

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

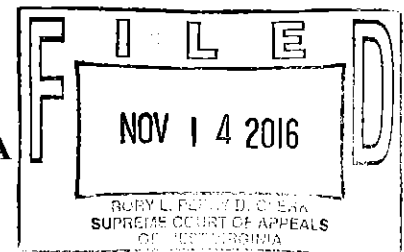
**Plaintiffs,**

**v.**

**CLENDENIN PLACE REALTY, LLC,**

**Defendant.**

**Kanawha County Circuit Court  
Civil Action No. 16-C-1442  
(Judge Charles E. King)**



**DEFENDANT CLENDENIN PLACE REALTY, LLC'S RESPONSE IN OPPOSITION  
TO PLAINTIFFS' MOTION TO REFER CASE TO BUSINESS COURT DIVISION**

**I. INTRODUCTION**

Defendant, Clendenin Place Realty, LLC ("CPR"), by counsel, files this Response in Opposition to Plaintiffs' Motion to Refer Case to Business Court Division ("Motion"). The Court should deny the Motion because this is a routine, straightforward contract case. The principal question in dispute is whether the purchase price offered by Plaintiffs for certain identified real estate and improvements meets the requirements of the contract. As such and as set forth below, the Motion does not satisfy the definitional requirement of Rule 29.04 (a) (2) of the Trial Court Rules.

**II. ARGUMENT**

Rule 29.04 (a) (2) of the Trial Court Rules provides as follows:

(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 (emphasis added).

No specialized treatment is necessary. No specialized knowledge or expertise is required. No specialized treatment will improve the expectation of a fair and reasonable resolution. There is no need for specialized knowledge or expertise by the Court, nor any reason to believe that

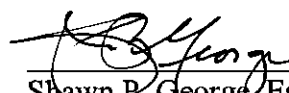
Judge Charles King, a veteran trial judge of more than 28 years, will have any difficulty with the issues presented in this action. The Answer filed by Defendant, attached as Exhibit 1, reinforces this conclusion.

### III. CONCLUSION

WHEREFORE, Clendenin Place Realty, LLC prays that the Court deny Plaintiffs Motion to Refer Case to the Business Court Division.

CLENDENIN PLACE REALTY, LLC

By Counsel



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**Plaintiffs,**

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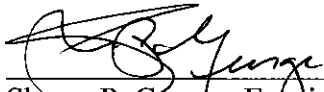
**CLENDENIN PLACE REALTY, LLC,**

**Defendant.**

**CERTIFICATE OF SERVICE**

I, Shawn P. George, do hereby certify that I served Defendant Clendenin Place Realty, LLC's Response in Opposition to Plaintiffs' Motion to Refer Case to Business Court Division on counsel of record this 10<sup>th</sup> day of November, 2016, by US Mail as follows:

Charles K. Gould, Esquire  
Steven F. Soltis, Esquire  
Jason D. Bowles, Esquire  
JENKINS FENSTERMAKER, PLLC  
Post Office Box 2688  
Huntington, WV 25726-2688



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PLAINTIFF: MFM Realty, LLC and Dutch Miller of Charleston, INC. DEFENDANT: Clendenin Place Realty, LLC	Civil Action No. 16-C-1442
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II. TYPE OF CASE:

TORTS	OTHER CIVIL	
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	<input type="checkbox"/> Fraud and Conversion

III. JURY DEMAND ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): Unknown

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? YES ☐ NO ☒

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other:

Attorney Name: SHAWN P. GEORGE

Representing:

Firm: GEORGE & LORENSEN, P.L.L.C.

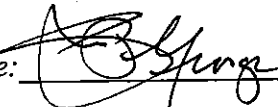
☐ Plaintiff  
☒ Defendant  
Clendenin Place Realty, LLC

Address: 1526 Kanawha Boulevard, East

☐ Cross-Complainant  
☐ Cross-Defendant

Telephone: (304) 343-5555

Dated: November 4, 2016

Signature: 

☐ Pro Se



**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA  
MFM REALTY, LLC and  
DUTCH MILLER OF CHARLESTON, INC.**

**Plaintiffs,**  
v.

**Civil Action No. 16-C-1442  
(Judge Charles E. King)**

**CLENDENIN PLACE REALTY, LLC,**

**Defendant.**

**DEFENDANT CLENDENIN PLACE REALTY, LLC'S ANSWER TO  
PLAINTIFFS' COMPLAINT**

Defendant, Clendenin Place Realty, LLC ("CPR"), by counsel, Answers Plaintiffs' Complaint as follows:

**FIRST DEFENSE**

The Complaint fails to state a cause of action against CPR upon which relief maybe granted.

**PARTIES, JURISDICTION AND VENUE**

1. CPR admits the allegations in Paragraphs 1 through 3 of the Complaint.
2. CPR admits that jurisdiction and venue are proper, but denies the balance of the allegations in Paragraph 4 of the Complaint.
3. CPR admits the allegations in Paragraphs 5-10 of the Complaint.
4. CPR admits that Paragraph 11 of the Complaint sets forth the language in Article 3(a) of the Lease, which language was authored and prepared by counsel for Plaintiffs. Any and all Lease language quoted or referenced in the Complaint speaks for itself and the characterization thereof by Plaintiffs is not binding upon nor accepted by CPR.
5. CPR admits that portion of Paragraph 12 of the Complaint which alleges that in the second year of the Lease, Plaintiffs attempted to exercise the option, which CPR rejected because Plaintiffs had failed to comply with the Lease requirements to exercise the option.

6. CPR lacks sufficient knowledge or information to admit or deny the allegations of Paragraphs 13 and 14 of the Complaint.

7. CPR denies the allegations of Paragraph 15 of the Complaint and specifically denies that Plaintiffs obtained or produced to CPR independent, neutral, unbiased fair market appraisals for the property in question.

8. CPR denies the allegations in Paragraphs 16-20 of the Complaint as stated, but CPR admits that in 2016, Plaintiffs sought again to exercise the purchase option under the Lease, but failed to comply with the provisions thereof because the appraisals and option price offered were not the product of independent, neutral, unbiased fair market appraisals and that by letter dated June 16, 2016, Defendant, inter alia, so advised Plaintiffs.

9. CPR lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 21 of the Complaint.

10. CPR denies the allegation of Paragraph 22 of the Complaint in so far as it alleges that Plaintiffs had complied with the Lease provisions regarding exercise of the purchase option.

11. CPR admits that portion of Paragraph 23 of the Complaint which alleges that CPR, by letter dated July 1, 2016, rejected Plaintiffs attempts to close the purchase of the leased property for the reasons set forth therein. CPR denies the remaining allegations of Paragraph 23 of the Complaint.

12. CPR denies each and every allegation in the Complaint not specifically admitted.

#### **COUNT I – SPECIFIC PERFORMANCE**

13. CPR incorporates by reference as if fully set forth herein all of its prior Answer to the Complaint.

14. CPR denies the allegations in Paragraphs 24 through 30 of the Complaint and specifically denies Plaintiffs, or either of them, are entitled to specific performance on the price tendered.

### **COUNT II – BREACH OF CONTRACT**

15. CPR incorporates by reference as if fully set forth herein all of its prior Answer to the Complaint.

16. CPR denies the allegations in Paragraphs 31 through 34 of the Complaint and specifically denies that Plaintiffs, or either of them, are entitled to any relief requested.

### **SECOND DEFENSE**

17. Plaintiffs have unclean hands which bars their claims.

### **THIRD DEFENSE**

18. Plaintiffs have failed to satisfy conditions precedent to any exercise of any purchase option of the property under the Lease, which failure precludes the exercise of the option.

### **FOURTH DEFENSE**

19. Plaintiffs attempts to exercise the purchase option of the property under the Lease fail under West Virginia law because the consideration offered is inconsistent with the purchase option under the Lease to require CPR to convey the property.

### **FIFTH DEFENSE**

20. Plaintiffs have attempted to commit a fraud by proffering three (3) wildly different appraisals as support for the purchase option of the property under the Lease. Specifically, as confirmed by Paragraphs 12 and 15 of the Complaint, Plaintiffs have secured and tendered to

CPR, three (3) different appraisals to support separate attempts to exercise the purchase option of the property under the Lease- one for \$4,000,000; another for \$4,300,000; and a third for \$5,675,000. None is an independent, neutral, unbiased fair market appraisal. Plaintiffs have done so notwithstanding each of their knowledge before entering into the purchase of the dealerships and related Lease of the property, that the same property appraised for \$7,000,000 in January of 2013 and was reappraised for \$7,050,000 in September of 2015 and that each such appraisal was independent, neutral and unbiased fair market appraisal performed not for CPR, but for its lender, Wesbanco.

#### **SIXTH DEFENSE**

21. CPR asserts each defense available under Rule 8c of the West Virginia Rules of Civil Procedure which discovery may support.

WHEREFORE, Clendenin Place Realty, LLC prays that the Court dismiss the Complaint and grant Clendenin Place Realty, LLC its costs incurred.

CLENDENIN PLACE REALTY, LLC  
By Counsel

  
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