all times relevant herein, defendant East Equipment Co., LLC (“EEC”), was a West Virginia limited liability company, with its principal address located at 242 East 2nd Avenue, Williamson, Mingo County, West Virginia, 25661.

-V-

At all times relevant herein, defendant Gary Rash (“Guarantor”), was a resident of Pike County, Kentucky, who resided at 159 Forest Hills Road, Forest Hills, Kentucky, 41527.

-VI-

This Court has personal and subject matter jurisdiction over the defendants and this action and because the acts and conduct giving rise to the claims asserted in this Complaint occurred in Mingo County, West Virginia, and relate to real property situated

therein and a real property lease agreement which was negotiated, executed and partially performed therein. Venue is appropriate in this Court pursuant to *W.Va. Code §56-1-1* because it involves causes of action which arose in Mingo County, West Virginia, and involving land situated therein.

-VII-

On or about the 1st day of June 2016, plaintiff Savannah 605, LLC, as Landlord, and defendant East Equipment Co., LLC, as Tenant, entered into an unrecorded Lease Agreement wherein Savannah leased unto EEC certain property located on Route 52 South, Williamson, West Virginia (the “Premises”), upon terms and conditions set forth therein (the “Lease”).

-VIII-

The Lease was thereafter amended by the parties by written “Amendment to Lease” dated October 3, 2016, and by “Third Amendment to Lease Agreement” dated March 16, 2016 [sic]. The “Lease Data” section of the Lease on page 1, calls for Rent of One Thousand Dollars (\$1,000.00) per month during the initial term.

-IX-

Per paragraph 3 of the Lease, as Amended, the Initial Lease Term of the Lease, as Amended, was 6 months and thereafter was extended through December 31, 2018, by the aforesaid March 15, 2016 “Third Amendment to Lease Agreement.”

-X-

After December 31, 2018, the Lease continued in effect pursuant to Paragraph 21 of the Lease, as Amended, which provides:

21. Holding Over. Tenant shall pay Landlord for each day Tenant retains possession of the Premises or part of them after termination of this Lease by lapse of time or otherwise at the rate ("Holdover Rate") which shall be 150% of the monthly Rent, and also pay all reasonable damages sustained by Landlord by reason of such retention. If Landlord gives notice to Tenant of Landlord's election to that effect, such holding over shall constitute renewal of this Lease for a month to month period at the Holdover Rate, but if the Landlord does not so elect, no such renewal shall result notwithstanding acceptance by Landlord of any sums due hereunder after such termination; a tenancy at sufferance at the Holdover Rate shall be deemed to have been created. In any event, no provision of this Section 21 shall be deemed to waive: (a) Landlord's right of reentry or, (b) any other right under this Lease or at law, or (c) such other remedies for holdover as may be available to Landlord under other provisions of this Lease or under applicable law.

-XI-

Paragraph 4 of the Lease, as Amended, provides:

4. Rental. A. Tenant shall pay to Landlord during the Initial Term monthly rental as set forth above in the Lease Data. Each installment payment shall be due in advance on the first day of each calendar month during the Lease Term to Landlord at the address appearing above in the Lease Data section, or at such other place designated by written notice from Landlord to Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis. Tenant shall also pay to Landlord the "Security Deposit" appearing above in the Lease Data section.

-XII-

Paragraph 5 of the Lease, as Amended, provides:

5. Use. Tenant shall use the Premises for the sales, repair and replacement of equipment and not use the Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

-XIII-

Paragraph 7 of the Lease, as Amended, provides:

7. Repairs. During the Lease term, Tenant shall make, at Tenant's sole expense, all necessary repairs and replacements to the Premises.

-XIV-

Paragraph 29 of the Lease, as Amended, provides, in relevant part:

29. Indemnification. ... Tenant shall protect, indemnify and hold the Landlord harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of (a) any damage to any property or any injury (including but not limited to death) to any person occurring in, on or about the Premises or the Building to the extent that such injury or damage shall be caused by or arise from actual or alleged act, neglect, fault, or omission by or of Tenant, its agents, servants, employees, invitees, or visitors to meet any standards imposed by any duty with the respect to the injury or damage: (b) the conduct or management of any work or thing whatsoever done by the Tenant in or about the Promises [sic] or from transactions of the Tenant concerning the Premises; (c) Tenant's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Premises or its occupancy; or (d) any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to this Lease. The provisions of this Section shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.

-XV-

On or about October 3, 2015, Savannah, as Landlord, and Guarantor Gary Rash, as Guarantor, entered into a Guaranty ("Guaranty"), Paragraph 1 of the Guaranty provides, in relevant part:

... the prompt payment when due, or whenever payment may become due under the terms of the Lease all payments of Base Rent and Additional Rent, and all other charges, expenses and costs of every kind

and nature, which are or may be due now or for the term of the Lease, under the terms of the Lease, any agreements or documents related to the Lease, or any other transaction between the Landlord and EAST EQUIPMENT CO., LLC directly or indirectly related to the Lease; and the complete and timely performance, satisfaction and observation of the terms and conditions of the Lease, rules and regulations and related obligations arising by reason of the Lease, required to be performed, satisfied or observed by EAST EQUIPMENT CO., LLC...”

-XVI-

Paragraph 3 of the Guaranty provides:

3. Performance Guaranty. In the event EAST EQUIPMENT CO., LLC, fails to perform, satisfy or observe the terms and conditions of the Lease, rules and regulations, and related Lease obligations required to be performed, satisfied or observed by the EAST EQUIPMENT CO., LLC, the Guarantor will promptly and fully perform, satisfy and observe the obligation or obligations in the place of the EAST EQUIPMENT CO., LLC. The Guarantor shall pay, reimburse and indemnify the Landlord for any and all damages, costs, expenses, losses and other liabilities arising or resulting from the failure of the EAST EQUIPMENT CO., LLC to perform, satisfy or observe any of the terms and conditions of the Lease, rules and regulations and related obligations.

-XVII-

Up until December, 2018, Savannah received rental payments in the amount of One Thousand Dollars (\$1,000.00) per month from EEC. From January 2019 through January 2020, Savannah received a total of Five Thousand Dollars (\$5,000.00) from EEC in rental payments. Thereafter, EEC ceased making rental payments.

-XVIII-

EEC continues to utilize the Premises for purposes of storing equipment, supplies, waste, trash and other items related to its operations on said Premises. Moreover, the aforesaid continuing storage of these aforesaid items by Tenant has

caused damage to the Premises, necessitating repairs to the Premises for which Tenant is responsible, pursuant to Paragraph 7 of the Lease, as Amended. Savannah has never received and EEC has never provided any notice of termination of the Lease to Savannah, further, Savannah and has attempted, unsuccessfully, to contact EEC regarding its continuing operations under the Lease and past due rent.

-XIX-

Pursuant to Paragraph 21 of the Lease, as Amended, EEC owes Savannah Thirteen Thousand Dollars (\$13,000.00) representing unpaid rent at the Holdover Rental of One Thousand Five Hundred Dollars (\$1,500.00) per month from January 2019 through January 2020 and Forty-two Thousand Dollars (\$42,000.00) representing rental at the Holdover Rate of One Thousand Five Hundred Dollars (\$1,500.00) per month from January 2020 through April 2022 for twenty-eight (28) months. An additional One Thousand Five Hundred Dollars (\$1,500.00) in rental payments will accrue at the beginning of each month hereafter.

-XX-

Pursuant to Paragraphs 5, 7 and 29 of the Lease, As Amended, EEC is responsible for costs of repairing damage to the Premises caused by its operations, including, but not limited to, removing equipment, supplies, waste and trash and other items from the Premises, and restoring the Premises to its previous state.

-XXI-

The actions of EEC, as aforesaid, in causing damage to the Premises and necessitating repair constitute waste.

-XXII-

Pursuant to the Guaranty, Guarantor is responsible to Savannah for all rents due and other damages from the Lease and EEC's performance and lack thereof under the Lease, As Amended, all as aforesaid.

WHEREFORE, as a result of the foregoing, plaintiff Savannah requests the Court issue an order entering judgment against the Defendants, jointly and severally:

- (a) Damages for past due rental in the amount of Fifty-five Thousand Dollars (\$55,000.00) and any additional rentals accruing hereafter at the Holdover Rate of One Thousand Five Hundred Dollars (\$1,500.00) per month, pursuant to the Lease, As Amended.
- (b) Damages for the costs to remove equipment and belts and a building as well as necessary repairs to the Premises caused by the ongoing operations of Tenant in an amount to be determined by the Court.
- (c) Reasonable attorneys' fees in an amount to be determined by the Court and costs of action.
- (d) Prejudgment and post judgment interest at the statutory rate.

PLAINTIFF DEMANDS A TRIAL BY JURY.

**SAVANNAH 605, LLC, KINZER
BUSINESS REALTY, LTD, and
FULTON T. McELROY
IRREVOCABLE TRUST,**
By Counsel,

/s/ Howard M. Persinger, III
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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

SAVANNAH 605, LLC,
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and FULTON T. McELROY
IRREVOCABLE TRUST,

Plaintiffs/Counterclaim Defendants,

v.

Civ. Act. No.: 22-C-37

EAST EQUIPMENT CO., LLC
and GARY RASH,

Defendants/Counterclaim Plaintiffs.

ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

COMES NOW the Defendants, by and through counsel and provides the following Answer to the Plaintiffs' Amended Complaint while preserving their counterclaims to the answer to Plaintiffs' original Complaint.

1. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph One (1) of the Amended Complaint. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

2. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Two (2) of the Amended Complaint. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

3. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Three (3) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

4. Admit.

5. Admit.

6. Paragraph Six (6) of the Plaintiffs' Amended Complaint states a legal conclusion to which no response is required. To the extent a response is required, the Defendants admit the property at issue in this case is located in Mingo County. By further way of answer, it also requires the interpretation of a document which speaks for itself.

7. Defendants admit there was a lease agreement entered into with Plaintiff Savannah 605, LLC; however, Defendants are without sufficient knowledge to admit or deny the remaining allegations in Paragraph Seven (7) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

8. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Eight (8) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

9. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Nine (9) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

10. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Ten (10) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

11. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Eleven (11) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

12. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Twelve (12) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

13. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Thirteen (13) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

14. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Fourteen (14) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

15. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Fifteen (15) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

16. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Sixteen (16) of the Amended Complaint as they are not aware when the last regularly monthly rental payment was made by Defendants to Plaintiffs but believe the last payment was in

or around January 2020. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

17. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Seventeen (17) of the Amended Complaint as they are not aware when the last regularly monthly rental payment was made by Defendants to Plaintiffs but believe the last payment was in or around January 2020. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

18. Defendants deny the allegations contained in Paragraph Eighteen (18) as stated. The Defendants assert that currently they have one (1) IMCO Miner, a building, power poles, and power lines on the property they have attempted to retrieve by have been denied access to by Plaintiffs. The Defendants deny and all remaining adverse claims against them and demand strict proof thereof. By further way of answer, it also requires the interpretation of a document which speaks for itself.

19. The Defendants deny and all adverse allegations in Paragraph Nineteen (19) of the Amended Complaint and demand strict proof thereof. By further way of answer, it also requires the interpretation of a document which speaks for itself.

20. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Twenty (20) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof. By way of further answer, the Defendants assert the only items left on the premises belonging to them and at issue are those found in Paragraph Eighteen (18) of this Answer. Those items have remained on the property because Plaintiffs completely restricted Defendants' access to their property.

21. Denied.

22. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph Twenty-Two (22) of the Amended Complaint. By further way of answer, it also requires the interpretation of a document which speaks for itself. To the extent an answer is required, the Defendants deny and all adverse claims against them and demand strict proof thereof.

23. Wherefore, having answered all allegations against them, the Defendants deny they have caused any financial hardship to Plaintiffs' or breached any agreement. Further, the Defendants assert that Plaintiffs are not entitled to any judgment, monetary or otherwise, against them, and pray this action be dismissed with prejudice, while awarding the Defendants their attorney fees and cost for defending this claim. By way of further defense, the Defendants assert the following affirmative defenses.

AFFIRMATIVE DEFENSES

24. Defendants reserve the right to challenge the subject matter jurisdiction of the Court.

25. Defendants reserve the right to challenge the personal jurisdictions of the Court.

26. Defendants reserve the right to assert improper venue.

27. Defendants reserve the right to challenge the sufficiency of service of process.

28. Defendants assert that one or more of the claims asserted fails to state a claim upon which relief can be granted.

29. Defendants assert that all or a portion of the claims may be barred by the applicable statute of limitations and/or the doctrine of laches.

30. Defendants assert that some or all of Plaintiffs' claims are barred by adverse possession.

31. Defendants assert the defenses of comparative negligence and/or fault and assumption of the risk.

32. Defendants assert the defense of abandonment of some or all of the rights asserted in the Amended Complaint.

33. Plaintiffs' claims are barred, in whole or in part, by the doctrines of accord and satisfaction, settlement, setoff, recoupment, and release.

34. Plaintiffs' claims are barred, in whole or in part, by the equitable doctrines of estoppel, waiver, laches, unclean hands, and/or consent and ratification.

35. Plaintiffs' claims are barred, in whole or in part, by the doctrines of illegality and/or fraud.

36. Plaintiffs' claims are barred, in whole or in part, by the lack of standing.

37. Plaintiffs' claims are barred, in whole or in part, by the Statute of Frauds.

38. Plaintiffs' claims are barred, in whole or in part, because the conduct, actions, and omissions of persons other than Defendants constituted superseding or intervening cause of any damage, loss, or injury allegedly sustained.

39. Plaintiffs' equitable claims are barred because they have an adequate remedy at law.

40. Plaintiffs' damages, if any, are limited by their failure to mitigate.

41. Plaintiffs' damages, if any, are, in whole or in part, the results of acts or omissions committed by Plaintiff.

42. Plaintiffs' damages, if any, are, in whole or in part, the result of acts or omissions committed by non-parties to this action over whom Defendants have no responsibility or control.

43. Plaintiffs would be unjustly enriched if they were permitted to recover on claims set forth in the Amended Complaint.

44. Defendants reserve their rights to seek joinder, indemnity, and/or contribution from any individual or entity pursuant to contract or common law.

45. Where not otherwise set forth in their Answer and Affirmative Defenses, Defendant incorporates by reference and invoke any and all affirmative defenses applicable in defense of the claims asserted herein, as may be relevant or pertinent as established by the facts of this case and as are contemplated by and set forth in the substantive law of West Virginia and the West Virginia Rules of the Civil Procedure.

/s/ Nathan D. Brown

Nathan D. Brown (WVSB# 12264)

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Company, LLC and Gary Rash

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

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EAST EQUIPMENT CO., LLC
and GARY RASH,

Defendants/Counterclaim Plaintiffs.

CERTIFICATE OF SERVICE

With this filing, the undersigned hereby affirms that on this 2nd day of August, 2022, Defendants caused to be served on the Plaintiff's counsel, Howard Persinger, III, by email and/or US Mail first class, the Answer To Plaintiff's Amended Complaint.

/s/ Nathan D. Brown

Nathan D. Brown (WVSB# 12264)

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