

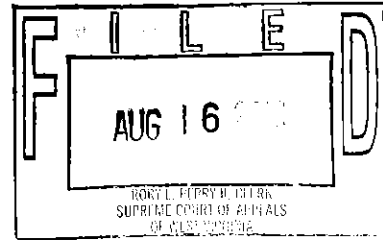
**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**STEVEN R. PETERS and  
DELLA JANE WOOFER,  
d/b/a D.J. BROADCASTING,**

**Plaintiffs,**

**v.**

**Lewis County Circuit Court  
Civil Action No. 14-C-36**



**J&J LAND PROPERTIES, LLC,  
a West Virginia Corporation,**

**Defendant.**

**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, J&J Land Properties, LLC, Defendant, by counsel, Michael D. Crim and McNeer, Highland, McMunn and Varner, L.C., respectfully move this Court to Refer the above-styled case to the Business Court Division.

This action involves three separate counts as follows:

- a. Injunctive Relief;
- b. Declaratory Relief; and,
- c. Monetary Damages.

The said counts all stem from the alleged unlawful encroachment of a right-of-way which prevented D. J. Broadcasting (hereinafter "DJB") from accessing a piece of property on which it intended to construct a commercial radio broadcast tower.

In support of this Motion, the movant believes that the above-styled action contains novel and/or complex issues as described below and supporting the basis for this request.

1. Defendant, J&J Land Properties, LLC ("J&J Land"), is a West Virginia limited liability company engaged in the business of owning, operating and leasing commercial

properties.

2. The Plaintiffs, d/b/a D. J. Broadcasting (“DJB”), is engaged in the business of owning and operating commercial radio stations in West Virginia, including the one at issue in this civil action.

3. In February 2008 DJB completed the construction of a high output broadcast tower on a 7.11 acre tract adjoining J&J Land’s property. The tower broadcast at 25,000 Watts.

4. DJB has alleged that in April 2009, a landslide allegedly caused irreparable damage around the tower site requiring it to be relocated and rebuilt.

5. DJB’s actions and conduct with regard to the high output broadcast tower is governed by the Federal Communications Commission.

6. DJB’s causes of action are predicated on the erection of a commercial structure on property owned by J&J Land which has allegedly encroached on a DJB’s right-of-way, thereby preventing it from accessing the new tower site location upon which it was to build its high output broadcast tower. At the relevant time, the property was occupied by a business entity that stored explosives.

7. This action qualifies as “business litigation” as defined by Rule 29.04(a) of the West Virginia Trial Court Rules. Specifically, DJB’s principal claims against J & J, as set forth above, involve matters related to operations between business entities and this litigation 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 due to the need for specialized knowledge or experience in the areas of commercial broadcasting; application of guidelines established by the Federal Communication Commission; federal and/or state regulations regarding access to commercial property in which the occupant of the commercial property

stores explosives; and, DJB's alleged losses associated with broadcasting market share and range and marketing revenue. While Rule 29.04(a) excludes certain actions, such as consumer litigation, from its definition of "business litigation," such exclusions are inapplicable to DJB's principal claims as set forth in the Complaint.

8. J & J moves the referral of this business litigation to the Business Court Division because of the complex issues which are presented by, and necessarily arise from, the allegations in Plaintiff's Complaint which will likely be resolved more expeditiously by referral to the Business Court Division.

9. At the Trial Court's, Scheduling Conference in this litigation, presiding Judge John Henning suggested that this civil action was appropriate for referral to the Business Court and recommended that counsel for the parties discuss the joint filing of the same. The parties have had negotiations regarding the same, but the parties could not agree on filing a joint motion.

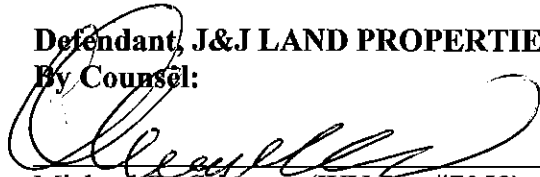
10. There currently are no known related actions pending.

11. The Movant does not request an expedited review under Trial Court Rule 29.06(a)(4).

**WHEREFORE**, for all the reasons stated herein, Defendant, J & J Land Properties, LLC respectfully moves that this case be referred to the Business Court Division pursuant Rule 29.06 of the West Virginia Trial Court Rules.

Dated this 15<sup>th</sup> day of August, 2016.

**Defendant, J&J LAND PROPERTIES, LLC,  
By Counsel:**



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Michael D. Crim (WV Bar #7058)

Empire Building, 400 W. Main Street  
P.O. Drawer 2040  
Clarksburg, West Virginia 26302-2040  
Telephone: (304) 626-1100  
Facsimile: (304) 623-3035

McNeer, Highland, McMunn and Varner, L.C.  
Of Counsel

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**CERTIFICATE OF SERVICE**

This is to certify that on the 15<sup>th</sup> day of August, 2016, the undersigned counsel served the foregoing ***"MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION"*** upon counsel of record by depositing true copies thereof in the United States mail, postage prepaid, in envelopes addressed as follows:

Honorable John L. Henning, Senior Status Judge  
P.O. Box 5  
Elkins, WV 26241

John Hinzman, Clerk  
Circuit Court of Lewis County  
Lewis County Courthouse  
110 Center Avenue  
Weston, WV 26452

Business Court Division  
Berkeley County Judicial Center  
380 W. South Street, Suite 2100  
Martinsburg, WV 25401

Shannon R. Thomas, Esquire  
456 Center Avenue  
Weston, WV 26452

Peter DeMasters, Esquire  
48 Donley Street, Suite 501  
Morgantown, WV 26501

A handwritten signature in cursive script, likely reading "Peter DeMasters", written in black ink on a white background.