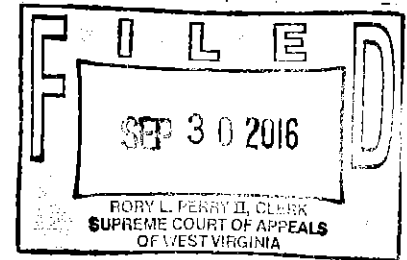


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IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

**GREATWIDE CHEETAH TRANSPORTATION, LLC,
a Delaware Limited Liability Company,
successor in interest to
CHEETAH TRANSPORTATION, LLC,
Plaintiff,**



v.

**//Civil Action No. 14-C-106
Honorable Lawrance S. Miller, Jr.**

**RONALD O. SLEMBOSKI, JR., an individual,
SANDRA L. SLEMBOSKI, an individual,
d/b/a MTF AGENCY, and MEDALLION
TRANSPORT AND LOGISTICS, LLC, a North
Carolina Limited Liability Company,
Defendants.**

**MOTION TO REFER ACTION AS BUSINESS LITIGATION
TO THE BUSINESS COURT DIVISION**

Comes now, this Court, *sua sponte*, pursuant to West Virginia Trial Court Rule 29.06, and moves the Honorable Chief Justice of the Supreme Court of Appeals of West Virginia to assign the above-styled case involving commercial torts to the appropriate Business Court Division for further hearing and disposition of the claims raised in this case.

STATEMENT OF THE CASE

Plaintiff Greatwide Cheetah Transportation, LLC ("Greatwide") provides truckload transportation services, and it is a Delaware limited liability company with its principal place of business in Pennsylvania. Defendant Ronald O. Slemboski, Jr., owns and operates MTF Agency, which does business in the trucking industry. Defendant Sandra L. Slemboski – Defendant Ronald Slemboski, Jr.'s mother – is alleged by Plaintiff to work in some capacity either with or for her son doing business as MTF Agency in Preston County, West Virginia. Defendant Medallion Transport and Logistics, LLC ("Medallion") is a North Carolina limited liability company that provides trucking and shipping services.

Plaintiff Greatwide filed the complaint in this action on June 6, 2014. Plaintiff alleges that on July 18, 2011, Defendant Ronald O. Slemboski, Jr., entered into an exclusivity contract with Greatwide in which Slemboski, Jr., agreed to solicit business solely for Greatwide. In exchange for that promise, Greatwide allegedly gave Mr. Slemboski, Jr., a forgivable loan in the amount of \$100,000. Plaintiff alleges that the Slemboski Defendants breached the agreement by soliciting business for Defendant Medallion. In addition to the breach of contract claim against the Slemboski Defendants, Plaintiff also alleges that the Slemboskis breached fiduciary duties they owed to Greatwide, as well as a claim for unjust enrichment in which Greatwide alleges that the Slemboskis retained the \$100,000 loan in violation of the agreement.

Defendant Ronald Slemboski, Jr., filed a counterclaim against Greatwide in which he alleges that Greatwide breached the contract that existed between himself and Greatwide by Greatwide's failure to pay him and by making unidentified outrageous demands that hindered his ability to perform the contractual duties.

After approximately six months of discovery, Greatwide filed an Amended Complaint in which it added Medallion as a defendant. Greatwide alleged that Defendant Sandra Slemboski and Defendant Medallion had committed tortious interference with a contractual relationship by Sandra Slemboski's solicitation of freight for Medallion in violation of the 2011 agreement. Greatwide alleged that Medallion had committed tortious interference with a contractual relationship because it knowingly interfered with the exclusivity contract between the Slemboski Defendants and Greatwide. Finally, Greatwide added a claim of civil conspiracy against both of the Slemboski Defendants and Medallion. Greatwide contends that it has suffered damages in the amount of \$721,982.00.

The parties thereafter engaged in a long and contentious discovery period. The parties came before this Court on four separate occasions involving discovery issues, all of which involved voluminous electronic discovery. In one instance, Medallion (a North Carolina company) sought to quash a subpoena request that was simultaneously being pursued as a Rule 45 request in the North Carolina court and as a Rule 34 request in this Court. At one point in the litigation, a search of the Slemboskis' computers involving the use of nine keywords produced a total of 690,718 hits. The Slemboskis alleged at that time that the production of the discovery for just 7,939 hits, which constituted approximately 1.1 percent of the total of the hits, had already cost \$25,000 to produce. This Court conducted hearings and entered detailed orders on those discovery issues. The discovery period in this case closed on June 6, 2016. Since the last discovery dispute in January 2016, the parties have not sought further court intervention on discovery issues. However, this Court notes that given the contentious nature of the electronic discovery process, issues may remain regarding that evidence (e.g. spoliation).

On June 24, 2016, Defendant Sandra L. Slemboski filed a Motion for Summary Judgment and a Memorandum of Law in Support of Her Motion for Summary Judgment. Ms. Slemboski contends that she was not an owner of MTF Agency, and that therefore she could not have breached the contract. Ms. Slemboski further contends that she cannot be liable on the contract because she did not sign it.

Plaintiff Greatwide contends in response that Ronald Slemboski, Jr., and Sandra Slemboski were doing business together as a partnership under the name of MTF Agency, which Greatwide contends is an unincorporated organization. Greatwide sets forth a litany of facts that it believes shows Ms. Slemboski's involvement as a partner in MTF Agency.

Therefore, according to Greatwide, Sandra Slemboski's actions as a "partner" in MTF Agency bind both herself and Ronald Slemboski, Jr.

Medallion thereafter filed a motion for summary judgment on September 26, 2016, in which it also makes the argument that Sandra Slemboski did not have a contract with Greatwide, and that therefore she was free to pursue business opportunities with Medallion. Medallion further argues that Ronald Slemboski, Jr., did not act under a valid exclusive agency agreement. Medallion contends that the exclusivity agreement was not valid, that it was superseded by an independent sales agreement in 2008, and that any purported contract between Greatwide and Ronald Slemboski, Jr., was breached by Greatwide when it failed to pay him commissions, failed to provide him notice of the nature of any alleged breach before terminating him, and by demanding full repayment of the \$100,000 loan. Finally, Medallion contends that the contract between Greatwide and Ronald Slemboski, Jr., was unilateral and void for want of consideration.

This case is currently set for a six-day trial to be conducted on January 6, 2017. Since the time of scheduling that date, this Court has had to postpone a 2014 first degree murder case until January 2017 in order to accommodate the incarcerated criminal defendant's expert and the State's investigating officer. Accordingly, it is unlikely at this juncture that the case can proceed in January 2017, and the trial of this case is likely to be further delayed due to the pending criminal trial.

ARGUMENT

- I. The Honorable Chief Justice of the Supreme Court of Appeals of West Virginia should assign this case to the Business Court Division because it is both procedurally proper and because the parties involved in this matter would be benefited by specialized knowledge and familiarity with business law legal principles.**

In order for this case to be assigned to the Business Court Division, the Honorable Chief Justice must review the motion and decide first, whether it is procedurally proper in accordance with the Trial Court Rules, and second, whether the motion and any reply filed thereto demonstrate that the case is appropriate business litigation for the Business Court Division.

A. The motion to refer this action to Business Court is procedurally proper.

Trial Court Rule 29.06(a)(1) states that

[a]ny party or *judge* may seek a referral of 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.

W. Va. T.C.R. 29.06(a)(1) (emphasis added). Subsection (a)(2) provides that “[t]he motion shall be filed after the time to answer the complaint has expired.” W. Va. T.C.R. 29.06(a)(2).

The time to file an answer to the complaint has expired in this case. This Court knows of no additional related actions that are pending or that may be filed in the future.

B. This case constitutes “business litigation” as defined by the Trial Court Rules.

Trial Court Rule 29.04(a) defines “business litigation” as “one or more pending actions in circuit court in which . . . the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities[.]” W. Va. T.C.R.

29.04(a)(1). The dispute must

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 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[.]

W. Va. T.C.R. 29.04(a)(2).

In this case, Plaintiff Greatwide is alleging the breach of an exclusivity agreement in exchange for a \$100,000 forgivable loan by MTF Agency. The underlying facts involve solicitation of freight on behalf of competitors in the trucking business. Defendant Medallion has alleged that its actions constitute legitimate competition, and that Plaintiff Greatwide engages in the identical conduct for which it has sued Medallion. As can be seen by the Defendants' motions for summary judgment and the Plaintiff's response thereto, this case involves complicated issues regarding agency law and partnership law, especially as it relates to Defendant Sandra Slemboski's role in the alleged breach of contract, and what effect her legal status as partner or non-partner has on such alleged conduct.

Next, this case involves the review of contracts between several business entities, at least one of which has been dissolved, dating back to 1996. These contracts are alleged to have been superseded by other contracts on the way to the final 2011 agreement that Greatwide alleges has been breached by the Slemboskis. The case further involves two tortious interference with contractual relationship claims alleged against two of the Defendants, and as a defense, Medallion contends that its actions constitute legitimate competition between competitors.

Finally, this case involves alleged conduct that is now over five years old. The parties have engaged in expensive electronic discovery. The parties are now engaged in complicated summary judgment motions that will require expertise in several different areas of business law – agency, partnership, tortious interference with contractual relationships, and legitimate competition. This Court believes it will have to reschedule, and thus further delay, the trial in this action due to an upcoming conflict with an incarcerated criminal defendant in a first degree murder case. *See State ex rel. Shorter v. Hey*, 170 W. Va. 249, 252 n.1, 294 S.E.2d 51, 54 n.1

(1981) (citing West Virginia Code § 56-6-1 for the proposition that criminal cases have a priority in West Virginia upon the docket of the circuit court).

This Court believes that the parties will benefit from specialized knowledge in these areas of the law in an effort to receive a fair and reasonable resolution to this matter. After seeing how the motions for summary judgment have fleshed out the specific issues in this case, this Court believes that specialized knowledge in business law principles will likely benefit the parties tremendously.

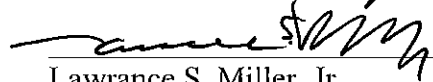
Pursuant to Trial Court Rule 29.04(a)(1), the Court has attached the docket sheet, the Amended Complaint, the Defendants' Answers, Medallion's November 24, 2015 Memorandum Regarding Outstanding Discovery Issues and Motion for Protective Order (without the attached exhibits),¹ Sandra Slemboski's Memorandum of Law in Support of Motion for Summary Judgment (without attached exhibits), Greatwide's Response in Opposition to Sandra Slemboski's Partial Motion for Summary Judgment (without attached exhibits), and Medallion's Memorandum of Law in Support of Motion for Summary Judgment (without attached exhibits).

¹ See specifically ¶ 8 (requesting a protective order based on a legitimate competition defense).

CONCLUSION

For the reasons stated in this Motion, this Court respectfully requests the Honorable Chief Justice of the Supreme Court of Appeals of West Virginia to find that this action is business litigation that should be assigned to the Business Court Division pursuant to West Virginia Trial Court Rule 29.

Respectfully submitted,

Sept. 28, 2016


Lawrance S. Miller, Jr.
Judge, 18th Judicial Circuit
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CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of September, 2016, I served the foregoing Motion to Refer Action as Business Litigation to the Business Court Division upon the Circuit Clerk of Preston County by hand delivery, and to the Clerk of the Supreme Court of Appeals, the Business Court Executive Director, and counsel of record by depositing a true copy thereof in the United States mail, postage prepaid, addressed as followed:

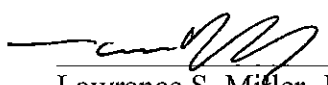
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