

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DAVANTIC, LLC,

2016 SEP 19 PM 1:23

Plaintiff,

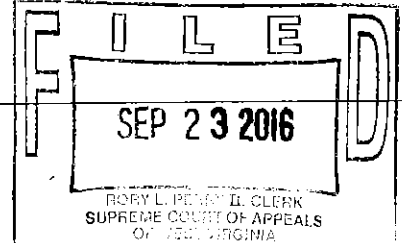
Kanawha County Circuit Court

Civil Action No. 16-C-304

v.

MICHAEL P. THOMPSON,
 REALCORP, LLC, VAL YOUNG,
 MPT REALTY, LLC, and
 TOP PROPERTIES, LLC,

Defendants.



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 Charles E. King, Jr., respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- ☐ There are no known related actions.
- ☐ The following related actions could be the subject of consolidation, and are
- ☐ now pending
 - or
 - ☐ may be filed in the future. (Please list case style, number, and Court if any)

This action involves: (Please check all that apply)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Breach of Contract; | <input type="checkbox"/> Internal Affairs of a Commercial Entity; |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity; | <input type="checkbox"/> Trade Secrets and Trademark Infringement; |
| <input checked="" type="checkbox"/> Sale or Purchase of Commercial Real Estate; | <input type="checkbox"/> Non-compete Agreements; |
| <input type="checkbox"/> Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code; | <input type="checkbox"/> Intellectual Property, Securities, Technology Disputes; |
| <input type="checkbox"/> Terms of a Commercial Lease; | <input type="checkbox"/> Commercial Torts; |
| <input type="checkbox"/> Commercial Non-consumer debts; | <input type="checkbox"/> Insurance Coverage Disputes in Commercial Insurance Policies; |
- (continued on next)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;
<input type="checkbox"/> Anti-trust Actions between Commercial Entities;
<input type="checkbox"/> Injunctive and Declaratory Relief Between Commercial Entities;
<hr/> <input type="checkbox"/> Liability of Shareholders, Directors, Officers, Partners, etc.;
<input checked="" type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest; | <input type="checkbox"/> Shareholders Derivative Claims;
<input type="checkbox"/> Commercial Bank Transactions;
<input type="checkbox"/> Franchisees/Franchisors;
<input type="checkbox"/> Internet, Electronic Commerce and Biotechnology
<input checked="" type="checkbox"/> Disputes involving Commercial Entities; or
<input checked="" type="checkbox"/> Other (Describe) Issue regarding the voluntary termination of PLLC _____
<hr/> |
|--|--|

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here: **Plaintiff alleges that the Defendants, while acting as the Plaintiff's real estate agent, breached their fiduciary duty when they purchased Plaintiff's property (the property they were retained to sell) and leased the property to the Veteran's Administration in a long term lease that Plaintiff alleges is worth in excess to 10 million dollars. Plaintiff alleges that the Defendants concealed their plan for the lease and the value of the property from the Plaintiff. Defendants argue that the Court lacks subject matter jurisdiction on grounds that Plaintiff, an alleged defunct limited liability company that was voluntarily terminated, lacks capacity to file or prosecute this civil action.**

In support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), the operative answer(s), the docket sheet, and the following other documents:

1. Defendants Michael P. Thompson, Realcorp, LLC, and Val Young's Motion to Dismiss, Answer to the Amended Complaint, and Counterclaim for Declaratory Judgment.
2. Defendants MPT Realty, LLC and Top Properties, LLC's Motion to Dismiss, Answer to the Amended Complaint, and Counterclaim for Declaratory Judgment.
3. Plaintiff's Answer to Counterclaim for Declaratory Judgment (MPT Realty LLC and Top Properties, LLC).
4. Plaintiff's Answer to Counterclaim for Declaratory Judgment (Michael P. Thompson, Realcorp, LLC, and Val Young).
5. Plaintiff's Memorandum in Opposition to Motion to Dismiss filed by MPT Realty LLC and Top Properties, LLC.

6. Plaintiff's Memorandum in Opposition to Motion to Dismiss filed by Michael P. Thompson, Realcorp, LLC, and Val Young.

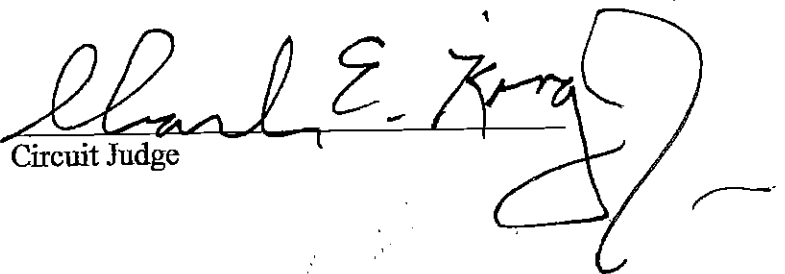
In regard to expedited review, this Court:


☒ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

☐ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: _____

WHEREFORE, the undersigned Judge hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 19TH day of Sept., 2016


Circuit Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 22
DAY OF Sept., 2016
 CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA LP

SEP 19 2016

CERTIFICATE OF SERVICE

I, Christine H. Fox, law clerk to the Honorable Charles E. King, Jr., do hereby certify that on this 22nd day of September, 2016, I have served the foregoing "Judicial Motion to Refer Case to Business Court Division," by either hand delivery or first class mail to:

Rory L. Perry II, Clerk of Court (with attachments)

State Capitol Rm E-317

1900 Kanawha Blvd. East

Charleston WV 25305

Honorable Christopher C. Wilkes (with attachments)

Berkeley County Judicial Center

380 West South Street

Suite 4400

Martinsburg, WV 25401

Business Court Division Central Office (with attachments)

Berkeley County Judicial Center,

380 West South Street,

Suite 2100,

Martinsburg, WV 25401

Marc R. Weintraub, Esq. (without attachments)

Isaac R. Forman, Esq.

Bailey & Glasser LLP

209 Capitol Street

Charleston, WV 25301

John W. Alderman, III, Esq. (without attachments)

Law Offices of John W. Alderman

3 Monticello Place

Charleston, WV 25314

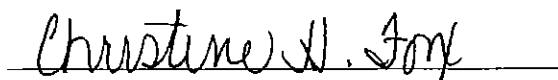
Vivian H. Basdekis (without attachments)

Jackson Kelly PLLC

500 Lee Street East

Suite 1600

Charleston, WV 25301



Sender Signature