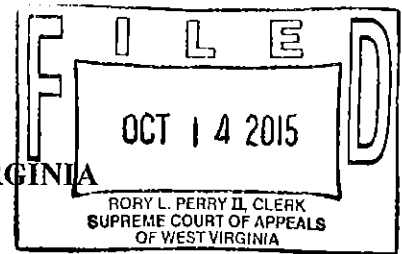


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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

WEST VIRGINIA BASEBALL, LLC,

Plaintiff,

v.

Kanawha County Civil Action No.: 15-C-1848  
Honorable James C. Stucky

MEDICAL WEIGHT LOSS  
CLINIC OF CHARLESTON,

Defendants.

**DEFENDANT'S MOTION TO REFER  
CIVIL ACTION TO THE BUSINESS COURT DIVISION**

Pursuant to Trial Court Rule 29.06, Imagine Medispa, f/k/a Medical Weight Loss Clinic of Charleston ("the Defendant"), respectfully move to refer this action to the Business Court Division ("Business Court"). As required by Rule 29.06(a)(1), the following information is provided:

Rule 29.06(a)(1) Question	Answer
Identification of the nature of the action sought to be referred	The action arises out of a Corporate Sponsorship Agreement between two businesses.
Basis for the requested referral	The claims asserted in this action raise significant questions with respect to the breach of its contractual obligation under the Corporate Sponsorship Agreement. The nature of the claims asserted by the Plaintiff are such that litigation in the Business Court will likely "improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise."
Whether additional related actions are pending or may be filed in the future	No additional related actions are pending or expected to be filed in the future.

This action is ideally-suited to adjudication in the Business Court. The parties are businesses in dispute of payments under the Corporate Sponsorship Agreement and claims that require the specialized treatment that can be obtained in the Business Court.

In sum, this Court should find that this action is well-suited to review in the Business Court and that referral will facilitate a fair and reasonable resolution of this action.

## **STATEMENT OF THE CASE**

Plaintiff claims or about March 9, 2011, it entered into a Corporate Sponsorship Agreement with the Defendant to receive one outfield billboard, logo placement on 20 ounce beer cups in the 2011 and 2012 baseball seasons, and one full panel print advertisement on 250,000 pocket schedules for 2011 baseballs season at the rate of \$13,5000.00 per year subject to rules, regulations, and default procedures contained in the Corporate Sponsorship Agreement. Plaintiff claims that the Defendant has not paid since March 2011 and is in breach of its contractual obligations under the Corporate Sponsorship Agreement.

## **LEGAL STANDARD**

In 2010, the West Virginia Legislature found that the “complex nature of litigation involving highly technical commercial issues” created a need for a separate and specialized court division with jurisdiction over actions involving “commercial issues and disputes between businesses.” W. Va. Code § 51-2-15(a). The Legislature also authorized the Supreme Court of Appeals to designate a Business Court Division and to promulgate rules governing its operation. *See* W. Va. Code § 51-2-15(b) & (c). On this basis, the Supreme Court of Appeals enacted Trial Court Rule 29 in 2012 and thereby “adopted a process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses . . . .” W. Va. Tr. Ct. R. 29.01.

Under Trial Court Rule 29.06, “[a]ny party or judge may seek a referral of Business Litigation . . . by filing a Motion to Refer . . . with the Clerk of the Supreme

Court of Appeals of West Virginia.” W. Va. Tr. Ct. R. 29.06(a)(1). “Business Litigation” is defined to mean:

one or more pending actions in circuit court in which:

(1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and

(2) the dispute 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 need 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 do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, [and] actions arising under the West Virginia Consumer Credit and Protection Act . . . .

W. Va. Tr. Ct. R. 29.04(a). Thus, Trial Court Rule 29 authorizes the transfer of “Business Litigation” to the Business Court, as long as the criteria specified in Rule 29.04(a) are satisfied.

## **ARGUMENT**

This Court should find that all of the claims asserted in this action raise significant questions with respect to the breach of its contractual obligation under the Corporate Sponsorship Agreement and that adjudication in the Business Court is likely to improve the expectation of a fair and reasonable resolution of the controversy.

## **CONCLUSION**

Based on the foregoing, this Court should find that this is an action that involves significant matters of concern between business entities and that referral to the Business

Court is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise.

**IMAGINE MEDISPA, LLC, F/K/A  
MEDICAL WEIGHT LOSS CLINIC OF  
CHARLESTON**

**By Counsel**

A handwritten signature in black ink, appearing to read 'Scott H. Kaminski', is written over a horizontal line.

Scott H. Kaminski (WVSB #6338)  
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CERTIFICATE OF SERVICE

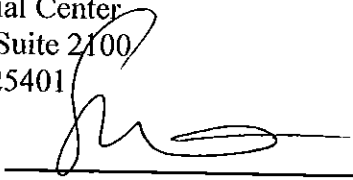
I Scott H. Kaminski, counsel for Imagine Medispa, LLC, certify that the foregoing *"Defendant's Motion to Refer Civil Action to Business Court,"* has been served on this 13th day of October, 2015 by mailing a true and accurate copy to the following:

Beth Kavitz  
Kavitz Law, PLLC  
22 Capitol Street, 2<sup>nd</sup> Floor  
Charleston, WV 25301

Honorable James C. Stucky  
Judge, Circuit Court of Kanawha County  
111 Court Street  
Charleston, WV 25301

Cathy Gatson  
Clerk, Circuit Court of Kanawha County  
111 Court Street  
Charleston, WV 25301

Business Court Division Central Office  
Berkeley County Judicial Center  
380 West South Street, Suite 2100  
Martinsburg, WV 25401

  
Scott H. Kaminski (WVSB #6338)