

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

University Healthcare Foundation, Inc., f./k./a.  
City Hospital Foundation, Inc.  
Petitioner,

vs.

Berkeley County Circuit Court  
Civil Action No. 14-AA-4

Larry A. Hess, Assessor of Berkeley County,  
West Virginia, and  
Mark W. Matkovich, State Tax Commissioner,  
Respondents

2014 JUL 17 PM 3:42  
V. UNIVERSITY HEALTHCARE FOUNDATION  
CITY HOSPITAL FOUNDATION, INC.

TO: THE HONORABLE ROBIN JEAN DAVIS,  
CHIEF JUSTICE OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Honorable Judge Christopher C. Wilkes respectfully requests the above-styled case be referred to the Business Court Division. No motion to refer was filed by any parties; however, by letter dated July 7, 2014, Plaintiff's counsel noted that "[a]ll parties are in agreement that referral to the Business Court Division would be appropriate and desirable." To this Court's knowledge, no other pending or related actions have been filed.

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This matter is an appeal of Ad Valorem Property Taxation. The Petitioner previously applied, pursuant to W.Va. Code § 11-3-24a, to the Respondent Assessor regarding the exemption of certain real property from taxation pursuant to W.Va. Code § 11-3-9(a)(12). Upon receiving an adverse decision, the Petitioner requested a ruling from the Tax Commission. Thereafter, the Respondent Tax Commissioner issued Property Tax Ruling 14-01, finding the subject property not eligible for exemption from taxation. Petitioner has now appealed this ruling to this Court.

7/17/14

This case involves the taxation (or exemption from taxation) of a hospital foundation's real property. The Hospital/Hospital Foundation is a IRC § 501(c)(3) charitable tax-exempt entity. The subject property is used to provide space for Petitioner's own offices, that of other non-profits, and that of for-profit entities, all of which are allegedly integral to the Petitioner's admitted charitable purpose of providing healthcare. The areas provided to for-profit entities are claimed to be rented at market rate, with the rents therefrom being "used primarily and immediately for the [charitable] purposes" of the Petitioner.

## II. REASONING

This matter is clearly business litigation which is best handled in the Business Court Division based upon the significant issues and the potentially complex facts. This Court finds that the above-styled action involves matters of significance to the transactions and operations of business entities. W.Va. T.C.R. 29.04(a)(1). Namely, a Court decision on this issue (the possible exemption from taxation of property which a non-profit, healthcare business rents to other healthcare providers who use it in a manner ancillary to the completion of the owner's charitable purposes) is directly significant to Assessors in West Virginia, the many non-profit healthcare providers throughout the State, as well as the for-profit healthcare providers who often rent space on non-profit, hospital-owned property. This issue may also be significant to potential future West Virginia businesses, and Legislators who have the discretion to set exemptions.

Further, this case contains some potentially complex factual issues. This Court notes that this litigation is at its early stages before this Court, and while the case has had little factual development, it still appears that complex factual issues could arise, including: the usage of the space for non-tax exempt entities, the extent to which these non-exempt entities may use the space for what could be exempt

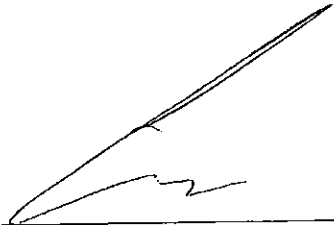
purposes, as well as detailed accounting issues surrounding the finances and procedures of the rent monies. Specialized treatment and expertise in the area of taxation and business operations is likely to improve the expectation of a reasonable and fair resolution of the controversy, §29.04(a)(2). Being a complex tax appeal, this type of claim is specifically allowable under §29.04(a)(3) ("complex tax appeals are eligible to be referred to the Business Court Division").

Finally, in further support of this motion, the Court attaches herewith a docket sheet from the Berkeley County Circuit Clerk's Office, the Petition with exhibits, the Response of the Assessor, the Answer of the Tax Commissioner, the Last Order in this matter, and the Letter from Petitioner's counsel to the undersigned Judge dated July 7, 2014. Also, the Court notes that by Rule, the response period for any interested party to respond to this Motion to Refer is twenty days. Further, by copy of this Motion, the Court gives notice of its request for an expedited ruling.

In conclusion, this matter clearly meets the definition of business litigation, and appears wholly appropriate for the Business Court Division.

WHEREFORE, this Court MOVES, pursuant to W.Va. Trial Court Rule 29, for referral to the Business Court Division; and REQUESTS, pursuant to the parties representations at the last hearing, and in the letter dated July 7, 2014, that the Chief Justice grant this Motion to Refer *without responses*, pursuant to W.Va. T.C.R. § 29.06(a)(4).

Dated: July 17, 2014

  
CHRISTOPHER C. WILKES, JUDGE  
TWENTY-THIRD JUDICIAL CIRCUIT  
BERKELEY COUNTY, WEST VIRGINIA

CERTIFICATE OF SERVICE

I, Christopher C. Wilkes, do hereby certify that on this, the 17 day of July, 2014, I have served the foregoing "*Judicial Motion to Refer Case to Business Court Division*," with attachments, by either hand delivery or first class mail to the following:

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CHRISTOPHER C. WILKES, JUDGE  
TWENTY-THIRD JUDICIAL CIRCUIT  
BERKELEY COUNTY, WEST VIRGINIA