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15-BCD-25

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

THF CLARKSBURG DEVELOPMENT TWO,
LIMITED LIABILITY COMPANY,

Plaintiff,

v.

Civil Action No. 15-C-404-2
THOMAS A. BEDELL, Chief Judge

IIAAMM, LLC,

Defendant.

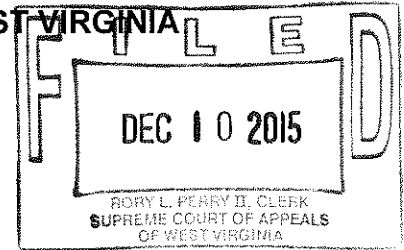
TO: THE HONORABLE CHIEF JUSTICE

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-404-2, 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 and defenses 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 is one brought for declaratory relief pursuant to the *West Virginia Declaratory Judgment Act, West Virginia Code § 55-13-1, et seq.* and Rule 57 of the *West Virginia Rules of Civil Procedure*. It primarily involves Breach of Contract, Declaratory Relief between Commercial Entities and Disputes Between Commercial Entities for which specific performance is sought.

This presently presiding judge deems there may be potential for additional claims and parties litigant as further discovery is undertaken.¹ This civil action may even further potentially involve issues as to Terms of a Commercial Lease of Real Estate; Internal Affairs of a Commercial Entity; Commercial Torts; Insurance Coverage Disputes

¹ The presently controlling *Pre-Trial And Scheduling Order* herein, which is more fully referenced infra on Page 4 of 6 and a copy of which being provided herewith, allows for Joinder and Amendments as well as other related claims and responsive pleadings to be fully affected by February 1, 2016.

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 issues for which specialized treatment may be helpful.

Basis for this Court's Request to Refer

The Plaintiff, THF Clarksburg Development Two, Limited Liability Company, (hereinafter referred to as "THF"), is a Missouri limited liability company with its principal place of business in the State of Missouri. The Defendant, IIAAMM, LLC (hereinafter referred to as "IIAAMM"), is a West Virginia limited liability company with its principal place of business in the County of Harrison, State of West Virginia.

THF's asserted issues arise from acts and omissions relating to real property located in the County of Harrison, State of West Virginia. In particular, this real property was conveyed by Deed from THF to IIAAMM and such parties also entered into a Supplemental Agreement with both documents being made a matter of public record in the Harrison County Clerk's Office.² Such Agreement included *inter alia* the option to repurchase the real property in question and the naming of an appraiser in the event such option was exercised. THF chose to exercise the option upon belief that it had been triggered under the terms of such Agreement by the actions of IIAAMM and further attempted to name an appraiser in further keeping with such terms.

More particularly, THF's *Complaint For Declaratory Judgment And Specific Performance* filed herein on October 9, 2015 avers a breach of the Supplemental

² Purported copies of such Deed and/or Supplemental Agreement were not attached to THF's Complaint or filed as Exhibits along therewith.

Agreement with IIAAMM regarding the “permitted use” under Section 3 contained therein.

IIAAMM filed its *Answer Of Defendant* on November 16, 2015 and the therein stated Second Separate Defense (to THF’s Complaint) specifically, to-wit: (a) denies Paragraph Nos. 1, 9 (partially), 10, 14, 15, 17, 18, 20 – 26 and 28; (b) admits Paragraph Nos. 2, 3, 5 – 8, 9 (partially), 12, 13, 16 (with clarification) and 24; and (c) avers no response necessary or restates and incorporates by reference other answers to Paragraph Nos. 4, 11, 19 and 27.³ Strict proof is demanded at trial on the denied allegations.

Particularly, IIAAMM asserts in its Eighth Separate & Affirmative Defense various allegations as to the parties’ Supplemental Agreement, appropriate determinations as to particular terminology contained therein as to “permitted use”, additional legal agreements entered into by it with another commercial entity for a particular business operation on the real property at issue and requisite actions taken in relation thereto all purportedly with the knowledge and approval of THF.

A Pre-Trial and Scheduling Conference was conducted in this Civil Action on Thursday, December 3, 2015 for which respective legal counsel for THF and IIAAMM each filed a Pre-Trial Memorandum and appeared 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. In its Memorandum, IIAAMM further identifies, *inter alia*, an affiliate LLC which was involved in the use of the real property in question. A *Pre-Trial and Scheduling Order* was caused to be entered

³ Within Paragraph No. 9, IIAAMM avers *inter alia* that the attempted exercise of such option by THF is void and without merit as such right to exercise has not been triggered. Within Paragraph No. 16, IIAAMM again avers *inter alia* that it had no duty to appoint an appraiser

herein on December 3, 2015 reflecting such agreed upon dates and deadlines and setting this matter for Jury Trial during the week of November 14, 2016.

Upon all of which, this instant matter is now still very 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: THF's *Complaint For Declaratory Judgment And Specific Performance*; IIAAMM's *Answer Of Defendant*; IIAAMM's *Pre-Trial Memorandum*; *Defendant's Pre-Trial Memorandum* 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:

Jiayin Liao, Esq.
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301
Counsel for Plaintiff
THF Clarksburg Development Two,
Limited Liability Company

James R. Christie, Esq.
Post Office Box 1133
Bridgeport, WV 26330
Counsel for Defendant
IIAAMM, LLC

In further keeping therewith, I am also providing a true copy of this Request for Referral along with the various pleadings and docket sheet 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-404-2 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 December 9, 2015.

A handwritten signature in cursive script, appearing to read "Thomas A. Bedell", written over a horizontal line.

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