

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

JOSEPH T. DOBKIN and  
LAURIE DOBKIN McDERMOTT,

Plaintiffs,

v.

DAVID B. SHRIVER,

Defendant.

Civil Action No. 14-C-91 K

Judge Karl

2014 JUL 15 PM 4:11  
DAVID B. SHRIVER

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO  
MOTION TO REFER TO BUSINESS COURT DIVISION**

As detailed below, referral of the case at bar to the Business Court Division would be inappropriate since the case is not within the definition of "Business Litigation" as that term is plainly defined in Trial Court Rule 29.04 (a), because the case is simply a tort action between individuals, not a case that involves matters "between business entities," or a case that involves complex commercial matters. Moreover, referral would be inconsistent with the goals behind the formation of the Business Court Division, and would deprive the individual plaintiffs of the jurisdiction of a circuit court that regularly and adeptly handles tort causes of action between individuals. Accordingly, the plaintiffs respectfully oppose referral of this case from the Circuit Court of Marshall County to the Business Court Division, and request that the defendant's referral motion be denied.

In order for a case to meet the definition of "Business Litigation" as the term is defined in W.Va. T.C.R. 29.04 (a), two requirements must be met that are not present in the case at bar. First, in order for a case to meet the definition of "Business Litigation," and thusly eligible for referral to the Business Court Division, the case must involve matters "between business

entities” according to the plain language of subsection (a) (1) of Rule 29.04. In contrast to this requirement for referral, the case at bar is not “between business entities.” As discussed below, instead of meeting the referral requisite of being a case “between business entities,” the case actually involves two individuals as plaintiffs, Joseph T. Dobkin and Laurie Dobkin McDermott, who have filed a tort action against another individual, David B. Shriver. The complaint herein does not name a business entity as a party, or assert any claims on behalf of a business entity. Plain and simple, this is not a case “between business entities.” It is a dispute between individuals.

Secondly, in order for a case to meet the definition of “Business Litigation” and to be eligible for referral to the Business Court Division, the plain language of the pertinent rule requires 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...” W.Va. T.C.R. 29.04(a) (2). Plainly stated, the case has to involve complex commercial matters between business entities to be eligible for transfer from a Circuit Court to the Business Court Division. The “complexity” requirement, like the initial referral requirement (“between business entities”) is not met in this case, because the case is simply a tort action by individual plaintiffs against an individual defendant, that states and features the type of tort causes of action and allegations that are regularly presented to Circuit Courts. Therefore, it is respectfully submitted that this tort case involving individuals as litigants, not litigation “between businesses entities,” would actually receive more specialized treatment, likely to improve the expectation of a fair and reasonable resolution, if the Circuit Court of Marshall County were to retain jurisdiction, since that court

regularly handles the very sort of tort causes of action at issue between the individuals involved in this case and is, therefore, very familiar with these types of tort causes of action and the specific applicable law and legal principles that govern such tort claims.

In this case, the defendant, David B. Shriver, is the first cousin of the plaintiffs, Joseph T. Dobkin and Laurie Dobkin McDermott, who are brother and sister. As the Complaint reflects, the defendant stands accused of individual actions and tortious conduct towards the plaintiffs individually, by virtue of various alleged financial improprieties that he perpetrated to the detriment of the plaintiffs, alleged to constitute various tort causes of action, notably fraud, unjust enrichment, breach of fiduciary duties owed, breach of good faith and fair dealing, illegality and oppression. See e.g., Complaint, para. 23. The principal allegations are that the defendant diverted and directed substantial revenues of a family business to himself personally, and that those actions give rise to the aforesaid tort based causes of action. Once again, as the Complaint reflects, no business entities are named as parties in this case, and no claims are asserted on behalf of any business entities. The torts at issue are alleged by the Complaint to have been perpetrated by an individual, upon other individuals. The fact that the torts were allegedly perpetrated within the framework of a closely held family corporation by an individual upon other individuals within does not make this a case "between business entities." Nor is it a case that presents commercial issues of such complexity that specialized treatment by the Business Court Division is needed to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge. Actually, the opposite is true. This is an individual tort case, involving allegations said to constitute tort causes of action - like fraud, unjust enrichment, breach of fiduciary duties and duties of good faith and fair dealing - that are routinely, regularly and adeptly handled by the Circuit Court of Marshall County, a court

that has great familiarity with these types of individual tort causes of action and the legal principles that govern these individual tort claims. The factual allegations of financial improprieties made against the defendant in the Complaint are rather straight-forward, i.e. that he diverted and directed substantial revenues from the family business to himself, and cannot be fairly characterized as creating complex commercial issues. The matters are well within the handling capabilities of the Circuit Court of Marshall County.

The goal behind the formation of the Business Court Division was to design a Court that focuses on complex issues that arise in commercial litigation, to provide a way for circuit court judges to be relieved from the burden of handling those novel or complex issues. See, W.Va. Judiciary Press Releases (Oct. 10, 2012). The Business Court Division was created subsequent to a finding of the West Virginia Legislature “that, due to the complex nature of litigation involving highly technical commercial issues, there is a need for a separate and specialized court docket to be maintained...” See, W.V. Code 51-2-15 (a). Presumably, another important objective was to establish West Virginia as one of the best legal environments in the country for businesses, by providing businesses an opportunity to have specially trained judges resolve complex business issues between business entities. See, “An Overview of the Development and Operation of Trial Court Rule 29,” written by the Honorable Christopher C. Wilkes. Referral of an individual tort action like the case at bar, one that does not involve business entities as parties, or complex business claims on behalf of or against business entities, away from a circuit court that regularly and competently handles individual tort causes of action, would not be consistent with the goals behind the formation of the Business Court Division.

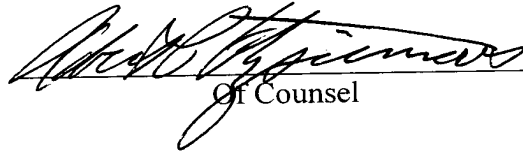
Accordingly, for the reasons stated above, it is respectfully submitted that this case does not meet the definition of “Business Litigation” set forth within Trial Court Rule 29 (a), and fails

to satisfy the requirements for transfer of the case from the jurisdiction of the Circuit Court of Marshall County to the Business Court Division. Defendant's referral motion should thusly be denied.

Respectfully submitted,

**JOSEPH T. DOBKIN and LAURIE DOBKIN  
McDERMOTT, *Plaintiffs***

By:

  
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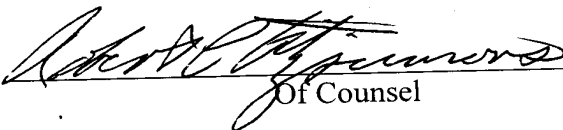
**CERTIFICATE OF SERVICE**

Service of *Plaintiffs' Memorandum In Opposition To Motion To Refer To Business Court Division* was made upon Defendant on this 15th day of July, 2014 by mailing a true copy thereof, via regular, United States mail, postage prepaid, to his counsel as follows:

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*Counsel for Defendant, David B. Shriver*

Respectfully submitted,

**JOSEPH T. DOBKIN and LAURIE DOBKIN**  
**McDERMOTT, Plaintiffs,**

By:  \_\_\_\_\_  
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