

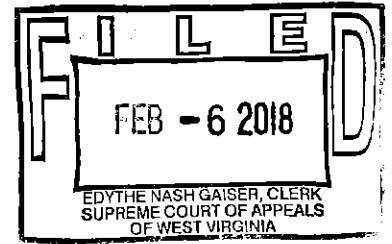
IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

COMMUNITY CARE OF WEST VIRGINIA, INC.,

Plaintiff,

v.

Civil Action No. 17-C-318-2
THOMAS A. BEDELL, Judge



FRONTIER COMMUNICATIONS OF
AMERICA, INC., its parents,
subsidiaries, and affiliates;
TAMCO CAPITAL CORPORATION,
its parents, subsidiaries, and affiliates;
ANTHONY ROME; and
MICHAEL SHAFFER;

Defendants.

TO: THE HONORABLE CHIEF JUSTICE

JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the *West Virginia Trial Court Rules*, the Honorable Thomas A. Bedell, Judge for the Fifteenth Judicial Circuit, respectfully submits his request that the above-styled Civil Action No. 17-C-318-2, currently pending before the Circuit Court of Harrison County, Division 2, be referred to the Business Court Division.

No Motion to Refer has been filed jointly or otherwise herein by any of the parties' litigant. This request is initiated solely by this Honorable Judge who is presently presiding herein. He verily believes the Business Court Division's process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses is better suited to serve the parties' litigant herein.

To the best of this Honorable Judge's knowledge and belief based upon his review of the pleadings filed to date, the various claims being asserted herein by the respective parties' litigant and the issues involved are deemed to qualify as "business litigation" pursuant to Rule 29.04(a) of the *West Virginia Trial Court Rules* as they:

1. Involve matters of significance to related transactions, operations, or governance between and/or among the entities joined or potentially involved herein.

- 2 Present appropriately commercial and/or technology issues in which specialized treatment might likely improve the expectation of a fair and reasonable resolution of the controversies because of the need for specialized knowledge or expertise in the subject matter of familiarity with some specific law or legal principles that may be applicable.

3. Do not involve any particularly identified or defined types of claims, disputes or litigation as collectively identified in Rule 29.04(a)(3).

Nature of the Action

The nature of this Civil Action primarily involves Breach of Commercial and Employment Contracts, Internal Affairs of Commercial Entities, Technology Disputes and other Commercial Torts. There are several liability issues appearing to derive therefrom and that include, to-wit: Negligence, Fraud, Fraudulent Billing, Bribery and Conspiracy; being asserted as well as Counterclaims additionally involving Commercial and Individual Defamation. As such and based upon the parties' respective pleadings to date, this presiding judge deems there may also be potential for additional litigant(s) and/or claims as discovery is undertaken. It may even potentially involve issues as to Insurance Coverage Disputes in Commercial Insurance Policies.

In support of this Judicial Motion to Refer, this matter is deemed to contain issues significant to businesses as well as present novel or otherwise interestingly intertwined issues as to the separate business operations of the corporate parties litigant and their contractual relationship with each other as well as related to the individual defendants herein and their individual and employment relationships for which specialized treatment may be helpful.

Basis for this Court's Request to Refer

More particularly, Plaintiff, Community Care of West Virginia, Inc.'s, (hereafter referred to as "CCWV"), *Complaint* filed herein on October 12, 2017 avers *inter alia* that:

(a) It is a non-profit, federally qualified Health Center that operates 15 community health center locations in seven (7) West Virginia counties (including Harrison County), Fifty (50) School Based Health Center sites throughout Braxton, Clay, Harrison, Lewis, Pocahontas, and Upshur Counties, and five (5) pharmacy sites.

(b) Since 2014, CCWV has been contractually involved with Defendant, Frontier Communications of America, Inc. (hereafter referred to as "Frontier") for telephone and internet services as well equipment purchasing with respect to providing telephone and internet access meeting standards imposed upon its medical facilities.

(c) During this time, CCWV's changing and evolving operations involved opening and closing various centers and clinics which further complicated related services and equipment purchases and billing.

(d) Defendants, Anthony Rome ("Rome"), as Frontier's employee, and Michael Shaffer ("Shaffer"), as CCWV's (now former) employee, were directly responsible for managing and overseeing such entities' contractual relationship.

(e) During such time, various and sundry activities of Rome and Shaffer allegedly resulted in bribery, violation of employment contract, fraudulent/improper purchases and billing for both equipment and services.

(f) Defendant, TAMCO Capital Corporation's ("TAMCO"), involvement herein allegedly results from being Frontier's corporate affiliate that provides financing for Frontier customers (including CCWV) and, in CCWV's perspective, is essentially Frontier's alter-ego.

Thereupon, CCWV now pursues claims and seeks relief accordingly, to-wit:

(a) Declaratory Judgment on specifically identified contracts, orders and other agreements between CCWV and Frontier/TAMCO and involving Shaffer.

(b) Fraud and Breach of Contract involving Shaffer.

(c) Fraudulent Billing for services, equipment and financing involving Frontier and TAMCO.

(d) Breach of Contract involving Frontier and TAMCO.

(e) Negligence and Civil Conspiracy involving all Defendants.

Answer To Plaintiff's Complaint On Behalf Of Frontier Communications Of America, Inc. And Anthony Rome was filed on December 15, 2017 and therein, *inter alia*, sets forth specific denials to CCWV's claims as well as twenty-three (23) Defenses.

Answer Of Defendant TAMCO Capital Corporation was filed herein on December 26, 2017 and therein, *inter alia*, sets forth forty-seven (47) Defenses before setting forth its forty-eighth (48) defense in specifically addressing CCWV's *Complaint* allegations.

Amended Answer To Plaintiff's Complaint And Counterclaims On Behalf Of Frontier Communications Of America, Inc., And Anthony Rome was then filed herein on

January 4, 2018. Therein, *Counterclaims On Behalf Of Frontier Communications Of America, Inc., And Anthony Rome* have been asserted by Frontier against CCWV for Breach of Contract, Fraud and Defamation and by Rome against CCWV for Defamation. Such claims are, in part, based upon allegations involving other individual employees of CCWV and Frontier as well as another business entity involved with Shaffer is/was independent of and unaffiliated with CCWV, Frontier or TAMCO and a business competitor of Frontier supposedly now being contracted by CCWV.

The record appears to indicate that a *Return Of Service* was filed herein on October 30, 2017 whereby Shaffer was served a true copy of the Summons and Complaint herein via personal service at 560 Ridge View Drive, Apartment 103, Bridgeport, WV on October 25, 2017. However, the record indicates that no appearance made or responsive pleading filed herein by Shaffer or on his behalf.

At the time of this Judicial Motion to Refer being made, no responsive pleading had yet been filed by CCWV to Frontier and Rome's counterclaims.

Pre-Trial Memorandums were respectively filed by and through legal counsel for: Frontier and Rome on January 16, 2018; CCWV on January 22, 2018; and TAMCO on January 22, 2018 in order to establish the necessary dates and deadlines for further pleadings, development of discovery, dispositive motions, mediation and final preparations for trial by jury. A Pre-Trial and Scheduling Conference was conducted in this Civil Action on Thursday, January 25, 2018 and a *Pre-Trial And Scheduling Order* was caused to be entered herein on January 26, 2018.

Upon all of which, this instant matter is now very early in discovery as nothing more has yet been filed by either party and made a matter of record herein.

There are no known related civil actions currently pending before this Court and this Honorable Judge is presently unaware of any other related actions that may be filed in the future.

Accordingly, this Civil Action is deemed by this Honorable Judge to involve issues which support its general basis for requesting its referral to the Business Court Division.

Pursuant to the requirements of West Virginia Rule 29.06(a)(1), copies of various pleadings herein are being provided along with this Motion to Refer, to-wit: CCWV's *Complaint; Answer To Plaintiff's Complaint On Behalf Of Frontier Communications Of America, Inc. And Anthony Rome; Answer Of Defendant TAMCO Capital Corporation; Amended Answer To Plaintiff's Complaint And Counterclaims On Behalf Of Frontier Communications Of America, Inc., And Anthony Rome; Pre-Trial Memorandums; this Court's Pre-Trial And Scheduling Order; and this Civil Action's docket sheet.*

In keeping with Rule 29.06(a)(3), I am providing and serving a true copy of this Motion to Refer (sans various pleadings or docket sheet) directly to the Clerk of the Harrison County Circuit Court as well as to the parties through their respective legal counsel of record or directly if *pro se* via first class USPS mail, to-wit:

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Counsel for Frontier and Rome

Michael Shaffer
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Bridgeport, WV 26330
Pro Se Defendant

A true copy of this Judicial Motion to Refer along with the various pleadings and docket sheet are also being provided to the Central Office of the Business Court Division via first class USPS mail in further keeping therewith.

Conclusion

WHEREFORE, this Honorable Judge, upon the reasons set forth above, respectfully moves Chief Justice Allen H. Loughry, II to grant this Judicial Motion to Refer Harrison County Civil Action No. 17-C-318-2 to the Business Court Division.

Furthermore, in regard to expedited review, this Court does not request an expedited review under *West Virginia Trial Court Rule 29.06(a)(4)*, and gives notice that all affected parties may file a reply memorandum stating their respective positions in accordance with such Rule.

With the original Judicial Motion to Refer along with two (2) copies thereof being provided, this matter is being respectfully submitted to you on February 2, 2018.

A handwritten signature in cursive script, appearing to read "Thomas A. Bebell", written over a horizontal line.

THOMAS A. BEDELL, Judge
15th Judicial Circuit
Harrison County Circuit Court ~ Division 2