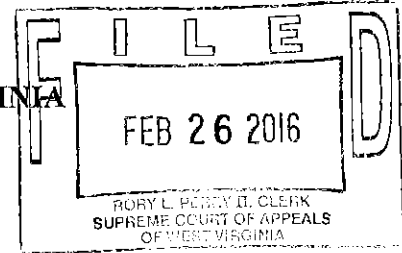


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
[BUSINESS COURT DIVISION]



AMERICAN LEGION DEPARTMENT
MARYLAND, INC., VICTORY POST 155,

Plaintiff,

B.C.D. Action No.: 16-BCD-3
[Circuit Court of Mineral County
Civil Action No. 15-C-90]

v.

FIRST UNITED BANK & TRUST,
a foreign banking corporation,

Defendant and Third-Party Plaintiff,

v.

ROGER LOUGH,

Third-Party Defendant.

**MOTION OF FIRST UNITED BANK & TRUST
TO REFER CASE TO THE BUSINESS COURT DIVISION**

Pursuant to Trial Court Rule 29.06, First United Bank & Trust ("FUBT"), by counsel, Bowles Rice LLP, hereby moves this Court to refer the above-captioned civil action to the Business Court Division of the West Virginia Circuit Courts. In support of this Motion, FUBT states as follows:

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

2. "Business Litigation" is defined by West Virginia Trial Court Rule 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, 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.

3. FUBT, a banking corporation chartered in the state of Maryland and authorized to do business in the state of West Virginia, is involved in a civil action filed by American Legion Department Maryland, Inc., Victory Post 155 ("the Legion"), a Maryland incorporated entity (*see* Complaint, ¶ 1), in the Circuit Court of Mineral County, West Virginia, wherein the principal claims among the parties fall within the subject matter of the Business Court Division. As more specifically set forth below, the Legion's Complaint meets each of the three criteria provided in West Virginia Trial Court Rule 29.04(a)(1)-(3).

4. First, pursuant to West Virginia Trial Court Rule 29.04(a)(1), the "principal claims" stated in the Legion's Complaint involve "matters of significance" to banking transactions between two business entities, FUBT and the Legion. Specifically, the Legion's Complaint alleges that FUBT deceptively, negligently, intentionally and willfully opened Checking Account No. 420734409 for Roger Lough, and wrongfully allowed Mr. Lough to

deposit negotiable instruments made payable to the Legion into said bank account, allowing Mr. Lough to convert the Legions' funds for his own use. Further, the Legion's Complaint alleges that FUBT's banking practices were without any commercial justification under the Uniform Commercial Code ("UCC"), W. Va. Code Chapter 46.

5. Second, pursuant to West Virginia Trial Court Rule 29.04(a)(2), "specialized treatment" of the parties' claims in this case is likely to "improve the expectation" of a fair and reasonable resolution of their controversy. Specifically, this matter involves complex commercial banking issues and legal principles that are not frequently raised in the West Virginia Circuit Courts. Resolution of the parties' claims will require the court to inspect and evaluate voluminous bank account documents and records covering a period of over two years. Resolution of the parties' claims will benefit from a familiarity with, or specialization in, laws related to commercial banking practices and the UCC.

6. Finally, none of the Legion's claims fall within the consumer litigation exceptions of West Virginia Trial Court Rule 29.04(a)(3). While the Legion's Complaint alleges violation of the West Virginia Consumer Credit and Protection Act ("WVCCPA"), the Legion is not a "Consumer" as defined by West Virginia Code § 46A-1-101, *et seq.*, and, therefore, cannot avail itself to the protections contained therein. West Virginia Code § 46A-1-102(12), states that a "Consumer" means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan, or debt or other obligations pursuant to a consumer lease." (emphasis added). Notably, the Legion's Complaint alleges that it was and is an incorporated organization, chartered in the state of Maryland. Thus, the Legion is not a natural person or a "Consumer" as defined by the WVCCPA, and, therefore, it does not apply.

7. Any party 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. W. Va. T.C.R. 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.* FUBT responded to Plaintiff's Complaint on November 23, 2015. Accordingly, this matter is timely before this Court. A true and accurate copy of the Complaint, Answer and docket sheet are attached as Exhibits 1-3.

8. FUBT currently is attempting service of its Third-Party Complaint against Mr. Lough in this matter. *See* attached Exhibit 4. Even so, good cause exists to transfer this case to the Business Court Division at this stage of the litigation.

9. First, Mr. Lough essentially was functioning as the Legion's treasurer by handling the relevant banking transactions for the Legion. Therefore, the principal claims still involve "matters of significance" to commercial banking transactions between FUBT and the Legion, and the claims still merit "specialized treatment" under West Virginia Trial Court Rule 29.04(a)(2).

10. Second, the Third-Party Complaint does not allege any new facts or issues, and only asserts claims for implied indemnification and contribution arising out of the banking transactions mentioned above. Further, as mentioned above, FUBT's claims against Roger Lough do not fall within the categorical exceptions in West Virginia Trial Court Rule 29.04(a)(3).

11. Finally, even though FUBT has not completed service of the Third-Party Complaint on Roger Lough, the original parties already have exchanged some written discovery related to the relevant banking transactions. Because the Business Court Division is better

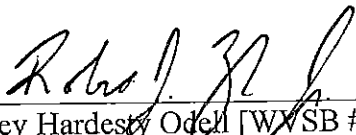
equipped to handle the complex commercial banking issues presented in this matter, there is good reason to avoid delaying the transfer of this case.

12. As required by West Virginia Trial Court Rule 29.06(a)(1), FUBT states that it is unaware of any related pending or future actions related to the parties' controversy.

WHEREFORE, First United Bank & Trust respectfully requests that this matter be referred to the Business Court Division.

Submitted this 24th day of February 2016.

FIRST UNITED BANK & TRUST,
By counsel



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing document titled
*"MOTION OF FIRST UNITED BANK & TRUST TO REFER CASE TO THE BUSINESS
COURT DIVISION"* was, this 24th day of February 2016, served on all parties pursuant to
W.Va.T.C.R. 29.06(a)(3) by depositing a true and correct copy of the same in the United States
Mail, postage prepaid, and addressed as follows:

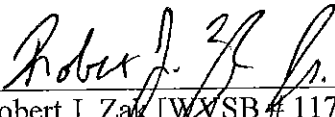
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