

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

AEROTEK ENERGY,

Plaintiff,

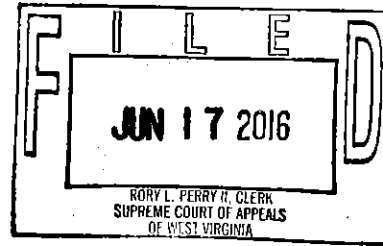
v.

Civil Action No. 16-C-77-2
THOMAS A. BEDELL, Chief Judge

ELECTRICAL SYSTEMS, INC.,

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. 16-C-77-2, 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 being asserted herein by the respective parties' litigant and the 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 or potentially involved 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 Rule 29.04(a)(3) of the *West Virginia Trial Court Rules*.

Nature of the Action

The nature of this Civil Action primarily involves Breach of Contract. However, there may be several other liability issues that also involve Negligence being asserted as well as Arbitration matters and this presiding judge deems there may be potential for additional claims and litigants as further discovery is undertaken. It may even potentially involve issues as to Insurance Coverage Disputes in Commercial Insurance Policies.

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 construction and electrician labor issues for which specialized treatment may be helpful.

Basis for this Court's Request to Refer

More particularly, the Plaintiff, Aerotek Energy's (hereinafter referred to as "Aerotek"), *Complaint* filed herein on February 26, 2016 rather simply avers *inter alia*

that it provided services in the amount of One Hundred Fourteen Thousand Two Hundred Fifty Dollars and Twelve Cents (\$114,250.12) to Defendant, Electrical Systems, Inc. (hereinafter referred to as "Electrical"), and that it has not been paid for such services provided.

The *Answer Of Defendant, Electrical Systems, Inc. And Counterclaim Against Plaintiff, Aerotek Energy* was filed on April 8, 2016 and therein, *inter alia*, sets forth eleven (11) Affirmative Defenses and wherein the Eleventh Affirmative Defense it both admits and denies Aerotek's limited allegations contained in the *Complaint* particularly, to-wit:

(a) In response to *Complaint* Paragraph 3, it admits that it "did provide labor on behalf of [Electrical] for a project in Caditz, OH" ... but, that "the general contractor (Bilfinger-Westcon) for the project has alleged faulty workmanship on-site and asserted a breach of contract claim against" it.

(b) In response to *Complaint* Paragraph 4, it admits failing "to pay for labor provided by [Aerotek]" while it "denies agreeing to pay the amount demanded".

In its *Counterclaim Against Aerotek Energy*, Electrical likewise states a Breach of Contract claim and asserts *inter alia* that, to-wit:

(a) The parties essentially entered into a contract for Aerotek to provide contract labor on behalf of Electrical for such project whereat the general contractor was Bilfinger Weston, Inc.

(b) Such contract required Aerotek to provide competent and qualified electricians to perform contract labor at that project location.

(c) Aeroteck failed to provide such electricians in violation of the contractual agreement.

A Pre-Trial and Scheduling Conference was conducted in this Civil Action on Thursday, June 2, 2016 upon which Electrical filed a Pre-Trial Memorandum on May 24, 2016 and Aerotek filed a Pre-Trial Memorandum on May 31, 2016 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. A *Pre-Trial and Scheduling Order* was caused to be entered herein on June 3, 2016 reflecting such agreed upon dates and deadlines as well as setting this matter for Jury Trial during the week of June 19, 2017.

Electrical asserted *inter alia* in its Pre-Trial Memorandum that, to-wit:

(a) Aerotek's failure to provide competent labor (qualified electricians) for the project in question resulted in the general contractor rejecting payment to it.

(b) It further claims reimbursement for all moneys paid to Aerotek for labor services identified as unreasonable workmanship by the general contractor.

(c) Arbitration is ongoing between Electrical and Bilfinger Westcon.

Also filed herein on May 9, 2016 and still pending is *Aerotek Energy's Motion To Dismiss Electrical Systems, Inc.'s Counterclaim* with an accompanying *Memorandum Of Law In Support Of Aerotek Energy's Motion To Dismiss Electrical Systems, Inc.'s Counterclaim* and Exhibits A and B.¹ Particularly, Exhibit A purports to be a copy of an Aerotek "Services Agreement" dated February 5, 2015 which consists of six (6) pages

¹ This presiding judge was unaware of such Motion and Memorandum of Law being filed until June 7, 2016 as no 'courtesy copies' thereof were provide by Aerotek's legal counsel in keeping with Rule 22.01 of the *West Virginia Trial Court Rules*.

and respectively executed on behalf of Aerotek, Inc. and its "Client", Electrical Systems, Inc. Exhibit B is a copy of Electrical's Answer and Counterclaim.²

Upon all of which, this instant matter is now still relatively 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. It does appear that there is ongoing arbitration between Electrical and the general contractor of the project where at Aerotek furnished contract labor pursuant to its "Services Agreement" with Electrical.

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: *Aeroteck's Complaint; Answer Of Defendant, Electrical Systems, Inc. And Counterclaim Against Plaintiff, Aerotek Energy Answer Of Defendant; Pre-Trial Memorandums; Aerotek Energy's Motion To Dismiss Electrical Systems, Inc.'s Counterclaim; Memorandum Of Law In Support Of Aerotek Energy's Motion To Dismiss Electrical Systems, Inc.'s Counterclaim* (with Exhibit A only); 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 Motion to Refer (sans various pleadings or docket sheet) directly to the Clerk of the

² Additionally, a *Motion For Admission Pro Hac Vice Of Margaret Inomata* and a *Verified Statement Of Application Of Margaret Inomata For Pro Hac Vice Admission* were filed herein on May 23, 2016.

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:

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*Counsel for Plaintiff and
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Aerotek Energy*
(Pro Hac Vice Application pending)

A true copy of this Motion to Refer along with the various pleadings and docket sheet are also being provided 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 Menis E. Ketchum, II to grant his Motion to Refer Harrison County Civil Action No. 16-C-77-2 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.

With the original Motion to Refer along with two (2) copies thereof being provided, this matter is being respectfully submitted to you this 15th day of June, 2016.

A handwritten signature in black ink, appearing to read 'T. A. Bedell', written over a horizontal line.

THOMAS A. BEDELL, Chief Judge
15th Judicial Circuit
Harrison County Circuit Court ~ Division 2