

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

VIKING VIDEO & MUSIC, INC.,
a West Virginia corporation,

PLAINTIFF,

VS.

CIVIL CASE NO. 12-C-2134

SUMMIT COMMUNITY BANK, INC.,
a West Virginia corporation,

DEFENDANT.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

On the 29th day of September, 2014, came the Plaintiff, Viking Video & Music, Inc., by its counsel, Michael J. Del Giudice, and came the Defendant, Summit Community Bank, Inc., by its counsel, Stuart A. McMillan, upon Defendant's Motion to Dismiss pursuant to Rule 41(b) of the West Virginia Rules of Civil Procedure.

Whereupon the Court heard the arguments of counsel and reviewed all of the briefs and documents submitted by each party and was of the **OPINION** and did hereby **DENY** Defendant's Motion to Dismiss. The Court **FINDS** excusable neglect did exist in this case, no trial date had yet been set and the Supreme Court has indicated that cases should be decided on the merits rather than on procedural defects.

The Court notes the objections and exceptions of the Defendant to this ruling and directs the Clerk of the Circuit Court of Kanawha County, West Virginia to send certified copies of this Order to Michael J. Del Giudice, Esq., 1219

Virginia Street, East, Suite 100, Charleston, West Virginia 25301 and Stuart A.
McMillan, Esq., P.O. Box 1386, Charleston, West Virginia 25325.

Entered this 20 day of OCT, 2014.

James C. Stucky
JUDGE

Prepared by:

CICCARELLO, DEL GIUDICE & LAFON

By: 

Michael J. Del Giudice (WV#982)
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Approved by:

BOWLES RICE, LLP

By: 

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Attorney for Defendant

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10/21/14
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