

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

THE VELOTTA COMPANY,
an Ohio Corporation,

Plaintiff,

v.

Case No. 13-C-122
Kurt W. Hall, Judge

STANTEC CONSULTING SERVICES, INC.,
a New York Corporation

Defendant.

**REQUEST FOR REFERRAL TO
BUSINESS COURT DIVISION**

COMES NOW the Honorable Kurt W. Hall, Chief Judge of the 26th Judicial Circuit of West Virginia, and hereby requests that the Honorable Robin J. Davis, Chief Justice of the West Virginia Supreme Court of Appeals refer the above-styled action to the Business Court Division of the West Virginia Judiciary, pursuant to Rule 29.06 of the West Virginia Trial Court Rules.

Pursuant to Rule 29.06(a)(1), as amended, “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 with the Clerk of the Supreme Court of Appeals of West Virginia.”

Pursuant to the applicable rules of procedure, this Court believes that the instant case would be resolved more expeditiously if referred to the Business Court Division due to the convoluted status of the case, which includes multiple levels of business contracting as well as concurrent out-of-state-filings.

Additionally, this Court notes that no party to the underlying action has motioned for a referral to the Business Court Division, and the instant request is made *sua sponte*. Any party seeking to object to this request and the referral contained herein may do so within twenty (20) days of the filing date of this request, pursuant to Rule 29.06(a)(4). Any such objections and supporting memorandum should be filed with the Office of the Clerk of the Supreme Court of Appeals, pursuant to Rule 29.06(a)(4).

I. BRIEF BACKGROUND OF THE CASE

The Plaintiff, an Ohio Corporation, alleges four counts of breach of contractual duty and one count of negligence against the Defendant, a New York Corporation doing business and maintaining offices in the State of West Virginia, stemming from four subcontracts for “design-build” projects related to several public works projects for the State of Pennsylvania. The majority of the work performed by Stantec pursuant to these subcontracts is alleged to have taken place at the Defendant’s Buckhannon, West Virginia office location.

In the first four counts of the Complaint, the Plaintiff alleges that the Defendant failed to perform work and services for the four projects with the reasonable skill and diligence required by customarily accepted professional procedures. In the fifth count, the Complaint alleges negligence by the Defendant in failing to adhere to commonly accepted professional practices related to the completion and designs of the four projects.

The Defendant previously filed a Motion to Dismiss asserting *forum non conveniens* due to currently pending litigation in state courts in Ohio and Pennsylvania related to the four subcontracts at issue. Both parties have accused one another of forum shopping. The Defendant’s Motion to Dismiss is currently pending before the Circuit Court of Upshur County.

II. THIS CASE CONSTITUTES BUSINESS LITIGATION AND IS APPROPRIATE FOR ASSIGNMENT TO THE BUSINESS COURT DIVISION

In order to refer a case to the Business Court Division, the case must constitute “business litigation,” as contemplated by Rule 29.04(a). For a case to constitute business litigation, the following must be demonstrated:

1. [T]he principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and
2. [T]he 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. [T]he 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).

The instant case involves a contractual dispute between the parties related to the quality and timeliness of work performance by the Defendant under several public works project subcontracts, and therefore involves matters of significance to transactions between business entities. *See* W.VA. T.C.R. 29.04(a)(1). Furthermore, given that the Plaintiff claims the Defendant failed to adhere to commonly accepted professional practices, specialized knowledge and expertise in the subject matter will likely improve the expectation of a fair and reasonable resolution. *See* W.VA. T.C.R. 29.04(a)(2). Moreover, because it appears that concurrent cases related to the underlying subcontracts may be pending in at least two other states, a particular

familiarity with the legal intricacies of interstate business contracting and the effects on forum selection would greatly aid the fair resolution of the case. *See* W.VA. T.C.R. 29.04(a)(2). Finally, the principal claims in the case arise only from the subcontracts and resulting performance, and are not of a type prohibited by Rule 29.04(a)(3).


Based upon the foregoing, the instant case constitutes business litigation, as contemplated by Rule 29.04(a), and is precisely the type of case intended for the Business Court Division to resolve.

III. CONCLUSION

For the reasons asserted in this request, this Court believes this matter constitutes business litigation and is an appropriate candidate for assignment to the Business Court Division. A referral to the Business Court Division would significantly aid in the fair and expeditious resolution of this matter. Therefore, pursuant to Rule 29.06(a)(1), this Court respectfully requests that the Honorable Chief Justice assign this matter to Assignment Region A of the Business Court Division of the State of West Virginia.

cc 7/28/14
A. Catanzarite
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Respectfully submitted,


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CIRCUIT CLERK

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of July, 2014, I served the foregoing Motion to Refer to Business Court Division upon the following counsel of record by depositing a certified copy thereof in the United States mail, postage prepaid, addressed as follows:

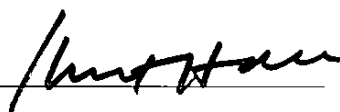
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Respectfully submitted,


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