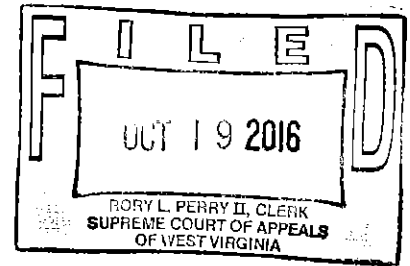


IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

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



vs.

//CIVIL ACTION NO. 14-C-106

Hon. 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.**

DEFENDANT RONALD O. SLEMBOSKI, JR.

and

**DEFENDANT SANDRA L. SLEMBOSKI'S
RESPONSE TO JUDGE LAWRENCE S. MILLER, JR.'S MOTION TO REFER
ACTION AS BUSINESS LITIGATION TO THE BUSINESS COURT DIVISION**

Now come defendants Ronald O. Slemboski, Jr., and Sandra L. Slemboski, by and through their counsel, Steven L. Shaffer, and Estep & Shaffer, L.C., and in response to the Court's Motion to Refer Action as Business Litigation to the Business Court Division, avers as follows:

Lawrance S. Miller, Jr., the Honorable Judge of the 18th Judicial Circuit serving Preston County, West Virginia, filed a motion in this civil action pursuant to West Virginia Trial Court Rule 29.06 and moved the Honorable Chief Justice of the Supreme Court of Appeals of West Virginia to assign the above-styled civil action to the Business Court Division. Defendants Ronald O. Slemboski, Jr., and Sandra L. Slemboski, herein files this response in opposition to the said motion.

HISTORY OF CIVIL ACTION

The Honorable Judge of the 18th Judicial Circuit did an exceptional job of setting forth the

entire history of this civil action. As the Honorable Chief Justice of the Supreme Court of Appeals of West Virginia can ascertain from Judge Miller's motion, this case has been on the Court's docket since June 6, 2014, and the Circuit Judge of the 18th Judicial Circuit has ruled on several motions and discovery disputes which the parties and their respective counsel have had. Currently pending before the Circuit Court of Preston County are motions as follows:

1. Defendant Sandra L. Slemboski's Motion for Summary Judgment;
2. Defendant Medallion's Motion for Summary Judgment; and
3. Plaintiff Greatwide's Motions *in Limine*.

There is currently a hearing scheduled for the 31st day of October, 2016, on the above listed motions.

Discovery has been completed and a pre-trial hearing has been scheduled for the 14th day of November, 2016, with a scheduled trial date of January 6, 2017.

The plaintiff has alleged causes of action against the defendants as follows:

- | | |
|-------------------------------------|------------------------------|
| Defendant Ronald O. Slemboski, Jr.; | 1) Breach of Contract, |
| | 2) Breach of Fiduciary Duty, |
| | 3) Unjust Enrichment, and |
| | 4) Civil Conspiracy; |
| Defendant Sandra L. Slemboski; | 1) Breach of Contract, |
| | 2) Breach of Fiduciary Duty, |
| | 3) Unjust Enrichment, |
| | 4) Civil Conspiracy, and |
| | 4) Tortious Interference; |
| Defendant Medallion; | 1) Civil Conspiracy, and |
| | 2) Tortious Interference. |

Defendant Ronald O. Slemboski, Jr., filed a counter-claim against the plaintiff for Breach of Contract.

Defendant Sandra L. Slemboski had initially filed a 12(b)(6) Motion to Dismiss the original complaint on July 9, 2014, wherein the plaintiff had alleged the causes of action of 1) Breach of

Contract, 2) Breach of Fiduciary Duty and 3) Unjust Enrichment against the Slemboski defendants. Defendant Sandra L. Slemboski filed her 12(b)(6) motion because she was neither an owner nor partner in the company owned by her son, Ronald O. Slemboski, Jr. Sandra L. Slemboski informed the Court at the September 19th, 2014, hearing that she was an employee of her son's business and that the plaintiff knew this and plaintiff's complaint was a frivolous action. Sandra Slemboski requested attorney fees for defending this frivolous and unmerited civil action when the plaintiff had all the documents in its possession and actually had knowledge that she was an employee and not an owner. The Court denied Sandra Slemboski's motion and said the case should proceed through the discovery process and she could file a motion for summary judgment. After 2 years of discovery and after Sandra Slemboski has incurred tens of thousands of dollars of attorney fees, the plaintiff still has not been able to produce one document that proves that Sandra Slemboski was an owner in her son's business. Sandra Slemboski has set forth her evidence in her Motion for Summary Judgment.

ARGUMENT

All parties have shown a preference to have this matter tried and heard by the Circuit Court of Preston County and by a jury in Preston County.

Plaintiff chose to file its complaint in the Circuit Court of Preston County in June of 2014. Plaintiff chose this venue over the federal court system. At the time when the plaintiff filed its original complaint, the plaintiff was a Delaware Company with its principal place of business in Pennsylvania. Defendant Sandra L. Slemboski was a resident of West Virginia and defendant Ronald O. Slemboski, Jr., was a resident of Ohio. The amount in controversy was over \$75,000.00 and there was complete diversity of citizenship so it could have been filed in federal court.

The Slemboski defendants could have removed this action to federal court and they chose to keep the venue of Preston County, where the plaintiff filed the action.

The plaintiff then filed an amended complaint and named Medallion as another party.

Medallion was a North Carolina Company with its principal place of business in North Carolina. Once again, plaintiff chose to keep the action in the Circuit Court of Preston County and the all defendants chose not to remove the action to federal court.

This action has progressed through the Circuit Court of Preston County and as Judge Miller has demonstrated in his motion, he has a great understanding of the facts and issues at dispute in this case. Judge Miller has been the presiding judge over every motion (and there have been several of them) and knows the history of the parties and case. As set forth earlier in this response, the causes of action are not unusual in nature. The causes of action are 1) breach of contract, 2) breach of fiduciary duty, 3) unjust enrichment, 4) tortious interference, and 5) civil conspiracy.

The Court has at its disposal a decision from the United States District Court for the Eastern District of Pennsylvania, ATF TRUCKING, L.L.C. v. QUICK FREIGHT, INC., TRANSPORTATION RESOURCES, INC., JOSEPH E. WORKMAN and THE MASON & DIXON LINES, INC., Civil Action No. 06-4627, where that Court has ruled on almost the exact fact scenario as the present case. The only issue in the present case that was not an issue before the United States District Court For The Eastern District of Pennsylvania is the issue of whether Sandra L. Slemboski was an owner in her son's business. That issue should be decided on the summary judgment motion which is presently before the Court and then the rest of the case can be ruled on under the holding from the United States District Court For The Eastern District of Pennsylvania case.

Rule 29.01 of the West Virginia Trial Court Rules states that West Virginia Code §51-2-15 sets forth a process for efficiently managing and resolving litigation involving commercial issues and disputes in an attempt to achieve effective management of business litigation. The West Virginia Trial Court Rules goes on to state in Rule 29.08 (g) that the presiding judge in the Business Litigation Court "shall make all reasonable efforts to conclude business litigation within ten (10) months from the date the case management order was entered."

The present case has already been in litigation for over two (2) years and other than the Circuit Court of Preston County ruling on two summary judgment motions and a couple of motions in limine, is ready for trial. Pre-trial memos have been submitted as well as jury instructions. Judge Miller is familiar with all of the issues in this matter and as demonstrated by his motion, he has a great understanding of the facts and should be ready to grant defendant Sandra L. Slemboski's motion for summary judgment that she was not an owner of the business which her son, Ronald O. Slemboski, Jr., operated. Once the court grants Sandra L. Slemboski's motion for summary judgment that she was not an owner, then the issues of breach of contract, breach of fiduciary duty, tortious interference and civil conspiracy would be ripe for a summary judgment motion by Sandra L. Slemboski and the tortious interference and civil conspiracy causes of action would be ripe for a summary judgment motion by defendant Medallion. The only claims which would remain would be the breach of contract claims by plaintiff against Ronald O. Slemboski, Jr., and the breach of contract claim by defendant Ronald O. Slemboski, Jr., against Greatwide.

CONCLUSION

This is not a complicated civil action. This civil action has progressed through the Circuit Court of Preston County for over two years and is ripe for trial. The parties have submitted their pre-trial memorandum and jury instructions.

The parties, by their actions and pleadings filed in this civil action, have demonstrated that this matter should be heard and tried in the Circuit Court of Preston County by the Honorable Judge of the 18th Circuit and by a Preston County jury. No party ever filed a motion to refer the case to Business Court Division.

If this was a new case which had just been filed and there had not been over two years of hearings, discovery and discovery disputes, then the motion by Judge Miller should be granted by the West Virginia Supreme Court of Appeals.

Both Greatwide and Medallion are huge companies that can afford long litigation. However,

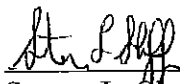
defendant Ronald O. Slemboski, Jr., is a small sole proprietorship in West Virginia who has limited resources and defendant Sandra L. Slemboski is an individual who has no assets and no funds to spend on a long term litigation. This case is a prime example of the big corporation bankrupting a small West Virginia business and a West Virginia individual.

If Judge Miller grants Sandra L. Slemboski's motion for summary judgment, then this case would be disposed of very quickly. If Judge Miller denies Sandra L. Slemboski's motion for summary judgment then this case can proceed to trial in Preston County, by Judge Miller and by a Preston County jury just as quickly, effectively and efficiently as if the case was moved to Business Court.

If this case did not go to trial in Preston County and was moved to another county because of courtroom availability, defendants would be extremely prejudiced by the costs of the attorney fees they would incur for their counsel to travel to another county. Counsel for the plaintiff and counsel for defendant Medallion are both from Monongalia County and would be closer to the courtroom in Monongalia County. In addition, the costs incurred to have a jury from Preston County travel to another county would be unbearable on the Slemboski defendants.

For all of the above reasons, Slemboski defendants would request that the Honorable Chief Justice of the Supreme Court of Appeals of West Virginia deny Judge Miller's Motion to Refer Action as Business Litigation to the Business Court Division.

Respectfully Submitted
Defendants, Ronald O. Slemboski, Jr. and
Sandra L. Slemboski, By Counsel


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CERTIFICATE OF SERVICE

I, Steven L. Shaffer, hereby certify that on the 18th day of October, 2016, I served a true and actual copy of the hereto annexed *"Defendant Ronald O. Slemboski, Jr. and Defendant Sandra L. Slemboski's Response to Judge Lawrance S. Miller, Jr.'s Motion to Refer Action as Business Litigation to the Business Court Division"* upon counsel of record, via United States mail, postage prepaid, hand delivery, or facsimile as follows:

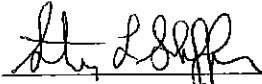
Rory L. Perry, II
Clerk of the Supreme Court of Appeals
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Charleston, WV 25305
Via United State Mail

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