

In the Circuit Court of Marion County, West Virginia

**American Bituminous Power
Partners, LP,**
Plaintiff,

v.

**Horizon Ventures of West Virginia,
Inc.,**
Defendant

Case No. CC-24-2018-C-130
Judge Michael Lorensen

Bench Trial Order Day Two: October 11, 2023

On the 11th day of October, 2023, this matter came on before the Court for a bench trial. By prior agreement of the parties, the Court conducted the bench trial in Berkeley County, West Virginia. The Plaintiff, American Bituminous Partners, L.P., was present by its counsel Roberta F. Green, Esq. and John F. McCuskey, Esq., and by its representative, Steve Friend, and Defendant, Horizon Ventures of West Virginia, Inc., was present by its counsel Mark A. Kepple, Esq. and Joseph G. Nogay, Esq. and by its representatives, Stanley Sears and John Karras.

1. The Court took up some housekeeping matters with regard to exhibits from Day One. Conference was had regarding Plaintiff's Exhibit 2 (Comprehensive Mining Plan), which was deferred, and eventually, refused for reasons set forth more fully on the record.
2. Plaintiff's Exhibit 3 (Mill Tech Report – Phase 1), and Plaintiff's Exhibit 5 (Mill Tech Report – Phase 2), which were conditionally admitted during the testimony of Mr. Thompson, were admitted.
3. Mr. Kepple moved for the admission of Exhibit D to Plaintiff's Exhibit 26 (Letter to Bank) and Plaintiff's Exhibit 18 (1996 Settlement Agreement), and these exhibits were admitted.

4. Thereafter, Horizon, by Mr. Kepple, called its second witness, duly-sworn: Stanley Sears.
5. After the direct examination of Mr. Sears, the Court took a brief break. At the conclusion of the direct testimony of Mr. Sears, counsel for Horizon moved for the admission of Defendant's Exhibit 5 (Third Amended Lease), which was admitted into evidence without objection.
6. Following the break, Mr. Sears was subject to cross-examination by Mr. McCuskey. During the cross-examination of Mr. Sears, Mr. Kepple objected to the use of two demonstrative exhibits (aerial photos), and said objection was sustained for reasons set forth more on the record. During the cross-examination of Mr. Sears, Mr. McCuskey moved for the admission of Plaintiff's Exhibit 21 (1994 Annual Report), which was admitted into evidence.
7. During the cross-examination of Mr. Sears, the Court recessed for a lunch break.
8. After the lunch break, the cross-examination of Mr. Sears by Mr. McCuskey resumed. During the cross-examination of Mr. Sears, Mr. McCuskey moved for the admission of Plaintiff's Exhibit 29 (Ohio County Case Complaint), which was admitted into evidence. Also during the cross-examination of Mr. Sears, Mr. McCuskey moved for the admission of Plaintiff's Exhibit 24 (Judge Young's Order), and this was denied.
9. Further, during the cross-examination of Mr. Sears, the Court took judicial notice of Plaintiff's Exhibit 28 (August 8, 2019 Order in this case), but did not admit it into evidence. Also, Mr. McCuskey moved for the admission of Plaintiff's Exhibit 31 (Supplemental Discovery Responses), and this was granted. Mr. McCuskey moved for the admission of Plaintiff's Exhibit 26 (Answer and Counterclaim).
10. At this point, the Court took a brief recess to chambers to consider the admissibility of Plaintiff's Exhibit 26. After the recess, the exhibit was admitted and the cross-

examination of Mr. Sears resumed. Mr. McCuskey moved for the admission of Plaintiff's Exhibit 22 (Statement of Overpaid Rent) and the same was denied.

11. Thereafter, Mr. McCuskey concluded his cross-examination of Mr. Sears. At this point, Mr. Kepple began a redirect examination of Mr. Sears. Following the redirect examination of Mr. Sears, Mr. Sears was subject to a re-cross examination by Mr. McCuskey. After that, the witness was excused.
12. Thereafter, the Court took a brief recess while Mr. Kepple discussed a matter with his client, Mr. Sears. Following the break, the proceedings resumed with conference regarding exhibits. Thereafter, the Court inquired as to whether AMBIT had a rebuttal, and Ms. Green re-called Herb Thompson to the stand, who remained duly-sworn.
13. Following the direct examination, Mr. Thompson was subject to cross-examination by Mr. Nogay.
14. Thereafter, Mr. Nogay concluded his cross-examination, and Mr. Thompson was subject to a re-direct examination by Ms. Green. Following this, Mr. Thompson was subject to a re-cross examination by Mr. Nogay. Thereafter, the witness was excused.
15. AMBIT, by Ms. Green, then called Richard Halloren, duly-sworn. The undersigned sustained an objection to Mr. Halloren's testimony, the reasons for which are more fully set forth on the record.
16. Thereafter, the Court took a brief recess.
17. Following the break, AMBIT rested.
18. The proceedings adjourned for the day.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTER: October 16, 2023

/s/ Michael Lorensen
Circuit Court Judge
16th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtsww.gov/e-file/ for more details.