

In the Circuit Court of Marion County, West Virginia

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

v.

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

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

ORDER DENYING AMBIT'S EMERGENCY MOTION TO QUASH SUGGESTIONS

On the 8th day of May, 2024, the Plaintiff, by counsel, filed an Emergency Motion to Quash Suggestions and for Stay of Proceedings. On May 9, 2024, Defendant, by counsel, filed Horizon's Response to AMBIT's Motion to Quash and to Stay Proceedings, and to Compel a Deposition in Aid of Execution.

FINDINGS OF FACT

On February 23, 2024, this Court entered a Final Judgment Order, awarding \$9,168,608.00 to Horizon. In collecting on this Judgment, Horizon procured certain suggestions from the Clerk. The "second" suggestions are at issue in this motion. See Ord., 5/9/24; see also Ord., 5/15/24. On May 3, 2024, Horizon procured these "second" suggestions, Suggestions of Personal Property from the Circuit Clerk directed toward five suggestees. See Pl's Mot., p. 1; see also Pl's Mot., Ex. B.

CONCLUSIONS OF LAW

Plaintiff brought the instant motion pursuant to Rule 69 of the West Virginia Rules of Civil Procedure. See Pl's Mot., p. 2. Rule 69 of the West Virginia Rules of Civil Procedure governs executions and other final process. W. Va. R. Civ. P. 69. Rule 69 of the West Virginia Rules of Civil Procedure provides, in pertinent part:

(a) *For payment of money.* – Process to enforce a judgment for the payment of money shall be a writ of execution, a writ of suggestee execution and such other writs as are provided by law. The procedure on execution and other such final process, in proceedings supplementary to and in aid of a judgment, and in proceedings on in aid of execution or such other final process shall be in accordance with the practice and procedure prescribed by the laws of the State

existing at the time the remedy is sought, subject to the following qualifications:

(1) A writ of execution shall be made returnable not less than 30 days nor more than 90 days after issuance, as directed by the person procuring issuance of the writ; and

(2) an answer to a summons issued in a suggestion proceeding shall be served upon the plaintiff within 20 days after service of the summons; and

(3) a return on a writ of suggestee execution shall be made forthwith on the expiration of one year after issuance of the writ.

Id.

The Court finds Horizon has issued the correct documentation to the correct suggestees to begin collecting its judgment. Horizon filed, pursuant to West Virginia Code § 38-5-10, a summons to each organization who AMBIT's filings identified as potential sources of income. See Def's Resp., p. 1. The Court notes that AMBIT was previously directed to produce all of its financial reports detailing gross revenues earned by AMBIT since January 1, 2013. See Def's Resp., p. 2. Therefore, this Court finds no improper probing into any alleged private financial information via Horizon's attempts to collect on its judgment under the procedure set forth in the relevant statutes. AMBIT has taken issue with the fact that Horizon has forwarded the suggestions directly to representatives of two of the five entities/suggestees via email, asking the recipient to contact counsel for discussion. See Pl's Mot., p. 2. However, the Court finds that this is not an attempt to acquire the private financial information of AMBIT, as AMBIT claims, because AMBIT was previously directed to produce all of its financial reports detailing gross revenues earned by AMBIT since January 1, 2013. Likewise, Horizon has posited that AMBIT is obligated to share its financial data with Horizon pursuant to the prior

agreements between the parties in 1987, 1989, and 1996. See Def's Resp., p. 2; see also Def's Resp., Ex. A. For all of these reasons, the Court is not persuaded that the suggestions should be vacated because Horizon is trying to circumvent the process to obtain private financial information belonging to AMBIT, when, for all intents and purposes, AMBIT does not have "private" financial information as it pertains to its relationship with Horizon. See Def's Resp., p. 2. Again, the Court notes Horizon correctly filed, pursuant to West Virginia Code § 38-5-10, a summons to each organization who AMBIT's filings identified as potential sources of income.

The Court has reviewed AMBIT's arguments regarding West Virginia Code § 38-5-18 and West Virginia Code § 38-5-11 and the use of a jury and/or special commissioner. See Pl's Mot., p. 4-5. The Court is not persuaded that it is appropriate at this stage in the proceedings for the use of a jury or a special commissioner. First, West Virginia Code § 38-5-18 provides that the suggestee can request a jury empanelment when the judgment creditor claims that the suggestee did not properly disclose the relevant information. W. Va. Code § 38-5-18. Horizon states that as the judgment creditor, it has made no such claim. See Def's Resp., p. 3. Further, AMBIT is not a suggestee. *Id.* Second, Horizon, again as judgment creditor, would be the party to request a commissioner in chancery, and Horizon has stated that it has not asked for one. See Def's Resp., p. 4-5. See *Commercial Airlift Leasing, Inc. v. Montgomery Equip. Co., Inc.*, No. CV 2:21-MC-00095, 2022 WL 2079877, at *1 (S.D. W. Va. June 9, 2022) ("Under West Virginia law, a judgment creditor may institute interrogatory proceedings before a 'commissioner in chancery' (simply a 'commissioner' following the consolidation of law and equity) to enforce an existing judgment"). Instead, Horizon has stated that there is no need for a commissioner to ascertain the estate in this matter under West Virginia Code § 38-5-1. See Def's Resp., p. 3. For these reasons, the Court

finds AMBIT's recitations of the law regarding a jury and special commissioner to be inapplicable to the case at bar. Thus, these considerations do not support quashing the subjection suggestions.

The Court also addresses AMBIT's argument that suggestion proceedings require a new and separate proceeding. A court has inherent authority to enforce its decrees, which authority extends to the issuance of post-judgment orders and writs to carry a judgment into effect. *State ex rel. TermNet Merch. Servs., Inc. v. Jordan*, 217 W. Va. 696, 702, 619 S.E.2d 209, 215 (2005). Further, it is common practice, post-judgment, for a returns for writs of execution and letters to the Clerk requesting an Abstract of Judgment to be placed in the same, underlying case file. Here, the damages were ascertained, a Final Order was entered, and Defendant has procured Suggestions via the Clerk to collect on the same. The Court finds that here, at this stage, a new proceeding is not required, especially considering the fact that the judgment creditor has not claimed the suggestee has not properly disclosed relevant information, and the judgment creditor has not stated a need for a commissioner to ascertain the estate.

For all of these reasons, the Court finds no grounds for quashing the suggestions. The Court directs the parties work together efficiently and in good faith through the post-judgment stage. This includes participation in post-judgment finance determinations and specifically participation in a Rule 30(b) deposition in aid of execution.

Finally, the Court addresses Horizon's request for fees. Horizon contends AMBIT is "continuing to file repetitive, vexatious and harassing litigation that has no meaningful basis in fact or law, and is clearly intended to stall the efficient conclusions of this matter". See Def's Resp., p. 6. Therefore, Horizon has requested it be awarded its costs "for being forced to respond to this frivolous and vexatious litigation". *Id.* The Court notes such request, but declines to award costs at this time. The Court also notes that AMBIT

and Horizon are directed to work together in good faith, as the damages in this matter have been adjudicated and the matter should be brought to resolution. The parties are advised that any future bad faith conduct, bad faith litigation, or willful failure to cooperate, could result in the Court imposing sanctions.

CONCLUSION

It is hereby ADJUDGED and ORDERED that Plaintiff's Emergency Motion to Quash Suggestions and for Stay of Proceedings is hereby DENIED. The Court notes the objections of the parties to any adverse ruling herein.

The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 16th day of May, 2024.

/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.courtswv.gov/e-file/ for more details.