

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

BETTY PARMER

Plaintiff,

v.

Civil Action No. 14-C-374

UNITED BANK, INC., a West Virginia  
corporation; and RANDALL WILLIAMS

Defendants.

**MOTION FOR REFERRAL TO BUSINESS COURT DIVISION**

Defendants, United Bank, Inc. ("United") and Randall Williams ("Williams") and respectfully move for an Order referring this action to the Business Court Division for the following reasons:

1. On September 11, 2012, the Supreme Court of Appeals approved Trial Court Rule 29 creating a Business Court Division, effective October 12, 2012.

2. Tr. Ct. R. 29.01 provides, "there is hereby adopted a process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses that includes the establishment of a Business Court Division to handle a specialized court docket within the circuit courts." Id.

3. The term "business litigation" is defined in Tr. Ct. R. 29.04(a) as litigation in which:

(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

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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.

4. Tr. Ct. R. 29.06(a) provides, "Any 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. The motion shall identify the nature of the action(s) sought to be referred, the basis for the request, and, if known, whether additional related actions are pending or may be filed in the future."

5. This litigation meets the definition of "business litigation" set forth in the Trial Court Rules even though Plaintiff is an individual. This is true because any examination of the Plaintiff's Complaint makes it clear that she complains about Defendants alleged conduct related to making Plaintiff a loan that secured and was for the benefit of Secure Us or MB Security, LLC, two entities owned by her nephew, Mitch Brozik. Ultimately, Plaintiff requests to be released from those loan obligations on behalf of those commercial business entities and seeks money damages.

6. As such, the "the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities." Tr. Ct. R. 29.04(a)(1)

7. Second, it cannot be reasonably questioned that “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.” Tr. Ct. R. 29.04(a)(2), as the claims involve relatively complicated issues of commercial and banking law.

8. Specifically, Plaintiff alleges that on April 19, 2012, she closed a loan with United Bank in the amount of approximately \$2.5 million dollars. These funds were used to purchase a \$4.4 million dollar Note payable to the Mylan Puskar trust by Secure US.

9. The Business Court Division has promulgated a form to be used in moving to refer cases to the Business Court Division. The form lists the very claim at issue including “Commercial Torts”.

10. The Supreme Court of Appeals of West Virginia has voiced concern about the under-utilization of the new Business Court Division.<sup>1</sup>

11. This Court has authority to refer upon motion by a party, or on its own initiative, this matter to the Business Court Division. Tr. Ct. R. 29.06(a)(2) (“a judge may file the motion at any time, if it is determined the litigation qualifies as Business Litigation that may be resolved more expeditiously by referral to the Division.”).

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<sup>1</sup> On May 4, 2013, for example, the Honorable James J. Rowe, Judge of the Eleventh Judicial Circuit and member of the Business Court Division, gave a progress report to West Virginia Bar Association. A. Lannom, WV Circuit Court Judge Gives Progress Report on Business Court, The State Journal, <http://www.statejournal.com/story/22162008/wv-circuit-court-judge-gives-progress-report-on-business-court>. Judge Rowe reported that even though the Business Court Division became effective on October 12, 2012, only thirteen cases had been referred to the Business Court Division over six months later. Id.

WHEREFORE, Defendants United Bank, Inc. and Randall Williams request this Court GRANT this motion under Tr. Ct. R. 29.06(a) referring this matter to the Business Court Division by entry of an Order of transfer to Business Court.

**UNITED BANK, INC., and  
RANDALL WILLIAMS**

**By Counsel**



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Civil Action No. 14-C-374

UNITED BANK, INC., a West Virginia  
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Defendants.

MOTION TO DISMISS

Pursuant to W.Va. R. Civ. P. 12(b)(6), Defendants, United Bank, Inc. ("United") and Randall Williams ("Mr. Williams"), by counsel, move to dismiss with prejudice Plaintiff's Complaint for the reasons set forth in Defendants' Memorandum of Law in Support of their Motion to Dismiss Plaintiff's Complaint. Specifically, Defendants state:

1. Plaintiff's Complaint arises from a loan entered into April 19, 2012 between Plaintiff, as borrower and United Bank, as lender.
2. On April 21, 2014, Plaintiff Betty Parmer filed suit against Defendants United Bank and Mr. Williams alleging three tort based causes of action: negligence, breach of fiduciary duty and conspiracy.
3. Plaintiff's tort claims are governed by the two-year statute of limitations period under W.Va. Code § 55-2-12. Plaintiff failed to file her Complaint within the two year limitations period under W.Va. Code § 55-2-12.<sup>1</sup> As such, Plaintiff has failed to state a claim upon which relief may be granted as a matter of law.

<sup>1</sup> W.Va. Code § 55-2-12 provides "Every personal action for which no limitation is otherwise prescribed shall be brought: (a) Within two years next after the right to bring the same shall have accrued, if it be for damage to property

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WHEREFORE, Defendants United Bank, Inc. and Randall Williams request that the Court dismiss Plaintiff's Complaint, with prejudice, and grant Defendants such further relief that is just and proper.

**UNITED BANK, INC. and  
RANDALL WILLIAMS**  
By Counsel



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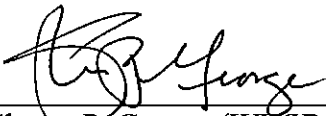
UNITED BANK, INC., a West Virginia  
corporation; and RANDALL WILLIAMS

Defendants.

CERTIFICATE OF SERVICE

I, Shawn P. George, Esq., do hereby certify that on 23<sup>rd</sup> June 2014, I served the foregoing "Motion To Dismiss" upon counsel of record by depositing a true copy thereof in the United States mail, postage prepaid, addressed as follows:

S. Sean Murphy (WVSB# 6642)  
256 High Street, Suite 601  
Morgantown, WV 26505

  
Shawn P. George (WVSB# 1370)  
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Defendants.

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS**

Pursuant to W.Va. R. Civ. P. 12(b)(6), Defendants, United Bank, Inc. ("United") and Randall Williams ("Mr. Williams"), by counsel, move to dismiss with prejudice the Complaint of Plaintiff Betty Parmer.

**INTRODUCTION**

The Court should dismiss Plaintiff's Complaint because it was not filed within West Virginia's two year statute of limitations applicable to tort claims under W.Va. Code § 55-2-12.

**SUMMARY OF RELEVANT FACTS**

Plaintiff filed her Complaint April 21, 2014. Plaintiff's Complaint asserts three causes of action. All are tort based- negligence, breach of fiduciary duty and conspiracy. Each allegedly arises from a commercial loan transaction signed and funded April 19, 2012 between Plaintiff, as borrower and United Bank, as lender, on which Mr. Williams was loan officer. (Compl. ¶ 20). Plaintiff alleges that when she signed the loan documents and obtained \$2.5 Million Dollars from United Bank that day, she was unaware the money would fund her purchase of a Note for \$4.4 Million Dollars held by the Mylan Puskar Trust ("Trust Note"), on which Secure US, a company owned by Mitch Brozik, Plaintiff's nephew, was obligor. (Compl. ¶ 20). Plaintiff also alleges

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that Mr. Williams conspired prior to the closing and funding of the loan to mislead Mrs. Parmer into obtaining the loan and using the proceeds to purchase the Trust Note.

### **ARGUMENT AND ANALYSIS**

Plaintiff's claims are governed by the two-year statute of limitations contained in Section 55-2-12 of the West Virginia Code. This statute of limitations begins to run when the right to bring the action accrues, which is when the injury is inflicted. *Hickman v. Grover*, 178 W.Va. 249, 251, 358 S.E.2d 810, 812 (1987) (quoting syl. pt. 1, *Jones v. Trustees of Bethany College*, 177 W.Va. 168, 351 S.E.2d 183 (1986)). Mrs. Parmer alleges her injury occurred on April 19, 2014, the day she closed the loan and received \$2.5 Million Dollars which was used to buy the Trust Note. Even when viewed in a light most favorable to the Plaintiff, there is no question that the statute of limitations expired before Plaintiff filed suit against Defendants.

#### **I. Legal Standard Under West Virginia Rule of Civil Procedure 12(b)(6)**

Under W.Va. R. Civ. P. 12(b)(6), the Court may dismiss a count or complaint that fails to state a claim upon which relief can be granted. *Mylan Labs, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). Although courts deciding Rule 12(b)(6) motions must accept the plaintiff's well-pleaded allegations as true, no court is required to accept plaintiff's legal conclusions. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (court need only accept as true the complaint's factual allegations, not its legal conclusions); *Bass v. Dupont*, 324 F.3d 761, 765 (4th Cir. 2003). In order to survive a motion to dismiss, a complaint must contain "enough facts to state a claim for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007). Where a Plaintiff has failed to establish that her claims were filed within the applicable statute of limitations, the claims are subject to dismissal under Rule 12. Such is the case here.

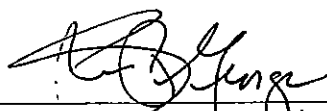
## **II. This Action Is Untimely Given the Factual Allegations of the Complaint.**

The relevant facts are not in dispute. The loan of which Plaintiff complains was closed and funded April 19, 2012. The Complaint confirms Plaintiff knew that day she had borrowed \$2.5 Million Dollars from United Bank, which she was obligated to repay. The loan proceeds were used to purchase the Trust Note for a \$1.9 Million Dollar discount from its face amount. Plaintiff asserts three tort based claims arising out of this loan and the use of its proceeds- negligence, breach of fiduciary duty and conspiracy. All are property damage claims, the statute of limitations for which is governed by W.Va. Code § 55-2-12. It imposes a two year statute of limitations for these claims. The statute provides that "Every personal action for which no limitation is otherwise prescribed shall be brought: (a) Within two years next after the right to bring the same shall have accrued, if it be for damage to property. As such, under West Virginia law, Plaintiff must have filed her Complaint before April 21, 2014. Plaintiff failed to do so. Plaintiff's Complaint is time-barred and must be dismissed.

### **CONCLUSION**

For the foregoing reasons, the Court should dismiss Plaintiff's Complaint with prejudice.

**UNITED BANK, INC. and  
RANDALL WILLIAMS  
By Counsel**



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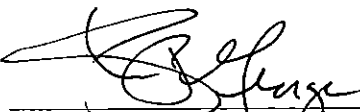
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I, Shawn P. George, do hereby certify that I served United Bank, Inc. and Randall Williams' Motion to Dismiss, Memorandum in Support and Motion for Referral to Business Court Division on counsel of record this 23<sup>rd</sup> day of June, 2014, by United States Mail as follows:

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