

IN THE CIRCUIT COURT OF WYOMING COUNTY
WEST VIRGINIA

SUMMIT RESOURCES, INC.)

a West Virginia corporation,)

Plaintiff,)

v.)

Civil Action No.: 14-C-60

WILLIAM W. KELLY, JR.,)

individually, LEZLEI S. KELLY,)

individually, CLASSIC OIL & GAS)

SERVICES, INC., a foreign corporation,)

and CLASSIC PIPELINE,)

INC., a West Virginia corporation,)

Defendants.)

Honorable Warren R. McGraw

FILED
2014 DEC 12 P 4:30
CLERK OF
WYOMING COUNTY, WV

**PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION TO REFER ACTION TO
THE BUSINESS COURT DIVISION**

This matter does not belong in the Business Court Division because it is primarily a fraud action brought against a single individual, William W. Kelly, Jr. The Defendants also failed to address the fact that this litigation is substantially related to Civil Action No. 11-C-176 that was filed with this Court in 2011. That lawsuit in essence involved the same parties and pertained to the same subject matter as this lawsuit. It was litigated before this Court for over three years before the Defendant in that matter filed bankruptcy. As a result of that bankruptcy filing, the Plaintiff brought this action for fraud against the principal of the bankrupt defendant. William Kelly, Jr. Since the issues related to this matter have been before this Court for over three years, it is intimately familiar with the facts of this case. Both parties will be substantially prejudiced if they will be required to start all over in a different court that has no knowledge of the matter in this case. Therefore, the Defendants' motion should be denied.

STATEMENT OF FACTS

1. Plaintiff originally filed Civil Action 11-C-176 against Classic Oil & Gas Resources, Inc. ("Classic Resources") in Wyoming County, West Virginia in 2011. The Complaint alleged two separate counts for breach of contract related to Classic Resources' failure to properly operate gas wells in which Plaintiff had purchased working interests.

2. During the three years that Civil Action 11-C-176 was litigated before this Court, the parties: 1) completed written discovery, which included hundreds of written requests and thousands upon thousands of pages of responsive documents; 2) completed depositions of all of the parties; 3) provided expert disclosures; 4) conducted multiple substantive hearings before this Court, including three separate motions to compel; and 5) addressed the Plaintiff's filing of an amended complaint.

3. Based upon the discovery provided by Classic Resources, the Plaintiff determined that its President, William Kelly, Jr. had engaged in fraud by siphoning off the monies provided by Plaintiff for the operation of the gas wells for his own personal benefit. It was determined that instead of using the money provided by Plaintiff to operate the wells, Mr. Kelly used that money, and proceeds generated from the gas wells, to fund a lavish lifestyle for he and his wife.

4. The Plaintiff also discovered that Mr. Kelly used a shell company, Classic Pipeline, Inc. to help him perpetrate this fraud against the Plaintiff. As a result, the Plaintiff amended his original complaint to add three (3) fraud claims against Classic Resources.

5. Immediately upon Plaintiff amending his complaint, Classic Resources filed for bankruptcy in federal court. As a result, Plaintiff's claims against Classic Resources were stayed.

6. However, in order to continue perpetrating his fraud on Plaintiff, Mr. Kelly created a new company, Classic Oil & Gas Services, Inc., ("Classic Services") and had all of Classic Resources' contracts transferred into Classic Services.

7. As a result, Mr. Kelly, Lezlie Kelly, Classic Pipeline and Classic Services continued to engage in a pattern of fraud against the Plaintiff. As a result, the Plaintiff filed the instant five (5) count complaint. None of the counts are for breach of contract. The first four (4) counts are against William Kelly individually for fraud. The final count alleges civil conspiracy against all defendants.

8. After the filing of the lawsuit, the defendants removed the matter to federal court under the allegation that the Plaintiff had fraudulently joined parties in an attempt to defeat diversity jurisdiction. In doing so, Mr. Kelly made numerous blatant misrepresentations to the Court in order to keep the case out of Wyoming County, where the gas wells are located.

9. Judge Berger agreed with the Plaintiff that there was no fraudulent joinder and remanded the case back to Wyoming County. Upon remand, the Defendants filed the pending motion to transfer this case to the business division.

LEGAL ARGUMENT

The Defendants' motion should be denied because the Plaintiff will be prejudiced by the transfer of this matter to the Business Court Division. Ignoring for the moment that the Defendants' motion is procedurally defective and its request unconstitutional, the simple fact is that nothing will be gained by the transfer of this case.

The purpose of the business court division is to address complex business issues that are outside the expertise of circuit court judges. This matter is not outside of the expertise of this Court, as this Court has been dealing with the issues in this case for over three (3) years. In

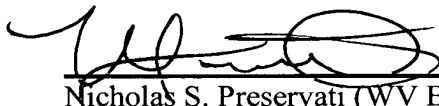
addition, the Plaintiff is not pursuing the typical breach of contract claim against the Defendants. There are five separate counts in the Complaint. Four of the counts are for fraud against the individual defendant, William Kelly, Jr. The final count is a civil conspiracy claim based upon the underlying fraudulent conduct of the defendants. The vast majority of the facts involved in this case center around the fraudulent conduct of one individual, William Kelly, Jr. Accordingly, this case is more aligned with the typical tort/criminal case than it is a complex business dispute. As such, it is the type of case that was not contemplated to be handled by the Business Court Division.

More important is the fact that the Plaintiff will be significantly prejudiced if this case is transferred out of Wyoming County. The parties and the actual facts of this case are well known to this Court. There has been significant discovery conducted by the parties in the parallel proceeding that are of significant use and importance in this case. In addition, the Plaintiff has spent tens of thousands of dollars in legal fees prosecuting this case and the related case in Wyoming County. Given the significant amount of time and money the parties have spent developing the issues in this case for the Court, it would be a waste of those resources and prejudicial to the Plaintiff to require it to start all over in a new court before a new judge.

Therefore, the Plaintiff respectfully requests that this Court deny the Plaintiff's motion to transfer this case to the Business Court Division. Plaintiff,

SUMMIT RESOURCES, INC.

By Counsel,



Nicholas S. Preservati (WV Bar #8050)
PRESERVATI LAW OFFICES PLLC
P.O. Box 1431
Charleston, WV 25325
(304) 346-1431 *office*

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Civil Action No. 14-C-60


Honorable Judge McGraw

CERTIFICATE OF SERVICE

I, Nicholas S. Preservati, certify that on December 2, 2014, a copy of "Plaintiff's Response in Opposition to Motion to Refer Action to the Business Court Division" was served upon counsel of record via hand delivery, addressed as follows:

Christopher Brumley
FLAHERTY SENSABAUGH BONASSO
P.O. Box 3843
Charleston, WV 25338-3843

Berkeley County Judicial Center
Business Court Division
Suite 2100
380 W. South Street
Martinsburg, WV 25401



Nicholas S. Preservati (WV Bar #8050)
Sarah Ghiz Korwan (WV Bar #4974)
PRESERVATI LAW OFFICES, PLLC
P.O. Box 1431
Charleston, WV 25325
(304) 346-1431 Telephone
(304) 346-1744 Facsimile

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