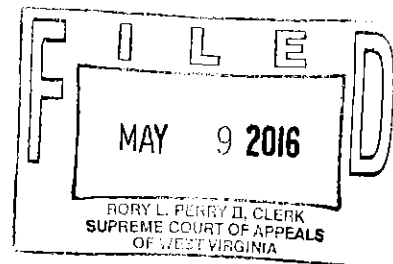


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
[BUSINESS COURT DIVISION]

JOHN MARK HICKMAN, CECIL
LEE HICKMAN, LAWRENCE
GRANT HICKMAN, AND CAROL
SUE CRISWELL, individually, and
on behalf of a class of similarly-situated
persons,



Plaintiffs,

v.

B.C.D. Action No. 16-BCD-04
[Ohio County Circuit Court
Civil Action No. 14-C-133]

ALLIANCE RESOURCES GP, LLC,
TUNNEL RIDGE, LLC, ROBIN
ENERGY INC., and JESMAR
ENERGY, INC.,

Defendants.

**PLAINTIFFS' OBJECTION TO DEFENDANTS' MOTION
TO REFER CASE TO THE BUSINESS DIVISION**

NOW COME the Plaintiffs, John Mark Hickman, Cecil Lee Hickman, Lawrence Grant Hickman, and Carol Sue Criswell, individually, and on behalf of a class of similarly-situated persons, by and through counsel, and respectfully submit their objection to the Defendants, Alliance Resources GP, LLC's ("Alliance"), Tunnel Ridge, LLC's ("Tunnel Ridge"), Robin Energy Inc.'s ("Robin Energy"), and Jesmar Energy, Inc.'s ("Jesmar") Motion to Refer Case to the Business Court Division.

Defendants' Motion should be denied, as Defendants have failed to establish the required elements of Rule 29.04 of the West Virginia Trial Court Rules. Therefore, the current case is not Business Litigation and is not within the jurisdiction of the Business Court Division.

A. Statement of the Facts

This case involves a Complaint filed by landowners against business entities. The dispute is over minerals illegally taken from Plaintiffs and does not present any commercial and/or technological issues that require specialized knowledge to reach a fair and reasonable

resolution. Instead, Plaintiffs' claims involve the ownership of mineral rights, extraction of minerals, and the basic legal principles of trespass and conversion. Moreover, as specifically prohibited by Rule 29.04(A)(3) for cases in the Business Court Division, the principal claims involve consumer and residential real estate.

The named Plaintiffs are the owners of property containing approximately 143 acres of real estate located in Triadelphia District, Ohio County, West Virginia. The Plaintiffs' real estate ownership interest includes the rights to any and all minerals and/or oil and gas interests except for the coal of the Pittsburgh vein. The Pittsburgh vein was previously severed from Plaintiffs' property by a predecessor in title and said coal has already been mined from the area underling Plaintiffs' property.

Defendant Alliance and Defendant Tunnel Ridge, a subsidiary of Defendant Alliance, wrongfully claim an ownership interest in the abandoned mine workings beneath the Plaintiffs' real estate. Moreover, Defendant Robin Energy entered into a lease agreement with Defendant Alliance and/or Defendant Tunnel Ridge for the development and production of methane gas from the abandoned mine workings. Furthermore, Defendant Jesmar entered into a contractual agreement with one or more of the Defendants for the construction and installation of methane production wells into abandoned mine workings.

Defendants have drilled methane production wells into the abandoned mine workings beneath the Plaintiffs' property. Moreover, Defendants produced methane gas from the abandoned and empty coal mine voids. In achieving production from the abandoned and empty coal mine works, Defendants withdrew and produced methane gas they did not own and in which they had no legal rights, as the Plaintiffs own the methane gas extracted and/or produced by Defendants. Moreover, Defendants have not provided any form of compensation to the Plaintiffs.

The class proposed by the Plaintiffs is defined as:

Those methane gas owners, after coal interests were previously severed, who held the right to explore for and produce methane gas in the mined out works where coal was mined out who had their methane gas extracted and produced by one or more of the named Defendants without any legal interest or right to do so from 2005 to the Present from the Blum 1 (Permit #125-2219), Hughes 1 (Permit #125-22426) and/or Hanson Engineering 1 (Permit #125-2422) methane gas wells.

B. Argument

Rule 29.04 of the West Virginia Trial Court Rules, providing the elements of “Business Litigation,” states:

For the purposes of this Rule, the following definitions apply:

(a) **“Business Litigation”**--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 and residential real estate, such as landlord-tenant disputes . . .

Id. (emphasis added). Based on the explicit text of the statute, all of the three elements must be established for a case to be considered “Business Litigation.” Based on the plain language of the statute, if the moving party does not establish all three requirements stated in Rule 29.04 of the West Virginia Trial Court Rules, a case is not eligible for transfer to the West Virginia Business Court Division. The current case fails to establish each of the requirements stated in Rule 29.04 and, therefore, is not Business Litigation and is not eligible for transfer to the West Virginia Business Court Division.

1. The Plaintiffs' principal claims do not involve matters of significance to the transactions, operations, or governance between business entities.

The Defendants have failed to establish that Plaintiffs' principal claims involve matters of significance to the transactions, operations, or governance between business entities. In this section, Defendants attempt to argue this case should be considered Business Litigation due to the fact that a severance deed must be interpreted, certain wells are located in Pennsylvania, the rule of capture may impact the decision, and a statute of limitation may need to be analyzed. Despite Defendants consistent use of phrases such as "complex technological issues" or "novel", none of these issues have any impact on whether Plaintiffs' principal claims involve matters of significance to the transactions, operations, or governance between business entities.

Plaintiffs' claims involve minerals, specifically coalbed methane ("CBM"), which have been illegally taken from under their land. Defendants first argue that "[t]he interpretation of various severance deeds and oil and gas leases will present complex commercial issues suited to resolution in the Business Court Division." (Defendants' Memo in Support, p. 3.) However, the plain language of Rule 29.04(a)(1) states that the focus of the analysis must be whether the "principal claim or claims" involve matters of significance to the transaction between business entities. Moreover, in addition to the fact that this argument is irrelevant to Rule 29.04(a)(1), judges in West Virginia have interpreted countless severance deeds and the act of interpreting a severance deed can hardly be considered a "complex commercial issue."

Furthermore, in this case, the Plaintiffs' principle claims solely focus on Defendants' trespass and wrongful taking of Plaintiffs' minerals. Any interpretation of the severance deed(s) would only impact whether the minerals belong to Plaintiffs, who are not business entities. Whether Defendants litigate this issue amongst themselves in the future is a matter for those parties to decide and an issue for separate litigation. Therefore, the fact that severance deeds may need to be interpreted does not change the fact that the Plaintiffs' principal claims do not

involve matters of significance to the transactions, operations, or governance between business entities.

Defendants have also argued this “case is further complicated by the fact that the Blum 1, Hughes 1 and Hansen Engineering 1 wells are at least partially located in Pennsylvania, which has clear legal rules regarding CBM ownership, while Plaintiffs and many putative class members own lands in West Virginia, where there is no bright rule.” (Defendants’ Memo in Support, p. 3.) Defendant continues by discussing the rule of capture and its alleged impact on this case. (*Id.*) Moreover, Defendant states that this case has a potential statute of limitations issue, which involves “complex technological issues concerning oil and gas extraction.” (*Id.* at 4.)

Defendant is simply stating phrases such as “complex technological issues” in an attempt to make straightforward issues such as a statute of limitation and the rule of capture appear to be something the Business Court should decide. Similar to Defendants’ argument regarding severance deeds, courts in West Virginia have made decisions regarding statutes of limitation since the concept of a statute of limitation has been present in this state. Moreover, the rule of capture is not a novel issue and, even if it was, would have no impact on whether this case should be referred to the Business Court. Additionally, whether a statute of limitation has been breached or the rule of capture applies has no impact regarding whether Plaintiffs’ claims involve matters of significance between business entities, as required for a case to be referred to the Business Court. Defendants’ final argument, stating that certain wells are located in Pennsylvania, is completely irrelevant to the analysis in Rule 29.04(a)(1), as it does not provide any support for Defendants contention that this case involves matters of significance between business entities.

Therefore, Plaintiffs’ principal claims do not involve matters of significance to the transactions, operations, or governance between business entities. As a result, this case does not

involve Business Litigation and the Business Court does not have jurisdiction over the Plaintiffs' claims.

2. **This dispute does not present commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy.**

The claims presented by Plaintiffs do not involve novel or complex theories of law and, therefore, do not require specialized knowledge or expertise to reach a fair and reasonable resolution. Similar to its argument in Section 1, Defendant has described Plaintiffs' claims of conversion and trespass as involving "highly technical factual issues" and "technologically complex." (Defendants' Memo in Support, p. 4-5.) Ironically, the case law cited throughout Defendants' Memorandum comes from the decisions of West Virginia courts that were able to understand the technology relevant to extracting minerals and/or ownership of minerals.

In support of its argument, Defendant states that a court in deciding this case will have to understand "technical reports regarding projected future production of CBM" and "evaluate evidence that involves highly technical matters of petroleum engineering, such as direct and inverse proportional ratios of gas pressures, distances, and volumes." (*Id.* at p. 5.) Nearly every lawsuit has some kind of complex issue, whether the judge/jury is required to understand medicine in a medical malpractice case or how a product works in a products liability lawsuit. Stating that an issue may be complex is not sufficient to demonstrate that the technology issues in a case require specialized treatment to improve the expectation of a fair and reasonable resolution.

Surely the Business Court believes that West Virginia courts have been able to fairly and reasonably decide cases regarding the extraction and ownership of Marcellus Shale, Utica Shale, and coal operations. Vague assertions that the extraction of CBM is complex does not sufficiently demonstrate that the Ohio County Circuit Court would be unable to reach a fair and reasonable resolution, as it has undoubtedly reached in many other cases. In fact, the Ohio

County Circuit Court has already addressed several of the allegedly complex issues in its order denying Defendant Alliance's, Defendant Tunnel Ridge's, and Defendant Robin Energy's Motion to Dismiss. Judge Wilson's opinion on the motion was already filed over eight months ago in August of 2014. According to the Judge's opinion, "[t]he Defendants assert that under the rule of 'capture' they are permitted to obtain the oil and gas that they can 'capture' from any well located on their property that is not bottomed or located on the Plaintiffs' land." (Page 1 of Order Denying defendant Alliance Resources GP, LLC, Tunnel Ridge, LLC and Robin Energy, Inc's Motion to Dismiss) The Judge ruled on the "capture" issue and denied the Defendants' motion to dismiss. If, as the Defendants now claim, they want the Business Court to rule on that issue, what they are essentially trying to do is get the Business Court to make a different decision which they were content to ask the Circuit Court judge to rule on in the first instance. They want a second bite at the apple with different judges.

Therefore, the current dispute does not present commercial or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy.

3. The claims at issue are expressly excluded under Rule 29.04(a)(3) of the West Virginia Trial Court Rules.

Rule 29.04(a)(3) of the West Virginia Trial Court Rules explicitly excludes cases in which the principal claims "involve . . . consumer and residential real estate" from falling under the jurisdiction of the Business Court. Defendants argue that "[a]lthough the plaintiffs are individuals, they do not appear in this litigation as consumers, but rather as landowners who assert ownership of coalbed methane as a commercial product." (Defendants' Memo in Support, p. 5.)

Defendants' argument ignores the basic facts of this case. The four named Plaintiffs allege that Defendants have illegally trespassed and taken a portion of their real estate.

Paragraphs 7 and 8 of the Plaintiffs' Complaint specifically allege the "Plaintiffs are the owners of approximately 143 acres of real estate located in Triadelphia District, Ohio County, West Virginia . . . Plaintiffs' real estate ownership interests include the rights to any and all mineral and/or oil and gas interests except for the coal of the Pittsburgh vein." Exhibit #1, Plaintiffs' Complaint at ¶¶ 7 and 8 (emphasis added). This sole focus of this case is whether Defendants have illegally trespassed and taken consumer and residential real estate, specifically the CBM underlying Plaintiffs' property.

Defendant alleges the CBM is a "commercial product," but ignores the fact that the CBM was a part of the Plaintiffs' real property until it was illegally taken. Therefore, Rule 29.04(a)(3) of the West Virginia Trial Court Rules explicitly excludes the Business Court's jurisdiction over this case, as its principle claims involve consumer and residential real estate.


CONCLUSION

Defendants have failed to establish the necessary elements for this case to be considered Business Litigation. Therefore, the Business Court Division does not have jurisdiction over this case. For the foregoing reasons, Defendants' Motion to Refer Case to the Business Court Division should be DENIED, and the Plaintiffs respectfully request such an Order from this Honorable Court.

Respectfully submitted,

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GRANT HICKMAN, AND CAROL
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on behalf of a class of similarly-
situated persons, Plaintiffs,

BY:



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CERTIFICATE OF SERVICE

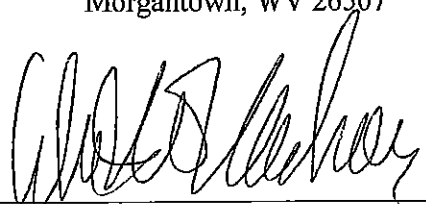
Service of the foregoing **PLAINTIFFS' OBJECTION TO DEFENDANTS' MOTION TO REFER CASE TO THE BUSINESS DIVISION** was had upon the defendants by depositing a true copy thereof in the United States mail this 9th day of May, 2016, addressed to counsel for the defendants as follows:

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