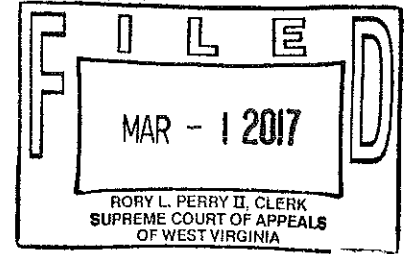


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
(BUSINESS COURT DIVISION)



SOARING EAGLE LODGE MASTER ASSOCIATION, INC., a West Virginia non-profit corporation; and **SOARING EAGLE LODGE ASSOCIATION, INC.** a West Virginia non-profit corporation,

Plaintiffs,

v.

KANAWHA COUNTY CIRCUIT COURT
Civil Action No. 15-C-2202
The Honorable Louis H. Bloom

SOARING EAGLE DEVELOPMENT COMPANY, LLC, a West Virginia limited liability company, **GBBN ARCHITECTS, INC.**, an Ohio corporation; and **BRANCH & ASSOCIATES, INC.**, a Virginia corporation,

Defendants.

and

BRANCH & ASSOCIATES, INC., a Virginia corporation,

Third-Party Plaintiff,

v.

APPLIED MECHANICAL SYSTEMS, INC., A West Virginia corporation, **EASTCOAST SIDING, INC.**, a Maryland corporation, **RICHARDSON AND MARCH CARPENTRY, LLC**, a West Virginia limited liability company, **TRI-STATE ROOFING & SHEET METAL COMPANY OF WEST VIRGINIA**, a West Virginia corporation,

Third-Party Defendants.

and

SOARING EAGLE DEVELOPMENT COMPANY, LLC, a West Virginia limited liability company,

Third-Party Plaintiff,

v.

**TRI-STATE ROOFING & SHEET METAL
COMPANY OF WEST VIRGINIA, a/k/a
TRI-STATE ROOFING & SHEET METAL
CO., a West Virginia corporation,
APPLIED MECHANICAL SYSTEMS, INC.,
an Ohio corporation,
RICHARDSON AND MARCH CARPENTRY, LLC,
a West Virginia limited liability company,
RICHARDSON CARPENTRY, LLC,
a West Virginia limited liability company, and
EASTCOAST SIDING, INC., a Maryland corporation,**

Third-Party Defendants.

TO: THE HONORABLE CHIEF JUSTICE

JOINT MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Plaintiffs, Soaring Eagle Lodge Master Association, Inc. and Soaring Eagle Lodge Association, Inc., by and through counsel, J. Michael Benninger of Benninger Law, PLLC; Defendant and Third-Party Plaintiff, Soaring Eagle Development Company, LLC, by and through counsel, John L. MacCorkle and Carrie Dysart, of MacCorkle Lavender PLLC and Shawn P. George of George & Lorensen, PLLC; GBBN Architects, Inc., by and through counsel, Stephen F. Gandee of Robinson & McElwee; Defendant and Third-Party Plaintiff, Branch & Associates, Inc., by and through counsel, Edgar A. Poe, Jr. and Anna F. Ballard of Pullin, Fowler, Flanagan, Brown & Poe, PLLC; Third-Party Defendant, Tri-State Roofing & Sheet Metal Company of West Virginia, by and through counsel, Robert H. Sweeney, Jr. and Michael A. Frye of Jenkins, Fenstermaker, PLLC; Third-Party Defendant, Richardson and March Carpentry, LLC, by and through counsel, Margaret L. Miner and David L. T. Butler, of Shuman, McCuskey & Slicer, PLLC; and Third-Party Defendant, Applied Mechanical Systems, Inc., by and through counsel, Ronald

Hatfield, Jr., of Litchfield Cavo LLP, respectfully request the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- There are no known related actions.
 - The following related actions could be the subject of consolidation, and are
 - now pending
 - or
 - may be filed in the future. (Please list case style, number, and Court if any)
-
-

This action involves: (Please check all that apply)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Breach of Contract; | <input checked="" type="checkbox"/> Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity; |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity; | <input type="checkbox"/> Anti-trust Actions between Commercial Entities; |
| <input checked="" type="checkbox"/> Sale or Purchase of Commercial Real Estate; | <input type="checkbox"/> Injunctive and Declaratory Relief Between Commercial Entities; |
| <input checked="" type="checkbox"/> Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code; | <input type="checkbox"/> Liability of Shareholders, Directors, Officers, Partners, etc.; |
| <input type="checkbox"/> Terms of a Commercial Lease; | <input type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest; |
| <input type="checkbox"/> Commercial Non-consumer debts; | <input type="checkbox"/> Shareholders Derivative Claims; |
| <input type="checkbox"/> Internal Affairs of a Commercial Entity; | <input type="checkbox"/> Commercial Bank Transactions; |
| <input type="checkbox"/> Trade Secrets and Trademark Infringement; | <input type="checkbox"/> Franchisees/Franchisors; |
| <input type="checkbox"/> Non-compete Agreements; | <input type="checkbox"/> Internet, Electronic Commerce and Biotechnology |
| <input type="checkbox"/> Intellectual Property, Securities, Technology Disputes; | <input checked="" type="checkbox"/> Disputes involving Commercial Entities; or |
| <input type="checkbox"/> Commercial Torts; | <input type="checkbox"/> Other (Describe) _____ |
| <input type="checkbox"/> Insurance Coverage Disputes in Commercial Insurance Policies; | |
-

In support of this Motion, the movants note this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described herein:

The parties to this civil action are all sophisticated private business entities and the nature of this matter satisfies the definitional requirements set forth for Business Litigation in Rule 29.06 of the West Virginia Trial Court Rules. Additionally, this matter involves complex issues related to construction defects and potential manufacturing defects of construction related products. The claims herein concern matters of significance to the transactions, operations and the governance of the relationship between the multiple parties. Further, this matter involves the review and analysis of numerous contracts/ agreements/documents relating to the staff and services required to manage the construction and property in question as well as documents specific to the construction of the property at issue. There are multiple contracts and sub-contracts at issue in this matter in which there are alleged to have been breaches. Matters at issue in this action require a need for specialized business knowledge due to the complexity of the business records required for a fair and accurate determination of the allegations of the Plaintiffs, Defendants, Third-Party Plaintiffs and Third-Party Defendants. As such, the business court would be the most appropriate venue to address these issues because they are solely business issues and will likely involve complex discovery and resolution strategy.

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), operative amended complaint(s), Defendants' answers and counterclaims, third-party complaints and Third-Party Defendants' answers and the docket sheet.

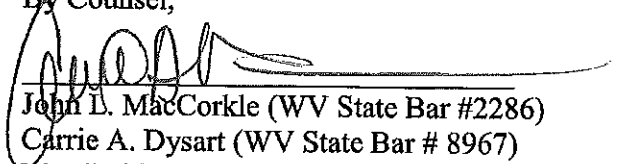
In regard to expedited review, the Movant:

- DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.
- hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: _____

WHEREFORE, the undersigned hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this ____ day of _____, 2017,

SOARING EAGLE DEVELOPMENT
COMPANY, LLC,
By Counsel,



John D. MacCorkle (WV State Bar #2286)
Carrie A. Dysart (WV State Bar # 8967)
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and

Shawn P. George (WV State Bar #1370)
George & Lorenson, P.L.L.C.
1526 Kanawha Boulevard, E.
Charleston, WV 25311

Reviewed and agreed to by:

J. Michael Benninger w/permission CAD 8967

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Huntington, WV 25726

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Counsel for Applied Mechanical Systems, Inc.

Margaret L. Miher w/permission by CMO 8967

Margaret L. Miher, Esq.

David L. T. Butler, Esq.

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Morgantown, WV 26505

Counsel for Third-Party Defendant Richard and March Carpentry, LLC

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SOARING EAGLE LODGE MASTER ASSOCIATION, INC., a West Virginia non-profit corporation; and SOARING EAGLE LODGE ASSOCIATION, INC. a West Virginia non-profit corporation,

Plaintiffs,

v.

**Civil Action No. 15-C-2202
Honorable Louis H. Bloom**

SOARING EAGLE DEVELOPMENT COMPANY, LLC, a West Virginia limited liability company, GBBN ARCHITECTS, INC., an Ohio corporation; and BRANCH & ASSOCIATES, INC., a Virginia corporation,

Defendants.

and

BRANCH & ASSOCIATES, INC., a Virginia corporation,

Third-Party Plaintiff,

v.

**APPLIED MECHANICAL SYSTEMS, INC., A West Virginia corporation,
EASTCOAST SIDING, INC., a Maryland corporation,
RICHARDSON AND MARCH CARPENTRY, LLC, a West Virginia limited liability company, TRI-STATE ROOFING & SHEET METAL COMPANY OF WEST VIRGINIA, a West Virginia corporation,**

Third-Party Defendants.

and

**SOARING EAGLE DEVELOPMENT
COMPANY, LLC, a West Virginia limited
liability company,**

Third-Party Plaintiff,

v.

**TRI-STATE ROOFING & SHEET METAL
COMPANY OF WEST VIRGINIA, a/k/a
TRI-STATE ROOFING & SHEET METAL
CO., a West Virginia corporation,
APPLIED MECHANICAL SYSTEMS, INC.,
an Ohio corporation,
RICHARDSON AND MARCH CARPENTRY, LLC,
a West Virginia limited liability company,
RICHARDSON CARPENTRY, LLC,
a West Virginia limited liability company, and
EASTCOAST SIDING, INC., a Maryland corporation,**

Third-Party Defendants.

CERTIFICATE OF SERVICE

I, Carrie A. Dysart, counsel for Defendant, Soaring Eagle Development Company, LLC, do hereby certify that on March 1, 2017, I served a true and correct copy of the foregoing *“Parties’ Joint Motion to Refer Case to the Business Court Division,”* with attachments, upon all counsel/parties of record, by either hand-delivery or depositing the same in the regular United States mail, postage prepaid, sealed in an envelope, and addressed as follows:

J. Michael Benninger, Esquire
Benninger Law Professional Limited Liability Company
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Clarksburg, WV 26301

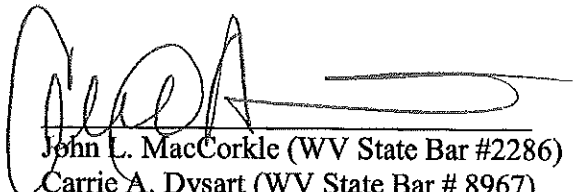
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Counsel for Defendant GBBN Architects, Inc.

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Counsel for Tri State Roofing & Sheet Metal Company of West Virginia

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Counsel for Applied Mechanical Systems, Inc.

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David L. T. Butler, Esq.
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Counsel for Third-Party Defendant Richard and March Carpentry, LLC



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Counsel for Soaring Eagle Development
Company, LLC**

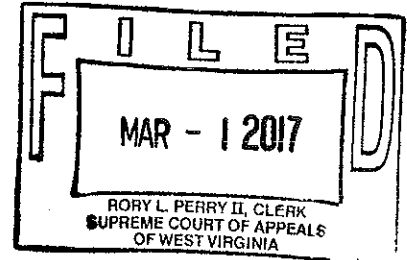
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E-mail address: cdysart@mlclaw.com

March 1, 2017

Rory L. Perry, II, Clerk of Court
Supreme Court of Appeals
State Capitol Rm E-317
1900 Kanawha Blvd, East
Charleston, WV 23505



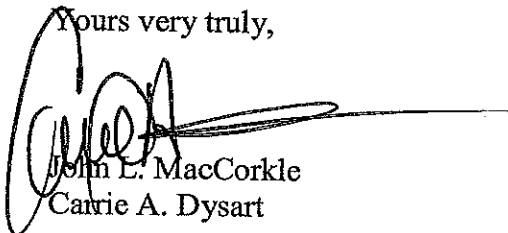
Re: Soaring Eagle Lodge Master Association, Inc., et al., v. Soaring Eagle
Circuit Court of Kanawha County, West Virginia
Civil Action No. 15-C-2202

Dear Mr. Perry:

Enclosed for filing is a **Joint Motion to Refer Case to the Business Court Division**. A copy of same has been served this date upon counsel of record.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Yours very truly,



John L. MacCorkle
Carrie A. Dysart

JLM/CAD/bb
Enclosures

cc: Honorable Louis H. Bloom, Judge
Cathy Gatson, Circuit Clerk of Kanawha County
Berkley County Judicial Center, Business Court Division
J. Michael Benninger, Esq.
Stephen F. Gandee, Esq.
Edgar A. Poe, Jr. Esq./Anna F. Ballard, Esq.
Michael Frye, Esq./Robert H. Sweeney, Jr., Esq.
Ronald Hatfield, Esq.
Margaret L. Miner, Esq./David L. Butler, Esq.
Shawn P. George, Esq.