

DO NOT REMOVE
FROM FILE

FILE COPY

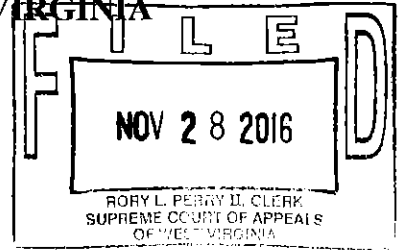
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

UNITED BANK, INC., A West Virginia
banking corporation;

Plaintiff,

v.

Kanawha County Circuit Court
Civil Action No.: 16-C-1486



CRISWELL FRENCH, PLLC, a West Virginia
Professional limited liability company, formerly
CRISWELL FRENCH CONDARAS, PLLC;
MATTHEW S. CRISWELL, an Individual;
STACI N. CRISWELL, An individual;
MARK L. FRENCH, An individual; and
ASHLEY W. FRENCH, An individual.

Defendants.

TO: THE HONORABLE CHIEF JUSTICE MENIS K. KETCHUM, II

**RESPONSE IN OPPOSITION TO
MOTION TO REFER CASE TO BUSINESS COURT DIVISION**

Comes now the Defendants, by counsel, for their Response in Opposition to Refer
Case to Business Court Division, and states as follows:

FACTS

This case arises out of a simple dispute regarding certain loans secured by
personal guarantees held by United Bank. United Bank has alleged that the Defendants
have defaulted on two loans and has accelerated the loans under the terms stated therein.

After filing the Complaint, it became apparent that United Bank failed to include
two (2) indispensable parties, Amy and Steve Condaras, who had signed personal
guarantees securing the outstanding loans. Therefore, the only disputes outstanding in

this non-complex litigation are what are United Bank's rights under the loan agreements and are Steve and Amy Condaras indispensable parties in this litigation.

STANDARD

Referral to the Business Litigation Division is controlled by Rule 29 of the West Virginia Trial Court Rules. This Rule states:

"Business Litigation" is defined by TCR 29 as a civil action 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.

ARGUMENT

After a review of the Complaint, the loan documents and personal guarantees attached thereto, it is clear that this case should not be referred to the Business Court Division. This case is simply an attempt by United Bank to collect on loan that has been

accelerated. When viewed in this light, this civil action is more akin to a credit card company attempting to collect a debt pursuant to a credit agreement. Therefore, this is in all reality a simple collection action filed by United Bank in an attempt to collect on the loan documents attached to the Complaint.

The only issue that makes this action different than any other simple collection action is whether Steve and Amy Condaras are indispensable parties. However, that question does not present a business issue, but rather an issue to be decided under the West Virginia Rules of Civil Procedure. Therefore, referral to the Business Court Division is not required for that issue to be decided.

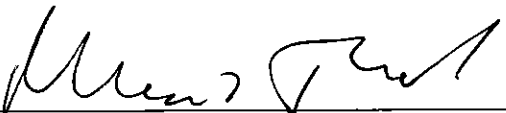
Therefore, based upon all the documents presented in this action, referral to the Business Court Division is not appropriate in this matter. Any finding to the contrary will create a standard contrary to the stated purposes of business court allowing all future simple collection actions filed in Circuit Court to be referred to the Business Court Division.

Importantly, it should be noted that United Bank chose to file its Complaint in the Circuit Court of Kanawha County. Now, after not receiving the expeditious treatment that it had hoped for has United Bank begun forum shopping. As previously stated, this is a simple collection action that the Circuit Court of Kanawha County is more than capable of handling.

Wherefore, based upon the above stated, and for all other reasons as may appear on the record, Defendants respectfully request this Honorable Court deny United Bank's

Motion to Refer to Business Division, along with all other and further relief this Honorable Court deems just and proper.

**MATTHEW S. CRISWELL, STACI N.
CRISWELL, MARK L. FRENCH, and
ASHLEY W. FRENCH**



Mark L. French, Esquire (WVSB# 9061)
Matthew S. Criswell, Esquire (WVSB# 8796)
CRISWELL FRENCH PLLC
105 Capitol Street, Suite 200
Charleston, WV 25301
Telephone: 304.720.6220
Facsimile: 304.720.6221

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**UNITED BANK, INC., A West Virginia
banking corporation;**

Plaintiff,

v.

**Kanawha County Circuit Court
Civil Action No.: 16-C-1486**


**CRISWELL FRENCH, PLLC, a West Virginia
Professional limited liability company, formerly
CRISWELL FRENCH CONDARAS, PLLC;
MATTHEW S. CRISWELL, an Individual;
STACI N. CRISWELL, An individual;
MARK L. FRENCH, An individual; and
ASHLEY W. FRENCH, An individual.**

Defendants.

CERTIFICATE OF SERVICE

I, Mark L. French, Esquire, counsel for Defendants, **Matthew S. Criswell, Staci N. Criswell, Mark L. French, and Ashley W. French**, hereby certify that on this 28th day of November, 2016, true and correct copies of the foregoing ***"Response in Opposition to Motion to Refer Case to Business Court Division"*** were served upon counsel of record via hand delivery, to the following addresses:

Richard M. Frances, Esquire (WVSB# 1275)
Stuart A. McMillan, Esquire (WVSB# 6352)
Andrew C. Robey, Esquire (WVSB# 12806)
BOWLES RICE LLP
600 Quarrier Street
P.O. Box 1386
Charleston, WV 25325-1836



Mark L. French, Esq.
West Virginia Bar No. 9061
Criswell French PLLC
105 Capitol Street, Ste. 200
Charleston, WV 25301
(304) 720-6220 Telephone
(304) 720-6221 Facsimile