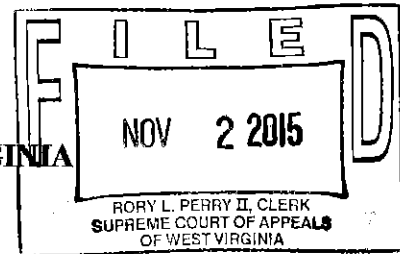


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



WEST VIRGINIA BASEBALL, LLC,

Plaintiff,

v.

**Kanawha County Civil Action No. 15-C-1848
Hon. James C. Stucky**

**MEDICAL WEIGHT LOSS
CLINIC OF CHARLESTON,**

Defendant.

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S
MOTION TO REFER CIVIL ACTION TO THE BUSINESS COURT DIVISION**

Plaintiff West Virginia Baseball, LLC, by Counsel, hereby responds in opposition to Defendant's Motion requesting this Court refer this civil action to the Business Court Division. This civil action is a simple contract dispute, involving none of the commercial complexities of cases suited for the Business Court Division, and requires no specialized knowledge or expertise to fairly and reasonably resolve the controversy. In support of this Response, Plaintiff states as follows.

FACTS AND PROCEDURAL HISTORY

Plaintiff contracted with Defendant in March of 2011 for advertising at the West Virginia Power Baseball Stadium in Charleston, West Virginia. By the signature of its representative on a Corporate Sponsorship Agreement, Defendant agreed to pay Plaintiff the sum of \$13,500 per year in exchange for one outfield billboard, logo placement on beer cups in the 2011 and 2012 seasons, and one full panel print advertisement on 25,000 pocket schedules for the 2011 baseball season. Cplt. ¶ 5. After signing this Agreement, Defendant ceased making payments for the agreed-upon services. Cplt. ¶ 6. Defendant received the above-listed advertising. Cplt. ¶ 10.

Plaintiff attempted to contact Defendant to resolve this matter without filing suit but ultimately had to resort to litigation. The Complaint in this matter was filed October 6, 2015 and timely served on Counsel for Defendant.

Plainly speaking, Defendant signed a simple contract with Plaintiff and failed to make payments as agreed in that contract. Plaintiff is suing Defendant for breach of contract by virtue of nonpayment for the benefit of the bargain received by Defendant.

APPLICABLE LAW

“Business Litigation” is defined at W. Va. Tr. Ct. R. 29.04 and cited accurately by Defendant; for purposes of this response certain criteria may require closer examination.

Business Litigation is defined as:

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 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 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, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

W. Va. T.C.R., Rule 29.04 (emphasis added). Additionally, W. Va. Tr. Ct. R. 29.03 states, in

pertinent part, “[t]hese rules shall not be construed to limit the jurisdiction of the circuit courts or to create any new cause of action.”

ANALYSIS

While Defendant correctly asserts that this civil action does involve a dispute between businesses, and that any party may seek the referral sought here, Defendant fails to demonstrate the “need 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. 29.03. A breach of contract claim is well within the competency and jurisdiction of the circuit court as contemplated by W. Va. Tr. Ct. R. 29.03, *supra*. The mere status of both parties to the matter as business entities does not, without more, require the specialized treatment of the case as the type of complex commercial matter for which the Business Court Division was created. Defendant’s request does not assert any complexity in the matter, and Plaintiff anticipates that discovery in this matter will demonstrate that the case comes down to a very few simple documents, including the contract governing this dispute. The circuit court undoubtedly has the expertise to interpret all contract law and the contract at issue.

CONCLUSION

WHEREFORE, in light of the foregoing, Plaintiff respectfully requests this Court deny Defendant’s Motion to Refer Civil Action to the Business Court Division and retain jurisdiction over this matter. Plaintiff further requests this Court award Plaintiff costs and attorney fees, and any and all such other and further relief as this court deems equitable and appropriate.



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WEST VIRGINIA BASEBALL, LLC
By Counsel

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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Defendant.

CERTIFICATE OF SERVICE

I, Elizabeth G. Kavitz, hereby certify that on the 30th day of October, 2015, the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO REFER CIVIL ACTION TO THE BUSINESS COURT DIVISION** was served via United States mail, first class, postage prepaid, on Counsel for Defendant and the applicable Court entities as follows:

Scott H. Kaminski, Esquire
Balgo & Kaminski, LC
P.O. Box 3548
Charleston, WV 25335-3548
Counsel for Defendant

Honorable James C. Stucky
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

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


Elizabeth G. Kavitz — WV Bar #10348