

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

WYLIE STEEL FABRICATORS, INC.,

Plaintiff,

v.

Civil Action No. 13-C-566-B  
Honorable Robert A. Burnside, Jr.

ROCK & COAL CONSTRUCTION, INC.,

Defendant.

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

NOW COMES Defendant, Rock & Coal Construction, Inc., (hereinafter "RCC"), by and through counsel Christopher A. Brumley, Bradley J. Schmalzer and the law firm of Flaherty Sensabaugh Bonasso PLLC, and respectfully move this Court refer this civil action to the Business Court Division pursuant to West Virginia Trial Court Rule 29.06(a)(2). This case involves potentially complicated tax issues in an alleged breach of contract action between two business entities. Therefore, referral of the matter to the Business Court Division is proper.

**1. STATEMENT OF FACTS**

**A. The claims set forth in Raleigh County Civil Action No. 13-C-566-B.**

On July 11, 2013, Plaintiff, Wylie Steel Fabricators, Inc., filed its Complaint against RCC, alleging a breach of contract on the theory that RCC failed to pay Tennessee sales tax on approximately two hundred seventy-five (275) tons of structural steel purchased from Plaintiff. *See* Complaint, at ¶ 6, attached as Exhibit 1. Specifically, the Complaint sets forth two causes of action: (1) Breach of Contract; and (2) Unjust Enrichment. *Id.* at ¶¶ 12-18. Plaintiff alleges that on September 27, 2011, RCC submitted a purchase order for structural steel and agreed to pay the State of Tennessee \$72,268.00 in sales tax. *Id.* at ¶ 8. The Complaint further alleges that by failing to pay the Tennessee sales tax assessed against the purchase order, RCC is in material

breach of its contractual obligations. *Id.* at ¶ 13. Finally, Plaintiff alleges that RCC has been unjustly enriched by \$72,268.00 for failing the failure to pay the tax. *Id.* at ¶ 18.

## **B. The Parties**

Both parties to this litigation are businesses. Defendant, Rock & Coal Construction, Inc., is a Kentucky corporation authorized to do business in West Virginia, and is located at 922 Robert C. Byrd Dr., Sophia, West Virginia 25921. Plaintiff, Wylie Steel Fabricators, Inc., is a Tennessee corporation with a mailing address of 508 Autumn Spring Court, Suite 1E, Franklin, Tennessee 37067.

## **2. ANALYSIS**

### **A. Legal Standard**

West Virginia Trial Court Rule 29.06(a)(1) provides that “[a]ny party or judge may seek a referral of Business Litigation to the Division by filing a Motion to Refer to the Business Court Division in the circuit court where the matter is pending.” “Business Litigation” describes civil actions where “the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and the dispute presents commercial . . . 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.” *Id.* at 29.04(a)(1)-(2).<sup>1</sup>

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<sup>1</sup> West Virginia Trial Court Rule 29.04(a)(3) specifically excludes the following types of claims from the definition of Business Litigation: “[C]onsumer 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.” The instant matter is not one of these types of cases.

**B. This matter is appropriate for referral to the Business Court Division because it is a purely commercial dispute between business entities.**

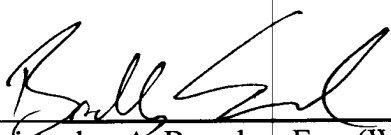
This case involves an alleged breach of contract and potentially complicated state tax law issues. Specifically, the case presents questions regarding commercial contracts, contract formation and the rights and duties of each party involved with regard to the payment and collection of sales tax. Therefore, this action fits the definition of "Business Litigation" because it involves the operation of business entities, requires the interpretation of a commercial contract, involves potentially complex tax issues and is not the type of case specifically prohibited from the Business Court Division.

The Business Court Division was created to handle cases precisely like the instant matter, thus, transfer of this case to the Business Court Division is appropriate. As of the filing of this Motion, RCC is unaware of any anticipated or additional related actions pending.

**CONCLUSION**

For the foregoing reasons, Rock & Coal Construction, Inc. respectfully moves this Court to seek a referral of this civil action to the Business Court Division pursuant to West Virginia Trial Court Rule 29.01, *et seq.*

**Rock & Coal Construction, Inc.  
By Counsel,**



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Christopher A. Brumley, Esq. (WV Bar #7697)  
Bradley J. Schmalzer, Esq. (WV Bar #11144)  
Flaherty Sensabaugh Bonasso PLLC  
P. O. Box 3843  
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(304)345-0200 phone  
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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

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Plaintiff,

v.

ROCK & COAL  
CONSTRUCTION, INC.,

Defendant.

CIVIL ACTION NO. 13-C-566-B  
Hon. Robert A. Burnside, Jr.

To the above-named Defendant:

Rock & Coal Construction, Inc.  
c/o Doug Sayre  
922 Robert C. Byrd  
Sophia, WV 25921

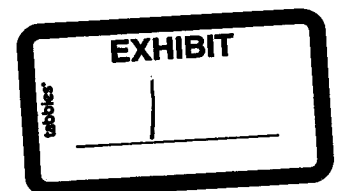
IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon John J. Meadows, plaintiff's counsel, whose address is P.O. Box 1588, Charleston, WV 25301, an Answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you.

You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

Dated: July 16, 2013

Paul H. Flanagan  
Clerk

Angela Plavon  
Deputy Clerk



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

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Plaintiff,

v.

ROCK & COAL  
CONSTRUCTION, INC.,

Defendant.

CIRCUIT CLERK \_\_\_\_\_

Civil Action No. 13-C- 546-B  
Hon. Robert A. Burnside, Jr.

**COMPLAINT**

COMES NOW the Plaintiff, Wylie Steel Fabricators, Inc. ("Wylie Steel"), by its counsel, John J. Meadows, Esq., and Jason P. Foster, Esq., and the law firm of Steptoe & Johnson PLLC, and for its Complaint against the Defendant, Rock & Coal Construction, Inc. ("Rock & Coal") alleges as follows:

**I. PARTIES**

1. Plaintiff, Wylie Steel, is a Tennessee corporation with a mailing address of 508 Autumn Springs Court, Suite 1E, Franklin, Tennessee 37067.

2. Defendant, Rock & Coal, is a Kentucky corporation authorized to do business in the state of West Virginia with a place of business at 922 Robert C. Byrd, Sophia, West Virginia, Raleigh County, West Virginia and a mailing address of P.O. Box 1457, Crab Orchard, West Virginia 25827.

**II. JURISDICTION AND VENUE**

3. Subject matter jurisdiction in this Court is proper pursuant to W. Va. Code § 51-2-2 because this is a case at law which exceeds the statutory minimum dollar value.

4. This Court has personal jurisdiction over Defendant Rock & Coal pursuant to W.Va. Code § 56-3-33, by virtue of its participation in the formation and breach of the contract at issue in this civil action.

5. Venue is proper in this Court by virtue of W.Va. Code § 56-1-1 because the causes of action in this matter arose in Raleigh County, West Virginia and Defendant Rock & Coal has a place of business in Raleigh County.

### **III. FACTS**

6. On September 27, 2011, Rock & Coal submitted a purchase order to Wylie Steel for approximately two hundred seventy-five (275) tons of structural steel (the "Purchase Order").

7. The total price of the Purchase Order was Eight Hundred Fifty Three Thousand Five Hundred Forty-Four Dollars (\$853,544.00).

8. From the price of the Purchase Order, the Parties agreed that Rock & Coal would pay the Tennessee sales tax in the amount of Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00).

9. Wylie Steel satisfactorily performed its obligations under the Purchase Order.

10. To date, Rock & Coal has failed to pay the Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00) owed in Tennessee taxes.

11. Based on Rock & Coal's failure to pay the Tennessee taxes, the taxes will be assessed against Wylie Steel.

### **COUNT I: BREACH OF CONTRACT**

12. Plaintiff incorporates by reference paragraphs 1- 11 of its Complaint as if fully set forth herein, verbatim.

13. By failing to pay the Tennessee taxes assessed against the Purchase Order, Rock & Coal is in material breach of its contractual obligations to Wylie Steel.

14. As a result of Rock & Coal's breach of its contractual obligations, Wylie Steel has been damaged in the amount of Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00).

WHEREFORE, Wylie Steel respectfully requests contract damages from Rock & Coal in the amount of Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00).

**COUNT II: UNJUST ENRICHMENT**

15. Plaintiff incorporates by reference paragraphs 1- 14 of its Complaint as if fully set forth herein, verbatim.

16. The total price of the Purchase Order of Eight Hundred Fifty Three Thousand Five Hundred Forty-Four Dollars (\$853,544.00) was premised on Rock & Coal's contractual obligation to pay Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00) in Tennessee taxes.

17. Had Rock & Coal not agreed to pay Tennessee taxes, Wylie Steel would have included the Tennessee sales tax in the total price of the Purchase Order.

18. Because Rock & Coal agreed to pay the total price of the Purchase Order including the amount of Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00) for the payment of Tennessee taxes but has failed to pay the taxes owed, Rock & Coal has been unjustly enriched by Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00).


WHEREFORE, Wylie Steel respectfully requests that Rock & Coal be compelled to disgorge the Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00) by which it has been unjustly enriched.

WHEREFORE, the Plaintiff, Wylie Steel, prays that this Court enter Judgment against the Defendant, Rock & Coal in the amount of Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00) and award Wylie Steel its fees, costs, interest, and all other relief the Court deems just and proper.

Respectfully submitted this 11th day of July, 2013.

**WYLIE STEEL FABRICATORS, INC.,**

**By Counsel**

  
\_\_\_\_\_  
John J. Meadows, Esq. (WVSB #9442)  
Jason P. Foster, Esq. (WVSB #10593)  
**STEPTOE & JOHNSON PLLC**  
707 Virginia Street, East  
P.O. Box 1588  
Charleston, WV 25326-1588  
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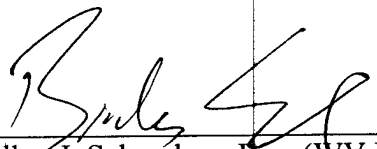
CERTIFICATE OF SERVICE

I, the undersigned, counsel for Defendant, Rock & Coal Construction, Inc., do hereby certify that the foregoing *MOTION TO REFER ACTION TO THE BUSINESS COURT DIVISION* has been served upon counsel of record this 19th of September, 2013, by depositing a true copy thereof in the United States mail, postage prepaid, addressed as follows:

John J. Meadows, Esq.  
Jason P. Foster, Esq.  
Steptoe & Johnson PLLC  
707 Virginia Street, East  
P.O. Box 1588  
Charleston, WV 25326-1588  
*Counsel for Plaintiff*

and

Berkeley County Judicial Center  
Business Court Division  
Suite 2100  
380 W. South Street  
Martinsburg, WV 25401

  
\_\_\_\_\_  
Bradley J. Schmalzer, Esq. (WV Bar #11144)

