

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

WEST VIRGINIA UNIVERSITY BOARD
OF GOVERNORS

Plaintiff,

v.

WV CAMPUS HOUSING, LLC,

DOWNTOWN CAMPUS PARKING
ASSOCIATES, LLC,

FALCON SERVICES, LLC, d/b/a
FALCON CONSULTING & MANAGEMENT,

WESTRIDGE CORPORATE PARK, LLC,

TORO EQUITIES, LLC d/b/a
MOUNTAIN AVIATION GROUP

RYAN LYNCH, an individual,

JOHN DOE ENTITIES 1 THROUGH 10; and

BDO USA, LLP, a Delaware limited liability
Partnership,

Defendants.

SCA EFiled: Jun 12 2024
10:48AM EDT
Transaction ID 73370908

Monongalia County Circuit Court
Civil Action No. 24-C-10

PLAINTIFF'S MOTION TO REFER TO THE BUSINESS COURT DIVISION

COMES NOW Plaintiff West Virginia University Board of Governors ("WVU"), by and through its undersigned counsel, and respectfully moves the Chief Justice of the Supreme Court of Appeals of West Virginia to refer the underlying case to the Business Court Division ("BCD" or "Business Court") and to enter an order transferring this case to BCD - Region A pursuant to West Virginia Code § 51-2-15 and Rule 29.06 of the West Virginia Trial Court Rules. This litigation implicates the type of commercial issues for which further specialized knowledge will

be beneficial to the parties and is thus properly referred to Business Court. W. Va. Tr. Ct. R. 29.01-04. In further support thereof, WVU states as follows:

FACTUAL AND PROCEDURAL BACKGROUND

This case stems from the operation of the mixed-use housing, retail, and parking complex known as University Place (“UPlace”), one of WVU’s Public-Private Partnerships. WVU is a party to a series of commercial contracts, including a long-term lease, subleases, and an operating agreement, with defendants WV Campus Housing, LLC (“WVCH”) and Downtown Campus Parking Associates, LLC (“DCPA”). Over a period of several years and unbeknownst to WVU, defendants WVCH and DCPA have fraudulently withdrawn, at the direction of defendant Ryan Lynch (“Lynch”), millions of dollars from the payments made by students who reside at UPlace.¹ These funds were supposed to be used for the financing, operation, and maintenance of UPlace, but instead were transferred to Lynch’s other businesses, including defendants Falcon Services, LLC d/b/a Falcon Consulting & Management (“Falcon”), Westridge Corporate Park, LLC (“Westridge”), and Toro Equities, LLC d/b/a Mountain Aviation Group (“Toro”) (collectively, the “Lynch Defendants”).²

Accounting firm BDO LLP, USA (“BDO”) prepared Independent Auditor’s Reports for UPlace on behalf of WVCH, DCPA and Lynch, and those reports were provided to and relied upon by WVU. BDO knew, or should have known, that defendants Lynch, DCPA and WVCH were improperly transferring money to the Lynch Defendants which was rightfully owed to WVU. Nevertheless, BDO failed to inform WVU of these improper transactions.

¹ Upon information and belief, Lynch owns and controls both WVCH and DCPA as he is the sole member for both entities.

² Upon information and belief, Lynch also owns and controls Falcon, Westridge, and Toro.

On January 12, 2024, WVU filed a Complaint asserting multiple causes of action, including claims for Breach of Contract, Promissory Fraud/Fraud in the Inducement, Fraud, Conversion, Fraudulent Concealment, Tortious Interference, Aiding and Abetting a Tort, Civil Conspiracy, and Piercing the Corporate Veil against Defendants WVCH, DCPA, and the Lynch Defendants. WVU also filed a negligence claim against BDO.

After WVU filed suit it entered into stipulations with all defendants providing them extensions of time to respond to the Complaint. Defendants WVCH, DCPA, Falcon, WestRidge, Toro, and Lynch were provided even more time on the condition that they provide full and complete responses to WVU's discovery requests.

All defendants have now responded to the Complaint. In March, defendant BDO filed a motion to compel arbitration against WVU under the theory that WVU was bound by an arbitration provision in an engagement letter between Lynch and BDO, even though WVU was a non-signatory to that agreement. In April, defendants WVCH, DCPA, Falcon, WestRidge, Toro, and Lynch also filed a motion to compel dispute resolution, arguing that an expert selection provision for budget disputes in one of the agreements at issue required WVU's claims to be stayed and submitted to that limited (and non-applicable) dispute resolution procedure. WVU has responded in opposition to both motions, arguing that neither motion is supported by the law or the contracts. Thus, at the very inception of this case now pending before the Circuit Court of Monongalia County are multiple complex arguments implicating the terms of the contracts and West Virginia case law applicable to the complex commercial torts that form the basis of this civil action. As already demonstrated, the underlying facts and legal theories set forth in this action give rise to complex, specialized claims involving "matters of significance to the transactions, operations, or

governance between business entities.” *See* W. Va. Tr. Ct. R. 29.04(a)(1). Thus, this case squarely falls within the purview of BCD jurisdiction and this Motion to Refer should be granted.

LEGAL STANDARD

West Virginia Code § 51-2-15 and Rule 29 of the West Virginia Trial Court Rules provide for the referral of cases to the BCD. The BCD was established to adopt a process for “efficiently managing and resolving litigation involving commercial issues and disputes[.]” W. Va. Tr. Ct. R. 29.01. “Business Litigation” is defined by the Rules as pending actions in which “the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities,” and cases wherein “the dispute presents commercial . . . issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter.” W. Va. Tr. Ct. R. 29.04(a)(1)-(2).

ANALYSIS

WVU has good cause to seek the referral of this case to the BCD because this case falls squarely within the BCD’s jurisdictional purview. As a threshold matter, this case is concerned with the breach of commercial subleases and operating agreements for one of WVU’s most popular residence halls. *See* Compl. Counts I-IV (attached hereto as Exhibit A). WVU has alleged breaches of the Joint Operating Agreement, Lease and Development Agreement, Residential Sublease, and Parking Garage Sublease, all of which are interrelated and form the basis of the public-private partnership at issue. *Id.*, ¶ 205 (“This business and economic relationship resulted in several valid, written contracts being executed between WVU, WVCH, and DCPA. WVU had a reasonable expectation of receiving economic benefits as a result of its contracts with WVCH and DCPA and

the operation of UPlace and the Parking Facility Project.”). From the outset, WVCH, DCPA, and the Lynch Defendants all seek to invoke provisions of these agreements in an effort to avoid adjudication in WVU’s selected forum, and as a result extensive briefing containing divergent contractual interpretations has already occurred. There is no question that the complex nature of the issues involved here are well suited for BCD review. *See* W. Va. Tr. Ct. R. 29.04(a)(1)-(2).

In addition to the breach of contract claims, WVU has also alleged multiple commercial torts, including fraud, conversion, fraudulent concealment, tortious interference, aiding and abetting a tort, civil conspiracy, piercing the corporate veil, and professional negligence. Ex. A, Counts VI-XIII. Each of these claims raise complex financial issues between the parties, the internal business operations and affairs of the defendant entities, and the individual liability of their members. WVU estimates that millions of dollars of UPlace funds have been improperly diverted to the Lynch Defendant business entities. These facts are at their core “business litigation” because they implicate “transactions, operations, or governance between business entities.” W. Va. Tr. Ct. R. 29.04(a)(1). WVU has also asserted a professional negligence claim against BDO, which concerns the standard of care for an accountant, as well as generally accepted accounting practices and the scope of audits. Ex. A, Count XIV.

Finally, none of WVU’s claims concern the categories of claims explicitly excluded from the definition of “business litigation” under Rule 29.04(a) (excluding from BCD review consumer litigation claims). Thus, this case is appropriate for BCD review as resolution of the issues presented in this litigation will require specialized commercial knowledge and familiarity with business transactions and operations. W. Va. Tr. Ct. R. 29.04(a)(2).

This motion is timely made. West Virginia Trial Court Rule 29.06(a)(2) provides that motions to refer actions as business litigation “shall be filed after the time to answer has expired.”

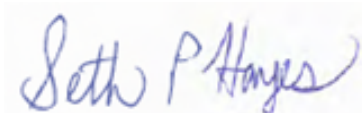
After WVU filed this action in January 2024, all defendants were provided nearly three months to respond to the complaint. Those responsive pleadings, while not Answers, have been filed and they make abundantly clear that this litigation will involve complex issues of commercial law and facts surrounding business dealings. As stated, good cause exists to seek referral at this time. The importance of UPlace to WVU and its students cannot be overstated. The mixed-use housing, retail, and parking complex involved at the heart of this litigation houses over 900 WVU students each academic year, provides over 500 parking spaces, and affords a variety of important commercial amenities. UPlace is of such critical importance to the mission of WVU and its students that the particular expertise provided by the BCD is warranted and will facilitate a prompt resolution to this significant matter.

Because of the significant sums of money involved, the number of implicated commercial entities, and the importance of the continued operation of UPlace as residential housing for WVU students, WVU has shown good cause for the referral of this case to the BCD. In sum, this is exactly the type of commercial case meant for the BCD.

Respectfully submitted,

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS,**

By counsel,



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Plaintiff,)	Civil Action No. 24-C-10
)	The Honorable Paul W. Gwaltney, Jr.
v.)	
)	JURY TRIAL DEMANDED
WV CAMPUS HOUSING, LLC,)	
)	
DOWNTOWN CAMPUS PARKING)	
ASSOCIATES, LLC,)	
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FALCON SERVICES, LLC, d/b/a)	
FALCON CONSULTING & MANAGEMENT,)	
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WESTRIDGE CORPORATE PARK, LLC,)	
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TORO EQUITIES, LLC d/b/a)	
MOUNTAIN AVIATION GROUP)	
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RYAN LYNCH, an individual,)	
)	
JOHN DOE ENTITIES 1 THROUGH 10; and)	
)	
BDO USA, LLP, a Delaware limited liability)	
Partnership,)	
Defendants.)	

CERTIFICATE OF SERVICE

I, Seth P. Hayes, do hereby certify that on this 12th day of June, 2024, I have served the foregoing *“Motion to Refer Case to Business Court Division,”* with attachments by either hand delivery or first-class mail to:

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