

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

SHELL EQUIPMENT COMPANY, INC.

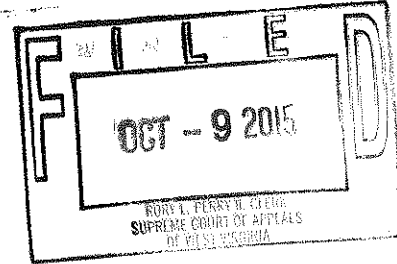
Plaintiff,

v.

Civil Action No. 15-C-208-2
THOMAS A. BEDELL, Chief Judge

J. F. ALLEN COMPANY, a
West Virginia Corporation,

Defendant.



TO: THE HONORABLE CHIEF JUSTICE

JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the *West Virginia Trial Court Rules*, the Honorable Thomas A. Bedell, Chief Judge for the Fifteenth Judicial Circuit, respectfully submits his request that the above-styled Civil Action No. 15-C-208-2, currently pending before the Circuit Court of Harrison County, Division 2, be referred to the Business Court Division.

No Motion to Refer has been filed jointly or otherwise herein by any of the parties' litigant. This request is initiated solely by this Honorable Judge presently presiding herein. He verily believes the Business Court Division's process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses is better suited to serve the parties' litigant herein.

To the best of this Honorable Judge's knowledge and belief based upon his review of the pleadings filed to date, the various claims being asserted herein by the respective parties' litigant and issues involved are deemed to qualify as "business litigation" pursuant to West Virginia Trial Court Rule 29.04(a) as they, to-wit:

1. Involve matters of significance to related transactions, operations, or governance between and/or among the entities joined herein.

2 Present appropriately commercial and/or technology issues in which specialized treatment might likely improve the expectation of a fair and reasonable resolution of the controversies because of the need for specialized knowledge or expertise in the subject matter of familiarity with some specific law or legal principles that may be applicable.

3. Do not involve any particularly identified or defined types of claims, disputes or litigation as collectively identified in West Virginia Trial Court Rule 29.04(a)(3).

Nature of the Action

The nature of this Civil Action primarily involves Breach of Contract. However, there are several liability issues asserted and this presently presiding judge deems there may be strong potential for additional claims and parties litigant as further discovery is undertaken. It may even further potentially involve issues as to Terms of a Commercial Lease of Real Estate; Insurance Coverage Disputes in Commercial Insurance Policies; or Injunctive or Declaratory Relief Between Commercial Entities.

In support of this Judicial Motion, this matter is deemed to contain issues significant to businesses as well as present novel or otherwise interestingly intertwined commercial and/or technological issues for which specialized treatment may be helpful.¹

¹ This Court will additionally note that it is directly aware of Shell (being one of several related business entities as named plaintiffs) having previously requested and been granted referral of other business and commercial matters initially litigated in various Circuit Courts in West Virginia. (See Harrison County Civil Action No. 14-C-143-2 ~ Such litigation upon referral was recently and successfully resolved in the Business Court Division with the Honorable Russell M. Clawges, Jr., acting as Presiding Judge and the Honorable James J. Rowe acting as Resolution Judge). As such, Shell may be well versed in and quite possibly desirous of Business Court Division involvement herein based upon such past experience.

Basis for this Court's Request to Refer

More particularly, the Plaintiff, Shell Equipment Company, Inc.'s (hereinafter referred to as "Shell"), *Complaint* filed herein on May 15, 2015 avers a breach of a purported agreement with the Defendant, J. F. Allen Co. (hereinafter referred to as "Allen"), regarding the temporary removal and then restoration of electric service to a certain building and improvements located on certain real property located in Eagle District, Harrison County, West Virginia. Such premises are averred to be part of real estate leased by Shell from an unidentified party and which had available electrical service that was in good working condition.

Shell further asserts that Allen was to return the property in the same condition it was prior to Allen's performance of certain construction work with respect to the Prospect Valley Highwall Reclamation Project that was to occur, in part, on the leased real estate and premises at issue.

Shell states that it conducts business operations on this property and that it experienced a loss in business opportunities as a result of electrical service not being returned to the leased premises by Allen as originally agreed to by the parties. Particularly, Allen is averred to have failed and/or refused to return (i.e.; restore) such service. Therefore, the parties' agreement was breached by Allen which resulted in injury and damage to Shell's leased premises and business operations.

Allen filed its Answer on June 26, 2015 and therein, *inter alia*, denies most of Shell's allegations contained in the *Complaint* while also averring that it is without knowledge or information sufficient to form a belief as to the truth of the allegations. However, it does admit three (3) particular allegations made by Shell, to-wit:

(a) Paragraph No. 2 in Shell's *Complaint* in that it "is a West Virginia corporation doing business in Harrison County, West Virginia".

(b) Paragraph No. 6 in Shell's *Complaint* insofar that it "entered into a contractual agreement with the West Virginia Department of Environmental Protection to perform certain construction work with respect to the Prospect Valley Highwall Reclamation Project".

(c) Paragraph No. 11 in Shell's *Complaint* insofar that it "has completed all operations and work with respect to the Prospect Valley Highwall Reclamation Project".

A Pre-Trial and Scheduling Conference was conducted in this Civil Action on Thursday, August 27, 2015 upon which only Allen filed a Pre-Trial Memorandum, in order to establish the necessary dates and deadlines for further pleadings, development of discovery, dispositive motions, mediation and final preparations for trial by jury. A *Pre-Trial and Scheduling Order* was caused to be entered herein on August 27, 2015 reflecting such agreed upon dates and deadlines and setting this matter for Jury Trial during the week of August 8, 2016.

The parties have selected James M. Wilson, Esq., to serve as mediator in this Civil Action and so notified this Court by *Notice Of Mediator Selected* filed herein on September 8, 2015 by and through Shell's legal counsel.

Upon all of which, this instant matter is now still relatively early in discovery as nothing more has yet been filed by either party and made a matter of record herein.

Accordingly, this Civil Action is deemed by this Honorable Judge to involve issues which support its general basis for requesting its referral to the Business Court Division.

There are no known related civil actions currently pending before this Court and this presiding judge is presently unaware of any other related actions that may be filed in the future.

In keeping with the requirements of West Virginia Rule 29.06(a)(1), copies of various pleadings herein are being provided along with this Request for Referral, to-wit: *Shell's Complaint; Answer Of Defendant, J. F. Allen Company, To Plaintiff's Complaint;* and this Civil Action's docket sheet.

In keeping with Rule 29.06(a)(3), I am providing and serving a true copy of this Request for Referral (sans various pleadings or docket sheet) directly to the Clerk of the Harrison County Circuit Court as well as to the parties herein through their respective legal counsel via first class U. S. Mail, such counsel being, to-wit:

Gregory H. Schillace, Esq.
Schillace Law Office
Post Office Box 1526
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Counsel for Plaintiff
Shell Equipment Company, Inc.

Benjamin G. Davisson, Esq.
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Clarksburg, WV 26302-1716
Counsel for Defendant
J. F. Allen Company

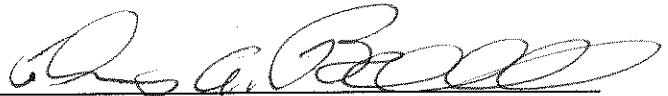
A true copy of this Request for Referral along with the various pleadings and docket sheet are also being provided to the Central Office of the Business Court Division via first class U. S. Mail in further keeping therewith.

Conclusion

WHEREFORE, this presently presiding judge herein, upon the reasons set forth above, respectfully moves Chief Justice Margaret L. Workman to grant his request to refer Harrison County Civil Action No. 15-C-208-2 to the Business Court Division.

Furthermore, in regard to expedited review, this Court does not request an expedited review under West Virginia Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a reply memorandum stating their respective position, in accordance with such Rule.

This matter is being respectfully submitted to you on this October 8, 2015.

A handwritten signature in black ink, appearing to read 'Thomas A. Bebell', written over a horizontal line.

THOMAS A. BEDELL, Chief Judge
15th Judicial Circuit
Harrison County Circuit Court ~ Division 2