

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

UNITED BANK, INC., a West Virginia
banking corporation,

Plaintiff,

v.

2014 JUN 23 PM 1:06
CATHY S. J. CLERK
KANAWHA COUNTY CIRCUIT COURT

Civil Action No. 14-C-571
Judge Kaufman

CLARENCE E. WHITE, an individual;
BLAIR WHITE, an individual;
GLENN RUNYAN, an individual;
KBW, Inc., a West Virginia corporation;
CLEDENIN PLACE REALTY, LLC, a West Virginia limited liability company,
successor by merger with Clendenin Place, Inc.;
WHITE DODGE, INC., a West Virginia corporation;
SHASTA AVIATION, INC., a Florida corporation;
AIR SUPPORT RESOURCES, LLC, a Florida limited liability company; and
CYDNEY REALTY, INC., a West Virginia corporation;

Defendants.

**PLAINTIFF UNITED BANK, INC.'S
MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

COMES NOW Plaintiff United Bank, Inc., ("Plaintiff" or "United"), by counsel,
Stuart A. McMillan, James E. Scott, and the law firm of Bowles Rice, LLP, and hereby moves
this Court to refer the above-captioned civil action to the Business Court Division of the West
Virginia Circuit Courts. In support of its Motion, United states as follows:

I. The Business Court Division Has Jurisdiction over This Civil Action.

1. West Virginia Code § 51-2-15 and Rule 29 of the West Virginia Trial
Court Rules provide that civil actions which constitute "Business Litigation" are eligible for
transfer to the West Virginia Business Court Division.

2. "Business Litigation" is defined by Rule 29 as a civil action in which:

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(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.

W. Va. T.C.R. 29.04(a)(1)-(3).

3. Any party may seek a referral of "Business Litigation" to the Business Court Division by filing a timely Motion to Refer in the circuit court wherein the matter is pending. W.Va. T.C.R. 29.06(a)(1).

4. United currently has a civil action pending before this Court in which the principal claims between the parties fall within the subject matter jurisdiction of the Business Court Division. [See Pl's Compl., attached hereto as Exhibit A.] More specifically, United's Complaint meets each of the three criteria provided in W. Va. T.C.R. 29.04(a)(1)-(3).

5. First, pursuant to W. Va. T.C.R. 29.04(a)(1), the "principal claims" stated in United's Complaint involve "matters of significance" among United and six (6) different business entities and three (3) different individuals. Namely, United seeks recovery of a sum

over Ten Million Dollars (\$10,000,000.00), with that sum representing the amounts due and owing on a variety of loans made in furtherance of the business operations of entities owned and/or operated by three (3) individual-defendants. Further, each of the six (6) business entity defendants entered into guaranty agreements with United, which guaranties are directly at issue in this matter. Accordingly, the "principal claims" in this case relate to matters of significance to the transactions of among various business entities.

6. Second, pursuant to W. Va. T.C.R. 29.04(a)(2), "specialized treatment" of the parties' claims is likely to "improve the expectation" of a fair and reasonable resolution of their controversy. Resolution of United's claims will require the Court to inspect and evaluate voluminous loan documentation covering a fourteen (14) year period. Resolution of United's claims will benefit from a familiarity with, or specialization in, laws related to securitization of loans and the use of "cross default" language within the banking industry.

7. Finally, pursuant to W. Va. T.C.R. 29.04(a)(3), none of United's claims fall within the categorical exclusions from Business Court Division subject matter jurisdiction:

[1] 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; [2] 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; [3] consumer environmental actions; [4] consumer malpractice actions; [5] consumer and residential real estate, such as landlord-tenant disputes; [6] domestic relations; [7] criminal cases; [8] eminent domain or condemnation; and [9] administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

8. Notably, Defendants KBW, Inc. ("KBW") and Clarence E. White ("C.E. White") have now filed counterclaims in this matter. [See Counterclaims of C.E. White and

KBW, attached collectively as Exhibit B.] Both Defendants assert relief for the following: (1) breach of contract; (2) tortious interference; and (3) breach of the duty of good faith and fair dealing. While these counterclaims do not fall within the categorical exceptions stated above, they also merit “specialized treatment” under W. Va. T.C.R. 29.04(a)(2) in that familiarity with, or specialization in, banking practices will improve the expectation of a fair and reasonable result with respect to these counterclaims.

9. Therefore, in light of the commercial nature of this dispute, as well as the need for specialized treatment, the principal claims in this matter fall within the jurisdiction of the Business Court Division.

II. United’s Motion Is Timely before This Court.

10. Where a civil action falls within the jurisdiction of the West Virginia Business Court Division, any party may file a Motion to Refer within three (3) months after the filing date of the action. W. Va. T.C.R. 29.06(a)(2).

11. United filed its Complaint on March 20, 2014.

12. Therefore, United has timely filed its Motion to Refer within the three (3) month period set forth in W. Va. T.C.R. 29.06(a)(2).

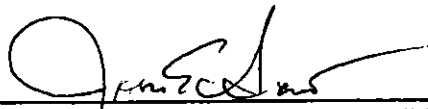
III. Transfer of This Civil Action to the Business Court Division Will Not Affect the Litigation of Any Related Pending or Future Actions.

13. As required by W.Va. T.C.R. 29.06(a)(1), United states that it is unaware of any related pending or future actions related to the parties’ controversy.

WHEREFORE, Plaintiff, United Bank, Inc., respectfully requests this Court to refer its civil action to the Business Court Division of the West Virginia Circuit Courts, thereby transferring this Motion to Refer for consideration by the Chief Justice of the West Virginia

Supreme Court of Appeals. Plaintiff, United Bank, Inc., further respectfully requests that the Chief Justice enter an order granting its Motion to Refer and transferring its civil action to the Business Court Division.

UNITED BANK, INC.
By Counsel



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IN THE CIRCUIT COURT OF KANAWHA COUNTY **FILED** WEST VIRGINIA

UNITED BANK, INC., a West Virginia
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v.

2014 JUN 23 PM 2:24
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Civil Action No. 14-C-571
Judge Kaufman

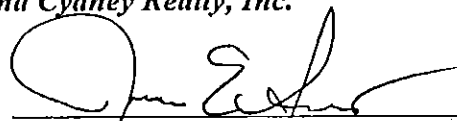
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Defendants.

CERTIFICATE OF SERVICE

I, Stuart A. McMillan, counsel for Plaintiff United Bank, Inc., do hereby certify
that service of "*Plaintiff United Bank, Inc.'s Motion to Refer Case to the Business Court
Division*" has been made upon Defendants' counsel of record via U.S. Mail, postage prepaid, on
this 19th day of June, 2014:

Mark A. Ferguson, Esquire
Sprouse & Ferguson, PLLC
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Charleston, West Virginia 25301
*Counsel for Defendants Clarence E. White,
KBW, Inc., Clendenin Place Realty, LLC,
White Dodge, Inc., and Cydney Realty, Inc.*


James E. Scott, Esq. (WV Bar #11106)