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October 22, 2014

Rory L. Perry II, Clerk of Court
State Capitol Room E-317
1900 Kanawha Blvd. East
Charleston WV 25305

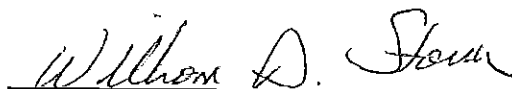
RE: Southern Amusement Co., Inc. vs.
B&J Enterprises, Inc., et al.
Logan County Civil Action No. 14-C-231
Perry, Judge

Dear Mr. Perry:

Enclosed for filing in above referenced matter, please find an original and five (5) copies of the ***Reply Memorandum on Behalf of Defendant, Dawn Enterprises LLC, in Support of Motion to Refer to Business Court Division.***

Thank you.

Sincerely,


William D. Stover

cc: (w/enclosure)

The Honorable Robert L. Perry Judge
Vickie Kolata, Circuit Clerk
Carol A. Miller, Business Court Executive Director
Robert B. Kuenzel
J. Mark Adkins

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
[BUSINESS COURT DIVISION]

SOUTHERN AMUSEMENT CO., INC.

vs.

Logan County
Civil Action No. 14-C-231
Perry, Judge

B&J BUSINESS ENTERPRISES INC., et al.

**Reply Memorandum on Behalf of Defendant, Dawn Enterprises LLC, in Support of
Motion to Refer to Business Court Division**

COMES NOW, Defendant Dawn Enterprises LLC ("Dawn") by counsel, William D. Stover, and files its Memorandum in support of a referral to the Business Court Division.

I. Background

Plaintiff, Southern Amusement, Co., Inc. ("Southern") filed its complaint for the subject civil action in Logan County Circuit Court on September 3, 2014. The individuals and entities listed as defendants in the Southern Complaint are all represented by Bowles Rice LLP except for Dawn which is represented by me. The other defendants are collectively referred to as "Defendants" or "other Defendants". Counsel for the other Defendants filed a *Motion to Refer on Behalf of Defendants B&J Business Enterprises, Inc., Dotson's Management Co., Inc., Jessie's Restaurant, LLC, Greg Dotson, Jeannie Dotson, and Bridget Dotson White* ("Motion to Refer") with the Clerk of the West Virginia Supreme Court of Appeals on October 3, 2014. Thereafter, the Clerk issued a courtesy notice of the filing to parties and Circuit Judge informing a reply memorandum could be filed on or before October 24, 2014 pursuant to Trial Court Rule 29(a)(4). In response to the complaint, Dawn filed its Answer with the Clerk of Logan County on October 2, 2014. A true copy of the *ANSWER OF DEFENDANT, DAWN ENTERPRISES LLC* is attached hereto as Exhibit A.

II. Argument for Jurisdiction

Southern's complaint against Dawn is limited to one issue: whether Dawn's 2014 sale of all issued and outstanding units in Jessie's Italian Restaurant LLC (Jessie's) to defendants: Jeannie Dotson ("Dotson") and Bridget Dotson White ("White"), constituted tortious interference of a 2002 contract between Southern and defendant, B & J Enterprises Inc. ("B & J"). The crux of the claimed interference was the utilization of acquired assets from Jessie's as replacements for Southern's assets at a specific retail location. The assets substituted were video lottery machines and associated licenses for operation of the machines.

Subject matter jurisdiction is evident for Business Court Division because the dispute in this case involves commercial issues between businesses which squarely falls within description of "Business Litigation" as defined in West Virginia Trial Court Rules ("TCR") Rule 29.04. Southern's principal claim involves matters of significance in the transactions, operations and governance between the business entities. The initial business issue of whether a valid enforceable predicate contract was evident between Southern and B & J to serve as a basis for tortious interference against Dawn, was thoroughly briefed in the Motion to Refer and need not be repeated in this Reply. However, to further clarify in the context of TCR Rule 29.04, the "principal claim", as referenced in TCR 29.04 (a)(1), also includes Dawn's transaction for the sale of Jessie's. The extent of Dawn's legal responsibility for the employment of acquired assets by the new owners of Jessie's is a matter of great significance to the involved business entities and the other parties named as defendants in this case.

Next, Southern's claim against Dawn presents specialized commercial issues which are better suited for business court due to a need for specialized knowledge in the subject matter. These considerations are generally described in TCR 29.04 (a)(2) as relevant components of "Business Litigation". More specifically, the principal issue in Dawn's dispute with Southern is whether the sale of a company with video lottery assets utilized at a location selected by buyers conditioned on State agency approval, constituted actionable contractual interference under the facts to be established for this case. Additionally, the factual and legal issues pertaining to affirmative defenses available in a contractual tortious interference claim are complex, and perhaps even more so, given the specialized background of State law and regulation for video lottery machines and associated licenses. See Syllabus Point 2, *Torbett v. Wheeling Dollar Sav. & Trust Co.*, 173 W.Va. 210, 314 S.E. 166 (1983) for a list of available affirmative defenses in tortious interference of contract claims. From Dawn's perspective, expectations of a fair and reasonable resolution are more likely in business court given the specialized subject matter and complexities encompassed in the assorted legal causes pled and corresponding defenses available to the numerous defendants named in the civil action.


In further support of Motion to Refer, Southern's tortuous interference of contract claim did not involve any consumer issues and did not violate any of the other prohibitions contained in TCR 29.04 (a)(3). Therefore, subject matter jurisdiction is evident for referral of civil action to Business Court Division since it meets criteria for Business Litigation as set forth in TCR Rule 29.

Pursuant to TCR 29.06 (a)(1) Dawn confirms the representation made by counsel for the other Defendants in the Motion to Refer, that it likewise is unaware of any pending or future actions related to the parties' controversy.

ACCORDINGLY, Dawn requests consideration of matters presented in its Reply Memorandum as additional support for a referral. Subject matter jurisdiction for Business Court Division is evident for all the defendants for each of respective claims made against them by Southern. The individual defendants, though named in their individual capacity, are participants in commercial transactions as owners or prospective owners of business entities or as agents of those business entities. The fact that individuals are named as defendants should not preclude referral since commercial issues regarding commercial transactions among business entities are at the heart of the alleged causes. Nor should the fact that Southern's claim against Dawn is grounded in tort serve as a basis for denial since commercial disputes are at the core of business litigation concept, whether in contract or tort. The commercial transactions alleged in complaint by Southern as giving rise to an entitlement for civil damages under various legal theories are exactly what is contemplated in the genre of "Business Litigation" defined in TCR 29.04 as appropriate for referral to the Business Court Division. Accordingly, Dawn joins the other Defendants and respectfully requests that Motion to Refer be granted with the Logan County civil action transferred to the Business Court Division for adjudication.

DAWN ENTERPRISES LLC

By Counsel


William D. Stover (WVSB #3632)
P.O. Box 5007
Beckley, WV 25801
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F: (304) 252-2779

CERTIFICATE OF SERVICE

I, William D. Stover, do hereby certify that I have caused copies of the hereto attached *Reply Memorandum on Behalf of Defendant, Dawn Enterprises LLC, in Support of Motion to Refer to Business Court Division* to be served upon:

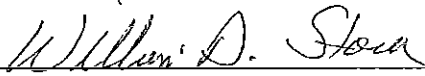
The Honorable Roger L. Perry
c/o Vickie Kolata, Circuit Clerk
Logan County Courthouse
300 Stratton Street
Logan, West Virginia 25601

Berkeley County Judicial Center
Business Court Division
Suite 2100
380 W. South Street
Martinsburg, West Virginia
Attn: Carol A. Miller, Business court Executive Director

Robert B. Kuenzel
Kuenzel & Associates, PLLC
36 Adams Street
P.O. Box 607
Chapmanville, West Virginia 25508
Counsel for Plaintiff

J. Mark Adkins or James E. Scott
BOWLES RICE LLP
600 Quarrier Street (25301)
P.O. Box 1386
Charleston, West Virginia 25325-1386
*Counsel for Defendants: B&J Enterprises, Inc.
Dotson's Management Co., Inc., Jessie's Italian
Restaurant LLC, Greg Dotson, Jeannie Dotson, and
Bridgette Dotson White*

by placing the same in the regular United States Mail, postage prepaid on this 22nd day of October, 2014.



William D. Stover (WVSB #3632)

EXHIBIT A

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

SOUTHERN AMUSEMENT CO., INC.

Plaintiff,

v.

Civil Action No.: 14-C-231

B&J BUSINESS ENTERPRISES INC., doing business as GIOVANNIS PIZZA, a West Virginia Corporation; DOTSON'S MANAGEMENT CO., INC., a West Virginia Corporation; JESSIE'S ITALIAN RESTAURANT LLC, doing business as JOYCE'S and TIBACCO & MORE EXPRESS, a West Virginia Limited Liability Company; DAWN ENTERPRISES LLC, a West Virginia Limited Liability Company; GREG DOTSON, JEANNIE DOTSON and BRIDGET DOTSON WHITE, individually,

Defendants.

ANSWER OF DEFENDANT, DAWN ENTERPRISES LLC

COMES NOW the Defendant, Dawn Enterprises LLC, ("Dawn") by its counsel, William D. Stover, and answers that certain Complaint filed against it as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

1. Dawn is without sufficient knowledge and information to admit or deny allegations contained in Paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Complaint, but upon information and belief, believes them to be true.
2. Dawn admits the allegations contained in Paragraph 6 of Complaint.
3. Dawn is without sufficient information and belief to either admit or deny matters alleged in Complaint pertaining to an alleged May 15, 2003 contract between Defendants: Greg Dotson on behalf of B&J Enterprises, Inc. and Giovannis Pizza and Southern Amusement, as the alleged contract was between private parties

unrelated by ownership or kinship to Dawn. Accordingly, Paragraphs 17, 18, 19, 20, 21, 22 and 23 of Complaint are neither admitted nor denied and strict proof is demanded thereof from Plaintiff, as the proponent of a valid and legally enforceable contract. The law does not presume a contract. Therefore, it is burden of Plaintiff to establish the existence of a contract as its proponent, as well as, the specific terms which bind the alleged parties thereto.

4. Dawn incorporates its responses to Paragraphs 1 through 23 for its response to Paragraph 24 of the Complaint.
5. Dawn avers that a response is not required of it for allegations set forth in Complaint under COUNT II-FRAUD since liability for fraud was alleged against the other Defendants: Greg Dotson, Jeannie Dotson and Bridgette Dotson White. Accordingly, no response is made to allegations of Complaint for Count II: Paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38. In the event this Court should later find that responses were required from Dawn for Count II, then the allegations set forth in Paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 are denied.
6. Dawn incorporates its responses to Paragraphs 1 through 38 of Complaint for its response to Paragraph 39 of the Complaint.
7. Dawn avers that a response is not required by it for allegations set forth in Complaint under COUNT III-CIVIL CONSPIRACY since liability for civil conspiracy was alleged against the other Defendants: Greg Dotson, Jeannie Dotson and Bridgette Dotson White. Accordingly, Dawn makes no response to the allegations of Complaint for Count III: Paragraphs 40, 41, 42, 43, 44, 45, 46, 47 and 48. In the event this Court should later find that responses were required of Dawn for Count III, then the allegations set forth in Paragraphs 40, 41, 42, 43, 44, 45, 46, 47 and 48 are denied.
8. Dawn incorporates its responses to Paragraphs 1 through 48 of the Complaint for its response to Paragraph 49 of the Complaint.
9. In response to Paragraph 50 of Complaint, Dawn admits that it sold Jessie's Italian Restaurant LLC (Jessie's) to Jeannie Dotson and Bridgette White pursuant to a Unit Purchase Agreement dated February 4, 2014 which included personal property assets: limited video lottery machines, related equipment and software and denies remainder of allegations set forth therein.
10. Dawn denies the allegations in Paragraph 51 of the Complaint.

11. In response to Paragraph 52 of Complaint, Dawn admits that West Virginia Lottery Commission administers laws and regulations for Video Lottery which include ownership and placement of machines in business establishments. Furthermore, Dawn affirmatively avers that Jeannie Dotson and Bridgett White were required to be approved by West Virginia Lottery Commission as a condition of the Unit Purchase Agreement for Jessie's.
12. Dawn denies allegations in Paragraph 53 of Complaint as relating to Dawn, and avers that it is not obligated to respond to allegations relating to the other defendants referenced therein.
13. In response to allegations in Paragraph 54 of complaint, Dawn admits being a party to agreement dated February 4, 2014 for sale of Jessie's to Jeannie Dotson and Bridgette White which included "limited video lottery machines/licenses." All other allegations are denied and strict proof is demanded for any "preexisting contract between the plaintiff and B&J" and the terms thereof which are or were relevant to Plaintiff's asserted cause against Dawn.
14. Dawn is without sufficient information to either admit or deny allegations in Paragraph 55 of Complaint and further avers that actions regarding Jessie's after Dawn's sale of the limited liability company to Jeannie Dotson and Bridgette White do not require a response from Dawn since such actions were not within control of Dawn.
15. In response to Paragraph 56 of the Complaint, Dawn incorporates by reference its response to Paragraph 54 of Complaint.
16. Dawn is without sufficient information to admit or deny allegations in Paragraph 57 of Complaint and affirmatively avers that wherever Jessie's limited video lottery machines were placed after purchased from Dawn was entirely the choice or discretion of Jeannie Dotson and Bridgette White, the new owners, with the approval of West Virginia Lottery Commission. Dawn further avers that the Unit Purchase Agreement for sale of Jessie's neither specified nor restricted where Jessie's limited video lottery machines could be deployed after the purchase.
17. The allegations in Paragraph 58 and 59 of Complaint are denied due to inaccurate inherent assumption of the referenced allegations that location of limited video lottery machines after sale of Jessie's were part of purchase negotiations and/or purchase contract entered into with Jeannie Dotson and Bridgette White, and such was not the case.
18. The allegations in Paragraphs 60 and 61 of Complaint that Dawn tortuously interfered with an alleged contract that plaintiff had with BJ and Greg Dotson by

entering into a Unit Purchase Agreement with Jeannie Dotson and Bridgette White is denied.

19. The allegation in Paragraph 62 of Complaint that action of Dawn selling Jessie's proximately caused damages to Plaintiff is denied.

THIRD DEFENSE

Dawn's motivation in selling Jessie's was for its financial interests as the owner of the limited liability company and not intended to induce a breach of an alleged contract between Plaintiff and B&J Enterprises. Moreover, the buyers of Jessie's, Jeannie Dotson and Bridgette White, were not restricted by purchase agreement to any particular location for utilization of the five (5) Limited Video Lottery Machines and related equipment and software acquired in the purchase. Dawn possessed the right to sell its wholly owned limited liability company to any interested buyer subject to any applicable state, municipal or federal laws to the contrary. No illegalities were alleged as to Dawn's transaction with Jeannie Dotson and Bridget Dotson White for the sale of Jessie's. Therefore, the sale of Jessie's was a justified and legitimate exercise of Dawn's freedom to contract for a sale of its property for its own financial interest for which no cause of action accrues to Plaintiff as an outside party to the transaction.

FOURTH DEFENSE

There existed no valid contract between Plaintiff and B&J Enterprises at time of purchase of Jessie's that restricted the acquisition of Jessie's and/or the assets of Jessie's acquired by Bridgett White and Jeannie Dotson through the February 4, 2014 Unit Purchase Agreement (which was conditioned on subsequent approval by West Virginia Lottery Commission for transfer of the lottery related assets).

FIFTH DEFENSE

The sale of Jessie's by Dawn to Bridgette White and Jeannie Dotson was not the direct and proximate cause of any claimed damages for alleged breach of an alleged contract between Plaintiff and B&J Enterprises and Greg Dotson.

SIXTH DEFENSE

The sale of Jessie's by Dawn to Bridgette White and Jeannie Dotson did not induce or otherwise cause B&J Enterprises and/or Greg Dotson to breach its alleged contract with Plaintiff.

SEVENTH DEFENSE

Dawn is not responsible for any alleged interference with alleged contract between Plaintiff and B&J Enterprises and Greg Dotson that constitutes negligence on its part rather than intentional conduct.

EIGHTH DEFENSE

Dawn, as a legitimate business competitor of Plaintiff, is not liable to Plaintiff for alleged tortious interference with alleged contract between Plaintiff and B&J Enterprises and Greg Dotson.

NINTH DEFENSE

Dawn reserves unto itself any and all other defenses that may become known through discovery or upon further investigation of cause(s) asserted by Plaintiff.

P R A Y E R

Wherefore, defendant, Dawn Enterprises LLC, prays that it be dismissed from this Complaint ,and that it be granted its attorney's fees and costs expended herein and for such other and further relief as this Honorable Court deems just and proper.

DEFENDANT RESPECTFULLY DEMANDS A TRIAL BY JURY.

DAWN ENTERPRISES LLC

By Counsel



William D. Stover, WVSB # 3632

P.O. Box 5007

Beckley, WV 25801

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IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

SOUTHERN AMUSEMENT CO., INC.

Plaintiff,

v.

Civil Action No.: 14-C-231
Honorable Roger L. Perry

B&J BUSINESS ENTERPRISES INC., doing
business as GIOVANNIS PIZZA, a West Virginia
Corporation; DOTSON'S MANAGEMENT
CO., INC., a West Virginia Corporation;
JESSIE'S ITALIAN RESTAURANT LLC,
doing business as JOYCE'S and TIBACCO &
MORE EXPRESS, a West Virginia Limited
Liability Company; DAWN ENTERPRISES LLC,
a West Virginia Limited Liability Company; GREG
DOTSON, JEANNIE DOTSON and BRIDGET DOTSON
WHITE, individually,

Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel for Dawn Enterprises, LLC does hereby certify that a true copy of the foregoing ANSWER OF DEFENDANT, DAWN ENTERPRISES LLC has been served upon:


Counsel for Plaintiff, Southern Amusement Co., Inc.:

Robert B. Kuenzel
36 Adams Street
P.O. Box 607
Chapmanville, WV 25508-0607

Counsel for Defendants: B&J Enterprises Inc, (dba Giovannis Pizza): Dotson Management Co., Inc.; Jessie's Italian Restaurant LLC; (dba Joyce's and Tobacco & More Express); Greg Dotson; Jeannie Dotson and Bridgette Dotson White :

J. Mark Adkins
James E. Scott
BOWLES RICE LLP
600 Quarrier Street
P.O. Box 1386
Charleston, WV 25325-1386

By placing the same in the regular United States Mail, postage prepaid this 2nd day of October, 2014.



William D. Stover (WVSB # 3632)