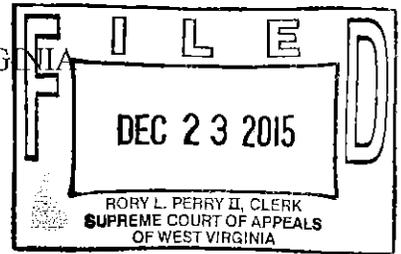


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
[BUSINESS COURT DIVISION]



ANNE E. MOORE, an individual,

Plaintiff,

v.

B.C.D. Action No. 15-BCD-26
[CIVIL ACTION NO. 15-C-2056
Judge: Kaufman]

H3LLC, a West Virginia limited liability
Company, and MICHAEL HOEFT, in his
Individual capacity and as manager of
H3LLC, and DOES 1 THROUGH 25,

Defendants.

**Motion to Refer on Behalf of Defendants
H3LLC and Michael Hoeft**

COME NOW Defendants H3LLC and Michael Hoeft, by counsel, and hereby
move this Court to refer the above captioned civil action to the Business Court Division. In
support of their Motion, Defendants state as follows:

I. The Business Court Division Has Jurisdiction over This Civil Action.

1. West Virginia Code § 51-2-15 and Rule 29 of the West Virginia Trial
Court Rules (“TCR”) provide that civil actions which constitute “Business Litigation” are
eligible for transfer to the West Virginia Business Court Division.

2. “Business Litigation” is defined by TCR 29 as a civil action 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].

TCR 29.04(a)(1)-(3).

3. Under TCR 29, any party or judge may seek a referral of “Business Litigation” to the Business Court Division by filing a Motion to Refer with the Clerk of this Court, after the time to answer the complaint has expired. TCR 29.06(a)(1). Such a motion must include a copy of the “complaint, answer, docket sheet and any other documents that support referral....” *Id.* Accordingly, a true and accurate copy of Plaintiff Anne E. Moore’s Complaint is attached hereto as Exhibit A. A true and accurate copy of the docket sheet is attached hereto as Exhibit B. These Defendants filed their Answers (Exhibit C) and Motions to Dismiss, along with the accompanying Memorandum of Law, which are collectively attached as Exhibit D.

4. Defendants are involved in a civil action filed by Plaintiff in the Circuit Court of Kanawha County, West Virginia, wherein the principal claims between the parties fall within the subject matter of the Business Court Division. More specifically, Plaintiff’s Complaint meets the criteria provided in TCR 29.04(a)(1)-(3).

5. First, pursuant to TCR 29.04(a)(1), the “principal claims” stated in Plaintiff’s Complaint involve “matters of significance” between H3LLC and Plaintiff, but also involve the complexity of negotiations with natural gas companies on behalf of multiple mineral owners. At the heart of the Complaint, Plaintiff alleges a breach of contract claim against H3LLC, wherein Plaintiff asserts that H3LLC failed to negotiate an advantageous oil and gas lease for Plaintiff’s Barbour County, West Virginia, property. Plaintiff’s principal claim for breach of contract will not only relate to Plaintiff’s dealings with H3LLC, but also with process H3LLC uses to negotiate leases with oil and gas companies on behalf of individuals it represents. The matter deals directly with complicated intricacies in the oil and gas market over the past 2-3 years, including a market analysis of which regions were in demand over certain time periods. These matters of significance among numerous business entities – and in the oil and gas industry as a whole – will be determinative issues in the present matter, as they relate directly to the parties’ obligations under the agreement.

6. Second, pursuant to TCR 29.04(a)(2), “specialized treatment” of the parties’ claims is likely to “improve the expectation” of a fair and reasonable resolution of their controversy. A judge that possesses “familiarity with” the complex issues and underlying legal principles – (1) intricacies of the oil and gas market in specific counties in West Virginia and (2) duties of an agent associated in attempting to negotiate profitable leases – will undoubtedly improve the expectation of a fair and reasonable resolution of the parties’ claims.

7. To explain the complicated nature of the case, the contract in dispute between H3LLC and Plaintiff sets forth H3LLC’s objective to “obtain a Lease effecting the most advantageous available economic terms and provisions for the properties relative to the oil & gas leasing offers within the area on the date of execution of this Agreement.” Ex. E, 1. Typically, once an agreement is made with a landowner, the property is listed with a larger group of properties, which then offers drilling rights to oil and gas companies seeking to drill in the area. The group achieves leverage that a single property cannot attain, which passes to each landowner “the most advantageous economic terms.” Because of the high number of variables – the number of landowners represented by the agent, market prices of oil and gas, availability of alternative properties, global economic factors, among others – specialized knowledge is required to determine the extent of the duty owed by H3LLC and to determine whether the contractual duty was breached. A judge familiar with these types of business relationship issues will improve the expectation of a fair and reasonable resolution of the parties’ claims.

8. Finally, pursuant to TCR 29.04(a)(3), none of Plaintiff’s or Defendants’ claims fall within consumer litigation exceptions.

9. Therefore, in light of the commercial nature of this dispute, as well as the need for specialized treatment due to complex and novel legal issues, the principal claims in this matter fall within the jurisdiction of the Business Court Division.

II. Defendants’ Motion is Timely before this Court.

10. Where a civil action falls within the jurisdiction of the West Virginia Business Court Division, any party may file a Motion to Refer “after the time to answer the

complaint has expired.” TCR 29.06(a)(2). Defendants responded to Plaintiff’s Complaint on December 21, 2015. Accordingly, this matter is timely before this Court.

III. Transfer of This Civil Action to the Business Court Division Will Not Affect the Litigation of Any Related Pending or Future Actions.

11. As required by TCR 29.06(a)(1), Defendants state that they are unaware of any pending or future actions related to the parties’ controversy.

WHEREFORE, Defendants H3LLC and Michael Hoeft respectfully request that this Court refer this action to the Business Court Division.

H3LLC AND MICHAEL HOEFT
By Counsel



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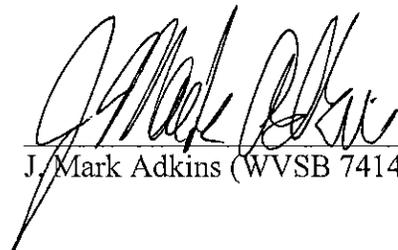
Defendants.

Certificate of Service

I, J. Mark Adkins, do hereby certify that I have caused copies of the hereto
attached *Motion to Refer on Behalf of Defendants H3LLC and Michael Hoeft* to be served
upon the following by placing the same in the regular United States Mail, postage prepaid:

Mark F. Underwood, Esquire
UNDERWOOD LAW OFFICES
923 Third Avenue
Huntington, WV 25701
Counsel for Plaintiff

on this 23rd day of December, 2015.



J. Mark Adkins (WVSB 7414)