

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2) or more
unit owners,

Plaintiff,

v.

BLACK BEAR CROSSING, LLC, et al.,
Defendants

and

Civil Action No.: 14-C-32

BLACK BEAR CROSSING, LLC, et al.,
Third-party Plaintiffs,

v.

FIRST TRACTS REAL ESTATE, LLC, et al.,
Third-party Defendants.

CASE MANAGEMENT AND SCHEDULING ORDER

On the 13th day of July, 2015, came the parties to the above-captioned matter for a case management and scheduling conference with regard to further proceedings herein. Black Bear Crossing Town House Association, LLC (Plaintiff) appeared by counsel, Kenneth E. Webb, Jr. of Bowles, Rice, McDavid, Graff & Love, PLLC; Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Matthew Glod, and Brian Kreider (Defendants/Third-party Plaintiffs) appeared by counsel, Jane E. Harkins of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and by Sean C. Workowski of Frith, Anderson & Peake, PC; Tygarts Valley Construction, Inc. (Defendant/Third-party Plaintiff) appeared by counsel, Teresa C. Dumire of Kay, Casto & Chaney PLLC; Treve Painter, Tink's Cottage Care at Snowshoe, LLC, and Slopeside Construction, Inc. (Defendants) appeared by counsel, Margaret L. Miner of Shuman, McCuskey

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& Slicer, PLLC; JD& JT General Contractors, LLC (Third-party Defendant) appeared by counsel, Lawrence E. Morhous of Brewster, Morhous, Cameron, Caruth, Moore, Kersey & Stafford, PLLC; CAS Structural Engineering, Inc. (Third-party Defendant) appeared by counsel, Jason S. Hammond of Bailey & Wyatt, PLLC; Chapman Technical Group, Ltd. appeared by counsel, W. Randolph Fife of Steptoe & Johnson PLLC; Douglas J. Grimes d/b/a Mill Run Farm (Third-party Defendant) appeared by counsel, Peter Zurbuch of Busch, Zurbuch & Thompson, PLLC; First Tracts Real Estate, LLC, David M. Simmons and Peter A. Monico (Third-party Defendants) appeared by counsel, Jessica Y. Whitmore of Kesner & Kesner, PLLC; Leon G. Mallow Surveying, Inc. (Third-party Defendant) appeared by counsel, Jamison H. Cooper of Cooper Law Offices, PLLC; Erie Insurance Property & Casualty Company (Intervenor) appeared by counsel, Matthew J. Perry of Lamp Bartram Levy Trautwein & Perry, PLLC.

Pursuant to Rule 16(b) of the West Virginia Rules of Civil Procedure and Rule 29.08 of the West Virginia Trial Court Rules, the following schedule and procedures are hereby adopted and ORDERED by the Court:

1. Plaintiff shall disclose the names and addresses of all fact witnesses who may be called to testify in the Plaintiff's case in chief on or before October 1, 2015.
2. The defendants and third-party defendants shall disclose the names and addresses of all fact witnesses who may be called to testify in their respective cases in chief on or before November 2, 2015.
3. Plaintiff shall disclose the names of all expert trial witnesses on or before January 15, 2016. The defendants and third-party defendants shall disclose the names of all expert trial witnesses on or before March 1, 2016. Expert witness disclosures shall include the specialty of each expert and copies of any reports submitted by the expert with regard to

this case. If no reports have been submitted, the parties shall provide a summary of the substance of the contemplated testimony of the expert. Any objection to the admissibility of expert testimony must be raised in a timely filed motion *in limine* for hearing at the pre-trial conference. The parties shall timely disclose co-designation of any expert.

4. The parties shall each serve their final interrogatories, requests for admissions and/or demands for production of documents no later than July 1, 2016.
5. Any objection to an interrogatory or request for admissions, notice of deposition, or demand for production of documents shall be filed within thirty (30) days after service of the same. Any such objection not filed within thirty (30) days shall be deemed waived. The party objecting to the request shall schedule a hearing with the Court, if desired, and notice the same simultaneously with service of the objection. Pending discovery disputes shall not extend the time in which the objecting party must otherwise appear or respond to any request as to which no objection has been filed.
6. If a party fails to answer an interrogatory or request for admissions, or fails to produce a document or make required disclosures, and does not file an objection thereto, the requesting party shall timely file a motion to compel. The movant shall schedule a hearing with the Court, if desired, and notice the same simultaneously with service of the motion to compel. If the requesting party fails to file a motion to compel, the request shall be deemed waived.
7. In any event, all discovery shall be completed on or before August 1, 2016.
8. Dispositive motions shall be filed well in advance of the pre-trial hearing and may be scheduled for hearing, if desired. Any dispositive motions for which a hearing is not scheduled with the Court shall be the subject of a briefing schedule pursuant to Rule 22


of the West Virginia Trial Court Rules, providing the non-movant the opportunity to respond in writing and request a hearing.

9. Mediation or other form of alternative dispute resolution shall be conducted by the Honorable Christopher C. Wilkes and the Honorable James H. Young, Jr., and shall be concluded on or before September 1, 2016. The resolution judges will contact the parties for the purpose of scheduling mediation or alternative dispute resolution.
10. All pre-trial motions, including motions *in limine*, shall be filed on or before September 5, 2016, for hearing at the pre-trial conference. Unless a matter could not have been reasonably anticipated by a party, the Court will not consider motions *in limine* at the time of trial.
11. No later than September 5, 2016, the parties shall exchange a list of all proposed exhibits (including demonstrative) and shall make the exhibits available for viewing by counsel. At the pre-trial conference, counsel shall have stipulated as to which exhibits shall be admitted without objection. Prior to trial, the parties shall preliminarily mark all exhibits by use of standard exhibit stickers, and provide a list to the Court, the Court Reporter, and the Circuit Clerk.
12. No later than September 5, 2016, the parties shall each prepare and provide the Court and opposing counsel with a pre-trial memorandum, to include at least the following:
 - a. Statement of the case including a brief summary of the material facts and theory of liability or defense;
 - b. Itemized statement of damages;
 - c. Stipulation of uncontested facts;
 - d. General statement of contested issues of law and, in particular, those contested issues of law requiring court ruling before commencement of trial;
 - e. The names and addresses of all witnesses, and, if any expert witness, the purpose of the testimony and whether the qualifications of the expert are to be stipulated;
 - f. Legal authorities to be relied upon;

- g. For each party, a list of depositions and exhibits to be offered as evidence at trial, indicating as to each whether there are objections to either authenticity or relevancy (if there are objections, the lines and pages of depositions being objected to must be identified), and a statement that copies of exhibits have been exchanged by counsel or that opposing counsel have examined the exhibits; and
 - h. Settlement possibilities.
13. The parties shall provide proposed jury instructions to the Court and opposing counsel no later than September 5, 2016, and shall be prepared to discuss the same at the pre-trial conference.
14. A pre-trial conference shall be held with the Court on Friday, September 9, 2016, at 11:00 AM, at the Pocahontas County Courthouse, at which time lead trial counsel shall appear fully prepared to discuss all aspects of the case.
15. A jury trial of the within matter shall commence on Tuesday, October 11, 2016, at 9:00 AM, at the Pocahontas County Courthouse. Seven (7) consecutive days are allotted for the trial of this case.

The Circuit Clerk shall forward a copy of this Order to all counsel of record; to the Honorable James H. Young, Jr., Resolution Judge, Wayne County Courthouse, P.O. Box 68, Wayne, WV 25570; to the Honorable Christopher C. Wilkes, Resolution Judge, Berkeley County Judicial Center, 380 W. South Street, Ste. 4100, Martinsburg, West Virginia 25401; and to the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Ste. 2100, Martinsburg, West Virginia 25401.

IT IS SO ORDERED this 13th day of July, 2015.


James J. Rowe, Presiding Judge
Business Court Division