

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

MILLIE TOMBLIN, d/b/a
C & J SECURITY, INC.,

Plaintiff,

v.

Civil Action No. 16-C-34
Judge Pratt

EAGLE PIPELINE, LLC an Ohio
limited liability company and
COLUMBIA PIPELINE GROUP, INC.; and
COLUMBIA PIPELINE GROUP
SERVICES COMPANY, a Delaware corporation,
a Delaware corporation,

Defendants,

and

EAGLE PIPELINE, LLC, an Ohio
limited liability company,

Defendant and Cross-claim Plaintiff,

v.

COLUMBIA PIPELINE GROUP SERVICES COMPANY,
a Delaware corporation,

Cross-Claim Defendant,

and

EAGLE PIPELINE, LLC, an Ohio
limited liability company,

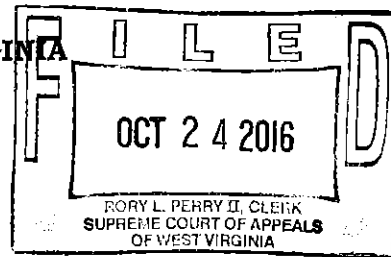
Defendant and Third Party Plaintiff,

v.

COLUMBIA GAS TRANSMISSION, LLC,
a Delaware limited liability company,

Third Party Defendant.

**EAGLE PIPELINE, LLC'S MEMORANDUM IN
OPPOSITION TO BUSINESS COURT**



COMES NOW Eagle Pipeline, LLC ("Eagle") by and through its counsel, and hereby submits its Memorandum in Opposition to Business Court.

FACTS

Eagle contracted to perform certain pipeline work for Columbia Pipeline Group Services Company ("Columbia") in Wayne County, West Virginia that involved the installation of approximately 3.04 miles of 16" pipeline lateral from Columbia Pipeline Group's Line P to AEP Big Sandy Power Plant in Lawrence County, Kentucky, hereinafter referred to as "Project". Columbia Gas Transmission, LLC ("CGT") owns or procured rights of way for the property upon which the Project was constructed. Eagle was awarded the contract purchase order for the Project by submitting a bid pursuant to specifications set by Columbia, CGT, affiliate company or agent of either. As part of the contract, Eagle could not perform any work other than the Project.

During Eagle's performance on the Project Columbia, CGT or their authorized agent modified the standards of construction from what was required by the initial bid documents. Additionally, Columbia, CGT or their authorized agent caused significant delays in the Project. Because of the modifications and delays, Eagle incurred additional costs in performing its work on the Project. Eagle requested a change order in the amount of \$2,301,253.45 for the increased cost caused by the modifications or delays. Columbia demanded that Eagle rescind the change order application or be subject to termination. Eagle refused to rescind its request for change order and Columbia terminated Eagle from the Project. At the time of the termination, Columbia owed Eagle approximately \$2 million for work performed, plus the amount requested in the change order. Most importantly, on March 9, 2016, Eagle filed a Mechanic's Lien in Wayne County, West Virginia for \$4,666,163.41 for work it performed on the Project. As a result

of Columbia's termination and failure to pay, Eagle is now out of business.

On March 10, 2016 this matter was commenced by Millie Tomblin d/b/a C&J Security, a subcontractor for Eagle on the Project. Eagle filed an answer and asserted third-party claims against Columbia and CGT. Upon information and belief, Ms. Tomblin's claims have been resolved. Currently, there are over 45 subcontractors, material suppliers and a bank which provided a line of credit for which payment is due related to the Project, collectively referred to herein as "Creditors." See, **Exhibit A**. The claims of approximately 10 subcontractors and material suppliers, which are not listed on **Exhibit A**, have been resolved.

LAW AND ARGUMENT

Referral of a civil action to business court is governed by W.Va. Trial Ct. Rule 29. The definition of "Business Litigation," set out by W.Va. Trial Ct. Rule 29.04, is as follows:

(a) "Business Litigation" — one or more pending 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.

A. This Matter is Not Appropriate for Business Court Because Eagle is No Longer in Business and Some of the Creditors Have Personal Guaranties Which Could Not be Resolved in Business Court

This matter should not be referred to business court because Eagle is out of business. As mentioned above, Columbia, its predecessor or authorized agent demanded that Eagle take no work other than the Project. Since Eagle has not been paid for the work on the Project, Eagle is no longer in business. Therefore, this matter is essentially not between two "business entities."

Additionally, some of the debt listed in **Exhibit A** is subject to the personal guaranty of proprietors of Eagle, David Hughes and Jeff Hughes. There are personal guaranties on the debt owed to Poca Valley Bank; C.J. Hughes Construction Co., Inc.; Bowling Feed and Hardware; Darr Farms Sand & Straw; Sunbelt Rentals; and Newman Tractor, LLC. Upon information and belief, the Creditors with personal guaranties who are potential parties to this matter may not be able to litigate their claims in business court because the dispute will not be between "business entities." The claims with personal guaranties will need to be brought in a separate lawsuit further increasing the cost of litigating this matter, which is contrary to judicial economy. Therefore, the existence of personal guaranties precludes this matter from business court.

B. Potential Parties May Not Be “Business Entities”

Exhibit A attached hereto contains a list of Creditors to whom payment for goods and services used on the Project is owed. All of the Creditors are potential parties to the above-styled matter. We do not know if all of the Creditors would fall under W.Va. Trial Ct. Rule 29’s definition of “business entity.” If this matter is referred to business court, Creditors that don’t fit into the definition of “business entities,” i.e. sole proprietorships, would not be able to participate in business court. This matter would then either have to be removed back to Circuit Court or such parties would have to initiate a separate lawsuit for their claims. Litigating some of the Creditors’ claims in multiple lawsuits will would increase the cost of litigating this matter, result in potentially inconsistent rulings, and increase the Court’s docket. Since some of the Creditors may not be “business entities”, this matter must not be referred to business court.

C. This Matter Does Not Require Specialized Knowledge or Expertise or Familiarity With Some Specific Law or Legal Principles

The above-styled matter does not require any specialized knowledge or expertise. In order to be “business litigation” under W.Va. Trial Ct. Rule 29.04(a)(2) there must be “the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.” In this matter Eagle believes during the course of its performance on the Project, Columbia, CGT or their authorized agent changed the Project work from how it was bid. Eagle further believes that acts of Columbia, CGT or their authorized agent delayed the Project. The change in performance and the delays caused Eagle to incur further expense. Columbia has refused to pay Eagle for the expenses caused by the changes and delays as well as money owed to Eagle at the time it was terminated. Eagle does not currently believe that the

facts related to this matter are so complex as to require "specialized knowledge or expertise in the subject matter" to understand. Also, the legal issue is simply whether Eagle was entitled to a change order for the costs it incurred from the changes and the delays. Since this matter does not require specialized knowledge or experience, it is not "business litigation" as defined by W.Va. Trial Ct. Rule 29(a) and should not be transferred to the business court division.

D. Eagle's Mechanic's Lien Makes This Matter Inappropriate For Business Court

Eagle claims a mechanic's lien interest in property owned by Columbia or CGT for the work Eagle performed on the Project. Most of the Project occurred in Wayne County, West Virginia. W. Va. Code §§38-2-8 and 34(a) collectively requires that a mechanic's lien is filed in the county where the subject property is located and the lawsuit to enforce the lien be commenced in the county of the lien. In this instance, the appropriate county to adjudicate this matter is Wayne County, West Virginia. If judgment is ruled in Eagle's favor, the Court must then deal with the potential sale of the property which is liened. Since the Wayne County, West Virginia Circuit Court would have jurisdiction over the lien property, it would be most efficient for the adjudication necessary before the lien is executed on to pay what is owed to Eagle. Therefore, this matter should not be referred to business court.

CONCLUSION

For all the reasons mentioned above, Eagle believes that the above-styled matter is not appropriate for business court and requests that it not be referred to business court.

Respectfully submitted.

EAGLE PIPELINE, LLC

By Counsel



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TOTAL

Poca Valley Bank	\$1,890,121.78
C.J. Hughes Construction Co. Inc.	\$41,169.12
Bowling Feed and Hardware	\$6,107.16
Darr Farms Sand & Straw	\$8,506.26
Sunbelt Rentals	\$44,872.01
Newman Tractor LLC	\$11,419.39
All Crane & Equipment Rental	\$10,426.04
Ark Engineering	\$61,963.34
Badger Daylighting Corp	\$29,717.50
Bi-Con Services	\$46,829.00
Big Sandy Construction, Inc	\$4,056.50
Concrete Poured Walls	\$6,935.00
Darby Equipment	\$39,198.38
Elite Midstream Services	\$84,685.00
Evets	\$229,000.16
Fishburn Services, LTD	\$10,044.00
Francis Brothers LLC	\$27,560.00
Frontier Communications	\$614.24
Green Valley Landfill	\$355.06
Industrial Sanitation, Inc.	\$6,019.22
J.B. Express, Inc	\$18,890.00
Justice Business Services LLC	\$9,753.19
Lusher Trucking Company, Inc.	\$3,375.00
M&G Propane Resources	\$320.00
Matheson Tri-Gas Inc	\$19,544.91
Mid Ohio Pipeline Services	\$12,650.00
Millennium Torque & Tensioning, Inc.	\$34,410.37
Mintek Resources, Inv	\$4,173.75
MRC Global	\$100,262.86
Olive Hill Trucking	\$14,310.26
Pac-Van, Inc.	\$1,726.00
Picket Concrete	\$5,888.41
Power Associates, International, Inc.	\$70,532.66
PSS Companies	\$60,162.41
Rain for Rent	\$19,201.27
Rhino Excavating LLC	\$5,670.00
Ridge Runner Pipeline Services	\$39,899.60
Rumpke	\$7,477.73
Somerville & Company	\$1,246.00



Spartan Mat, LLC	\$47,400.00
Storage on the Spot, Inc.	\$2,035.20
The Home City Ice Company	\$1,861.10
Tri State Industrial	\$17,870.48
Veriforce	\$2,691.00
WV Trucking LLC	\$862.50
 TOTAL	 \$3,061,813.86

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CERTIFICATE OF SERVICE

I, Nicholas R. Stuchell, counsel for Eagle Pipeline, LLC, and pursuant to Trial Court Rule 29.06(a)(4), hereby certify that on, October 21, 2016 I served the foregoing ***Eagle Pipeline, LLC's Memorandum in Opposition to Business Court*** to the following,

by depositing a true and exact copy thereof in the regular course of the United States mail, first class postage prepaid, in an envelope addressed as follows:

The Honorable Darrell Pratt
Judge, 24th Judicial Circuit
Wayne County Courthouse
P. O. Box 68
Wayne, WV 25570

The Honorable M. "Jamie" Ferguson
Wayne County Circuit Clerk
P. O. Box 38
Wayne, WV 25570

Carol Miller, Business Court Executive Director
Berkeley County Judicial Center
Business Court Division
380 W. South Street
Suite 4400
Martinsburg, WV 25401

Ancil G. Ramey, Esquire (WVSB # 3013)
STEPTOE & JOHNSON, PLLC
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304-526-8133; 304-933-8738
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Counsel for Plaintiff, Millie Tomblin, d/b/a C & J Security, Inc.

Marsha Kauffman, Esquire (WVSB # 6979)
W. Bradley Sorrells, Esquire (WVSB # 4991)
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Counsel for Columbia Pipeline Group, Inc.; Columbia Pipeline Group Services Company and Columbia Gas Transmission, LLC



Nicholas R. Stuchell