

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
(BUSINESS COURT DIVISION)**

PURDY RUN AGGREGATES, LLC, a Michigan limited liability company (the surviving company after the merger of Purdy Run Aggregates, LLC, a Florida limited liability company, and Purdy Run Aggregates II, LLC, a Michigan corporation),

**SCA EFiled: Nov 09 2022
04:32PM EST
Transaction ID 68369112**

Plaintiff,

vs.

**Harrison County Circuit Court,
Case No. 21-C-273-1
Christopher McCarthy, Judge**

TALL GRASS MANAGEMENT PARTNERS, LLC, a Florida limited liability company, JOHN H.W. GEFAELL, an individual, WILLIAM M. WARD (a/k/a BILLY M. WARD), an individual, and AWARD DEVELOPMENT LLC, a Kentucky limited liability company, jointly and severally,

Defendants.

TO: THE HONORABLE CHIEF JUSTICE

PLAINTIFF'S MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Plaintiff, Purdy Run Aggregates, LLC, by and through counsel, Jonathon W. Fischer of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- ☒ There are no known related actions.
- ☐ The following related actions could be the subject of consolidation, and are
- ☐ now pending
- or
- ☐ may be filed in the future. (Please list case style, number, and Court if any)
-
-

This action involves: (Please check all that apply)

- | | |
|---|--|
| <input checked="" type="checkbox"/> Breach of Contract; | <input type="checkbox"/> Sale or Purchase of Commercial Real Estate; |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity; | |

- ☐ Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code;
- ☐ Terms of a Commercial Lease;
- ☐ Commercial Non-consumer debts;
- ☐ Internal Affairs of a Commercial Entity;
- ☐ Trade Secrets and Trademark Infringement;
- ☐ Non-compete Agreements;
- ☐ Intellectual Property, Securities, Technology Disputes;
- ☒ Commercial Torts;
- ☐ Insurance Coverage Disputes in Commercial Insurance Policies;
- ☐ Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;
- ☐ Anti-trust Actions between Commercial Entities;
- ☐ Injunctive and Declaratory Relief Between Commercial Entities;
- ☐ Liability of Shareholders, Directors, Officers, Partners, etc.;
- ☐ Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;
- ☐ Shareholders Derivative Claims;
- ☐ Commercial Bank Transactions;
- ☐ Franchisees/Franchisors;
- ☐ Internet, Electronic Commerce and Biotechnology
- ☒ Disputes involving Commercial Entities; or
- ☐ Other (Describe) _____

In support of this Motion, the movant notes this matter contains issues significant to the transactions and operations of and between the businesses and presents novel and/or complex commercial issues for which specialized treatment will be helpful. Furthermore, this case would potentially benefit from the assistance of the specialized alternative dispute resolution offered through Judicial Mediation. The movant asserts these positions as more fully described herein:

The parties to this civil action are a commercial aggregate vendor, commercial property management entity, and associated individuals, and the nature of this matter satisfies the definitional requirements set forth for Business Litigation in Rule 29.06 of the West Virginia Trial Court Rules. Plaintiff contends it sustained substantial damages as a result of the Defendants' breach of contract, fraudulent misrepresentation(s), and tortious interference with a prospective economic advantage. Plaintiff filed its cause of action on or about November 12, 2021 (*see Exhibit A*), and the Defendants filed Answers on or about January 24, 2022 (*see Exhibit B*). On or about March 14, 2022 counsel for Defendants Ward and Award Development, LLC, filed a Motion to Withdraw as Counsel, which the Court granted on May 26, 2022 (*see Exhibit C*). The parties have engaged in limited written discovery.

Additionally, this matter involves complex issues related to the management of commercial aggregate production and sales, commercial property management, and commercial torts. The claims herein concern matters of significance to the transactions, operations and the governance of the relationship between the multiple parties. Matters at issue in this action require a need for specialized business knowledge required for a fair and accurate determination of the allegations of the Plaintiff and Defendants. Further complicating this matter is the contractual application of Michigan law to the suit as well as the intricacies of the contractual obligations imposed upon Defendants vis-à-vis management of Plaintiff's commercial aggregate business.

As such, the business court would be the most appropriate venue to address these issues because they are solely business issues and will likely involve complex discovery and resolution strategy.

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint, Defendants' answers and counterclaims, and the docket sheet.

In regard to expedited review, the Movant:

- ☒ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.
- ☐ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: _____

WHEREFORE, the undersigned hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 9th day of November, 2022.

PURDY RUN AGGREGATES, LLC,

By Counsel:

/s/ Jonathon W. Fischer
Jonathon W. Fischer, WV State Bar No. 12538

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC

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Morgantown, WV 26508
Telephone: (304) 225-2200
Facsimile: (304) 225-2214

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
(BUSINESS COURT DIVISION)**

**PURDY RUN AGGREGATES, LLC, a Michigan
limited liability company (the surviving company
after the merger of Purdy Run Aggregates, LLC,
a Florida limited liability company, and Purdy Run
Aggregates II, LLC, a Michigan corporation),**

Plaintiff,

vs.

**Harrison County Circuit Court
Case No. 21-C-273-1
Christopher McCarthy, Judge**

**TALL GRASS MANAGEMENT PARTNERS,
LLC, a Florida limited liability company, JOHN
H.W. GEFAELL, an individual, WILLIAM M.
WARD (a/k/a BILLY M. WARD), an individual,
and AWARD DEVELOPMENT LLC, a Kentucky
limited liability company, jointly and severally,**

Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Plaintiff, does hereby certify that on this 9th day of November, 2022, that a true copy of the foregoing “*Plaintiff’s Motion to Refer Case to the Business Court Division,*” was served upon counsel by uploading it to the Court’s electronic filing system and by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Joseph Blalock, Esquire
Benesch, Friedlander, Coplan, & Aronof, LLP
44 15th St., Suite 2
Wheeling, WV 26003
*Counsel for Defendants Tall Grass Management Partners, LLC
& John H.W. Gefaell*

William M. Ward
(a/k/a Billy Ward)
420 Silver Maple Ridge, Apt. 11
Charleston, WV 25306
Defendant

Award Development, LLC
Attn: Ashley Ward, Resident Agent/Manager
3429 Springdale Drive
Lexington, KY 40517
Defendant

/s/ Jonathon W. Fischer
Jonathon W. Fischer, WV State Bar No. 12538

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

PURDY RUN AGGREGATES, LLC, a Michigan limited liability company (the surviving company after the merger of Purdy Run Aggregates, LLC, a Florida limited liability company, and Purdy Run Aggregates II, LLC, a Michigan corporation),

Plaintiff,

VS.

Civil Action NO.: 21-C-273-1

TALL GRASS MANAGEMENT PARTNERS, LLC, a Florida limited liability company, JOHN H.W. GEFAELL, an individual, WILLIAM M. WARD (a/k/a BILLY M. WARD), an individual, and AWARD DEVELOPMENT LLC, a Kentucky limited liability company, jointly and severally,

Defendants.

COMPLAINT

Plaintiff, PURDY RUN AGGREGATES, LLC (“Plaintiff”), by and through its attorneys, GREER LAW OFFICES, PLLC, for its Complaint against Defendants TALL GRASS MANAGEMENT PARTNERS, LLC, JOHN H.W. GEFAELL, WILLIAM M. WARD (a/k/a BILLY WARD), and AWARD DEVELOPMENT, LLC (collectively, the “Defendants”), hereby provides as follows:

PARTIES

1. Plaintiff¹ is a Michigan limited liability company with its principal place of business in the State of Michigan.
2. Defendant TALL GRASS MANAGEMENT PARTNERS, LLC (“Tall Grass”) is

¹ Plaintiff is the surviving entity after the merger of Purdy Run Aggregates, LLC, a Florida limited liability company, and Purdy Run Aggregates II, LLC, a Michigan corporation (the “Merger”).



a Florida limited liability company with its principal place of business in the State of Florida.

3. Defendant JOHN H.W. GEFAELL (“Gefael”) is an individual residing, upon information and belief, in the State of Florida, and is a member of Tall Grass.

4. Defendant WILLIAM M. WARD (a/k/a BILLY WARD) (“Ward”) is an individual residing, upon information and belief, in the Commonwealth of Kentucky, and, upon information and belief, is a member of Award, LLC (defined below).

5. Defendant AWARD DEVELOPMENT LLC (“Award LLC”) is a Kentucky limited liability company with its principal place of business in the Commonwealth of Kentucky and does business with Plaintiff, accepting work from Plaintiff and remitting invoices to Plaintiff in Oakland County, Michigan for work performed in Harrison County WV.

JURISDICTION, VENUE, AND CHOICE OF LAW

6. This Court has subject matter jurisdiction over this matter because the amount in controversy exceeds Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars, exclusive of interest, costs and attorney fees.

7. The Court has personal jurisdiction over the parties under the West Virginia Long-Arm Statute (W. Va. Code § 56-3-33) as the Defendants had sufficient minimum contacts with the State of West Virginia (detailed below) to exert personal jurisdiction.

8. Venue in Harrison County is proper pursuant to W. Va. Code § 56-1-1 as the site where the cause of action(s) arose.

9. Though this Court has personal and subject matter jurisdiction over this matter and the parties thereto, Michigan law applies to the claims set forth herein because a majority of the parties consented, as a part of the Management Agreement (defined below) that “[t]he laws of the State of Michigan shall govern the validity, performance and enforcement of the Agreement

without regard to choice of law principles.”

FACTS

10. Plaintiff (prior to the Merger) and Tall Grass entered into that certain Management Agreement dated April 10, 2018 and a certain letter agreement dated April 9, 2018 (collectively, the “Management Agreement,” copies of which are attached hereto as Exhibit 1 and incorporated herein by reference), whereby Tall Grass was to perform management services on behalf of Plaintiff, as more specifically outlined in the Management Agreement.

11. Plaintiff was and is currently in the pipeline and energy business. The Defendants approached Plaintiff, unsolicited, and proposed Plaintiff invest in the development of an aggregate business by purchasing real property for the purpose of extracting aggregate, minerals, and other materials.

12. Defendants represented to Plaintiffs that Defendants had knowledge and expertise relevant in the aggregate business and, in reliance upon Defendants’ representations, Plaintiff and Tall Grass entered into a Management Agreement to manage the extraction operation on a 94.11 acres tract situate in Clay District, Harrison County, West Virginia, said property being of record in the Office of the Clerk of the County Commission of Harrison County, West Virginia in Deed Book 1610 at Page 876 (hereinafter the “Property”).

13. The Management Agreement identifies thirteen (13) services but is not limited to the identified services as Tall Grass was to have managed the day to day operations of Purdy Run at the Property.

14. Tall Grass, through its Co-Managers, Gefaell and Ward, failed to meet the financial performance requirements under the Management Agreement during 2018.

15. Additionally, Tall Grass failed to meet the financial performance requirements

under the Management Agreement during 2019 (i.e., 50% of EBITDA Targets for two consecutive quarters starting in 2019), thereby effectively terminating the Operating Agreement.

16. Upon information and belief, Defendants' tortious and/or fraudulent conduct (or misconduct) caused failure of and, thus, the consequent adverse impact to Plaintiff and its business.

17. Under the Management Agreement, Tall Grass was charged with taking all necessary steps to manage the business in a prudent, commercially sound, and professional manner.

18. Tall Grass, through its Co-Managers, Gefaell and Ward, failed to establish the most basic systems to manage, administer and report on the business of Plaintiff, including, but not limited to, the failure to establish the following:

- (a) basic transaction processing,
- (b) accounting system,
- (c) reporting system,
- (d) sound administrative processes,
- (b) documentation and filing systems,
- (c) procedures for customer invoicing,
- (d) credit assessment and monitoring,
- (e) collections,
- (f) managing vendors and trade payables, and
- (g) basic bookkeeping, accounting, and timely financial statement preparation.

19. Tall Grass also failed to report operating results to Plaintiff as required by the Management Agreement.

20. Tall Grass delegated its bookkeeping and accounting responsibilities to two (2)

third-party accounting firms.

21. Notwithstanding such delegation of bookkeeping responsibilities, Tall Grass has failed to meet the bookkeeping, accounting, and reporting requirements of the Management Agreement.

22. The above commissions and omissions have been a detriment to the development, commercialization, and prudent management of Plaintiffs business.

23. Tall Grass failed to honor the engagement terms and pay agreed upon fees for services to be provided to Plaintiff by both accounting firms it engaged, which has had a chronic adverse effect on the quality, responsiveness and timeliness of service and information provided to Plaintiff essential to operating the business.

24. As a result of non-payment of accounting fees, Plaintiff has been forced to address this issue directly.

25. In the same regard, as a direct result of the failure of Tall Grass to take the necessary steps to ensure Plaintiff's regulatory compliance with the Mine Safety and Health Administration and the requirements of the West Virginia Department of Environmental Protection ("WV-DEP") pursuant to the company's quarry permit, Tall Grass exposed Plaintiff to violations, shut-down and civil penalties.

26. Due to Tall Grass's failure to submit to the WV-DEP required water sampling results taken in 2018 on a timely basis, Plaintiff has received two civil penalties notices which indicate potential financial exposure of as much as \$37,000, dated September 18, 2019 and September 30, 2020 (copies of which are attached hereto as Exhibit 2 and Exhibit 3, respectively, and incorporated herein by reference).²

² Plaintiff and WV-DEP entered into a Consent Order which resulted in the total fine paid by Plaintiff being revised from \$37,000.00 to \$13,140.00.

27. Tall Grass assumed both operational and financial responsibility to ensure the access road leading to the quarry was suitable and continuously maintained to accommodate gravel haulers accessing the quarry on a daily basis.

28. Upon information and belief, Gefaell and Ward used Tall Grass as an instrument to their own personal gain, committing fraud and other wrongdoing.

29. Upon information and belief, Ward (through Award LLC) fraudulently billed Plaintiff a total of 60 hours for grading work (within a one-week period) and material charges (culvert pipe) in connection with that same work.

30. Upon information and belief, the grading performed took substantially less time than 60 working hours.

31. Ward produced no evidence of culvert pipe being supplied to the quarry site or used to improve the access road to the quarry as invoiced.

32. Ward has admitted that no culvert pipe was ever supplied to the quarry site or used to improve the access road to the quarry as invoiced.

33. Upon information and belief, Tall Grass took for its use, unscaled material from the quarry to service the access road which was not accounted properly or paid for.

34. Upon information and belief, a scale house contract worker, under the management of and at the direction of Tall Grass, was instructed to manually alter and falsify tickets generated by the scale system, by artificially changing tare weights on various scale tickets.

35. Upon information and belief, the above practice then allowed Tall Grass and/or its managers to have material, not properly accounted for, available for its own commercial use to “make good” on other commitments in a manner that was beyond Plaintiff’s purview.

36. Upon information and belief, Ward engaged in a practice that can be best

described as “truck skimming” or tortious interference.

37. Under normal circumstances and Plaintiff’s business practices, of which Tall Grass was fully aware, Plaintiff arranges trucking services on behalf of its customers to facilitate the delivery of material from the Plaintiff quarry to its customer’s designated delivery location on a seamless, full requirements basis.

38. Billing and collections from customers, scheduling, dispatch and payment to hauling subcontractors is to be managed and controlled by Plaintiff.

39. Plaintiff has typically earned a margin for the above service.

40. Upon information and belief, using Confidential Information (as defined the Management Agreement and under common law), including Plaintiff’s customers and their job locations, along with the commercial relationships established by Plaintiff with hauling subcontractors (and Plaintiff’s pricing model), Ward, using Award LLC as a sleeve, inserted himself in a number of transactions with known Plaintiff customers and haulers to make a profit on trucking.

41. Upon information and belief, in some instances, the above activity involved transactions in which material was sold by and hauled from other quarries in direct competition with Plaintiff.

42. In doing so, Tall Grass has interfered in a commercial opportunity of Plaintiff for the personal gain of members of Tall Grass and/or Award LLC.

43. Upon information and belief, Tall Grass engaged in a breach of its obligations to Plaintiff to maintain Confidential Information to the economic detriment of Plaintiff.

COUNT I: BREACH OF CONTRACT

44. Plaintiff reasserts and realleges the foregoing paragraphs of the Complaint as

though fully restated herein.

45. Pursuant to the Management Agreement, including explicit representations by Tall Grass therein, it was intended that Tall Grass would take all necessary steps to manage Plaintiff's business in a prudent, commercially sound and professional manner (the "Business Services").

46. Tall Grass failed to provide the Business Services and failed to meet the most basic standard of care as intended by and specifically outlined in the Management Agreement and, for that reason, *inter alia*, it was terminated. (See Notice of Termination attached hereto as Exhibit 4 and incorporated herein by reference.)

47. As a direct and proximate result of Tall Grass's conduct (or misconduct), Plaintiff has suffered and will continue to suffer injuries including, but not limited to, loss of profits, additional expenses, loss of business operations, loss of the benefit of its bargain, civil penalties, and other incidental and consequential damages including attorneys' fees.

COUNT II: FRAUD/INTENTIONAL MISREPRESENTATION

48. Plaintiff reasserts and realleges the foregoing paragraphs of the Complaint as though fully restated herein.

49. Prior to and after entering into the Management Agreement, Tall Grass misrepresented to Plaintiff that it possessed the basic knowledge and expertise necessary to perform the contractual services it committed to and fully comply with the Management Agreement.

50. Tall Grass would have reasonably expected that Plaintiff would have relied upon such representations.

51. Instead, Tall Grass took the Confidential Information provided to it by Plaintiff

and used it to benefit its own business and/or its members, such benefit being in an amount not known to the Plaintiff.

52. As a direct and proximate result of Tall Grass's conduct (or misconduct), Plaintiff has suffered and will continue to suffer injuries including, but not limited to, loss of profits, additional expenses, loss of business operations, loss of the benefit of its bargain, civil penalties, and other incidental and consequential damages including attorneys' fees.

COUNT III: TORTIOUS INTERFERENCE
WITH BUSINESS RELATIONSHIP

53. Plaintiff reasserts and realleges the foregoing paragraphs of the Complaint as though fully restated herein.

54. As part of its duties under the Management Agreement, Tall Grass was given access to Plaintiffs Confidential Information.

55. The Confidential Information included, but was not limited to job locations, commercial relationships established by Plaintiff with hauling subcontractors, and Plaintiff's pricing model.

56. Tall Grass, Gefaell, Ward and Award LLC each inserted themselves in a number of transactions with known Plaintiff customers and haulers to make a profit on trucking.

57. Tall Grass, used the Confidential Information to obtain jobs and earn income to benefit Tall Grass and/or businesses under the control of the Tall Grass and/or its member(s), including Gefaell, Ward and Award LLC.

58. Upon information and belief, in some instances, the above activity involved transactions in which material was sold by and hauled from other quarries in direct competition with Plaintiff.

59. Tall Grass, Gefaell, Ward and Award LLC have intentionally and negligently

interfered with Plaintiffs contractual relationships through improper means and with reckless disregard for the consequences of their actions.

60. As a direct and proximate result of the conduct of Tall Grass, Gefaell, Ward and Award LLC as alleged hereinabove, Plaintiff has suffered damages in an amount unknown to Plaintiff at this time, but which will be proven at trial.

61. The actions of Tall Grass, Gefaell, Ward and Award LLC were undertaken willfully, wantonly, maliciously and in reckless disregard for Plaintiffs rights, and as a direct and proximate result thereof Plaintiff suffered economic damage in a total amount to be proven at trial, therefore Plaintiff seeks exemplary and punitive damages in an amount sufficient to deter said Tall Grass and others from similar future wrongful conduct.

COUNT IV: TORTIOUS INTERFERENCE
WITH PROSPECTIVE ECONOMIC ADVANTAGE

62. Plaintiff reasserts and realleges the foregoing paragraphs of the Complaint as though fully restated herein.

63. Plaintiff had a legitimate and identifiable prospective business advantage of hauling of various aggregates and other various products in the highly competitive market and being established within such field.

64. Tall Grass was aware of Plaintiffs prospective business advantage and, by engaging in the unjustified conduct described hereinabove, Tall Grass intentionally, negligently, and improperly interfered with Plaintiffs prospective economic advantage in the aggregates marketplace.

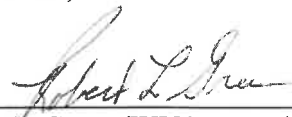
65. As a direct and proximate result of the conduct of Tall Grass as alleged hereinabove, Plaintiff has suffered damages in an amount unknown to Plaintiff at this time, but which will be proven at trial.

66. Tall Grass's actions were undertaken willfully, wantonly, maliciously and in reckless disregard for Plaintiffs rights, and as a direct and proximate result thereof Plaintiff suffered economic damage in a total amount to be proven at trial, therefore Plaintiff seeks exemplary and punitive damages in an amount sufficient to deter said Tall Grass and others from similar future wrongful conduct.

WHEREFORE, Plaintiff requests this Honorable Court:

- A. That Defendants pay to Plaintiff the amount of Sixty Thousand (\$60,000.00) Dollars for failure to pay expenses,
- B. That Defendants pay to Plaintiff the amount of One Hundred Eight-Five Thousand (\$185,000.00) Dollars for reimbursed management fees,
- C. That Defendants pay to Plaintiff such other costs and expenses incurred as a result of Defendants' conduct in an amount to be determined by the trier of fact,
- D. That Tall Grass assign its membership interest in Purdy Run to Purdy Run (redemption),
- E. That Defendants pay to Plaintiffs reasonable attorneys' fees and the costs incurred regarding this action, and
- F. All other just, proper, and equitable relief as this Court may determine.

PURDY RUN AGGREGATES, LLC,
By Counsel,



Robert L. Greer (WV Bar ID # 5852)
Jonathon W. Fischer (WV Bar ID #12538)
GREER LAW OFFICES, PLLC
P.O. Box 4338
Clarksburg, WV 26301
(304) 842-8090
Counsel for Plaintiff

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

PURDY RUN AGGREGATES, LLC, a Michigan
limited liability company (the surviving company
after the merger of Purdy Run Aggregates, LLC, a
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Plaintiff,

vs.

TALL GRASS MANAGEMENT PARTNERS,
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H.W. GEFAELL, an individual, WILLIAM M.
WARD (a/k/a BILLY M. WARD), an individual,
and AWARD DEVELOPMENT LLC, a Kentucky
limited liability company, jointly and severally,

Defendants.

Case No. 21-C-273-1

**ANSWER OF DEFENDANTS TALL GRASS MANAGEMENT PARTNERS, LLC, JOHN
H.W. GEFAELL, WILLIAM WARD, AND AWARD DEVELOPMENT LLC**

Defendants, Tall Grass Management Partners, LLC, John H.W. Gefaell, William Ward, and Award Development LLC (“Defendants”), by and through counsel, answers the allegations in the Complaint of Plaintiff Purdy Run Aggregates, LLC (“Plaintiff” or “Purdy Run”) as follows:

PARTIES

1. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in Paragraph 1 of the Complaint, and therefore deny the same.

2. Defendants admit that Tall Grass Management Partners, LLC is a Florida limited liability company with its principal place of business in the State of Florida.



3. Defendants admit that John H.W. Gefaell is an individual residing in the State of Florida and is a member of Defendant Tall Grass Management Partners, LLC, a Florida limited liability company.

4. Defendants admit that William M. Ward is an individual residing in the State of West Virginia. Defendants deny the remaining allegations set forth in Paragraph 4 of the Complaint.

5. Defendants admit that Award Development LLC is a Kentucky limited liability company with its principal place of business in the Commonwealth of Kentucky and has been involved in business relations with Plaintiff. Defendants deny the remaining allegations set forth in Paragraph 5 of the Complaint.

JURISDICTION, VENUE, AND CHOICE OF LAW

6. Defendants admit the allegations set forth in Paragraph 6 of the Complaint.

7. Defendants admit the allegations set forth in Paragraph 7 of the Complaint.

8. Defendants admit the allegations set forth in Paragraph 8 of the Complaint.

9. Defendants admit that only Tall Grass Management Partners, LLC through a Management Agreement with Purdy Run Aggregates, LLC dated April 10, 2018, agreed for Michigan law to apply to any claims arising out of the Management Agreement. Defendants deny the remaining allegations set forth in Paragraph 9 of the Complaint.

FACTS

10. Defendants admit that Tall Grass Management Partners, LLC entered into a Management agreement with Purdy Run Aggregates, LLC dated April 10, 2018.

11. Defendants deny the allegations set forth in Paragraph 11 of the Complaint.

12. Defendants deny the allegations set forth in Paragraph 12 of the Complaint.

13. Defendants admit that the Management Agreement contains 13 separate subsections that describe the scope of and changes in work covered under the Agreement's Management Services section. Defendants deny the remaining allegations set forth in Paragraph 13 of the Complaint.

14. Defendants admit that the financial performance requirements under the Management Agreement were not met during 2018 for a variety of reasons not under the control of Defendants.

15. Defendants admit that the financial performance requirements under the Management Agreement were not met during 2019 for a variety of reasons not under the control of Defendants.

16. Defendants deny the allegations set forth in Paragraph 16 of the Complaint.

17. Defendants admit the allegations set forth in Paragraph 17 of the Complaint.

18. Defendants deny the allegations set forth in Paragraph 18, including subparts (a)-(g) of the Complaint.

19. Defendants deny the allegations set forth in Paragraph 19 of the Complaint.

20. Defendants admit a third-party accounting firm, with the knowledge and approval of Plaintiff's manager, was hired to perform bookkeeping responsibilities. Defendants deny the remaining allegations set forth in Paragraph 20 of the Complaint.

21. Defendants deny the allegations set forth in Paragraph 21 of the Complaint.

22. Defendants deny the allegations set forth in Paragraph 22 of the Complaint.

23. Defendants admit payments to the third-party accounting firm were delayed due to the non-payment of fees owed to Defendants by Plaintiff. Defendants deny the remaining allegations set forth in Paragraph 23 of the Complaint.

24. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in Paragraph 24 of the Complaint, and therefore deny the same.

25. Defendants deny the allegations set forth in Paragraph 25 of the Complaint.

26. Defendants state that Exhibits 2 and 3 to Plaintiff's Complaint speaks for itself.

Defendants deny the remaining allegations set forth in Paragraph 26 of the Complaint.

27. Defendants deny the allegations set forth in Paragraph 27 of the Complaint.

28. Defendants deny the allegations set forth in Paragraph 28 of the Complaint.

29. Defendants deny the allegations set forth in Paragraph 29 of the Complaint.

30. Defendants deny the allegations set forth in Paragraph 30 of the Complaint.

31. Defendants deny the allegations set forth in Paragraph 31 of the Complaint.

32. Defendants deny the allegations set forth in Paragraph 32 of the Complaint.

33. Defendants deny the allegations set forth in Paragraph 33 of the Complaint.

34. Defendants deny the allegations set forth in Paragraph 34 of the Complaint.

35. Defendants deny the allegations set forth in Paragraph 35 of the Complaint.

36. Defendants deny the allegations set forth in Paragraph 36 of the Complaint.

37. Defendants deny the allegations set forth in Paragraph 37 of the Complaint.

38. Defendants deny the allegations set forth in Paragraph 38 of the Complaint.

39. Defendants admit the allegations set forth in Paragraph 39 of the Complaint.

40. Defendants deny the allegations set forth in Paragraph 40 of the Complaint.

41. Defendants deny the allegations set forth in Paragraph 41 of the Complaint.

42. Defendants deny the allegations set forth in Paragraph 42 of the Complaint.

43. Defendants deny the allegations set forth in Paragraph 43 of the Complaint.

COUNT I

BREACH OF CONTRACT

- 44. Defendants incorporate by reference its answers contained in Paragraphs 1-43.
- 45. Defendants deny the allegations set forth in Paragraph 45 of the Complaint.
- 46. Defendants deny the allegations set forth in Paragraph 46 of the Complaint.
- 47. Defendants deny the allegations set forth in Paragraph 47 of the Complaint.

COUNT II

FRAUD/INTENTIONAL MISREPRESENTATION

- 48. Defendants incorporate by reference its answers contained in Paragraphs 1-47.
- 49. Defendants deny the allegations set forth in Paragraph 49 of the Complaint.
- 50. Defendants deny the allegations set forth in Paragraph 50 of the Complaint.
- 51. Defendants deny the allegations set forth in Paragraph 51 of the Complaint.
- 52. Defendants deny the allegations set forth in Paragraph 52 of the Complaint.

COUNT III

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP

- 53. Defendants incorporate by reference its answers contained in Paragraphs 1-52.
- 54. Defendants deny the allegations set forth in Paragraph 54 of the Complaint.
- 55. Defendants deny the allegations set forth in Paragraph 55 of the Complaint.
- 56. Defendants deny the allegations set forth in Paragraph 56 of the Complaint.
- 57. Defendants deny the allegations set forth in Paragraph 57 of the Complaint.
- 58. Defendants deny the allegations set forth in Paragraph 58 of the Complaint.
- 59. Defendants deny the allegations set forth in Paragraph 59 of the Complaint.
- 60. Defendants deny the allegations set forth in Paragraph 60 of the Complaint.

61. Defendants deny the allegations set forth in Paragraph 61 of the Complaint.

COUNT IV

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

62. Defendants incorporate by reference its answers contained in Paragraphs 1-61.

63. Defendants deny the allegations set forth in Paragraph 63 of the Complaint.

64. Defendants deny the allegations set forth in Paragraph 64 of the Complaint.

65. Defendants deny the allegations set forth in Paragraph 65 of the Complaint.

66. Defendants deny the allegations set forth in Paragraph 66 of the Complaint.

67. Defendants deny any and all allegations in Plaintiff's Complaint not expressly admitted in this Answer.

WHEREFORE, Defendants deny that Plaintiff is entitled to any relief from this Court.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. Plaintiff's claims are barred in whole, or in part, by the doctrine of waiver, estoppel and satisfaction, and laches.

3. Plaintiff's claims are barred because it failed to mitigate its alleged damages.

4. Plaintiff's claims are barred because of the doctrine of unclean hands.

5. Plaintiff's claims are barred because it materially breached the terms of the Management Agreement.

6. Defendants reserve the right to raise additional Affirmative Defenses as the same become known during the course of discovery in this action.

WHEREFORE, having fully answered, Defendants Tall Grass Management Partners, LLC, John H.W. Gefaell, William Ward, and Award Development LLC pray this Court dismiss Plaintiff Purdy Run Aggregates, LLC's Complaint in its entirety.

DATED: January 24, 2022

Respectfully submitted,

/s/ Joseph R. Blalock

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Attorneys for Defendants Tall Grass Management Partners, LLC, John H.W. Gefaell, William Ward, and Award Development LLC

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing **DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT** has been served on all parties via ordinary U.S. Mail, this 24th day of January, 2022, to:

Robert L. Greer
Jonathon W. Fischer
GREER LAW OFFICES, PLLC
P.O. Box 4338
Clarksburg, WV 26301

Attorneys for Plaintiff

/s/ Joseph R. Blalock

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Partners, LLC, John H.W. Gefaell, William Ward,
and Award Development LLC*

CASE NO. 21-C-273

OPENED 11/12/2021

JUDGE... CHRISTOPHER JOHN MCCARTHY

PLAINTIFF. PURDY RUN AGGREGATES LLC A MICHIGAN LIMITED LIABILITY CO
VS DEFENDANT. TALL GRASS MANAGEMENT PARTNERS LLC

PRO ATTY.. ROBERT L. GREER
DEF ATTY..

PAGE# DATE MEMORANDUM.....

00001 11/12/21 CCIS, Complaint w/exh, Summons thru SOS to Tall Grass Mgmt
00002 11/12/21 Partners, J.Gefaell, Award Development LLC w/30 day rtn, and
00003 11/12/21 Summons thru KanawhaCoSD to W.Ward w/20 day rtn. cls
00004 11/19/21 Serv. Ret. Summons & Complaint to SOS for Tall Grass
00005 11/19/21 Management Partners, LLC 11-18-21 jsd
00006 11/19/21 Serv. Ret. To SOS for Award Development LLC 11-18-21 jsd
00007 11/19/21 Serv. Ret. Summons & Complaint to SOS for John H W Gefaell
00008 11/19/21 11-18-21 jsd
00009 11/22/21 Serv. Ret. Summons to W. Ward and Excepted by his Wife M.
00010 11/22/21 Ward 11-18-21 jsd
00011 1/24/22 Answer of defs. Tall Grass Mgt. Partners, J. Gafaell, W.
00012 1/24/22 Ward and Award Development, COS filed by J. Blalock djs
00013 1/28/22 Returned Service Return from SOS for Award Development ah
00014 3/04/22 COS for pltff's first set of interrers., requests for
00015 3/04/22 admissions and requests for prod. of documents to defs.
00016 3/04/22 filed by R. Greer djs
00017 3/14/22 Motion to Withdraw As Counsel to W.M. Ward & Award
00018 3/14/22 Development, LLC, w/COS filed by J. Blalock jsd
00019 3/14/22 Rule 4.03 Notification Cert. Of J.R. Blalock, Esq., w/COS
00020 3/14/22 filed by J. Blalock jsd
00021 3/25/22 ORDER SETTING HEARING ON DEFENSE COUNSEL'S MOTION TO WITH-
00022 3/25/22 DRAW. Hearing set for 4-19-2022 @ 2:00 pm. C- J. Blalock, R.
00023 3/25/22 Greer, W. Ward & Award Development. sp
00024 3/31/22 Motion for ext. of time to respond to discovery, COS filed
00025 3/31/22 by J. Blalock djs
00026 4/29/22 Def.'s Tall Grass Management Partners, LLC & John H.W.
00027 4/29/22 Gefaell's Obj.'s & Resp.'s to Pltff.'s First Set of Comb.
00028 4/29/22 Disc. Req.'s filed by J. Blalock jsd
00029 5/26/22 ORDER GRANTING DEFENSE COUNSEL'S MOTION TO WITHDRAW:C-Joseph
00030 5/26/22 Blalock,R Greer,W Ward,Award Development. mdr
00031 11/07/22 Declaration submitted by J. Fischer. sp
00032 11/07/22 Consent to Substitution of Counsel. sp
00033 11/07/22 STIPULATION & ORDER OF SUBSTITUTION OF COUNSEL. All further
00034 11/07/22 & future pleadings & correspondence in this matter shall be
00035 11/07/22 served upon J. Fischer. C- J. Fischer, R. Greer, J. Blalock,
00036 11/07/22 W. Ward & Award Development. sp

EXHIBIT

C