

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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JAMES D. MILLER,
MELISSA DAWN MILLER,
and MILLER HOME REPAIR, LLC,

Plaintiffs,

v.

Harrison County Circuit Court
Case No. CC-17-2023-C-168
THOMAS A. BEDELL, Judge

BENEDUM AIRPORT AUTHORITY, a West Virginia corporation, WOLFE'S EXCAVATING, LLC, a West Virginia limited liability company; THE THRASHER GROUP, INC., a West Virginia Corporation; and JOHN DOE PERSONS AND/OR ENTITIES,

Defendants.

TO: THE HONORABLE ELIZABETH D. WALKER, CHIEF JUSTICE

JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Introduction

Pursuant to Rule 29.06 of the *West Virginia Trial Court Rules*, the Honorable Thomas A. Bedell, Judge for the Fifteenth Judicial Circuit, respectfully submits his request that the above-styled civil action currently pending in this Court be referred to the Business Court Division.

No Motion to Refer has been jointly or otherwise filed herein by any of the parties' litigant. This request is initiated solely by this presiding Judge. He verily believes the Business Court Division's process for efficiently managing and resolving litigation involving commercial issues and disputes between business organizations is better suited to serve these parties' litigant.

To the best of my knowledge and belief based upon my review of the pleadings filed to date, the various claims and defenses being asserted by the respective parties' litigant, and the issues involved qualify as "business litigation" pursuant to West Virginia Trial Court Rule 29.04(a).

Nature of the Action

This civil action includes three (3) particular claims by MLC, to-wit: Negligence and/or Reckless Conduct (Count I); Interference with Riparian Rights / Unreasonable Use of Land (Count II); and Nuisance (Count III). As such, this action involves Commercial Torts and Disputes involving Commercial Entities as well as matters of significance between business entities with such dispute presenting or otherwise involving highly technological, engineering design, construction, environmental, and meteorologically related issues in which focused treatment is likely to improve the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles what me be applicable.

In support, this matter is deemed to contain issues significant to businesses as well as present novel or otherwise interestingly intertwined commercial issues for which specialized treatment would be helpful.

Basis for this Court's Request to Refer

Plaintiffs, James D. Miller, Melissa Dawn Miller, and Miller Home Repair, LLC, are co-owners of the real property situated at 67 County Line Road Bridgeport, West Virginia 26330. (see Plaintiff's Complaint Pages 1 & 2 @ Numbers 1, 2, and 3).

Defendant, Benedum Airport Authority (hereafter referred to as "BAA"), is asserted by Plaintiff to be "a domestic non-profit corporation organized and existing under the laws of the State of West Virginia...engaged in the business of transporting and warehousing and scheduled air transportation operating in Harrison County, West Virginia... . . .also known as North Central West Virginia Airport...a public/military airport located northeast of Bridgeport...owned by Benedum Airport Authority." (*Id.*, at no. 3).

No Pre-Trial/Scheduling Conference pursuant to Rule 16 of the West Virginia Rules of Civil Procedure have yet been held before the Court. Procedurally, the Complaint herein was filed on or about the 11th day of August, 2023, and Answers by the various Defendants have also been filed. No discovery has yet taken place in the instant matter.

Accordingly, this instant matter is now still very early in discovery as nothing more has yet been filed on behalf of any party and made a matter of record herein prior to the filing of this Judicial Motion to Refer.

Furthermore, there may well be additional issues arise during further evidentiary development and proceedings herein that include privity of contract, superseding/intervening causes, and potential at fault non-parties.

There are three related civil actions presently pending before the Circuit Court of Harrison County, West Virginia, to wit:

*MAPLE LAKE CLUB, INC., a West Virginia corporation, Plaintiff,
v. BENEDUM AIRPORT AUTHORITY, a West Virginia
corporation, WOLFE'S EXCAVATING, LLC, a
West Virginia corporation, and THE THRASHER GROUP,
INC., a West Virginia Corporation, Defendants.
Civil Action No: CC-17-2023-C-44-2.*

That matter was assigned to the Business Court Division on the 26th day of July, 2023, by the Honorable Chief Justice Elizabeth D. Walker, by Administrative Order pursuant to West Virginia Trial Court Rule 29.07(a).

*PHILLIP "MARK" FETTY and PAULA N. FETTY, Plaintiffs,
v. BENEDUM AIRPORT AUTHORITY, a West Virginia
corporation, WOLFE'S EXCAVATING, LLC, a
West Virginia limited liability company; THE THRASHER
GROUP, INC., a West Virginia Corporation; and, JOHN DOE
PERSONS AND/OR ENTITIES, Defendants.
Civil Action No 17-2023-C-167-2.*

That matter is also presently pending before the undersigned as Judge of the Circuit Court of Harrison County, West Virginia.

*ALL ABOUT DOGS, LLC, a West Virginia Corporation, and
BRENDA SCOTCHIE and JOHN SCOTCHIE, in their individual
capacities, Plaintiffs,
v.
BENEDUM AIRPORT AUTHORITY, a West Virginia
corporation, WOLFE'S EXCAVATING, LLC, a
West Virginia Corporation; and THE THRASHER
GROUP, INC., a West Virginia Corporation, Defendants.
Civil Action No 17-2023-C-251-2.*

That matter is also presently pending before the undersigned as Judge of the Circuit Court of Harrison County, West Virginia

Accordingly, this civil action is deemed to involve multiple issues which support my *Judicial Motion to Refer Case To The Business Court Division*.

In keeping with West Virginia Rule 29.06(a)(1), copies of various pleadings herein are being provided along with this Judicial Motion to Refer.

In keeping with Rule 29.06(a)(3), this Judicial Motion to Refer is being filed this same day with the Clerk of the Harrison County Circuit Court as well as served on the parties herein through their respective legal counsel ***via electronic***

notification, to-wit: **John R. Angotti, Esq.**, *counsel for Plaintiffs Phillip "Mark" Fetty and Paula N. Fetty and James D. Miller, Melissa Dawn Miller and Miller Home Repair, LLC*; **Dayton C. Meadows, V, Esq.**, *counsel for Plaintiffs All About Dogs, LLC*; **William M. Tiano, Esq. and Thomas G. Dyer, Esq.**, *counsel for Plaintiffs, Maple Lake Club, Incl*, **Teresa J. Dumire, Esq.**, *counsel for Defendant Wolfe's Excavating, LLC*; **George N. Stewart, Esq.**, *counsel for Defendant Benedum Airport Authority*; and, **J. Mark Adkins, Esq.**, *counsel for Defendant The Thrasher Group, Inc.*

In further keeping therewith, I am also providing this Judicial Motion to Refer as well as pertinent pleadings and copy of this civil action's docket sheet to the Central Office of the Business Court Division.

Conclusion

WHEREFORE, this presiding Judge respectfully moves Chief Justice Walker to grant his Judicial Motion to Refer this Harrison County Circuit Court Civil Action to the Business Court Division upon the reasons set forth *supra*.

Furthermore, in regard to expedited review, this Court does not request an expedited review under West Virginia Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a reply memorandum stating their respective position, in accordance with such Rule.

Respectfully submitted to you on November 13, 2023.

/s/ **THOMAS A. BEDELL**
Circuit Court Judge
15th 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.