

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

UNIVERSITY HEALTHCARE FOUNDATION, INC.
f/k/a CITY HOSPITAL FOUNDATION, INC.,

Petitioner,

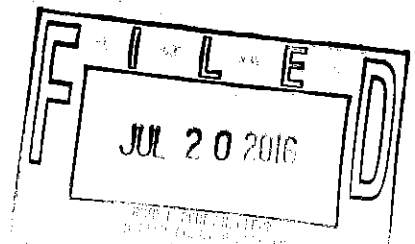
v.

Civil Action No. 16-AA-3
Judge Silver

LARRY A. HESS, ASSESSOR
OF BERKELEY COUNTY, WEST VIRGINIA, and
MARK W. MATKOVICH,
STATE TAX COMMISSIONER,

Respondents.

TO: THE HONORABLE MENIS E. KETCHUM, II
CHIEF JUSTICE OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



JOINT MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION AND
CONSOLIDATE WITH BERKELEY COUNTY BUSINESS COURT
CASE NOS. 14-AA-4 AND 15-AA-6

The Petitioner, UNIVERSITY HEALTHCARE FOUNDATION, INC., f/k/a CITY HOSPITAL FOUNDATION, INC. (the "Petitioner," or "UHF"), by its counsel, and with the consent of Respondents LARRY A. HESS, Assessor of Berkeley County, West Virginia and MARK W. MATKOVICH, State Tax Commissioner (collectively, the "Respondents"), hereby moves the Honorable Chief Justice of the Supreme Court of Appeals of West Virginia, pursuant to West Virginia Trial Court Rule 29.06, for entry of an Order referring the above-styled Civil Action to the Business Court Division and consolidating said action with Berkeley County Business Court Case Nos. 14-AA-4 and 15-AA-6. The Petitioner further requests that the Chief Justice find good cause to grant this motion without response, pursuant to West Virginia Trial Court Rules 29.06(a)(2) and (4). In support of this motion to refer and consolidate, the Petitioner states as follows:

FACTS

1. The Petitioner and the Respondents (collectively, the “Parties”) are litigating a certain civil action pending before the Circuit Court of Berkeley County, West Virginia, Business Court Division, Case No. 14-AA-4, styled *University Healthcare Foundation, Inc. f/k/a City Hospital Foundation, Inc. v. Larry A. Hess, Assessor of Berkeley County, West Virginia and Mark W. Matkovich, State Tax Commissioner* (the “2014 Case”).

2. Pursuant to an Administrative Order of the Chief Justice dated July 30, 2014, the 2014 Case was referred to the Business Court Division and assigned to the Honorable Christopher C. Wilkes.

3. The Parties are also litigating a certain civil action pending before the Circuit Court of Berkeley County, West Virginia, Business Court Division, Case No. 15-AA-6, styled *University Healthcare Foundation, Inc. f/k/a City Hospital Foundation, Inc. v. Larry A. Hess, Assessor of Berkeley County, West Virginia and Mark W. Matkovich, State Tax Commissioner* (the “2015 Case”).

4. Pursuant to an Administrative Order of the Chief Justice dated June 5, 2015, the 2015 Case was referred to the Business Court Division and assigned to the Honorable Christopher C. Wilkes.

5. By Order dated July 29, 2015, the Business Court stayed the 2015 Case pending the outcome of appeals filed by the Respondents in the 2014 Case, subject to the right of the Parties to fully litigate the 2015 Case once this Court issues its mandate. The appeals in the 2014 are docketed with this Court as Appeal Nos. 15-0597 and 15-0599.

6. The 2014 Case and the 2015 Case involve the Petitioner's contention that a certain parcel of its real property in Berkeley County, West Virginia, known as the Dorothy A. McCormack Cancer Treatment and Rehabilitation Center (the "DMC") is exempt from *ad valorem* property tax for tax year 2014 and tax year 2015, which contention the Respondents oppose.

7. On April 1, 2016, the Petitioner perfected its appeal to the Circuit Court of Berkeley County, West Virginia by filing the present action, Berkeley County Civil Action No. 16-AA-3, styled *University Healthcare Foundation, Inc. f/k/a City Hospital Foundation, Inc. v. Larry A. Hess, Assessor of Berkeley County, West Virginia and Mark W. Matkovich, State Tax Commissioner* (the "2016 Case").

8. The 2016 Case involves the same contentions as the 2014 Case and the 2015 Case, to-wit: the Petitioner contends that the DMC is exempt from *ad valorem* property tax for tax year 2016, which contention the Respondents oppose. The 2016 Case also includes additional properties which the Petitioner contends are exempt from *ad valorem* property tax for tax year 2016, which contention the Respondents also oppose.

9. Pursuant to the Parties' Agreement, the Petitioner now seeks to transfer the 2016 Case to the Business Court Division and consolidate the 2014 Case, the 2015 Case, and the 2016 Case for final disposition according to the respective merits of each case and upon such further proceedings as the Court may direct.

STANDARD

10. "Any party or judge may seek a referral of Business Litigation to the Division by filing a Motion to Refer to the Business Court Division with the Clerk of the Supreme Court of Appeals of West Virginia. The motion shall identify the nature of the action(s) sought to be referred, the basis for the request, and, if known, whether additional related actions are pending or may be filed in the future. A copy of the complaint, answer, docket sheet and any other documents that support referral under Trial Court Rule 29.04(a) shall be attached to the motion." W.Va. Trial Ct. R. 29.06(a)(1).

11. "Business Litigation," for purposes of referral to the Business Court Division, involves 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 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.

W.Va. Trial Ct. R. 29.04(a) (emphasis added).

12. “The motion shall be filed after the time to answer the complaint has expired, For good cause shown to the Chief Justice, the motion may be filed sooner.” W.Va. Trial Ct. R. 29.06(a)(2).

13. “Any party or affected judge shall have twenty (20) days after the motion is filed to file a reply memorandum stating its position and opposition, if any. Any reply memorandum must be filed with the Clerk of the Supreme Court of Appeals and served in accordance with Trial Court Rule 29.06(a)(3). The Chief Justice shall have the authority to grant or deny the motion to refer without response for good cause shown.” W.Va. Trial Ct. R. 29.06(a)(4).

ANALYSIS

14. The nature of the action which the Parties seek to refer to the Business Court Division is a complex tax appeal regarding whether certain parcels of real property in Berkeley County, West Virginia are exempt from *ad valorem* property tax for tax year 2016. This action is directly related to the 2014 Case and 2015 Case, which are already pending before the Business Court Division.

15. Attached as Exhibits to this motion are copies of: (1) the Petition filed in the 2014 Case; (2) this Court’s July 30, 2014 Administrative Order in the 2014 Case; (3) the Petition filed

in the 2015 Case; (4) this Court's June 5, 2015 Administrative Order in the 2015 Case; the Petition filed in the 2016 Case; and (5) the docket sheet for the 2016 Case.¹

16. Like the 2014 Case and the 2015 Case, the 2016 Case involves matters of significance to the transactions and operations of business entities, particularly in regard to non-profit healthcare providers that seek charitable exemptions from *ad valorem* property taxes.

17. Like the 2014 Case and the 2015 Case, the 2016 Case deals with complex commercial issues regarding interactions between taxable and non-taxable corporate entities, the structure and purposes of various charitable corporations offering healthcare in Berkeley County, and detailed accounting issues surrounding the finances and operations of said entities. Specialized treatment and expertise in the area of taxation and business operations is likely to improve the expectation of a reasonable and fair resolution of the controversy.

18. Like the 2014 Case and the 2015 Case, the 2016 Case is a complex tax appeal, which is specifically eligible for referral to the Business Court Division pursuant to West Virginia Trial Court Rule 29.04(a)(3).

19. The 2016 Case involves the same parties, the same real property as in the 2014 Case and the 2015 Case plus additional properties for the 2016 Case, the same claims and defenses, and the same request for relief as the 2014 Case and the 2015 Case. Referring the 2016 Case to the Business Court Division, and consolidating it with the 2014 Case and the 2015 Case, will therefore promote the interests of efficient and economical use of administrative and judicial resources.

¹ The Exhibits attached to the 2014 Petition, the 2015 Petition, and the 2016 Petition are voluminous (in excess of 200 pages) and have been omitted in order to save paper and reduce the size of this filing.

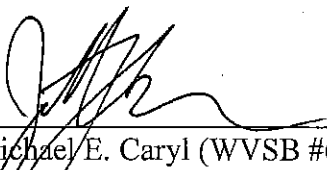
20. Given that the Parties agree that this matter should be referred to the Business Court Division and consolidated with the 2014 Case and the 2015 Case, and that the Chief Justice previously determined that both the 2014 Case and the 2015 Case constitute "Business Litigation," the Petitioner respectfully requests that the Chief Justice find good cause to grant this motion without response as provided by Trial Court Rule 29.06(a)(4).

WHEREFORE, the Petitioner MOVES, pursuant to W.Va. Trial Court Rule 29, for an Order referring this matter to the Business Court Division and consolidating it with Berkeley County Business Court Case Nos. 14-AA-4 and 15-AA-6.

Respectfully submitted this 15TH day of July 2016.

**UNIVERSITY HEALTHCARE
FOUNDATION, INC., f/k/a CITY
HOSPITAL FOUNDATION, INC.
PETITIONER**

By Counsel



Michael E. Caryl (WVSB #662)
J. Tyler Mayhew (WVSB #11469)
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UNIVERSITY HEALTHCARE FOUNDATION, INC.
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Civil Action No. 16-AA-3
Judge Yoder

LARRY A. HESS, ASSESSOR
OF BERKELEY COUNTY, WEST VIRGINIA, and
MARK W. MATKOVICH,
STATE TAX COMMISSIONER,

Respondents.

CERTIFICATE OF SERVICE

I certify that I served the foregoing JOINT MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION AND CONSOLIDATE WITH BERKELEY COUNTY BUSINESS COURT CASE NOS. 14-AA-4 AND 15-AA-6 upon the below-named individuals by first class United States mail, postage prepaid, at the following addresses:

Norwood Bentley III, Esquire
Berkeley County Council
400 W. Stephen Street, Suite 201
Martinsburg, West Virginia 25401

*Counsel for Larry A. Hess, Assessor
of Berkeley County, West Virginia*

The Honorable Gray Silver, III
Berkeley County Judicial Center
380 W. South Street, Suite 4400
Martinsburg, West Virginia 25401

*Circuit Judge for Berkeley County
Civil Action No. 16-AA-3*

L. Wayne Williams, Esquire
Assistant Attorney General
State Capitol, Building 1, Room W-435
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

*Counsel for Mark W. Matkovich, State
Tax Commissioner*

The Honorable Christopher C. Wilkes
Berkeley County Judicial Center
380 W. South Street, Suite 4100
Martinsburg, West Virginia 25401

*Business Court Judge for Berkeley
County Business Court Civil Action
Nos. 14-AA-4 and 15-AA-6*

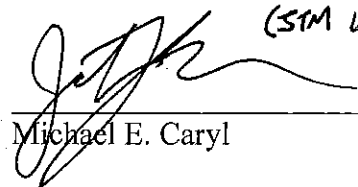
Honorable Virginia M. Sine
Berkeley County Judicial Center
380 W. South Street
Martinsburg, West Virginia 25401

*Circuit Clerk of Berkeley County,
West Virginia*

on the 15th day of July 2016.

Ms. Lorri Stotler
Berkeley County Judicial Center
Business Court Division
380 W. South Street, Suite 2100
Martinsburg, West Virginia 25401

*Administrative Assistant for the
Central Office of the Business Court
Division*

 (SIM WVSJ #11469)

Michael E. Caryl