

9-27-21
S Higgins
J Gianola
D Taylor Jr
R B Goodwin
C D Tappan
C Miller Business
Court

**IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**RONALD LANE, INC.,
a West Virginia corporation,
CHRISTOPHER LANE, and
NORMAN LANE**

Plaintiffs,

vs.

**Civil Action No.: 21-C-12
Presiding: Judge Lorensen**

and

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

RONALD LANE,

Plaintiff,

vs.

**Civil Action No. 21-C-60
Presiding Judge Lorensen**

**CHRISTOPHER LANE,
NORMAN LANE, and
RONALD LANE, INC.
a West Virginia limited liability corporation,**

Defendants.

ORDER DENYING DEFENDANT RONALD LANE'S PARTIAL MOTION TO DISMISS

This matter came before the Court this 27 day of September, 2021, upon Defendant Ronald Lane's Partial Motion to Dismiss. The Plaintiffs Ronald Lane, Inc., by counsel, Stephen G. Higgins, Esq. and Norman Lane, by counsel, John F. Gianola, Esq., and Defendant Ronald Lane, by counsel, R. Booth Goodwin, II, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are

adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. This matter surrounds the claims in the Complaint, wherein Plaintiffs Ronald Lane Inc. (“RLI”), Christopher Lane, and Norman Lane (hereinafter “Plaintiffs”), asserted claims against Defendant, Ronald Lane (hereinafter “Defendant”), for claims arising from and relating to disputes regarding corporate transactions and business dealings involving a closely-held corporation. *See* Joint Mot. to Refer Cases to the Business Court Division, p. 1. The Court notes this civil action involves two related cases which have been consolidated. Specifically, relevant to the instant motion are Count 5 (Conversion), 6 (Breach of Fiduciary Duty), 7 (Usurpation of Corporate Opportunity), and 8 (Breach of Contract). *See* Def’s Mot., p. 1.

2. On May 27, 2021, Defendant filed the instant Partial Motion to Dismiss, arguing Count 5 (Conversion), 6 (Breach of Fiduciary Duty), 7 (Usurpation of Corporate Opportunity), and 8 (Breach of Contract) should be dismissed because: 1) the claims were released as part of a mediated resolution¹, and 2) even taking the allegations as true, these counts are based on transactions engaged in by Ronald Lane while he was the sole shareholder or sole voting shareholder of RLI and as such, Ronald Lane cannot be guilty of self-dealing or breach of fiduciary duty. *See* Def’s Mem., p. 4; *see also* Def’s Mot., p. 1.

3. On a prior day, Plaintiffs filed their Response entitled Plaintiffs’ Memorandum in Opposition to Defendant’s Partial Motion to Dismiss, arguing the motion should be denied

¹ Defendant averred the parties and their counsel engaged in mediation, and the agreement of the resolution of the disputes therein was memorialized in a written Term Sheet signed by all parties, followed by a Stock Purchase Agreement. *See* Def’s Suppl. Br., p. 2.

because the company was and is a separate legal entity, to which Ronald Lane owed a fiduciary duty, and Defendant did not file any West Virginia authority for its proposition that because Ronald Lane was the “sole *voting* shareholder, he was free to take opportunities of the Company for himself” and the out-of-state authority Defendant presented does not support the dismissal of any claims in this case. *See* Pl’s Resp., p. 4, 8-12. Additionally, Plaintiffs aver questions of fact preclude the granting of the motion. *Id.* at 12. With regard to the motion’s argument that the counts were released by the terms of the Stock Purchase Agreement between the parties as a result of the mediation, Plaintiffs argue “Release” is an affirmative defense, more properly raised in an Answer, and all the counts in the Complaint are reserved and preserved in the Terms Sheet and Stock Sale Agreement. *Id.* at 13.

4. On or about July 14, 2021, Defendant filed his Reply Memorandum in Support of Ronald Lane’s Partial Motion to Dismiss, reiterating its argument that Ronald Lane’s status as RLI’s sole shareholder or sole voting shareholder negates liability for the disputed counts, and the claims are released. *See* Reply, p. 2.

5. At status hearing, in this matter held on July 26, 2021, the Court informed the parties it would be converting the instant motion to a motion for summary judgment under Rule 56 of the West Virginia Rules of Civil Procedure due to the consideration of documents attached as exhibits to the motion/pleadings which are not part of the Complaint. The Court directed any party who wanted to file a supplemental brief in light of that decision could file such supplemental brief by August 9, 2021. *See* Day Ord. From July 26, 2021 Hearing, ¶1.

6. On August 9, 2021, Defendant submitted his Supplemental Memorandum of Law in Support of Ronald Lane’s Partial Motion to Dismiss (Converted to Motion for Summary Judgment), averring the issues remain the same when the motion is converted to a motion for

summary judgment, and reiterating his position that the claims have been released. *See* Def's Suppl. Br., p. 2. Moreover, Defendant contended that the Court could conclude this based on the motion/pleadings and the four corners of the written documents attached, and that nothing could be adduced from further discovery that will change the agreements or the claims being asserted. *Id.* at 3.

7. Also on August 9, 2021, Plaintiffs submitted Plaintiffs' Supplemental Brief in Opposition to Defendant's Partial Motion to Dismiss, attaching additional exhibits it contends "provide ample evidence to defeat" the instant motion under both of the arguments set forth in the motion. *See* Pl's Suppl. Br., p. 9.

8. The Court finds the motion ripe for consideration, but not the issues raised.

STANDARD OF LAW

First, this matter comes before the Court upon a motion to dismiss under Rule 12(b)(6). "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Syl. Pt. 3, *Chapman v. Kane Transfer Co., Inc.*, 160 W.Va. 530 (1977). "Since the preference is to decide cases on their merits, courts presented with a motion to dismiss for failure to state a claim construe the complaint in the light most favorable to the plaintiff, taking all allegations as true." *Sedlock v. Moyle*, 222 W.Va. 547, 550, 668 S.E.2d 176, 179 (2008). "We recognized, however, that liberalization in the rules of pleading in civil cases does not justify a carelessly drafted or baseless pleading." *Par Mar v. City of Parkersburg*, 183 W.Va. 706, 711 (1990).

A motion to dismiss under Rule 12(b)(6) enables a circuit court to weed out unfounded suits." *Williamson v. Harden*, 214 W.Va. 77, 79 (2003).

Nevertheless, the West Virginia Rules of Civil Procedure also provide that if “matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56”. *See* W. Va. R. Civ. P. 12(c); *see also* Syl Pt. 1, in part, *Kopelman & Assoc., L.C. v. Collins*, 196 W. Va. 489, 473 S.E.2d 910 (1996) (“[w]hen a motion for judgment on the pleadings under Rule 12(c) of the West Virginia Rules of Civil Procedure is converted into a motion for summary judgment, the requirements of Rule 56 of the West Virginia Rules of Civil Procedure become operable”). Therefore, pursuant to Rule 56 of the West Virginia Rules of Civil Procedure, “[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” Syl. Pt. 2, *Miller v. Whitworth*, 193 W. Va. 262, 455 S.E.2d 821 (1995) (quoting Syl. Pt. 3, *Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W. Va. 160, 133 S.E.2d 770 (1963)).

CONCLUSIONS OF LAW

The West Virginia Supreme Court of Appeals has held: This Court has previously held that “[o]nly matters contained in the pleading can be considered on a motion to dismiss under Rule 12(b) R.C.P., and if matters outside the pleading are presented to the court and are not excluded by it, the motion should be treated as one for summary judgment and disposed of under Rule 56 R.C.P. if there is no genuine issue as to any material fact in connection therewith....” Syl. pt. 4, *United States Fid. & Guar. Co. v. Eades*, 150 W.Va. 238, 144 S.E.2d 703 (1965), *overruled on other grounds by* *Sprouse v. Clay Communication, Inc.*, 158 W.Va. 427, 211 S.E.2d 674 (1975). *Accord* Syl. pt. 1, *Poling v. Belington Bank, Inc.*, 207 W.Va. 145, 529 S.E.2d 856 (1999). *See also* Franklin D. Cleckley, Robin J. Davis, & Louis J. Palmer, Jr., *Litigation*

Handbook on West Virginia Rules of Civil Procedure § 12(b)(6)[3], at 354 (3d ed. 2008) (“Only matters contained in the pleading can be considered on a motion to dismiss under Rule 12(b)(6). However, if matters outside the pleading are presented to the court and are not excluded by it, the motion must be treated as one for summary judgment and disposed of under Rule 56.”).

However, the West Virginia Supreme Court of Appeals has also recognized that “[n]otwithstanding this general rule, it has been recognized that, in ruling upon a motion to dismiss under Rule 12(b)(6), a court may consider, in addition to the pleadings, documents annexed to it, and other materials fairly incorporated within it. This sometimes includes documents referred to in the complaint but not annexed to it. Further, Rule 12(b)(6) permits courts to consider matters that are susceptible to judicial notice. *Id.* § 12(b)(6)[2], at 348 (footnote omitted).

The West Virginia Supreme Court of Appeals has analyzed and discussed this rule and exception as follows:

“In general, material extrinsic to the complaint may not be considered on a Rule 12(b)(6) motion to dismiss without converting it to a Rule 56 motion for summary judgment, but there are certain exceptions this rule. As the Second Circuit has explained:

The complaint is deemed to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference. Even where a document is not incorporated by reference, the court may nevertheless consider it where the complaint relies heavily upon its terms and effect, which renders the document integral to the complaint.

... [G]enerally, the harm to the plaintiff when a court considers material extraneous to a complaint is the lack of notice that the material may be considered. Accordingly, where plaintiff has actual notice of all the information in the movant's papers and has relied upon these documents in framing the complaint the necessity of translating a Rule 12(b)(6) motion into one under Rule 56 is largely

dissipated.... [O]n a motion to dismiss, a court may consider documents attached to the complaint as an exhibit or incorporated in it by reference, ... matters of which judicial notice may be taken, or ... documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit. Because this standard has been misinterpreted on occasion, we reiterate here that a plaintiff's reliance on the terms and effect of a document in drafting the complaint is a necessary prerequisite to the court's consideration of the document on a dismissal motion; mere notice or possession is not enough.”

Chambers v. Time Warner, Inc., 282 F.3d 147, 152–53 (2d Cir.2002) (citations, alterations in original, and internal quotation marks omitted); *see also New Beckley Mining Corp. v. Int'l Union, United Mine Workers of Am.*, 18 F.3d 1161, 1164 (4th Cir.1994) (citing *Cortec Indus. v. Sum Holding, L.P.*, 949 F.2d 42, 47–48 (2d Cir.1991)); *Miller v. Pac. Shore Funding*, 224 F.Supp.2d 977, 984 n. 1 (D.Md.2002); 5A Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure: Civil* § 1327 & n. 7 (3d ed. 2004) (citing cases). *cited by Forshey v. Jackson*, 222 W. Va. 743, 748, 671 S.E.2d 748, 753 (2008).

Here, the parties have offered, discussed, and argued the settlement documents, including the Stock Sale Agreement and Term Sheet. As the Court stated at the July 26, 2021 hearing, in consideration of Rule 12 and West Virginia case law, the Court hereby Court hereby CONVERTS the instant Partial Motion to Dismiss to a Motion for Summary Judgment.

Turning to the instant motion, Defendant asserts two grounds for granting the Motion: (1) Counts 5–8 were released in the Term Sheet and Stock Sale Agreement; and (2) Counts 5–7 fail to state a claim for which relief can be granted because the alleged acts underlying those claims occurred while Ron was either the sole or sole voting shareholder. These two grounds are addressed in turn.

Release

“The law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than by litigation; and it is the policy of the law to uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy.” Syl. pt. 1, *Sanders v. Roselawn Mem’l Gardens*, 152 W. Va. 91, 104 (1968).

It is undisputed that the settlement reached between the parties is valid; however, the Court must determine if the release language, of the mediation which the Court notes did not resolve all the disputes between the parties, in the Term Sheet and Stock Sale Agreement applies to Counts 5–8.

First, the Court considers the limitations of the pre-suit mediation in this matter². The parties settled certain of their differences, excepting matters pertaining to “appropriate ownership and ownership and claims for improvements of real property.” *See* Def’s Mot., Ex. A. Accordingly, the focus of the Court’s inquiry is whether the counts that are the subject of the motion seek relief in either regard. Specifically, the Stock Sale Agreement contains the following provision executing the release bargained for in the Term Sheet:

Purchasers [Chris and Norman] and the Company [RLI] *release and forever discharge Seller [Ron] from any and all claims of whatever kind or character*, direct or indirect, whether known or unknown or capable of being known from the beginning of time to the date hereof, arising at law or in equity, by right of action or otherwise, whether based in or on express or implied contract, tort, or federal, state or local statute, regulation, ordinance or law, *relating to or arising out of the subject matter of this Agreement*, including, any and all claims, demands, liabilities, or causes of action up to the date of this mutual release, *except for matters related to the appropriate ownership and claims for improvement of real property*.

² Ron argues that the Plaintiffs released claims by executing two related agreements, the Term Sheet and the Stock Sale Agreement. In the Term Sheet, the Plaintiffs obligated themselves to release all claims against Ron “except for appropriate ownership and claims related to real property.” Compl., Ex. 2 at ¶ 9. Similarly, under the Stock Sale Agreement, the Plaintiffs agreed to “release and forever discharge” Ron from all claims “except for matters related to the appropriate ownership and claims for improvement of real property.” Mot., Ex. A at ¶ 6.2.

Mot., Ex. A ¶ 6.2 (emphasis added).

Defendant argues that the release language in the Term Sheet and Stock Sale Agreement applies to Counts 5–8. Count 5 is for Conversion. In that claim, the Plaintiffs accuse Ron of converting and wrongfully appropriating corporate assets by using them to improve the RLI Development Properties that were titled in his name. Count 6 is for Breach of Fiduciary Duty. In that claim, the Plaintiffs accuse Ron of wasting corporate assets and self-dealing as to the Development Properties and by trying to deed the RLI Headquarters in his name without seeking prior approval from RLI's directors and without any official action by RLI's Directors or Shareholders. Count 7 is for Usurpation of Corporate Opportunity. In that claim, the Plaintiffs accuse Ron of seizing an opportunity from RLI by trying to deed the Headquarters Property in his name. Count 8 is for Breach of Contract. In that claim, the Plaintiffs accuse Ron of breaching two shareholder agreements by virtue of the above allegations.

While Defendant contends these allegations go far beyond the “ownership and claims” on the specific tracts of land referenced in the Term Sheet and Stock Sale Agreement, Plaintiffs contend these counts all unquestionably relate to the ownership and/or improvement of the properties. *See* Pls' Resp., p. 15.

The Court considers that Plaintiffs have set forth why each count relates to the ownership or improvement of the properties in question. *See* Pls' Resp., p. 15. Indeed, the central averment of Count V is that “Defendant Ronald Lane directed the use of RLI funds, material and personnel in the improvement of the RLI Developments, and if applicable, RLI Headquarters...”. *Id.*; *see also* Compl., ¶¶132-33. The Court notes the “RLI Developments” as defined in Paragraph 26 of the Complaint, refer expressly to the properties named by the parties in the Term Sheet. *Id.*; *see also* Compl., ¶26. Further, Count VI pertains to alleged breaches of fiduciary duty as it relates to

the acquisition and improvement of the properties. *See* Pls' Resp., p. 15. This includes allegedly acquiring parcels of property with monies advanced to him by the Company as bonuses or loans, with parcels to be improved by the company, with company resources. *See* Compl., ¶143. Moreover, Count VII is a cause of action pertaining to only one property: the company's headquarters, wherein Plaintiff allege in the alternative that Defendant usurped corporate opportunity in acquiring the headquarters after the company had invested in *improvements*. *See* Pls' Resp., p. 15; *see also* Compl., ¶¶156-69. The plain reading of this count reveals that it "relates to" the improvement of the property. Finally, in Count VIII, Plaintiffs allege a cause of action for breach of contract related to his conduct with regard to the acquisition and improvement of the subject properties, related to a non-compete clause between Defendant and the company, and an implied covenant of good faith and fair dealing. *See* Pls' Resp., p. 15; *see also* Compl., ¶¶173-77. Therefore, the Court finds, each of the counts, is concerned with "appropriate ownership" of the subject properties and/or otherwise "relates to" claims for the improvement of the properties, and as such, the Court cannot find them to be released.

Further, Plaintiffs proffered evidence showing genuine issue of material fact exists as to the appropriate ownership of the subject property. Plaintiffs proffered a 2020 Demand for Security Note in which Plaintiffs contend Ronald Lane admitted through this document that the company was and is the owner of the headquarters property. *See* Pls' Suppl. Br., p. 4. Plaintiffs also proffered a 2011 Purchase and Lease to Purchase Agreement involving property alleged to be the headquarters property subject to this litigation, wherein Plaintiffs aver the agreement, signed by Defendant as Buyer, was unmistakably drafted to reflect the fact that the Buyer was a corporate entity, including a provision obligating Buyer to provide a "corporate resolution". *Id.* at 4-5. Additionally, Plaintiffs proffered a Confirmation of Wire Purchase Price of the headquarters

property evidencing that RLI paid the purchase property, and not Ronald Lane, individually. *Id.* at 7. Further, Plaintiffs proffered an August 2015 email in which it was purportedly stated that Ronald Lane had decided to “put this property in his name individually”. *Id.* The Court finds this evidence shows genuine issue of material of fact exists as to the acquisition of the headquarters property, especially considering Defendant’s assertion that the deed contained a scrivener’s error regarding whether the corporation or individual was/is meant to the owner.

Further, the Court notes that Plaintiff proffered a 2018 lease between RLI and EQT which it contends an assertion on the part of Defendant that at that time, RLI owned the building and Ronald Lane, individually, owned the land, which does not lend support to Ronald Lane’s “stated position, that he owns the RLI Developments and/or is required to repay the Company for its investment in the Developments”. *Id.* at 7-8.

Plaintiffs proffered a 2014 Shareholder Agreement and contended it supports Count VII (usurpation) by establishing there were four shareholders other than Ronald Lane. *Id.* at 4. Plaintiffs contend Defendant would have devalued those other four shareholders’ stock if, as he contends, he bought the headquarters building for himself, depriving the company the opportunity to own the building from which it conducted its business. *Id.* Finally, Plaintiffs contend the 2014 Shareholder Agreement also supports Count VIII (breach of contract). *Id.* at 3-4. Further, Plaintiffs proffered that provisions in the 2014 Shareholder Agreement support Count V (conversion) because the 2014 Shareholder Agreement has provisions that provide for a methodology for valuing shares and a contractual obligation for fairness on the shareholders of the company, including among the issues that are subject to arbitration by and between shareholders, any action by RLI or a shareholder that is contrary to the 2014 Shareholder Agreement or substantially unfair to any shareholder. *Id.* at 3.

The Court considers Defendant's argument that because of the release, the counts not disputed in this motion dispute whether Ronald Lane or RLI owns the Development Properties or headquarters property and whether RLI is owed any further compensation for improvements it made to those properties. *See* Def's Reply, p. 2. The Court notes and considers that the release language from the Term Sheet and Stock Sale Agreement fails to clearly limit or prescribe which types of causes of action are preserved. *See* Pls' Suppl. Br., at 9. Development of facts relative to the intention of the parties may give a greater clarity.

Accordingly, upon the Court's review of the motion and pleadings, as well its review of the Complaint with regard to the relevant exception language from the Term Sheet and Stock Sale Agreement, the Court cannot find that no genuine issue of material fact remains that Counts 5–8 were released in the Term Sheet and Stock Sale Agreement. Therefore, the Court concludes the motion cannot be granted on this ground.

Liability of a Sole Voting Shareholder

The Court next examines Defendant's second argument, that Defendant's status as sole shareholder or sole voting shareholder negates liability under Counts 5–7. Defendant alleges the alleged misconduct in Counts 5–7 occurred while Defendant was either the sole or sole voting shareholder. Defendant averred Defendant was RLI's sole shareholder until January 31, 2014 and that he was RLI's sole voting shareholder until November 14, 2018. *See* Def's Reply, p. 5. As such, Defendant argues that because the alleged misconduct underlying Counts 5–7 occurred, if at all, while he was RLI's sole or sole voting shareholder, the specific facts alleged in those Counts do not state a claim upon which relief can be granted.

Defendant admits that West Virginia courts do not appear to have ruled on what impact a shareholder's status as a sole or sole voting shareholder has on the shareholder's liability to his or her corporation under the specific facts alleged in the Complaint and has proffered authority from other jurisdictions to determine whether Defendant may be liable for the specific allegations in Counts 5–7 in his capacity as sole or sole voting shareholder. The Court also notes that Plaintiffs have rebutted the out-of-state cases in the briefing on the instant motion. *See* Pls' Resp., p. 8-12.

Plaintiffs also submitted evidence in the form of additional documents after the Court announced it would be converting the instant motion to a motion for summary judgment and eliciting supplemental briefing. Plaintiffs proffered a 2014 Shareholder Agreement which it argues establishes that Ronald Lane was the majority shareholder of the company at the time the headquarters property was acquired (August 3, 2015) and consequently owed fiduciary duties to the company and to the minority shareholders. *See* Pls' Suppl. Br., p. 2.

Plaintiffs contend the 2014 Shareholder Agreement also supports Count VII (usurpation) by establishing there were four shareholders other than Ronald Lane. *Id.* The Court considers Plaintiffs also proffered other documents it contends evidence other shareholders existed. Plaintiffs proffered a 2018 Shareholder Agreement it contends establish that Norman Lane and Christopher Lane remained shareholders. *Id.* at 4.

Further, the Court cannot find the out-of-state cases proffered by Defendant can cause it to conclude no genuine issue of material facts remain on this issue. Here, the Court notes the case involves the opportunity to purchase property, especially headquarters property, is clearly an opportunity in which RLI had an interest or expectancy, distinguishing these facts from *In re Digex Shareholders Litigation*. *See* Pl's Resp., p. 8-10. Moreover, *In re Tufts Elecs., Inc.*, 746 F.2d 915, 917 (1st Cir. 1984), is distinguishable because here, unlike in *Tufts*, Plaintiffs have proffered that

there are other shareholders (see above) and averments of fraud. *Id.* at 10. The Court likewise declines to follow the Fifth Circuit decision and Maryland case proffered by Defendant. The Fifth Circuit decision, *Matter of Safety International, Inc.*, 775 F.2d 660 (5th Cir. 1985) involved an option that was never listed as an asset on the company's books, unlike in this subject matter, where the disputed properties were corporate assets carried on the books of the company as such. *Id.* at 11. The Maryland case, *Pittman v. American Metal*, 336 Md. 517, 649 A.2d 356 (1994) is a shareholder case with no minority shareholders whose interests needed to be considered. *Id.* at 11-12.

Further, the evidence received with Plaintiffs' Supplemental Brief, as described above, demonstrates how different the shareholder conduct of Ronald Lane as alleged in the instant matter is different from out of state cases proffered by Defendant. Questions remain regarding Ronald Lane's name as grantee on the subject property. While Defendant contends this is merely a scrivener's error, Plaintiffs aver he sought to substitute his name of that for the company on the eve of closing. *See* Pls' Suppl. Br., p. 1. Accordingly, the Court finds the cases proffered by Defendant are distinguishable from the case at bar, and as such, the Court declines to follow such out-of-state case law.

The Court finds the evidence proffered show that at this stage, the Court cannot find that no genuine issue of material fact remains as to Defendant's argument that Defendant's status as sole shareholder or sole voting shareholder negates liability under Counts 5-7.


For all of these reasons, the Court finds the instant motion must be denied.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Defendant, Ronald Lane's Partial Motion to Dismiss, as it has been converted by the Court to a Motion for Summary Judgment, is hereby DENIED.

The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, to any *pro se* parties of record, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

9-27-21
date of entry



JUDGE MICHAEL D. LORENSEN
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION