

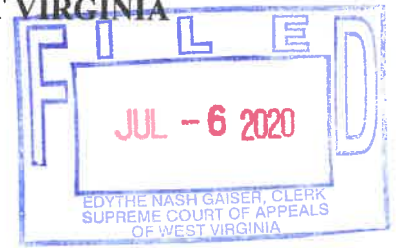
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**JEFFERSON COUNTY FOUNDATION, INC.,
a West Virginia Non-Profit Corporation,**

Plaintiff,

v.

**CIVIL ACTION NO.: 20-C-332
Kanawha County Circuit Court
(Judge Kaufman)**



**WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY,
a Public Corporation of the State of West Virginia, and
ROXUL USA, INC. d/b/a ROCKWOOL,
a Delaware Corporation,**

Defendants.

**PLAINTIFF'S REPLY TO DEFENDANTS' JOINT MOTION TO REFER CASE TO
THE BUSINESS COURT DIVISION**

The Plaintiff, Jefferson County Foundation, Inc. ("JCF"), by counsel, Christopher P. Stroeck, Esq., Robert M. Bastress, Jr., Esq., Robert M. Bastress, III, Esq., and the law firm of DiPiero, Simmons, McGinley & Bastress, PLLC, hereby responds in opposition to the Defendants' Joint Motion to Refer Case to the Business Court Division. This matter does not even involve litigation between business entities on commercial questions, let alone complex commercial litigation between them. Rather, Plaintiff seeks to declare a resolution and related actions taken by the West Virginia Economic Development Authority ("WVEDA"), specifically to create a scheme by which Rockwool agrees to pay off governmental bonds issued to support its project in exchange for avoidance of property taxes, to be unconstitutional based upon the uniform and equal taxation clause set forth in Article X, Section 1, of the West Virginia Constitution.

As set forth in W.Va. Code § 51-2-15 (2019):

(a) The West Virginia Legislature finds that, due to the complex nature of litigation involving highly technical commercial issues, there is a need for a separate and specialized court docket to be maintained in West Virginia's most populated circuit court districts with specific jurisdiction over **actions involving commercial issues and disputes between businesses** (emphasis added).

(b) The West Virginia Supreme Court of Appeals is authorized to designate a business court division within the circuit court of any judicial district with a population in excess of sixty thousand according to the 2000 Federal Decennial Census.

(c) Upon the determination to designate business court divisions, the West Virginia Supreme Court of Appeals shall promulgate rules for the establishment and jurisdiction of the business court divisions within the circuit court system.

As set forth in Rule 29.06 of the West Virginia Trial Court Rules (2020):

(a) "Business Litigation" -- 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** (emphasis added) 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 coverage 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.

Plaintiff first states that this matter does not involve matters of significance to the transactions, operations, or governance between business entities. Plaintiff JCF is a West

Virginia 501(c)(3) Non-Profit Corporation -- a citizen-action group -- formed for the purpose of preserving and protecting the quality of life for all Jefferson County, West Virginia residents. JCF educates and advocates for effective and accountable government, sustainable development, and the protection of health, heritage, and the environment. Out of concern over the protection of the environment, health and the economy of Jefferson County, it has a current priority focus of ensuring the accountability of all government entities that are involved in and responsible for the location, construction, permitting, and operation of the proposed Rockwool industrial facility in Jefferson County. This Action is being brought by the Directors, on behalf of the organization, in both their individual capacities as taxpayers and organizational capacities as Directors, to challenge the illegal tax avoidance scheme orchestrated by the Defendants as being unconstitutional. To the point, JCF is not a "business entity" as contemplated by the W.Va. Code § 51-2-15 and the promulgated trial court rules.

Defendant WVEDA is a public body organized pursuant to W.Va. Code § 31-15-1, et seq. (2019), also not a "business entity" as required in W.Va. Code § 51-2-15. Defendant Rockwool, a Delaware Corporation, is a "business entity," but not one that has any business transactions or dealings with Plaintiff JCF. Upon information and belief, the Business Court Division was created to expeditiously resolve disputes between "business entities." This matter is nothing of the sort. It is a constitutional challenge to actions taken by the WVEDA that would exempt Rockwool from paying its fair share of ad valorem taxes to Jefferson County citizens.

Even assuming the Plaintiff JCF is a business entity as contemplated by the statutes and rules for the Business Court Division, this matter does NOT involve commercial issues and disputes between businesses, matters of significance to the transactions, operations, or governance between business entities, nor does it concern a dispute that 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.

This case is a direct constitutional challenge to an action taken by the WVEDA. On May 2, 2019, the WVEDA passed a RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY TO BE EXCHANGED FOR CERTAIN COMMERCIAL FACILITIES AND EQUIPMENT OWNED BY ROXUL USA INC. D/B/A ROCKWOOL (“RESOLUTION”). *See* RESOLUTION attached as Exhibit B to the Complaint. Pursuant to the RESOLUTION, the WVEDA agreed to issue certain revenue bonds, with the proceeds payable to Rockwool, in an amount not to exceed One Hundred and Fifty Million Dollars (\$150,000,000.00), in exchange for the Project property pursuant to agreed-upon terms and conditions. The Project property would be leased to Rockwool by the WVEDA for a term not to exceed the term of the bonds and for lease payments equal to the debt service payments on the bonds, and otherwise on such agreed-upon terms and conditions. Rockwool will have an option to purchase the Project property from the WVEDA for One Dollar (\$1.00) at the end of the lease term. The WVEDA’s interest in the real and personal property that supports the Project will be exempt (or so the scheme contemplates) from ad valorem property taxation. As a result, Rockwool will not have to pay the same real and personal property taxes at the same rates as are assessed and levied against all other Jefferson County citizens and businesses.

Based upon these undisputed facts, Plaintiff alleges that the conduct and actions of the Defendant WVEDA, as aforesaid, violate Article X, Section 1 of the West Virginia Constitution, which provides that all property shall be taxed equally, and violate Article 11, Section 3, Chapter

9 of the West Virginia Code of 1931, as amended, as not being one of the authorized articulated exceptions from ad valorem taxation. Plaintiff further alleges that Chapter 31, Article 15, Section 17 of the West Virginia Code of 1931, as amended, is, on its face, vague, overly broad, irrational, unreasonable and/or violates Plaintiff's rights under Article III, Section 10 and Article X, Section 1 of the West Virginia Constitution. As a direct and proximate result thereof, the Plaintiff and other Jefferson County citizens, have been or will be substantially injured and damaged, by the Defendant's creation of a form of unequal taxation.

Defendants suggest that this matter may be referred to the Business Court Division as it presents a "complex tax appeal." However, Plaintiff is not appealing a tax assessed against its business or any another business entity. Plaintiff is challenging the purported tax exemption scheme as being unconstitutional. Deciding the constitutional challenge does not require specialized knowledge of the type contemplated by the law and rules forming the Business Court Division. It is apparent that the Defendants are simply forum / judge shopping. The Business Court Division was not created to permit such improper judicial tampering. Plaintiff requests that the Honorable Chief Justice deny this request.

JEFFERSON COUNTY FOUNDATION, INC.
Plaintiff, By Counsel

/s/Christopher P. Stroeck
Christopher P. Stroeck, Esq. (WVSB #9387)
Arnold & Bailey, PLLC
208 N. George Street
Charles Town, WV 25414
304-725-2002
304-725-0283 (Fax)
cstroeck@arnoldandbailey.com

/s/Robert M. Bastress, Jr.
Robert M. Bastress, Jr. (WVSB #263)

P.O. Box 1295
Morgantown, WV 26507
304-319-0860
rmbastress@gmail.com

/s/Robert M. Bastress, III
Robert M. Bastress, III, Esq.
DiPiero, Simmons, McGinley & Bastress, PLLC
604 Virginia Street, East
P.O. Box 1631
Charleston, WV 25326
304-342-0133
rob.bastress@dbdlawfirm.com

Counsel for Plaintiff

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JEFFERSON COUNTY FOUNDATION, INC.,

Plaintiff,

v.

No. 20-0332

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY,
a Public Corporation of the State of West Virginia, and
ROXUL USA, INC. d/b/a ROCKWOOL,
a Delaware corporation,

Defendants.

CERTIFICATE OF SERVICE

I, Christopher P. Stroeck/Robert M. Bastress, Jr./Robert M. Bastress III, counsel for the Plaintiff, do hereby certify that on this, the 6th day of July 2020, a true copy of the “**PLAINTIFF'S REPLY TO DEFENDANTS' JOINT MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**” was served upon the following:

Joseph V. Schaeffer, Esq.
SPILMAN THOMAS & BATTLE, PLLC
301 Grant St., Suite 3440
Pittsburgh, PA 15219
Counsel for Roxul USA, Inc. d/b/a Rockwool

James A. Walls, Esq.
SPILMAN THOMAS & BATTLE, PLLC
48 Donley St., Suite 800
Morgantown, WV 26501
Counsel for Roxul USA, Inc. d/b/a Rockwool

James E. Simon, Esq.
SPILMAN THOMAS & BATTLE, PLLC
300 Kanawha Blvd., E.
Charleston, WV 25301
Counsel for Roxul USA, Inc. d/b/a Rockwool

Michael E. Caryl, Esq.
Robert S. Kiss, Esq.
Camden P. Siegrist, Esq.
Peter G. Markham, Esq.
BOWLES RICE LLP
600 Quarrier St.
Charleston, WV 25301
Counsel for The West Virginia Economic Developmental Authority

The Honorable Tod J. Kaufman
Circuit Court Judge
KANAWHA COUNTY CIRCUIT COURT
111 Court Street
Charleston, WV 25301

Cathy Gatson
KANAWHA COUNTY CIRCUIT CLERK
111 Court Street
Charleston, WV 25301

BUSINESS COURT DIVISION CENTRAL OFFICE
Berkeley County Judicial Center
380 West South Street
Suite 2100
Martinsburg, WV 25401

/s/ Christopher P. Stroeck

Christopher P. Stroeck

/s/ Robert M. Bastress, Jr.

Robert M. Bastress, Jr.

/s/ Robert M. Bastress III

Robert M. Bastress III