

KAMINSKI LAW, PLLC

◆ Trial Attorney and Counselor ◆

Licensed in WV, KY and OH

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vjones@kamlawwv.com

17-C-55-M

May 25, 2017

Francine Spencer, Clerk
McDowell County Circuit Clerk
90 Wyoming Street, Suite 201
Welch, WV 24801


RE: *Stollings Trucking Company, Inc. v. Continuum Coal, LLC*

Dear Ms. Spencer:

Please find enclosed for filing one original and ten copies of the above-referenced *Complaint* in regard to the above-referenced matter. I have enclosed a check in the amount of \$200.00 for the filing fee, with an additional \$5.00 for return postage, equaling \$205.00, in addition to \$40.00 to the West Virginia Secretary of State for the service fee. Please file/stamp the Complaint, service the Complaint via West Virginia Secretary of State and send three copies of the filed/stamped Complaint back for service upon two (2) defendants and for our records.

If there are any questions, please do not hesitate to contact me.

Sincerely,


Vivian L. Jones
Paralegal to Scott H. Kaminski

/vlj
Enclosures

RECEIVED & FILED
CLERK OF COURT
MCDOWELL COUNTY, W.VA.
2017 MAY 26 AM 10:38

IN THE CIRCUIT COURT OF McDowell

COUNTY, WEST VIRGINIA

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. 17-C-55

Plaintiff(s)

Judge: MurenskyStollings Trucking Company, Inc.

vs.

Defendant(s)

Days to

Answer

Type of Service

Continuum Coal, LLCclb lan Ganza30Secretary of State

Name

304 Waitman Street

Street Address

Morgantown, WV 26501

City, State, Zip Code

II. TYPE OF CASE:

☒ General Civil☐ Mass Litigation [As defined in T.C.R. 26.04(a)]☐ Asbestos☐ FELA Asbestos☐ Other: _____☐ Habeas Corpus/Other Extraordinary Writ☐ Other: _____☐ Adoption☐ Administrative Agency Appeal☐ Civil Appeal from Magistrate Court☐ Miscellaneous Civil Petition☐ Mental Hygiene☐ Guardianship☐ Medical MalpracticeIII. JURY DEMAND: ☒ Yes ☐ No CASE WILL BE READY FOR TRIAL BY (Month/Year): Jan / 2018IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?☐ Yes ☒ No

IF YES, PLEASE SPECIFY:

☐ Wheelchair accessible hearing room and other facilities☐ Reader or other auxiliary aid for the visually impaired☐ Interpreter or other auxiliary aid for the deaf and hard of hearing☐ Spokesperson or other auxiliary aid for the speech impaired☐ Foreign language interpreter-specify language: _____☐ Other: _____Attorney Name: Scott H. KaminskiFirm: Kaminski Law, PLLCAddress: PO Box 3548 Ches, WV 25335Telephone: 304. 344. 0444

Representing:

☒ Plaintiff☐ Defendant☐ Cross-Defendant☐ Cross-Complainant☐ 3rd-Party Plaintiff☐ 3rd-Party Defendant☐ Proceeding Without an AttorneyOriginal and 9 copies of complaint enclosed/attached.Dated: 5/25/17Signature: [Signature]

Plaintiff: Stalling Trucking Company, Inc., et al
vs.
Defendant: Continuum Coal LLC, et al., et al

Case Number: _____

**CIVIL CASE INFORMATION STATEMENT
DEFENDANT(S) CONTINUATION PAGE**

GS Energy, LLC 40 Ian Gartner
Defendant's Name

304 Waitman Street
Street Address

Morgantown, WV 26501
City, State, Zip Code

Days to Answer: 30

Type of Service: WVSOS

IAN Gartner
Defendant's Name

304 Waitman Street
Street Address

Morgantown, WV 26501
City, State, Zip Code

Days to Answer: 30

Type of Service: Return for personal service

Gary Gartner
Defendant's Name

PO Box 31
Street Address

Wheeling, WV 26003
City, State, Zip Code

Days to Answer: 30

Type of Service: Return for personal service

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA

STOLLINGS TRUCKING COMPANY, INC.

Plaintiff,

v.

CIVIL ACTION NO: 17-C-55
Honorable Muendy

CONTINUUM COAL, LLC, a West Virginia
Limited Liability Corporation, GS ENERGY, LLC,
A West Virginia Limited Liability Corporation,
IAN GANZER, Individually and in his capacity
as member of Continuum Coal, LLC, and
GARY GANZER, Individually and in his capacity
as member of Continuum Coal, LLC

Defendants.

RECEIVED & FILED
CLERK OF COURT
MCDOWELL COUNTY, W.VA.
2017 MAY 26 AM 10:42

COMPLAINT

Plaintiff, Stollings Trucking Company, Inc. ("Stollings"), by its counsel Scott H. Kaminski of Kaminski Law, PLLC, hereby complains against Defendants, Continuum Coal, LLC ("Continuum"), GS Energy, LLC ("GS"), Ian Ganzer and Gary Ganzer, as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Stollings is a West Virginia corporation doing business in the State of West Virginia and having its principal place of business located at 135B Marcum Trucking Drive, Verdunville, West Virginia 25649.

2. Continuum is a West Virginia limited liability company doing business in the State of West Virginia and having its principal place of business located at 304 Waitman Street, Morgantown, West Virginia 26501.

3. GS Energy is a West Virginia limited liability company doing business in the State of West Virginia chartered in McDowell County and having its principal place of business located at 304 Waitman Street, Morgantown, West Virginia 26501.

4. Ian Ganzer is an individual who resides in Monongalia County, West Virginia and who is a member of Continuum, LLC and GS Energy, LLC which act as his alter ego.

5. Gary Ganzer is an individual who upon information and belief resides in Pennsylvania and who is a member of Continuum, LLC and GS Energy, LLC which act as his alter ego.

6. This Court has jurisdiction over Defendants because Defendant GS is chartered in McDowell County, West Virginia and the dispute arose out of an agreement entered into between Stollings and Defendant Continuum in the State of West Virginia and to be performed in McDowell County, West Virginia and because Continuum and GS were West Virginia limited liability companies when they engaged in the actions giving rise to Stollings' claims.

7. Venue is proper in this Court because the work performed for Defendants occurred in McDowell County, West Virginia.

II. FACTUAL BACKGROUND

8. Plaintiff is a company with substantial experience and expertise in mining coal.

9. Defendants represented to Plaintiff that they had the legal right to surface mine and to remove coal from the Red Ash seam located on certain real property located in McDowell County, West Virginia (the "Property").

10. Although Defendants and Plaintiff signed a document on or about July 20, 2013 that purported to be a legally binding contract, this purported contract was legally defective in various respects, including, but not limited to, by virtue of the lack of any mutual assent or meeting of the minds as to numerous material terms.

11. Thereafter Defendants induced Plaintiff to commence the development of a surface mine upon the Property under the pretenses of there being a legally binding contract under which Plaintiff would be fully, fairly and reasonably compensated for its services through the payment of certain net profits to be generated from Defendant's sale of coal resulting from Plaintiff mining operations.

12. In response to Defendant's inducements and promises, Plaintiff invested substantial sums of money and devoted substantial labor and equipment to develop the Property in anticipation of beginning coal mining operations.

13. Plaintiff prepared the Property by engaging in exploratory work, conducting engineering studies, obtaining permits, constructing hauling roads and performing all other services as were necessary to commence mining operations.

14. The total amount of expenses invested by Plaintiff was in excess of \$6,000,000.00.

15. At all relevant times, Plaintiff diligently performed all such work in accordance with the reasonable expectations and directions of Defendants.

16. Due to Defendants' purported inability to procure any substantial and long term market for the coal mined upon the subject property, Plaintiff was forced to cease mining operations at the Property.

17. On or about May 12, 2015, Defendants, without any prior knowledge or consent from Plaintiff, secretly transferred control of the mining operations at the Property to a third-party (Eagle Creek Mining, LLC) which was thereupon directed by Defendant to recommence the mining operations that Plaintiff had begun but was forced to cease.

18. Defendants, through their unlawful and fraudulent conduct, induced Plaintiff to invest substantial sums of money to develop their property for mining all of the while knowing and planning to prevent Plaintiff from ever recouping its full investment.

III. CAUSES OF ACTION

Count 1: Quantum Meruit

19. Plaintiff alleges and incorporates herein by reference the allegations set forth in the paragraphs above.

20. Plaintiff provided valuable services to Defendants in the absence of any binding contract.

21. Defendants accepted and received the services provided by Plaintiff.

22. The services provided by Plaintiff have inured and continue to inure to the direct and substantial benefit and enjoyment of Defendants.

23. Defendants have failed to fully compensate Plaintiff for the reasonable value of the services rendered by Plaintiff to Defendants.

24. Defendants are now liable to compensate Plaintiff for that portion of the reasonable value of its services that have heretofore remains unpaid.

Count 2: Fraud

25. Plaintiff alleges and incorporates herein by reference the allegations set forth in the paragraphs above.

26. Defendants intended to deceive and defraud Plaintiff from the outset of their anticipated mining arrangement.

27. Defendants induced Plaintiff into performing substantial and valuable mining services with the intention of terminating their relationship with Plaintiff before compensating Plaintiff for the value of the services performed. Defendants, after Plaintiff had completed

substantial development and pre-mining services and had only begun to mine coal for a short duration of time, e, wrongly transferred control of the mining operations to a third-party, and, in so doing, completed their plan to defraud Plaintiff.

28. Plaintiff reasonably relied to its detriment upon the fraudulent representations and inducements of the Defendants.

29. As a direct and proximate result of Defendants fraudulent actions, Plaintiff has suffered substantial damages.

Count 3: Unjust Enrichment

30. Plaintiff alleges and incorporates herein by reference the allegations set forth in the paragraphs above.

31. Plaintiff is entitled to recover from Defendants under the theory of unjust enrichment.

32. Plaintiff conferred a significant benefit upon Defendants by expending a total of over \$6,000,000 to prepare the Property for surface mining and coal removal (the "Mining Infrastructure") without being offered a meaningful opportunity to earn its share of the mining profits that would have allowed Plaintiff to recoup its full investment.

33. Defendants accepted, retained and appreciated such benefit by hiring another mining operator to replace Plaintiff and use the Mining Infrastructure to surface mine and remove coal from the Property, and enjoying the mining profits resulting therefrom.

34. Defendants have been unjustly enriched as a result of these actions and circumstances.

35. As a direct and proximate result of Defendants unjust enrichment, Plaintiff is entitled in equity to recover all such amounts as will fairly and reasonably compensate and reimburse Plaintiff for the benefits so bestowed upon Defendants.

Count 4: Breach of Contract

36. Stollings alleges and incorporates herein by reference the allegations set forth in the paragraphs above.

37. On or about July 20, 2013, Plaintiff entered into a purported Contract Mining Agreement to mine coal for Defendants.

38. To the extent the Contract Mining Agreement is considered legally binding and enforceable, then Defendants have breached said contract in numerous ways including failing to pay Plaintiff amounts due and owing under the contract and other such ways as shall become evident in discovery.

39. Plaintiff met its obligations under the Contract Mining Agreement, or did so to the extent possible.

40. Accordingly, Defendant is legally liable to Plaintiff for all amounts owed to Plaintiff under the Contract Mining Agreement.

IV. ATTORNEY'S FEES AND COSTS

41. Stollings alleges and incorporates herein by reference the allegations set forth in the paragraphs above.

42. Defendants' actions forced Stollings to retain counsel to prosecute this action. Stollings is entitled to recover its reasonable and necessary attorneys' fees and costs incurred in this action.

V. PRAYER

WHEREFORE, Stollings respectfully requests that Defendants be required to answer and appear herein and, upon final hearing, that the Court enter judgment against Defendants and in Stollings' favor in the amount of Stollings' actual damages plus pre-judgment and post-judgment interest at the highest rate allowed by law and Stollings' reasonable costs, attorneys' fees and

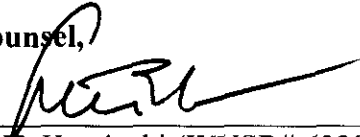
punitive damages. Stollings further requests all other relief, both special and general, at law and/or in equity, to which it shows itself justly entitled.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated May 25, 2017.

STROLLINGS TRUCKING COMPANY, INC.

By counsel,



Scott H. Kaminski (WVSB# 6338)
Kaminski Law, PLLC
P.O. Box 3548
Charleston, WV 25335-3548
304-344-0444
304-344-4411 fax
skaminski@kamlawwv.com
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA
STOLLINGS TRUCKING COMPANY, INC.

Plaintiff,

v.

CIVIL ACTION NO: 17-055
Honorable Murphy

CONTINUUM COAL, LLC, a West Virginia
Limited Liability Corporation, GS ENERGY, LLC,
A West Virginia Limited Liability Corporation,
IAN GANZER, Individually and in his capacity
as member of Continuum Coal, LLC, and
GARY GANZER, Individually and in his capacity
as member of Continuum Coal, LLC

Defendants.

SUMMONS

To: Continuum Coal, LLC
c/o Ian Ganzer
304 Waitman Street
Morgantown, WV 26501

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Scott H. Kaminski, Plaintiff's Attorney, whose address is P.O. BOX 3548, CHARLESTON, WV 25335-3548, an Answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are requested to serve your answer within thirty (30) days of service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will thereafter be barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: May 26, 2017

Therese Kerner
Clerk of Court

By Yvonne Stone
8 Deputy Clerk

CC

IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA

STOLLINGS TRUCKING COMPANY, INC.

Plaintiff,

v.

CIVIL ACTION NO: 17-c-55
Honorable Murphy

CONTINUUM COAL, LLC, a West Virginia
Limited Liability Corporation, GS ENERGY, LLC,
A West Virginia Limited Liability Corporation,
IAN GANZER, Individually and in his capacity
as member of Continuum Coal, LLC, and
GARY GANZER, Individually and in his capacity
as member of Continuum Coal, LLC

Defendants.

SUMMONS

To: GS Energy, LLC
c/o Ian Ganzer
304 Waitman Street
Morgantown, WV 26501

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Scott H. Kaminski, Plaintiff's Attorney, whose address is P.O. BOX 3548, CHARLESTON, WV 25335-3548, an Answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are requested to serve your answer within thirty (30) days of service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will thereafter be barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: May 26, 2017

Francine Spencer
Clerk of Court

By: Melissa L. Stone
9 Deputy Clerk

IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA
STOLLINGS TRUCKING COMPANY, INC.

Plaintiff,

v.

CIVIL ACTION NO: 17c-55
Honorable Murphy

CONTINUUM COAL, LLC, a West Virginia
Limited Liability Corporation, GS ENERGY, LLC,
A West Virginia Limited Liability Corporation,
IAN GANZER, Individually and in his capacity
as member of Continuum Coal, LLC, and
GARY GANZER, Individually and in his capacity
as member of Continuum Coal, LLC

Defendants.

SUMMONS

To: Ian Ganzer
304 Waitman Street
Morgantown, WV 26501

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Scott H. Kaminski, Plaintiff's Attorney, whose address is P.O. BOX 3548, CHARLESTON, WV 25335-3548, an Answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are requested to serve your answer within thirty (30) days of service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will thereafter be barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: May 26, 2017

Francine Ganer
Clerk of Court

Melinda Stone
Deputy Clerk

IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA
STOLLINGS TRUCKING COMPANY, INC.

Plaintiff,

v.

CIVIL ACTION NO: 17-C-55
Honorable Murphy

CONTINUUM COAL, LLC, a West Virginia
Limited Liability Corporation, GS ENERGY, LLC,
A West Virginia Limited Liability Corporation,
IAN GANZER, Individually and in his capacity
as member of Continuum Coal, LLC, and
GARY GANZER, Individually and in his capacity
as member of Continuum Coal, LLC

Defendants.

SUMMONS

To: Gary Ganzer
P.O. Box 31
Wheeling, WV 26003

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Scott H. Kaminski, Plaintiff's Attorney, whose address is P.O. BOX 3548, CHARLESTON, WV 25335-3548, an Answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are requested to serve your answer within thirty (30) days of service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will thereafter be barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: May 26, 2017

Tranana Spencer
Clerk of Court

By: Marcia Stone
11 Deputy Clerk