

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SCA EFiled: Dec 06 2022  
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Transaction ID 68521870

**PANTHER DRILLING SYSTEMS, LLC,  
an Oklahoma Limited Liability Company,**

**Petitioner/Counter-Respondent and  
Third-Party Petitioner,**

**v.**

**Supreme Court Docket No. 22-849  
Tyler County Circuit Court  
Civil Action No. 15-P-9  
Honorable Jeffrey Cramer**

**JAY-BEE OIL & GAS, INC.,  
JAY-BEE PRODUCTION CO  
JB EXPLORATION I, LLC  
a/k/a JAY-BEE EXPLORATION I, LLC**

**Respondents/Cross-Claim Plaintiffs,**

**v.**

**PROTOTYPE WELL PLANNING, LLC,  
a Texas Limited Liability Company,**

**Co-Respondent/Third-Party Counter  
Claimant and Cross-Claim Defendant,**

**PANTHER DRILLING SYSTEMS, LLC,  
an Oklahoma Limited Liability Company,**

**Petitioner/Counter-Respondent and  
Third-Party Petitioner.**

**RESPONSE TO PANTHER DRILLING SYSTEM, LLC'S MOTON TO REFER THIS  
MATTER TO THE BUSINESS COURT DIVISION**

NOW COMES, Respondents/Cross-Claim Plaintiffs, Jay-Bee Oil & Gas, Inc., Jay-Bee Production Co., and JB Exploration I, LLC a/k/a Jay-Bee Exploration I, LLC, (hereinafter collectively referred to as Jay-Bee), through counsel Charles R. Bailey, Jason S. Hammond and the law firm of Bailey & Wyant, PLLC, and for its Response to Panther Drilling System, LLC's Moton to Refer this Matter to the Business Court Division, states and avers as follows:

- 1) This dispute emanates from drilling services that Panther Drilling Services, LLC (“Panther”) performed upon thirteen (13) natural gas wells for Jay-Bee in Tyler County, West Virginia.
- 2) As part of its work for Jay-Bee, Panther contracted with Prototype Well Planning, LLC (“Prototype”) to prepare drilling plans for the Sneezy 10 and Sneezy 11 wells (hereinafter collectively referred to as “Sneezy wells”).
- 3) Following the attempted drilling of the Sneezy wells, a dispute erupted between Jay-Bee and Panther regarding Panther’s drilling of the Sneezy wells. This dispute developed into a payment dispute regarding the other wells, when Panther and Jay-Bee were unable to resolve the issues around the Sneezy Wells.
- 4) On June 5, 2015, Panther initiated this Civil Action by filing a Petition in the Circuit Court of Tyler County, West Virginia, to enforce Notices of Mechanic’s Liens against the Jay-Bee wells. In its Petition, Panther plead claims for enforcement of the Notices of Mechanic’s Liens, breach of Contract and unjust enrichment, seeking to recover Seven Hundred Eighty Three Thousand Three Hundred Seventy Three dollars and Seventy Five cents (\$783,373.75), for work and labor performed for Jay-Bee.
- 5) This action was assigned to the Honorable Jeffrey Cramer and he has presided over the entirety of the matter.
- 6) On July 13, 2015, Jay-Bee filed its Answer, Affirmative Defenses, and Counterclaim. Additionally, Jay-Bee filed a Partial Motion to Dismiss, arguing that Panther’s Notices of Mechanic’s Liens are defective.

- 7) Since this Civil Action was initiated, the Circuit Court of Tyler County, West Virginia has entered multiple substantive and evidentiary Orders including, but not limited to:
- a. September 3, 2015 – Order Denying Respondent’s Motion to Dismiss;
  - b. May 24, 2017 – Order Granting Petitioner’s Motion for Leave to Amend Answer to Counterclaim and file Third-Party Complaint;
  - c. October 1, 2019 – Order Granting Respondent’s Motion to Align the Parties and Motion for Leave to file Cross Claim against Prototype Well Planning, LLC
  - d. October 2, 2019 – Order granting Jay-Bee’s Motion to Amend and Supplement Expert Witness Disclosure and denying Motion in Limine to Limit the Testimony of Expert Witness Terry Brittenham and Petitioner’s Motion to Exclude Certain Opinion of Respondent’s Expert Donald Kesterson; and
  - e. September 30, 2020 – Order Granting Petitioner’s Partial Motions for Summary Judgment.
- 8) Pursuant to the Court’s Order of September 30, 2020, granting Petitioner’s Motion for Summary Judgment, Panther was granted judgment against Jay-Bee in excess of One Million Dollars (\$1,000,000.00). As a result of this Judgment, Jay-Bee entered a payment plan with Panther resolving any and all claims asserted by Panther. The Judgement has now been compromised, settled and satisfied. Consequently, the only pending claims remaining in this Civil Action are those revolving around the Sneezy wells.

- 9) This Civil Action was unsuccessfully mediated on November 13, 2018. The parties worked together to reconvene a mediation for the remaining claims. After agreeing to mediate this action with Mediator Stephen Dalesio on October 19, 2022, Panther and its insurer, James River Insurance Company, unilaterally elected not to participate in the mediation and cancelled the mediation.
- 10) A Scheduling Conference was conducted on October 17, 2022. The trial of this action is scheduled to commence on October 16, 2023.
- 11) In addition to the instant civil action, there exists a companion action, Civil Action Number 20-C-5. The companion action is a Declaratory Judgment Action involving the same parties and Panther's insurers. The Declaratory Judgment Action is seeking a determination of what rights and duties that Panther and its insurers have to defend and indemnify Prototype in Civil Action 15-P-9. In the Declaratory Judgment Action, Judge Cramer has issued Orders Denying Panther and James River's Motions to Dismiss. Furthermore, pursuant to the parties' Agreement, the Court has scheduled a hearing for Summary Judgment Motions that will be filed. The Hearing is scheduled for May 3, 2023.
- 12) Following seven (7) years of litigation, Panther filed this Motion to Refer on November 18, 2023, requesting that Civil Action Number 15-P-9 be referred to the Business Court Division.
- 13) Pursuant to Rule 29.04 (a) of the West Virginia Trial Court Rules, Business Litigation is defined as:
  - (1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and

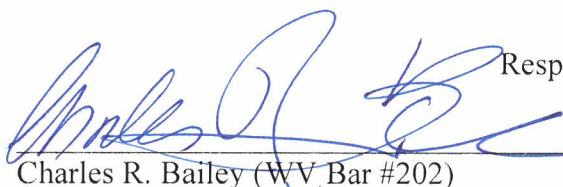
- (2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific 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 disputes 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.

- 14) Initially, Panther's Motion to Refer is woefully untimely. Panther filed its Petition initiating this Civil Action on June 5, 2015. Panther's claims have since been resolved pursuant to the Circuit Court of Tyler County's Order of September 30, 2020. The only remaining claims are Jay Bee's claims, and those revolving around the contractual indemnity issues involving Prototype. Panther waited over 7 years before filing its Motion to Refer, and over two (2) years since it was granted Summary Judgment regarding Panther's billing dispute with Jay-Bee. At no time in this seven year period did Panther file a Motion to Refer. Panther's Motion to Refer is dilatory, at best, and is an attempt at forum shopping over seven years after filing its Petition.

- 15) Since the filing of Panther's Petition on June 5, 2015, Judge Cramer has made numerous substantive rulings and evidentiary rulings regarding this action. Furthermore, both 15-P-9 and 20-C-5 are scheduled for trial and a hearing to dispose of the matters. The instant Motion to Refer is similar to one filed in *Larry Lovins, D/B/A Appalachian Home Center, et.al., v. Jai Sai, LLC, et.al.*, BCD Case Number 13-C-1796 KAN. In *Lovins*, the Motion to Refer was denied because the dispute had been pending for several years and the Circuit Court of Kanawha County, West Virginia, had already made multiple substantive rulings. *Lovins* was pending in the Circuit Court of Kanawha County for approximately 4 years at the time of the denial. Herein, the subject action has been pending for seven years and there have been a multitude of substantive and evidentiary rulings made by the Circuit Court of Tyler County. There is no basis to grant such an untimely motion.
- 16) Secondly specialized treatment from the Business Court is unnecessary. Jay-Bee's claims against Panther are for negligence, breach of contract, fraud and negligent hiring. There is nothing inherently complicated or technical regarding these legal theories. While it is accurate that the parties will have expert witnesses to support these claims or to provide a defense, these matters can be easily explained to a jury by a qualified expert. Judge Cramer is already familiar with the issues regarding this Civil Action, has made numerous substantive and evidentiary rulings regarding this matter and will be prepared to further litigate the matters. Consequently, the Motion to Refer must be denied.
- 17) Finally, despite cancelling the recent mediation, Panther seems concerned with obtaining an expeditious resolution of this action. However, the Declaratory

Judgment Action, Civil Action Number 20-C-5, is set for a hearing on upcoming Summary Judgment Motions on May 3, 2023, which will determine the indemnity issues and insurance coverage issues involving claims against Prototype. Further, the subject action, 15-P-9, is scheduled for trial on October 16, 2023, following the resolution of the Declaratory Judgment Action, Civil Action Number 20-C-5. The parties are required to mediate this action, on or before September 1, 2023. Both of these of Civil Actions are docketed to be resolved by the Circuit Court, within the next 10 months.

**WHEREFORE**, Respondents/Cross-Claim Plaintiffs, Jay-Bee Oil & Gas, Inc., Jay-Bee Production Co., and JB Exploration I, LLC a/k/a Jay-Bee Exploration I, LLC, respectfully request that Panther Drilling Systems, LLC's Motion to Refer this Matter to the Business Court Division be denied, and requests all further relief deemed just and appropriate.

 Respectfully Submitted,

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Jay-Bee Production Co., and  
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JAY-BEE OIL & GAS, INC., et al.,

Respondents.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of foregoing **Response to Panther Drilling System, LLC's Motion to Refer this Matter to the Business Court Division** was served upon the following parties by U.S. Mail on this 6<sup>th</sup> day of December, 2022:

The Honorable Judge Jeffrey Cramer  
2nd Judicial Circuit Court  
600 Seventh Street  
Moundsville, WV 26041

Business Court Division  
Berkeley County Judicial Center  
Suite 2100  
380 W. South Street  
Martinsburg, WV 24401

Circuit Court of Tyler County  
PO Box 8  
Middlebourne, WV 26149

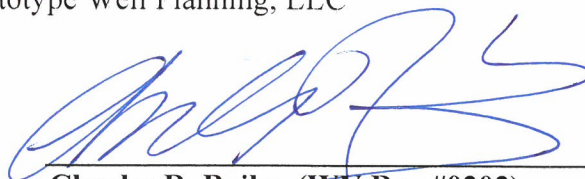
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