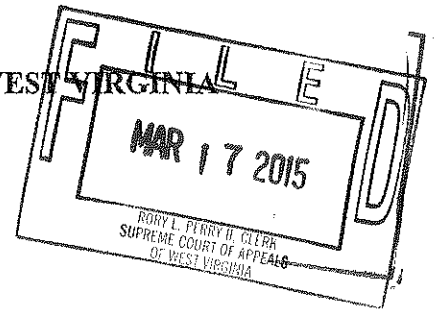


IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA



**F.K. EVEREST, INC. and
J. MIKE MARTIN,**

PLAINTIFFS,

v.

Civil Action No. 15-C-134

**RYAN L. EDDY, DAVID BRYTE,
INFINITY ELECTRIC, INC., and
ORANGE CONSTRUCTION
CORPORATION,**

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, Defendants, by counsel Andrew G. Fusco, Dylan C. Lewis and the law firm of Bowles Rice LLP, respectfully move 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 — tortious interference; (iii) injunctive relief between commercial entities; (iv) a dispute involving commercial entities; (v) breach of fiduciary duty; and (vi) will most likely include counterclaims concerning commercial/business issues which will create further complexity and which are otherwise the types of claims appropriate for West Virginia's Business Court Division (hereinafter "Business Court Division). See Exhibits A - Complaint & B - Motion for Preliminary Injunction.

2. The 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 pending claims and anticipated counterclaims “present[s] 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 Monongalia County, West Virginia in this action;
- (b) There is a pending Motion for Preliminary Injunction which has not been otherwise assigned to a Monongalia County Circuit Judge;
- (c) Because the Business Court Division is designed for specialized litigation as is present among the parties, the Motion for Preliminary Injunction 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 prejudice any of the parties. Moreover, a stay will not prejudice Plaintiffs since the majority of "employees" Plaintiffs alleged were solicited by Defendants are Union Shop electricians, who are not employees of Plaintiffs but, instead, third-party laborers assigned to Plaintiffs' jobsite.

9. There is good cause to transfer this case to the Business Court Division prior to answering the Complaint since there is a pending Motion for Preliminary Injunction and said motion should be determined in the Business Court Division for those reasons set forth in Paragraph 8 above. Trial Court Rule 29.06(a)(2). Moreover, Defendants anticipate filing a Motion to Dismiss which should also be determined in the Business Court Division, should this matter be transferred.

WHEREFORE, Defendants, respectfully request 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 24th day of February 2015.

**RYAN L. EDDY, DAVID BRYTE,
INFINITY ELECTRIC, INC., and
ORANGE CONSTRUCTION
CORPORATION**

By counsel,



BOWLES RICE LLP

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**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 24th day of February 2015. 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:

Assigned Monongalia Circuit Judge

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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 for Preliminary Injunction, or a reply thereto, so that briefing on the pending Motions for Preliminary Injunction can be completed at the option of the parties and ready for argument and hearing regardless of which Court ultimately retains jurisdiction.

ENTER:

Assigned Monongalia Circuit Judge

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, 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:

Jonathan Landesman, Esquire
Cohen Seglias Pallas Greenhall & Furman, P.C.
30 South 17th Street, 19th Floor
Philadelphia, Pennsylvania 19103

Stephen M. LaCagnin, Esquire
Wendy G. Adkins, Esquire
Jackson Kelly PLLC
150 Clay Street, Suite 500
PO Box 619
Morgantown, West Virginia 26507

Attn: Assigned Monongalia Circuit Judge
Circuit Court of Monongalia County
Monongalia County Courthouse
243 High Street, Room 110
Morgantown, WV 26505

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

Dated this 24th day of February 2015.

A handwritten signature in black ink, appearing to be 'A. G. Fusco', written over a horizontal line.

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