

15-BCD-04

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

W. HARLEY MILLER CONTRACTORS, INC.,

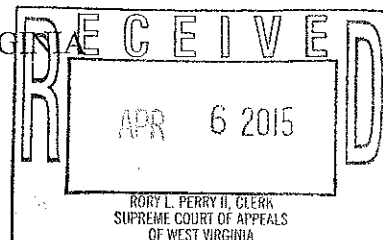
Plaintiff,

v.

JEFFERSON COUNTY BOARD OF EDUCATION,
HELBING, LIPP, RECNY ARCHITECTS, INC., dba
HELBING, LIPP, RECNY ARCHITECTS, and
DAVID LIPP,

Defendants.

Jefferson County Circuit Court
Civil Action No. 15-C-61



JEFFERSON COUNTY BOARD OF EDUCATION'S
RESPONSE TO PLAINTIFF'S MOTION TO REFER CASE
TO THE BUSINESS COURT DIVISION

The Jefferson County Board of Education responds to the Plaintiff's Motion to Refer Case to the Business Court Division to address two issues raised by the Motion. First, while the Motion indicates that this case is a dispute between commercial entities, the involvement of the Board of Education and an individual defendant indicates clearly that not all of the parties are commercial entities, for which the Business Court was intended. Second, while the Business Court Division is intended to fairly and efficiently resolve business litigation, there is no indication that cannot occur here—where the Circuit Court has already held one hearing on Plaintiff's request for a preliminary injunction. As a result, the Board believes it would be appropriate to deny the Motion and allow the case to proceed as it has already begun in the Circuit Court of Jefferson County.

Trial Court Rule 29.04 defines the type of "business litigation", which the Business Court Division is intended to manage. "Business litigation" includes those actions pending in Circuit Court in which "the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities." T.C.R. 29.04(a)(1). Rule 29.04 goes on to

exclude particular actions not appropriate for referral to the Business Court Division, including “administrative disputes with government organizations and regulatory agencies” T.C.R. 29.04(a)(3).

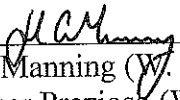
These provisions of Trial Court Rule 29.04 seem to exclude this action. This action was brought by the unsuccessful bidder to a Board of Education construction project against the Board of Education, the architect retained to manage that project, and the architect’s firm. In it, the bidder alleges that the process employed by the Board of Education in obtaining public bids to complete the construction project was unfair and that the result of that public bidding process should be set aside. In other words, it involves an action by one business entity against a public body, an individual, and a business entity alleging that the public body’s bidding process was unfair and should be set aside. The Board would note, then, that the “principal claim” is not “between business entities” but instead involves both a public body and an individual, and that the claim, at least in some respects relates to the administrative process used by the Board to obtain bids on a construction project. To the extent this type of claim was not the type intended to be referred to the Business Court Division, the Board believes that denying the Motion would be appropriate.

Moreover, there is no indication that the Circuit Court cannot fairly and expeditiously resolve this litigation. The Complaint in this action was filed on or about Friday, March 13, 2015. In the Complaint, the Plaintiff seeks preliminary and permanent injunctive relief, in the form of an order requiring the Board of Education to award the construction contract at issue to the Plaintiff. On March 19, 2015, the Circuit Court conducted an evidentiary hearing on the request for a preliminary injunction and denied the request. Nonetheless, the fact that the Circuit Court was able to hold a hearing within four business days, consider all evidence that the

Plaintiff wished to submit, and reach a decision on the substantive request, demonstrates that the Circuit Court is certainly capable of expeditiously considering the Plaintiff's Complaint and attempting to resolve this litigation. Indeed, the fact that the Court has already addressed the substantive issues to some extent and is familiar with the parties' arguments may mean denying the Motion will lead to a more efficient resolution of this case.

For those reasons, the Board of Education believes the more appropriate forum for this case is the Circuit Court of Jefferson County, and would request that the Motion be denied.

JEFFERSON COUNTY
BOARD OF EDUCATION,
By Counsel,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 3rd day of April, 2015, via electronic mail and U.S. mail, postage prepaid upon the following:

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