

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

TRITON CONSTRUCTION, INC.,
d/b/a TRITON CONSTRUCTION, INC.
OF VIRGINIA

Plaintiff,

v.

Kanawha County Circuit Court
Civil Action No. 25-C-455
Judge Carrie Webster

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

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.

across multiple states. Mr. Warino is the Chief Operating Officer of CTL and Mr. Mattox, a prior 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 Mid-Atlantic Division’s prior project history in duplicate bids to the Virginia Department of Transportation (“VDOT”).

On or around April 4, 2025, Triton 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 (the “*Triton Complaint*”). On the same day, ELR filed a sister civil action with identical allegations in

the Circuit Court of Kanawha County, West Virginia, and also adding in a cause of action for slander of title and equitable relief, styled as *E. L. Robinson Engineering, Co., v. CTL Engineering, Inc.*, Civil Action No. 25-C-456 (the “*ELR Complaint*”). 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, both Plaintiffs allege 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, Triton asks the Court to award punitive damages, compensation for lost profits, damages for damage to their business relationship with the VDOT, and other general damages.

II. Discussion

The claims alleged in this civil action unequivocally involve matters of significance to the business acquisition of ELR and CTL’s business assets, which directly relate to Triton’s ability to conduct business in Virginia, North Carolina, and South Carolina as a partner to ELR. 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 Triton’s claims arise out of the same dispute of ownership over certain intellectual property at issue in the acquisition between ELR and CTL, thereby impeding the ability of both Triton and CTL to compete in the same region when Triton is partnered with ELR. Thus, 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

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.

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, although Triton is not a party to the APA, the implications of the asset transfer between ELR and CTL materially affect Triton’s business operations in the Mid-Atlantic Region. The Business Court is uniquely positioned to interpret commercial acquisition agreements such as the APA and the impact of the same on a non-party. These sophisticated commercial transactions are 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, Triton’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 Carrie Webster, and the Central Office of the Business Court Division via electronic mail.

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