

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

E. L. ROBINSON ENGINEERING CO.,

Plaintiff,

v.

Kanawha County Circuit Court
Civil Action No. 25-C-456
Judge Richard D. Lindsay

CTL ENGINEERING, INC.;
JOE WARINO, P.E.,
PAUL MATTOX, P.E.; and
DEAN HATFIELD, P.E.

Defendants.

TO: THE HONORABLE CHIEF JUSTICE WILLIAM R. WOOTON

MOTION TO REFER TO BUSINESS COURT DIVISION

CTL Engineering, Inc. (“CTL”), Mr. Joseph Warino, P.E. (“Mr. Warino”), Mr. Paul Mattox, P.E., (“Mr. Mattox”), and Dean Hatfield (“Mr. Hatfield”) (collectively “Defendants”), by their respective counsel and pursuant to Rule 29 of the West Virginia Trial Court Rules, respectfully request that the above-styled action be referred to the Business Court Division of the West Virginia Supreme Court of Appeals for all further proceedings.¹

I. Background

This dispute arises out of an Asset Purchase Agreement (“APA”) between E. L. Robinson Engineering, Inc. (“ELR”) and CTL by which CTL purchased the business of ELR’s “Mid-Atlantic Division,” encompassing its Raleigh, North Carolina, Columbia, South Carolina, and Chantilly, Virginia operations (ELR’s “Mid-Atlantic Division.”) *See Complaint*, at ¶¶ 14, 19. Both CTL and ELR are substantial commercial enterprises engaged in engineering and construction consulting across multiple states. Mr. Warino is the Chief Operating Officer of CTL and Mr. Mattox, a prior

¹ CTL Engineering, Inc, Joseph Warino, and Mr. Paul Mattox (“Defendants”) expressly reserve their right to file their responsive pleadings to the Complaint pursuant to Rules 8 and 12 of the West Virginia Rules of Civil Procedure.

employee of ELR, is the Chief Growth Officer of CTL. *See Complaint*, at ¶ 5, 7. Mr. Hatfield, a prior employee of ELR’s Mid-Atlantic Division, is a principal of CTL. *See Complaint*, at ¶ 9. Triton Construction, Inc. d/b/a Triton Construction, Inc. of Virginia (“Triton”) is a “heavy/highway civil contractor specializing in the construction of roads, bridges, and similar projects.” *See Complaint*, at ¶ 23. Triton and ELR routinely partner on large commercial projects in multiple states.

On or about March 30, 2024, the parties entered into an Asset Purchase Agreement (“APA”) governing ELR’s sale of the Mid-Atlantic Division’s business to CTL. *See, Complaint*, at ¶ 15. While the APA had a non-compete provision prohibiting ELR from competing with CTL in the geographic area of the Mid-Atlantic Division’s operations (North Carolina, South Carolina, and Virginia), there was a specific exclusion wherein ELR could partner with Triton and pursue projects “anywhere in the world.” *See, Complaint*, ¶¶ 19-21. After ELR sold the Mid-Atlantic Division to CTL by way of the APA on March 30, 2024, ELR proceeded to partner with Triton and bid on the same projects as CTL in the geographic area of the Mid-Atlantic Division, specifically in Virginia. CTL utilized Mr. Hatfield’s and other Mid-Atlantic Division employees’ prior project experience in various bids to the VDOT for design-build projects. Eventually, ELR and CTL crossed paths, having utilized the Division’s prior project history in duplicate bids to the Virginia Department of Transportation (“VDOT”).

On or around April 4, 2025, ELR filed the instant civil action and alleged CTL defamed, slandered, and tortiously interfered with its business by claiming ownership of various past projects completed by the Mid-Atlantic Division in three submissions to the VDOT as its own. Additionally, ELR alleges that it is entitled to equitable relief and punitive damages. On the same day, Triton filed a sister civil action with identical allegations in the Circuit Court of Kanawha

County, West Virginia, styled as *Triton Construction, Inc. d/b/a Triton Construction, Inc. of Virginia v. CTL Engineering, Inc.*, Civil Action No. 25-C-455. Both Triton and ELR allege that Dean Hatfield (“Mr. Hatfield”) “made several false and defamatory statements concerning the Triton/ELR design-build team” on a conference call with the VDOT wherein officials disqualified Triton and ELR from a design-build project. *See ELR Complaint*, at ¶ 112 and *Triton Complaint*, at ¶ 113. Further, Triton alleges that “CTL, acting by and through its agents, Defendant Joe Warino and/or Dean Hatfield, defamed the Triton/ELR design build team by making false claims that the design work performed by ELR had been performed by CTL and/or by making false claims that the intellectual property [sic] for such design work was conveyed to Defendant CTL.” *See Triton and ELR Complaints*, at ¶ 89.

Ultimately, ELR’s Complaint asks this Court to order CTL to permanently enjoin CTL from using the intellectual property, designs, proprietary information, and other goodwill purchased in the sale of the Mid-Atlantic Division to CTL. Not only are the significant business interests of both companies at stake, but also the ability of Mr. Warino, Mr. Mattox, and Mr. Hatfield to conduct business in their capacity as principals and chief officers of CTL.

II. Discussion

The claims alleged in this civil action unequivocally involve matters of significance to the business acquisition of all Parties’ conveyance and ownership of business assets pursuant to the APA. Consequently, this case appropriately constitutes “Business Litigation” as defined under Rule 29.04 of the West Virginia Trial Court Rules. Rule 29.06(a)(1) permits any party to “seek a referral of *Business Litigation* to the [Business Court] Division by filing a Motion to Refer . . . with the Clerk of the Supreme Court of Appeals of West Virginia.” W. Va. Trial Ct. R. 29.06(a)(1)

(emphasis added). Rule 29.04(a) defines “Business Litigation” as one or more pending actions in circuit court in which:

- (1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and
- (2) the dispute presents commercial and/or technology 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 or familiarity with some specific law or legal principles that may be applicable; and
- (3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

W. Va. Trial Ct. R. 29.04(a).

Based on the foregoing definition of “Business Litigation,” the instant civil action is patently eligible for referral to the Business Court Division. Both civil actions arise out of disputes relevant to CTL’s acquisition of the business of ELR’s Mid-Atlantic Division, which carried with it significant implications as to the roles and duties of the relevant businesses’ officers and owners.² As the Complaint makes clear, this case implicates the business interests of all Parties, including each business’s tangible assets, intangible assets, confidential information, proprietary and intellectual property, employees, and goodwill. ELR seeks a permanent injunction to impede

² Defendants anticipate that both Civil Actions will be consolidated given that both Complaints allege identical causes of action and arise out of the same set of operative facts. While the *ELR Complaint* brings additional causes of action for slander of title and equitable relief, both complaints are otherwise identical.

CTL's ability to utilize its own employees' past designs and other intellectual property that belongs to them, further implicating CTL's ability to bid on upcoming projects. *See* Pls.' Compl. at ¶ 49. These claims require an assessment of ownership rights in intellectual property post-acquisition and a determination of which such rights were transferred or retained under the APA. The outcome of this litigation may materially impact the ongoing business operations, competitive positioning, and financial viability of both parties in the Mid-Atlantic region. The Business Court is uniquely equipped to evaluate such broad-reaching economic consequences with the level of commercial awareness and judicial efficiency required, and has demonstrated the capacity to handle such disputes involving intellectual property, confidentiality provisions, and proprietary data, all of which are beyond the scope of routine commercial litigation. Certainly, then, this case involves disputes of significance to the transactions, operations, or governance between business entities, as required by Rule 29.06(a)(1) of the West Virginia Trial Court Rules.

In addition to satisfying the core definitional elements of "Business Litigation" under Rule 29.04(a), this case presents complex legal and factual questions uniquely suited for resolution by the Business Court Division due to the technical nature of the commercial disputes and the industry context. Specifically, the APA at issue governs operations across multiple jurisdictions (North Carolina, South Carolina, and Virginia), and its enforcement will require an understanding of a choice-of-law provision, multi-state business licensing, and the implications of a territorial non-compete clause mixed with the unique exclusion clause in the APA. Interpretation of such an agreement involves nuanced legal considerations typically present in sophisticated commercial transactions and best resolved by a court with expertise in complex business law.

Additionally, the Complaint implicates the personal and professional actions of CTL's executive leadership and engineering principals in relation to the APA's terms. These claims raise

questions about the duties owed by such officers during and after a corporate acquisition. Such executive-level fiduciary and contractual disputes are precisely the type of governance-related litigation that Rule 29 contemplates for the Business Court Division. Finally, Plaintiff's claims do not involve any of the subjects enumerated in Rule 29.04(a)(3) that are categorically excluded from the definition of "Business Litigation." Accordingly, this civil action is eligible for referral to the Business Court Division, as the claims alleged fall within the meaning of "Business Litigation" as defined under Rule 29.04(a).

III. Conclusion

Based on the foregoing, Defendants respectfully move, pursuant to Rule 29 of the West Virginia Trial Court Rules, that the Chief Justice of the Supreme Court of Appeals of West Virginia refer this civil action for all further proceedings to the Business Court Division. The Business Court Division was expressly established to address cases involving sophisticated business actors, complex commercial instruments, and specialized industry knowledge. Given the multi-dimensional commercial, contractual, and technological issues presented in this litigation, specialized treatment by the Business Court is not only appropriate but essential to ensure a just and commercially sound resolution. Accordingly, Defendants respectfully submit that these additional grounds further confirm that this matter is eligible for transfer to the Business Court Division under Rule 29.

Jointly submitted by:

/s/ J. Mark Adkins

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CERTIFICATE OF SERVICE

I, J. Mark Adkins, counsel for Defendants CTL Engineering, Inc., Paul Mattox, P.E., and Joe Warino, P.E., do hereby certify that on the **29th day of May 2025**, I filed the foregoing ***Motion to Refer to Business Court Division*** via File & ServeXpress, which will provide notice of such filing to all counsel of record. Notice has also been provided to Kanawha County Circuit Court, the Honorable Richard D. Lindsay, and the Central Office of the Business Court Division via electronic mail.

/s/ J. Mark Adkins
J. Mark Adkins (WVSB #7414)