

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

MFM REALTY, LLC  
and  
DUTCH MILLER OF CHARLESTON, INC.,

Plaintiffs,

v.

Kanawha County Circuit Court  
Civil Action No. 16-C-1442

CLENDENIN PLACE REALTY, LLC,

Defendant.

TO: THE HONORABLE CHIEF JUSTICE

**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

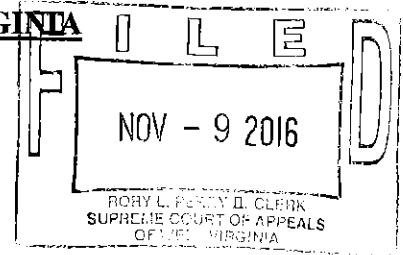
Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, MFM Realty, LLC and Dutch Miller of Charleston, Inc., by counsel, Charles K. Gould, Jason D. Bowles, Stephen F. Soltis, and Jenkins Fenstermaker, PLLC respectfully request the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- ☒ There are no known related actions.
- ☐ The following related actions could be the subject of consolidation, and are
  - ☐ now pending
  - or
  - ☐ may be filed in the future. (Please list case style, number, and Court if any)

\_\_\_\_\_  
This action involves: (Please check all that apply)

- ☒ Breach of Contract;
- ☐ Sale or Purchase of Commercial Entity;
- ☒ Sale or Purchase of Commercial Real Estate;
- ☐ Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code;
- ☐ Terms of a Commercial Lease;
- ☐ Commercial Non-consumer debts;



- ☐ Internal Affairs of a Commercial Entity;
- ☐ Trade Secrets and Trademark Infringement;
- ☐ Non-compete Agreements;
- ☐ Intellectual Property, Securities, Technology Disputes;
- ☐ Commercial Torts;
- ☐ Insurance Coverage Disputes in Commercial Insurance Policies;
- ☐ Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;
- ☐ Anti-trust Actions between Commercial Entities;
- ☐ Injunctive and Declaratory Relief Between Commercial Entities;
- ☐ Liability of Shareholders, Directors, Officers, Partners, etc.;
- ☐ Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;
- ☐ Shareholders Derivative Claims;
- ☐ Commercial Bank Transactions;
- ☐ Franchisees/Franchisors;
- ☐ Internet, Electronic Commerce and Biotechnology
- ☒ Disputes involving Commercial Entities; or
- ☐ Other (Describe) \_\_\_\_\_

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here: **This matter presents issues related to a purchase option contained within a Lease Agreement for commercial property. The Plaintiffs are seeking specific performance of clear and unequivocal terms and provisions of the Lease Agreement. Alternatively, Plaintiffs seek recovery of incidental and consequential damages as a result of Defendant's breach of the Lease Agreement.**

In further support of this Motion, please find attached hereto an accurate copy of the operative Complaint the operative Answer, and docket sheet.

In regard to expedited review, the Movant:

- ☒ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

☐ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do


so: \_\_\_\_\_  
\_\_\_\_\_

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

Respectfully submitted, this 7th day of November, 2016.

**MFМ REALTY, LLC  
and  
DUTCH MILLER OF CHARLESTON, INC.**

**By counsel**

  
\_\_\_\_\_  
Charles K. Gould, Esquire (WV Bar #7539)  
Jason D. Bowles, Esquire (WV Bar #12091)  
Steven P. Turner, Esquire (WV Bar #12578)  
**JENKINS FENSTERMAKER, PLLC**  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he served a true and correct copy of the foregoing *Motion To Refer Case To The Business Court Division* via First-Class Mail upon the following individuals this 7<sup>th</sup> day of November, 2016:

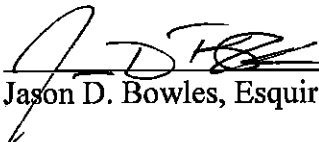
Shawn P. George, Esquire  
George & Lorensen, PLLC  
1526 Kanawha Blvd. E.  
Charleston, WV 25311

Honorable Charles E. King, Judge  
Circuit Court of Kanawha County  
111 Court Street  
Charleston, WV 25301

Cathy Gatson, Circuit Clerk  
Circuit Court of Kanawha County  
111 Court Street  
Charleston, WV 25301

Business Court Division Central Office  
Berkeley County Judicial Center  
380 West South Street, Suite 2100  
Martinsburg, WV 25401

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Jason D. Bowles, Esquire (WV Bar #12091)