

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

STOLLINGS TRUCKING COMPANY, INC.

Plaintiff,

vs.

CIVIL ACTION NO.: 17-C-55MCD

Presiding Judge: Farrell

Resolution Judge: Matish

Temporary Presiding Judge: Young

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 a member of Continuum Coal, LLC, and  
GARY GANZER, Individually and in his capacity  
as a member of Continuum Coal, LLC,

Defendants.

**ORDER**

On August 24, 2018, came Plaintiff, Stollings Trucking, Inc., by and through counsel, Scott H. Kaminski and Kristofer J. Cormany, and Defendants, Continuum Coal, LLC, GS Energy, LLC, Ian Ganzer, and Gary Ganzer, by and through counsel, Hunter B. Mullens, all for hearing on the Defendants' "Motion to Hear Defendant's Motion for Partial Summary Judgment Held in Abeyance," and Defendants' "Motion to Implead Third-Party Defendant and File Defendants' First Amended Answer to Complaint and Counterclaim."

The Court after considering the pleadings filed herein, the arguments of counsel, and all matters of record, the Court hereby denies Defendants' "Motion to Implead Third-Party Defendant and File Defendants' First Amended Answer to Complaint and Counterclaim," at this time and

further denies in part and grants in part Defendants' "Motion to Hear Defendants' Motion for Partial Summary Judgment Held in Abeyance," and further FINDS as follows:

The Plaintiff's Complaint does not meet the particularity required to plead a cause of action for fraud, and also, that Defendants, likewise, do not at this time, have facts sufficient to plead a cause of action for fraud against Rhonda Marcum, individually.

WHEREFORE, this Court hereby ORDERS the following:

1. The Plaintiff has ten (10) business days from the hearing date to attempt to amend its Complaint to plead facts sufficient to sustain a cause of action for fraud with the required particularity;
2. If the Defendants develop facts sufficient to plead the required particularity for fraud, they may renew their motion setting forth said facts;
3. The Defendants' "Motion to Implead Third-Party Defendant and File Defendants' First Amended Answer to Complaint and Counterclaim" is hereby denied, unless and until they develop additional facts as set forth above;
4. The Defendants' "Motion to Hear Defendants' Motion for Partial Summary Judgment Held in Abeyance" is granted in regards to the Plaintiff's Fraud claim as set forth above, but otherwise denied at this time; and
5. The Parties may further file any motions they deem necessary as this matter proceeds and schedule the same pursuant to the West Virginia Rules of Civil Procedure.

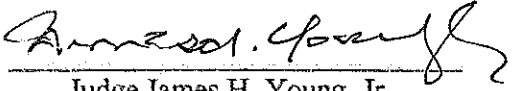
The Clerk of this Court is directed to mail a certified copy of this Order to: Scott H. Kaminski, Esq., P.O. Box 3548, Charleston, WV 25335-3548; Kristofer J. Cormany, Esq., P.O.

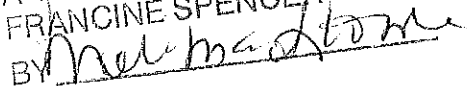
Box 11827, Charleston, WV 25339; Thomas H. Fluharty, Esq., 408 Lee Avenue Clarksburg, WV 26301; and, Hunter B. Mullens, Mullens & Mullens, PLLC, P.O. Box 95, Philippi, WV 26416;

All until further Order of the Court.


Entered this 19 day of September, 2018.

ENTER: \_\_\_\_\_

  
Judge James H. Young, Jr.

A TRUE COPY TESTE  
FRANCINE SPENCER CLERK  
BY 

Prepared by:

  
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*Counsel for Defendants*

Agreed to by:

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*Stollings Trucking Company, Inc. vs. Continuum Coal, LLC, et al., Business Court Case, Civil  
Action No. 17-C-55, McDowell County*

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**Resolution Judge:**

*The Honorable James A. Matish  
Harrison County Courthouse  
301 W. Main Street  
Clarksburg, WV 26301*

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**Business Court Division  
West Virginia Supreme Court of Appeals  
Berkeley County Judicial Center  
380 W. South Street, Suite 2100  
Martinsburg, WV 25401**

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HARRISON COUNTY, WV



TWENTY-FOURTH JUDICIAL CIRCUIT

WAYNE COUNTY, WEST VIRGINIA

POST OFFICE BOX 68

WAYNE, WEST VIRGINIA 25570

JAMES H. YOUNG, JR.

*Judge*

*Telephone*

*304-272-6332*

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September 20, 2018

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

Re: Stollings Trucking Company, Inc. vs. Continuum Coal, LLC, Civil Action No.  
17-C-055

Dear Ms. Spencer:

Please find enclosed an original Order in the above-referenced matter, along with a self-addressed envelope in order that a **time-stamped copy can be returned to me**. Also, please **mail copies to the Business Court Division and all attorneys of record in this matter**. For your convenience, I have also enclosed a list of the attorneys of record.

If you need anything further, please contact me.

Sincerely,

Diana Fields  
Secretary

Enclosures

17-C-055  
SEP 20 2018  
CLERK OF COURT