

IN THE CIRCUIT COURT OF HAMPSHIRE COUNTY WEST VIRGINIA

ROBERT E. MAYHEW,

Plaintiff,

v.

**CIVIL ACTION NO.: 15-C-109
HONORABLE CHARLES E. PARSONS**

**DAVID WEIMER, Individually, and
WEIMER CHEVROLET, INC., a West
Virginia Corporation,**

Defendants.

MOTION TO REFER ACTION TO THE BUSINESS COURT DIVISION

NOW COME Defendants, David Weimer, Individually ("Weimer"), and Weimer Chevrolet, Inc., a West Virginia corporation ("WCI"), by and through counsel, Colleen C. McCulloch and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and respectfully move to refer this civil action to the Business Court Division pursuant to West Virginia Trial Court rule 29.06(a)(2). In support thereof, these Defendants would show that this litigation involves allegations by the Plaintiff of the (i) alleged breach of an asset sale agreement; (ii) alleged breach of a commercial real property lease with option to purchase; (iii) alleged breach of a consulting agreement; and (iv) fraud. Defendants counter-claims include (i) breach of contract; and (ii) tortious interference with business relationship. Accordingly, referral of the matter to the Business Court Division is proper.

1. STATEMENT OF FACTS

A. The Claims made in the Hampshire County Civil Action No. 15-C-109

The Complaint was filed by Robert E. Mayhew on or after November 16, 2015. In his Complaint, a true and correct copy of which is attached hereto as Exhibit 1, Plaintiff alleges that Defendants breached a consulting agreement which was entered into in conjunction with Plaintiff's sale of a Chevrolet automobile dealership to Defendants. *See* Complaint, at ¶¶ 20 – 26, Plaintiff

further alleges that he was fraudulently induced into the sale of the Chevrolet automobile dealership, that Weimer made material and false representations to Plaintiff and that Plaintiff relied to his detriment on the terms of the contract. *See*, Complaint, at ¶¶ 28-34. Plaintiff further alleges that Defendants have breached a commercial real estate lease agreement and option to purchase with his wholly owned limited liability company, K.B. Mayhew Holdings, LLC. In their Answer and Counter-Claims, Defendants deny the allegations and assert that it was Plaintiff who has breached the consulting agreement; breached the Agreement to Sale (sic) Business and has tortuously interfered with the ongoing business of Defendants. A true and correct copy of Defendants' Answer and Counter-Claims is attached hereto as Exhibit 2. Plaintiff's Answer to the Counter-Claims is attached hereto as Exhibit 3.

B. The Parties

The parties to this litigation are Plaintiff, Robert Mayhew, former owner and principal in Mayhew Chevrolet, Inc., who asserts claims individually as well as claims on behalf of his corporation and Limited Liability Company, although neither is named as a party. Plaintiff's address is 111 Depot Valley Road, Romney, West Virginia 26757. Weimer is a resident of 405 Crestview Drive, Frostburg, Maryland 21532. WCI is a West Virginia corporation with a principal address of 22338 Northwestern Pike, Romney, West Virginia 26757.

2. ANALYSIS

A. Legal Standard

West Virginia Trial Court Rule 29.06(a)(1) provides that "[a]ny party or judge may seek a referral of Business Litigation to the Division by filing a Motion to Refer to the Business Court Division in the circuit court where the matter is pending." "Business Litigation" describes civil

actions where "the principal claim or claims involve matters of significance to the transactions, operation, or governance between business entities; and 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." *Id.* at 29.04(a)(1)-(2).

Other than the foregoing, there are no known related actions. This dispute relates solely to the breach of contracts executed in the sale of a commercial entity and the lease with purchase option of commercial real property.

B. This Matter is Appropriate for Referral to the Business Court Division as it is a Commercial Dispute between the Former Owner and Current Owner of an Automobile Dealership.

This case involves the alleged breach of a commercial sales contract, a consulting agreement and lease with option to purchase as well as tortious interference with business relationships. Therefore, this case fits the definition of "Business Litigation" because it involves the operation of a business entity and requires the interpretation of commercial contracts. Further, it is not the type of litigation that is specifically prohibited from the Business Court Division.

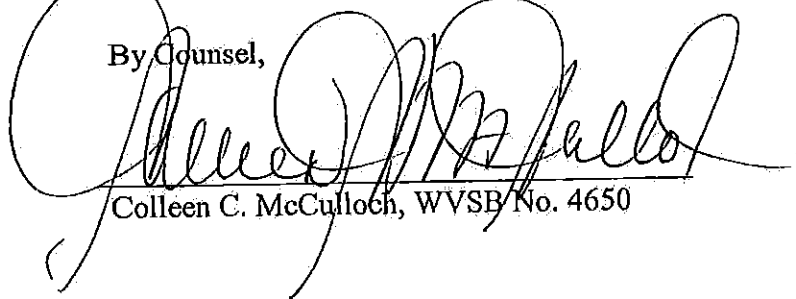
The Business Court Division was created to handle cases like this litigation; therefore, transfer to the Business Court Division is appropriate.

CONCLUSION

WHEREFORE, for all the reasons stated herein, David Weimer and Weimer Chevrolet, Inc. respectfully move this Court for a referral of the above-captioned civil action to the Business Court Division pursuant to West Virginia Trial Court Rule 29-01, *et. seq.*

DAVID WEIMER, Individually and
WEIMER CHEVROLET, INC., a West
Virginia corporation

By Counsel,

A large, stylized handwritten signature in black ink, appearing to read 'Colleen C. McCulloch', is written over the printed name and title.

Colleen C. McCulloch, WVSB No. 4650

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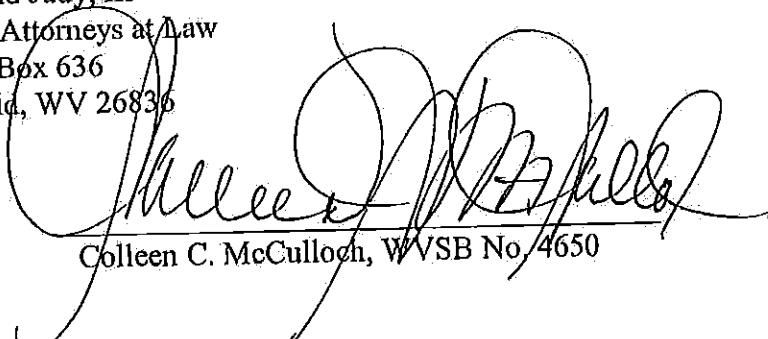
DAVID WEIMER, Individually, and
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Virginia Corporation,

Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendants, does hereby certify on this 21st day of January, 2016, that a true copy of the foregoing "*MOTION TO REFER ACTION TO THE BUSINESS COURT DIVISION*" was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

J. David Judy, III
Judy & Judy Attorneys at Law
PO Box 636
Moorefield, WV 26836



Colleen C. McCulloch, WVSB No. 4650

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REPLY TO: Beckley

SENDERS E-MAIL: cmcculloch@pffwv.com
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January 21, 2016

Sonja Embrey
Hampshire County Circuit Court
P.O. Box 343
Romney, WV 26757

RE: *Robert E. Mayhew v. Weimer, David and Weimer Chevrolet*
Hampshire County Circuit Court
Civil Action No. 15-C-109

Dear Ms. Embrey:

Enclosed for filing in the above styled civil action, please find Defendants' "Motion to Refer Action to the Business Court Division." All appropriate parties have been served with a complete copy of the same.

Should you have any questions, please feel free to contact me.

Very truly yours,

Natalie Bates Blankenship
Natalie Bates Blankenship
Legal Assistant

CCM/nbb

Enclosures

cc: Honorable Judge Parsons
J. David Judy, III, Esq.
Central Office of the Business Court Division
David Weimer