

BOONE COUNTY  
CIRCUIT CLERK  
IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

2014 JUN 23 P 12:45

BOONE MOTOR SALES, INC., D/B/A  
STEPHENS AUTO CENTER,

RECEIVED

PLAINTIFF,

v.

Civil Action No. 14-C-98

THORNHILL GROUP, INC., D/B/A  
THORNHILL FORD LINCOLN and  
FORD MOTOR COMPANY,

DEFENDANTS.

**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION  
AND REQUEST FOR STAY PENDING RECOMMENDATION FOR REFERRAL**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Thornhill Group, Inc., by counsel Andrew G. Fusco, Dylan C. Lewis and the law firm of Bowles Rice LLP, respectfully moves this Court to refer the above-styled case to the Business Court Division.

1. The nature of this action involves: (i) breach of contract; (ii) commercial torts; (iii) injunctive and declaratory relief between commercial entities; (iv) franchisees / franchisors; (v) a dispute involving commercial entities; and (vi) claims under Chapter 17A, Article 6A. Motor Vehicle Dealers, Distributors, Wholesalers and Manufacturers, §17A-6A-1, *et. seq.* (hereinafter "West Virginia Dealer Act").

2. West Virginia's Business Court Division is designed to address the "complex nature of litigation involving highly technical commercial issues" in "actions involving commercial issues and disputes between businesses." W. Va. Code § 51-2-15(a).

3. Any party may seek to refer “Business Litigation” to the Business Court Division within three months after the filing date of the action, W. Va. Tr. Ct. R. 29.06(a)(1)-(2).

4. To qualify for referral to the Business Court Division, a matter must be “Business Litigation,” as defined by Trial Court Rule 29.04(a). Business Litigation is litigation in which: (1) “the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities,” (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 needs 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 are not of the types listed in West Virginia Trial Court Rule 29.04(a)(3). W. Va. Tr. Ct. R. 29.04(a).

5. The present matter satisfies all elements of “Business Litigation” as defined by Trial Court Rule 29.04(a).

6. Moreover, referral of this case to the Business Court Division is necessary because the West Virginia Dealer Act “presents commercial . . . issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the needs for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.” W. Va. Tr. Ct. R. 29.04(a)(2).

7. There currently are no known related actions pending.

8. Pursuant to Trial Court Rule 29.06(b), the Circuit Court Judge may stay a civil action upon the filing of a motion to refer. In this particular circumstance, a stay of the civil action is reasonable and in the best interest of the parties and the judiciary for the following reasons:

- (a) The present motion to refer is being filed prior to any ruling or determination being made by the Circuit Court of Boone County, West Virginia in this action;
- (b) There are two pending Motions to Dismiss with regard to Plaintiff's Complaint filed in this matter;
- (c) Because the Business Court Division is designed for specialized litigation as is present among the parties, the Motion(s) to Dismiss and anticipated answers should be determined by the assigned Business Court Judge, who will ultimately decide all other issues in the matter, assuming referral is granted; and
- (d) A stay will not prejudiced any of the parties.

WHEREFORE, Thornhill Group, Inc., respectfully requests that this matter be referred to the Business Court Division and that the civil action be stayed until a determination on referral is made.

Submitted this 19<sup>th</sup> day of June 2014.

**THORNHILL GROUP, INC.**

By counsel,

  
BOWLES RICE LLP

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CIRCUIT CLERK  
JUL 1 2014 10:05 AM  
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STEPHENS AUTO CENTER,**

**PLAINTIFF,**

**v.**

**THORNHILL GROUP, INC., D/B/A  
THORNHILL FORD LINCOLN and  
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**Civil Action No. 14-C-98**

**ORDER DIRECTING CIRCUIT CLERK TO TRANSMIT  
MOTION TO REFER AND RESPONSES TO CLERK OF WVSCA**

Pending before the Court is a Motion to Refer to the Business Court Division filed on the 19<sup>th</sup> day of June 2014. And it appearing to the Court that all periods for response have expired, the matter is now ripe for referral to the Clerk of the Supreme Court of Appeals of West Virginia pursuant to Rule 29.06(c)(1).

Therefore, the Court does hereby ORDER and DIRECT the Circuit Clerk to transmit to the Clerk of the Supreme Court of Appeals of West Virginia for filing a copy of the Motion to Refer and all reply memoranda for review by the Chief Justice.

The objections of any party aggrieved by this Order are noted and preserved.

The Clerk is DIRECTED to send a certified copy of this Order to all counsel of record; Rory Perry, Clerk of the Supreme Court of Appeals of West Virginia; and the Business Court Division, Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia 25401.

ENTER:

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William S. Thompson, Judge

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STEPHENS AUTO CENTER,**

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**PROPOSED ORDER STAYING CIVIL ACTION  
PENDING DETERMINATION ON REFERRAL TO BUSINESS COURT DIVISION**

This Court has the power to stay a civil action pending determination on referral to the Business Court Division pursuant Trial Court Rule 29.06(b) Further, it appears from the face of Plaintiff's Complaint that this matter is one likely to be referred to the Business Court Division and that a stay of the civil action would not prejudice any party.

IT IS, THEREFORE, ORDERED, that this action is hereby STAYED pending determination on referral to the Business Court Division. However, this stay does not prevent any party from filing a response to the pending Motions to Dismiss, or a reply thereto, so that briefing on the pending Motions to Dismiss can be completed at the option of the parties and ready for argument regardless of which Court ultimately retains jurisdiction.

ENTER:

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William S. Thompson, Judge

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CIRCUIT CLERK  
WEST VIRGINIA  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION AND REQUEST FOR STAY PENDING RECOMMENDATION FOR REFERRAL** was served pursuant to Trial Court Rule 29.06(a)(3) by placing a true and exact copy thereof in the United States mail, postage prepaid and addressed as follows:

William T. Forester, Esquire  
Forester Law Offices  
PO Box 1036  
312 Main Street  
Logan, West Virginia 25601

*Counsel for Boone Motor Sales, Inc.*

William J. Hanna, Esquire  
Flaherty Sensabaugh Bonasso PLLC  
PO Box 3843  
Charleston, West Virginia 25338

*Counsel for Ford Motor Company*

Judge William S. Thompson  
Boone County Courthouse



200 State Street  
Madison, West Virginia 25130

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

Dated this 19<sup>th</sup> day of June, 2014.

A handwritten signature in black ink, appearing to read "Andrew G. Fusco", written over a horizontal line.

Andrew G. Fusco [WVSB # 1317]  
Dylan C. Lewis [WVSB # 10733]