

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**LP ENTERPRISES, LLC d/b/a LP IN-STORE
SERVICES, LLC,**

Plaintiff,

**Jefferson County Circuit Court
Civil Action No. 16-C-213
Hon. David H. Sanders, III**

v.

**LEAFGUARD OF MARYLAND, INC., d/b/a
LEAFGUARD OF MARYLAND AND
NORTHERN VIRGINIA/BELDON**

Defendant.

JOINT MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the parties, by counsel, jointly request that the above-styled case be referred to the Business Court Division for all further proceedings. This dispute presents commercial issues for which specialized treatment will be helpful and improve the expectation of a fair and reasonable resolution. There are no related actions which should be the subject of consolidation. For these reasons, the Court should grant the parties' Joint Motion to Refer Case to Business Court Division.

I. STATEMENT OF FACTS

Plaintiff alleges that the Plaintiff and LeafGuard executed two contracts, one on March 2, 2010 (the "2010 Contract") and the other on September 2, 2009 (the "2009 Contract") (collectively, "the Contracts"), whereby the Plaintiff agreed to provide LeafGuard with promotional/marketing services on "various occasions" in 2009 and 2010. Compl. ¶ 3. Plaintiff alleges that "the Defendant failed to pay for the services provided by the Plaintiff" and "also that the Defendant untimely cancelled/terminated the Contracts." Compl. ¶ 4. Plaintiff alleges that due to the LeafGuards's alleged breach of these Contracts, it is owed \$371,495.99, comprised of

\$183,830.00 in “unpaid services and contractual cancellation fees, termination fees and other expenses” and \$187,665.99 in “contractual interest from May 2010.” Compl. ¶ 4.

II. ANALYSIS

West Virginia Trial Court Rule 29.06 provides that “[a]ny party . . . may seek a referral of Business Litigation to the [Business Court] Division by filing a Motion to Refer to the Business Court Division with the Clerk of the Supreme Court of Appeals of West Virginia.” Tr. Ct. R. 29.06(a). “Business Litigation” is defined 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.

W. Va. Trial Ct. R., 29.04 (emphasis added).

This is a commercial dispute between businesses that should be referred to the Business Court Division.

This case “involve[s] matters of significance to the transactions, operations, or governance between business entities,” and “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.” *See* Trial Ct. R., 29.04(a)(1)-(2). In addition, over \$371,495.99 is at stake in this litigation. Under these circumstances, all parties would benefit from the Business Court Division’s specialized knowledge of commercial issues and business law, in addition to the particular benefit of having a Resolution Judge assigned.

Finally, because this case is in the early stages of litigation, referral to the business court would not prejudice the parties or the court system. Instead, it is in the interest of the parties and judicial economy for this case to be referred to the Business Court Division. Thus, not only is this case exactly the type that should be referred to the Business Court Division, but proceeding in the Business Court Division will also promote judicial economy. For all of these reasons, this case should be referred to the Business Court Division.

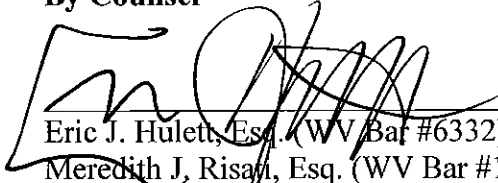
In further support of this Motion, please find attached hereto an accurate copy of the operative Complaint (Exhibit A), Motion to Dismiss (Exhibit B), and docket sheet (Exhibit C).

III. CONCLUSION

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

**LEAFGUARD OF MARYLAND, INC., d/b/a
LEAFGUARD OF MARYLAND AND
NORTHERN VIRGINIA/BELDON**

By Counsel



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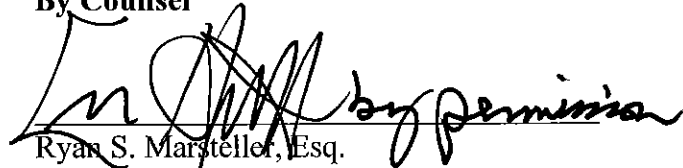
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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2016, I served the foregoing "JOINT
MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION" upon counsel of
record by depositing a true copy thereof in the United States mail, postage prepaid, in an
envelope addressed as follows:

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Eric J. Hulett