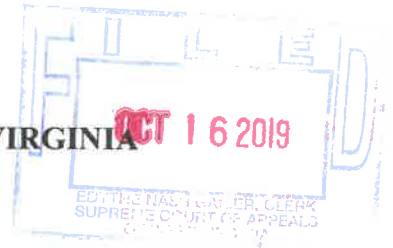


IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA



**GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,
a West Virginia non-profit corporation,**

Plaintiff,

v.

**Civil Action no. 19-C-357
The Honorable Robert A. Burnside, Jr.**

**EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company;
ELMER COPPOOLSE, an individual;
JAMES TERRY MILLER, an individual;
R. ELAINE BUTLER, an individual; and
GSR, LLC, a West Virginia limited liability company,**

Defendants.

MOTION TO REFER TO THE BUSINESS COURT DIVISION

Now Comes, Glade Springs Village Property Owners Association, Inc. ("Plaintiff" or "GSVPOA"), by and through the undersigned counsel, Mark A. Sadd and Ramonda C. Marling of Lewis Glasser PLLC, and moves the Circuit Court of Raleigh County, West Virginia, to refer the underlying case to the Business Court Division ("BCD") and to enter an order transferring it to the BCD pursuant to *West Virginia Code* §51-2-15 and Rule 29.06 of the *West Virginia Trial Court Rules*. In support thereof, GSVPOA states as follows:

Prefatory Statement

The claims and counterclaims in this matter are premised upon contracts among and between the GSVPOA, EMCO Glade Springs Hospitality, LLC ("EMCO") and GSR, LLC ("GSR"). As set forth more fully in the Amended Complaint, GSVPOA owns two golf courses located within Glade Springs Village ("GSV") – Stonehaven and Woodhaven golf courses.

EMCO, GSR and the Declarant Board of Directors for these breaches as more fully set forth in the First Amended Complaint.

Procedural History and Nature of Claims Asserted

1. GSVPOA filed its initial Complaint before the Circuit Court of Raleigh County, West Virginia on August 14, 2019 naming EMCO, Elmer Coppoolse, James Miller and Elaine Butler as defendants.

2. On or about August 28, 2019, GSVPOA filed its First Amended Complaint adding GSR as a defendant. A copy of the First Amended Complaint is attached hereto as Exhibit 1.

3. As set forth more fully in the Amended Complaint, the claims asserted in this civil action are premised upon the following contracts:

- the 2001 Letter Agreement;⁶
- the Club Lease Agreement;⁷
- the 2003 Letter Agreement;⁸
- the 2010 Lease Agreement;⁹
- the 2010 Letter Agreement;¹⁰ and
- the 2011 Letter Agreement¹¹

(collectively, the “Contracts”).

⁶ This term is defined in Paragraph 29 of the Amended Complaint.

⁷ This term is defined in Paragraph 32 of the Amended Complaint.

⁸ This term is defined in Paragraph 33 of the Amended Complaint.

⁹ This term is defined in Paragraph 52 of the Amended Complaint.

¹⁰ This term is defined in Paragraph 58 of the Amended Complaint.

¹¹ This term is defined in Paragraph 67 of the Amended Complaint.

4. GSVPOA asserted breach of contract and accounting claims against EMCO and GSR under various Contracts. *See* Exhibit 1, Counts I, II, IV, and V.

5. GSVPOA asserted breach of fiduciary duty claims against Elected Board of Directors under UCIOA. *See* Exhibit 1, Count III.

6. EMCO and GSR filed their Answer to the First Amended Complaint on October 4, 2019 and filed their Amended Answer to the First Amended Complaint on October 9, 2019. A copy of EMCO and GSR's Amended Answer to the First Amended Complaint is attached hereto as Exhibit 2.

7. EMCO and GSR also asserted breach of contract counterclaims against GSVPOA. Exhibit 2, Counterclaim, p. 11.

8. The individual defendants (Coppoolse, Miller and Butler) filed their Answer to the First Amended Complaint on October 9, 2019. A copy of Defendants' Elmer Coppoolse, James Terry Miller, and R. Elaine Butler's Answer to First Amended Complaint is attached hereto as Exhibit 3. In addition, a copy of the docket sheet is attached hereto as Exhibit 4.

9. The principal claims in this matter involve commercial disputes involving matters of significance to transactions and operations between the parties as business entities. *Trial Court Rule 29.04(a)*.

10. The disputes present commercial 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. *Id.*

11. The principal 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; or administrative disputes with government organizations and regulatory agencies. *Id.*

12. Fiduciary duty claims such as those asserted against the individual defendants also fall within the purview of the BCD. *See Harrison Cnty. Dev. Auth. v. Tetrick & Bartlett, PLLC* (2015) (appeal from Harrison County BCD adjudication of breach of fiduciary duty and other claims); *Mangus Coal Co. v. Jennings*, 2016 W. Va. LEXIS 904, 2016 WL 6820762 (2016) (affirming Preston County BCD order granting summary judgment on breach of fiduciary against an individual defendant as barred by applicable statute of limitations); and *Brozik v. Parmer*, 2017 W. Va. LEXIS 4, 2017 WL 65475 (2017) (appeal from Monongalia County BCD adjudication of breach of fiduciary duty claim in Docket No. 16-0238).

13. The filing of this Motion is within a week of the filing of individual defendants' answer in this matter and is therefore timely. *Trial Court Rule 29.06(a)(2)*.

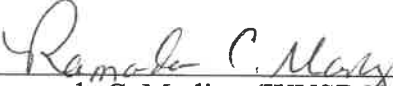
14. Additional related actions are not currently pending.

WHEREFORE, for all of the reasons stated herein, GSVPOA respectfully requests that the Circuit Court of Raleigh County, West Virginia, pursuant to *West Virginia Code* §51-2-15 and Rule 29.06 of the *West Virginia Trial Court Rules*, refer the underlying case and order the transfer of it to the Business Court Division and to award Plaintiff any such further relief as this Court deems just and proper.

**GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.**

By Counsel,

LEWIS GLASSER PLLC



Ramonda C. Marling (WVSB No. 6927)
Mark A. Sadd, (WVSB No. 6005)
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Charleston, WV 25326
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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

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a West Virginia non-profit corporation,**

Plaintiff,

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ELMER COPPOOLSE, an individual;
JAMES TERRY MILLER, an individual;
R. ELAINE BUTLER, an individual; and
GSR, LLC, a West Virginia limited liability company,**

Defendants.

CERTIFICATE OF SERVICE

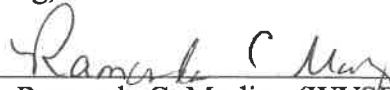
The undersigned hereby certifies that a true and accurate copy of the foregoing
MOTION TO REFER TO THE BUSINESS COURT DIVISION was served this 15th day of
October, 2019, *via* US Mail and E-Mail on Defendants, as follows:

Kyle G. Lusk, Esq.
Lusk & Bradford, PLLC
220 N. Fayette Street
Beckley, WV 25801

John A. Smith, Esq.
Flaherty Sensabaugh Bonasso
P.O. Box 3843
Charleston, WV 25338

Honorable Robert A. Burnside, Jr.
Tenth Judicial Circuit
Raleigh County Courthouse
222 Main Street
Beckley, WV 25801

West Virginia Business Court Division
Attn: Lorri Stotler
Berkeley County Judicial Center
Suite 2100
380 W. South Street
Martinsburg, WV 25401

A handwritten signature in cursive script, appearing to read "Ramonda C. Marling", is written over a horizontal line.

Ramonda C. Marling (WVSB No. 6927)

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,
a West Virginia non-profit corporation,**

Plaintiff,

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**Civil Action no. 19-C-357
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**EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company;
ELMER COPPOOLSE, an individual;
JAMES TERRY MILLER, an individual;
R. ELAINE BUTLER, an individual; and
GSR, LLC, a West Virginia limited liability company,**

Defendants.

RALEIGH COUNTY
RECEIVED AND FILED
AUG 28 2019
PAUL H FLANAGAN
CIRCUIT CLERK

FIRST AMENDED COMPLAINT

NOW COMES Plaintiff, Glade Springs Village Property Owners Association, Inc. ("Plaintiff" or "GSVPOA"), by and through the undersigned counsel, Mark A. Sadd and Ramonda C. Marling of Lewis Glasser PLLC, pursuant to Rule 15(a) of the West Virginia Rules of Civil Procedure, and submits its First Amended Complaint¹ against Defendants, or each or several of them, states as follows:

Prefatory Statement

This matter centers on a common interest community² located in Raleigh County, West Virginia, Glade Springs Village ("GSV"). As a common interest community, GSV is governed by the Uniform Common Interest Ownership Act ("UCIOA"). See W. Va. Code § 36B-1-101 et

¹ The purpose of this amendment is to assert claims against the newly named defendant, GSR, LLC ("GSR").

² Under UCIOA, the phrase "common interest community" is defined as "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate" W. Va. Code § 36B-1-103(7).



seq. Until May 2019, Glade Springs Village Property Owners Association, Inc. (“GSVPOA”) was controlled by the declarant-appointed³ executive board⁴ (“Board of Directors”).

Beginning in 2018, a group of GSV property owners threatened to initiate a civil action to force the declarant to hold its first open election of the board of directors independent of and free of the declarant’s control. Ultimately, under threat of litigation, the declarant acquiesced and permitted the election to move forward.

The GSV property owners ousted the declarant-appointed board of directors and elected the first independent board of directors of GSVPOA in April of this year. The Elected Board of Directors⁵ took office on May 1, 2019. Since that time, the Elected Board of Directors has determined that the Declarant Board of Directors⁶ breached their statutory fiduciary duties to the members of GSVPOA and permitted EMCO Glade Springs Hospitality, LLC (“EMCO”) and GSR, LLC (“GSR”) to breach certain contracts with GSVPOA. As such, the Elected Board of Directors on behalf of GSVPOA and all of its members under W. Va. Code § 36B-3-102(a) brings this civil action seeking redress against EMCO, the Declarant Board of Directors, and GSR for these breaches as more fully set forth below.

³ Under UCIOA, the term “declarant” is defined as “any person or group of persons acting in concert who: (i) As part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of; or (ii) reserves or succeeds to any special declarant right.” W. Va. Code § 36B-1-103(12).

⁴ Under UCIOA, the phrase “executive board” is defined as “the body, regardless of name, designated in the declaration to act on behalf of the association.” W. Va. Code § 36B-1-103(16).

⁵ This term is defined in Paragraph 70 below.

⁶ This term is defined in Paragraph 13 below.

Parties

1. GSVPOA is a West Virginia non-profit corporation registered to do business in West Virginia.
2. GSVPOA was formed in 2001.
3. GSVPOA is the statutorily mandatory association of the unit or lot⁷ owners of GSV, a common interest community located in Raleigh County, West Virginia.
4. Defendant EMCO is a limited liability company registered to do business in West Virginia.
5. Defendant Elmer Coppoolse (“Coppoolse”) is a resident of Raleigh County, West Virginia.
6. Defendant Coppoolse was a member of the Declarant Board of Directors of GSVPOA from 2010 to April 30, 2019.
7. Upon information and belief, Defendant Coppoolse is also the majority member and chief executive officer of Defendant EMCO.
8. Defendant James Terry Miller (“Miller”) is a resident of Raleigh County, West Virginia.
9. Defendant Miller was a member of the Declarant Board of Directors of GSVPOA from 2010 to April 30, 2019.
10. Defendant R. Elaine Butler (“Butler”) is a resident of Nicholas County, West Virginia.
11. Defendant Butler was a member of the Declarant Board of Directors of GSVPOA

⁷ For purposes of this civil action, the terms “unit” and “lot” are interchangeable unless the context suggests otherwise. Under UCIOA, the term “unit” is defined as “a physical portion of the common interest community designated for separate ownership or occupancy” W. Va. Code § 36B-1-103(33).

from 2010 until she retired on or about December 21, 2018.

12. Upon information and belief, Defendant Butler was also serving as the controller or chief financial officer for Defendant EMCO under the supervision and direction of Defendants EMCO and Coppoolse during her tenure as a member of the Declarant Board of Directors of GSVPOA.

13. Defendants Coppoolse, Miller and Butler are collectively referred to as the “Declarant Board of Directors” in this Amended Complaint.

14. Defendant GSR is a West Virginia limited liability corporation.

15. Defendant GSR is the owner and operator the Glade Springs hotel, the Cobb Golf Course, Tennis Courts and other recreational facilities adjacent to Glade Springs Village.

Jurisdiction and Venue

16. This Court has subject matter jurisdiction over this matter because the amount in controversy exceeds the jurisdictional threshold.

17. This Court has personal jurisdiction over Defendant EMCO because EMCO is a West Virginia limited liability company registered to do business in this State and has transacted business related to GSVPOA’s claims in this State.

18. This Court has personal jurisdiction over Defendant GSR because GSR is a West Virginia limited liability company registered to do business in this State and has transacted business related to GSVPOA’s claims in this State.

19. Venue is proper in this Court because a substantial part of the acts or omissions giving rise to the claims occurred in Raleigh County, West Virginia.

20. Venue is also proper in this Court with regard to Defendants Coppoolse and Miller because they reside in Raleigh County, West Virginia and all of their actions in relation to the affairs of GSVPOA occurred in Raleigh County, West Virginia.

21. Venue is also proper in this Court with regard to Defendant Butler because all her actions in relation to the affairs of GSVPOA occurred in Raleigh County, West Virginia.

Background

22. GSV occupies more than 2,950 acres and contains 750 private residences and additional undeveloped lots.

23. In 2001, Cooper Land Development, Inc. ("Cooper Land") as the declarant filed a Declaration of Covenants and Restrictions in the office of the Clerk of the County Commission of Raleigh County, West Virginia, in Deed Book 5004, at page 6485. Under the Declaration, GSV imposed restrictions, covenants, easements and conditions under a general plan of improvement for the benefit of all the property owners and to establish a method of maintenance, preservation, use and enjoyment of the lots and common elements within GSV, including the right to impose and collect assessments against all lots secured by statutory liens with the power of foreclosure and sale.

24. Cooper Land was, for all relevant purposes of this civil action, the declarant of GSV.

25. Further, Cooper Land was *not* a "resort owner" as W. Va. Code § 36B-1-103(29) defines that term.

26. No predecessor or successor of Cooper Land in Raleigh County, West Virginia, was a resort owner.

27. Under its Bylaws, GSVPOA is governed by and acts through its board of directors.

28. In 2001, GSVPOA considered constructing two golf courses within the common area of the community, the Stonehaven Course and the Woodhaven Course. Stonehaven and Woodhaven were to have become and, in fact, did become part of GSV's common elements, to be maintained solely by GSVPOA at the expense of its members.

29. In contemplation of the construction of these golf courses, on or about May 4, 2001, Cooper Land, Cooper Communities, Inc., Glade Springs Resort Limited Liability Company ("GSR"), The West Virginia Enterprise Center Limited Liability Company, Land Use Corporation and William T. Bright entered into a letter agreement labeled "Resort Guest Use of New GSVPOA Golf Courses" (the "2001 Letter Agreement").

30. Under the 2001 Letter Agreement, GSR was entitled to purchase rounds of golf for resale to resort guests under certain terms, including but not limited to:

- a. GSR was entitled to purchase 1,000 rounds of golf each calendar month from May to October on the Stonehaven and Woodhaven golf courses for resale to resort guests during the first five years of the agreement;
- b. beginning January 1, 2004, GSR would tender a green fee of \$18.00 per round of golf to GSVPOA subject to an annual adjustment based on the CPI for Urban Wage Earners not to exceed five percent and
- c. all amounts due to GSVPOA to be paid by the tenth day of the following month.

31. GSVPOA constructed the Woodhaven and Stonehaven golf courses within the common areas of GSV between 2001 and 2009.

32. Under the Club Lease Agreement dated May 4, 2001 (the "Club Lease Agreement"), GSR was to have charged GSVPOA members for golf carts the lesser of (1)

GSR's then-current rate for golf carts used by GSR's Club Members and Resort Guests; or (2) \$15 a person a round, with such rate to increase (but not decrease) annually each January 1, beginning January 1, 2004, based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers.

33. In contemplation of the opening of Stonehaven, on or about April 22, 2003, Cooper Land, GSVPOA and GSR entered into a letter agreement supplementing the 2001 Letter Agreement (the "2003 Letter Agreement").

34. Among other terms, the 2003 Letter Agreement provided that:

All individuals playing golf on the Stonehaven Course will check-in at the GSR Golf Shop. GSR will collect any amounts due GSVPOA from Stonehaven Customers, with GSR acting as agent for GSVPOA. GSR will provide GSVPOA with a daily accounting with any amounts due GSVPOA by the 10th day following each month. Such accounting will include the number of rounds played each day by category, including applicable sales taxes collected. GSR will provide and pay for all personnel, equipment, supplies, etc. to provide such services for GSVPOA. GSVPOA will pay GSR \$1,750.00 per month, plus state sales tax, for the months of May, June, July, August, September and October and \$1,000.00 per month, plus state sales tax, for the months of November, December, January, February, March and April. Such monthly payments to begin at the opening of Stonehaven and shall be paid even if GSR Golf Shop is closed due to weather. Such monthly payments will increase or decrease each July 1, beginning July 1, 2004 based on the lesser of; a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers; United States City Average, All Items, based on June indexes; or b) five (5) percent.

GSVPOA will provide and pay for all maintenance cost for Stonehaven including wages, taxes, and benefits for golf course maintenance employees, starters and rangers. GSR will provide Golf Shop employees including golf cart attendants and pay all wages, taxes and benefits for said employees. Sales and use taxes collected and paid to GSVPOA, on behalf of Stonehaven will be remitted by GSVPOA. Real Estate and personal property taxes related to Stonehaven will be paid by GSVPOA. GSR will remit sales taxes related to "GSR Resort Guests". GSVPOA will

pay for Stonehaven scorecards and incidental expenses related to Stonehaven.

Representatives of GSVPOA, CLDI and GSR will meet monthly, or more frequently upon reasonable request by any of the parties to review and discuss the operation of the Stonehaven and Cobb golf courses, including hours of operation, to exchange information on planned temporary closing dates of either course for maintenance, and generally to provide for efficient operation of both courses to insure that golfers on both courses are provided a good golf experience.

The term of this agreement with respect to the agreements herein shall be one (1) year. This agreement will automatically renew unless either party gives written notification 60 days in advance of expiration.

2003 Letter Agreement, Paragraphs 6, 11, 14 and 15.

35. In 2010, Cooper Land purported to assign or convey its interests in the GSV properties that were subject to the 2001 Declaration and all of its rights as the Declarant to Justice Holdings, LLC ("Justice Holdings").

36. Thereafter, Justice Holdings, purportedly as the successor declarant of GSV, exclusively appointed a Board of Directors to GSVPOA ("Declarant Board of Directors").

The Declarant Board of Directors of GSVPOA

37. Defendant Coppoolse obtained an appointment to the Board of Directors. He was a member of the Board of Directors of GSVPOA ("Declarant Board of Directors") from 2010 to April 30, 2019 as determined by Justice Holdings or its principals/members/managers and maintained authority as a member of the Declarant Board of Directors under W. Va. Code §36B-3-301 *et seq.* as well as the 2001 Declaration for GSV and its Bylaws.

38. Upon information and belief, Defendant Coppoolse is also a minority member in GSR and is the General Manager of GSR.

39. Defendant Coppoolse is the majority owner and chief executive officer of Defendant EMCO.

40. Defendant James Terry Miller ("Miller") was a member of the Declarant Board of Directors from 2010 to April 30, 2019.

41. Defendant Miller held his position on the Declarant Board of Directors as determined by Justice Holdings or its principals/members/managers or Defendant Coppoolse.

42. Defendant R. Elaine Butler ("Butler") was a member of the Declarant Board of Directors from 2010 until her retirement on December 21, 2018, while also serving as the controller or chief financial officer for Defendant EMCO under the supervision and direction of Defendants EMCO and Coppoolse.

43. Upon information and belief, Defendant Butler was simultaneously secretary and chief financial officer of Justice Holdings, LLC, secretary of GSR, LLC and a senior manager of Defendant EMCO.

44. Defendants Coppoolse, Miller and Butler are collectively referred to as the "Declarant Board of Directors" in this Amended Complaint.

45. At all times relevant and material to the matters complained of herein, Defendants Coppoolse, Miller and Butler in their capacity as members of the Declarant Board of Directors had a fiduciary duty in accordance with the GSV Declaration and Bylaws and West Virginia law to act in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of GSVPOA and to act in a fiduciary capacity with regard to the best interest of the property owners of GSV and members of GSVPOA.

46. At all times relevant and material to the matters complained of herein, Defendants Coppoolse, Miller and Butler, in their capacity as members of the Declarant Board of Directors, owed fiduciary duties to all GSV property owners and Members of GSVPOA under W. Va. Code§ 36B-3-103 as well as the 2001 Declaration and Bylaws.

Actions of the Declarant Board of Directors

47. Defendant Coppoolse exerted extraordinary power and control over all of the affairs, assets and operations of GSVPOA until the first independent board of directors of GSVPOA took control of the organization on May 1, 2019.

48. Defendant Miller failed to exercise independent judgment on behalf of GSVPOA and submitted to the will and direction of Defendant Coppoolse directly contrary and in opposition to the interests of GSVPOA.

49. Defendant Butler failed to exercise independent judgment on behalf of GSVPOA and submitted to the will and direction of Defendant Coppoolse directly contrary and in opposition to the interests of GSVPOA.

50. Defendant Coppoolse directed that GSVPOA contract with Defendant EMCO and later Defendant GSR to serve as the managing agent of GSVPOA with no input from or review by any person independent of Defendants EMCO and GSR.

51. Defendant Coppoolse dominated the Declarant Board of Directors, and routinely and pervasively deployed the resources and assets of GSVPOA to the use of Defendants EMCO and GSR or others for no adequate consideration.

52. On or about March 1, 2010, the Declarant Board of Directors entered into a Lease Agreement with Defendant EMCO with regard to a pro shop and food and beverage facilities located inside the Clubhouse for the Woodhaven Golf Course (the "2010 Lease Agreement").

53. Under the 2010 Lease Agreement, Defendant EMCO was required to provide written reports to GSVPOA of the gross and net revenues from the operations along with the payment due GSVPOA by the tenth day of the month following each month of operations. Defendant EMCO was required to pay rent under the 2010 Lease Agreement in a sum equal to five (5%) percent of all gross revenues from the premises, together with catering, food and beverage sales from any golf carts operated on the Woodhaven Golf Course by Defendant EMCO.

54. Defendant EMCO repeatedly failed to provide a full accounting to GSVPOA under the terms of the 2010 Lease Agreement.

55. GSVPOA has repeatedly requested a full accounting from Defendant EMCO under the 2010 Lease Agreement; however, Defendant EMCO refuses to provide a full accounting.

56. Defendant EMCO failed to remit all amounts due and owing under the 2010 Lease Agreement and is currently in arrears to GSVPOA.

57. GSVPOA has not been able to determine the full amount of Defendant EMCO's arrearage under the 2010 Lease Agreement because of Defendant EMCO's failure and refusal to provide a full accounting to GSVPOA.

58. On or about March 1, 2010, the Declarant Board of Directors also entered into a Letter Agreement with Defendant EMCO setting forth additional understandings of the parties

and to implement the 2001 Letter Agreement and the 2003 Letter Agreement with regard to both the management of Woodhaven and Stonehaven (the "2010 Letter Agreement").

59. As noted in the 2010 Letter Agreement, the round fee was adjusted to \$33.58 on or about January 18, 2010. Such round fee was to be adjusted annually based on the May 4, 2001 Letter Agreement.

60. The 2010 Letter Agreement provided that Defendant EMCO personnel shall independently manage the tee-time reservations for Stonehaven and Woodhaven according to the parameters set forth therein. Such management of the tee-time shall not interfere with regular member play.

61. Under the 2010 Letter Agreement, Defendant EMCO was to collect any amounts due to GSVPOA from Woodhaven customers, with Defendant EMCO acting as an agent. Defendant EMCO was required to provide a daily accounting and payment of all sums due to GSVPOA by the tenth day of the following month minus a two and one-half (2 1/2 %) percent administration fee.

62. The 2010 Letter Agreement also provided, among other terms, that as consideration for the additional tee-time flexibility, GSVPOA agreed to pay one half of the monthly fee as outlined in the 2003 Letter Agreement.

63. Defendant EMCO has not given GSVPOA a full accounting under the 2010 Letter Agreement.

64. GSVPOA has repeatedly requested the accounting, but Defendant EMCO has refused to provide a full accounting under the 2010 Letter Agreement.

65. Defendant EMCO has not remitted all funds due to GSVPOA and is currently in arrears under the 2010 Letter Agreement.

66. GSVPOA is unable to determine the full amount of the Defendant EMCO's arrearage under the 2010 Letter Agreement because it has not received a full accounting from Defendant EMCO.

67. On or about March 1, 2011, the Declarant Board of Directors of GSVPOA entered into a Letter Agreement with GSR regarding GSVPOA golf courses (the "2011 Golf Course Agreement").

68. The 2011 Golf Course Agreement purported to replace the following and purported to declare such agreements to be null and void:

- a. The 2001 Letter Agreement;
- b. The 2003 Letter Agreement; and
- c. The 2010 Letter Agreement.

69. Under the 2011 Golf Course Agreement, GSR was entitled to purchase rounds of golf from GSVPOA for its hotel guests for \$22.00 a person subject to annual adjustment as set forth therein. All amounts due and owing GSVPOA for such golf rounds were to be paid by the 30th of the month following the purchase.

70. Without consideration to GSVPOA, the 2011 Golf Course Agreement also purported to reinstate Defendant GSR to a base monthly management fee paid by GSVPOA.

71. Under the 2011 Golf Course Agreement, Defendant GSR was required to provide daily accounting along with the payment due GSVPOA by the thirtieth day of the month

following each month of operations. The accounting was to include the number of rounds of golf played each day by category, including applicable sales taxes collected.

72. Defendant GSR repeatedly failed to provide a full accounting to GSVPOA under the terms of the 2011 Golf Course Agreement.

73. GSVPOA has repeatedly requested a full accounting from Defendant GSR under the 2011 Golf Course Agreement; however, Defendant GSR refused to provide a full accounting.

74. Defendant GSR failed to remit all amounts due and owing under the 2011 Golf Course Agreement and is currently in arrears to GSVPOA.

75. GSVPOA has not been able to determine the full amount of Defendant GSR's arrearage under the 2011 Golf Course Agreement because of Defendant GSR's failure and refusal to provide a full accounting to GSVPOA.

The Member Elected Board of Directors of GSVPOA

76. In 2018, a group of GSV property owners (*i.e.*, members of GSVPOA) challenged the right of the Declarant to solely and exclusively appoint the Board of Directors as a direct violation of UCIOA and other West Virginia law.

77. Defendant EMCO openly and actively advocated to retain the Declarant Board of Directors despite the prohibitions against the Declarant's total control of the executive board of directors set forth in W. Va. Code §§ 36B-3-103(d), (e) and (f).

78. Ultimately, GSVPOA's first election by the Members for an independent Board of Directors was held in April 2019, when members of the Declarant Board of Directors were ousted effective May 1, 2019.

79. GSV members David McClure, Cindy Fernald and Allen Teinert were duly elected to the Board of Directors of GSVPOA (the "Elected Board of Directors") and assumed office on or about May 1, 2019. As of the date of this Amended Complaint, Mr. McClure, Ms. Fernald and Mr. Teinert comprise the entire Elected Board of Directors.

80. On May 24, 2019, David McClure in his capacity as President of GSVPOA, upon a vote of the Elected Board of Directors, terminated the 2011 Golf Course Agreement under the W. Va. Code § 36B-3-105.

81. Defendants GSR and/or EMCO were to surrender possession and control of the Stonehaven and Woodhaven golf courses to GSVPOA on August 23, 2019.

82. In anticipation of that date, on August 20, 2019, Defendants EMCO and GSR by their counsel threatened to thwart GSVPOA's use and enjoyment of the two golf courses. In a letter dated August 20, 2019, a true copy of which is attached hereto as Exhibit 1, Defendants EMCO and GSR, among other things, declared the following:

- a. "You will need to remove the Stonehaven dumpster from our property and relocate the same to your property";
- b. "Other than public parking, you will not be allowed to park on any property that belongs to the Resort"
- c. "The pathway to #10 at Stonehaven is owed by the Resort and is no longer available for your use."
- d. "The Resort owns the Stonehaven halfway house and the bathrooms. This will be closed and will not be available for your use."

83. The use, benefit and enjoyment of GSVPOA's real property rights, the access and use of which Defendants EMCO and GSR have declared to immediately deprive GSVPOA and its members, including improvements on or in the vicinity of the Stonehaven and Woodhaven

golf courses, are specifically governed under written instruments and agreements made for the specific use, benefit and enjoyment of GSVPOA and its members.

84. Further, these real property rights are essential to the use, benefit and enjoyment of the Stonehaven and Woodhaven golf courses by GSVPOA and its members.

85. Further, these real property rights were paid for and have been maintained solely with the funds of GSVPOA and its members.

86. Defendants EMCO and GSR are intentionally thwarting and interfering with GSVPOA's use, benefit and enjoyment of their real estate interests, causing substantial damage and injury to GSVPOA and its members.

Count I – Accounting Against EMCO and GSR

87. Plaintiff incorporates by this reference all of the averments set forth in the previous paragraphs 1 through 86 as if set forth fully in Count I of this Amended Complaint.

88. The Elected Board of Directors has requested a full accounting under all agreements from Defendants EMCO and GSR, but has not received a full accounting.

89. As set forth above, under the 2003 Agreement, Defendant EMCO also is required to "provide GSVPOA with a daily accounting with any amounts due GSVPOA by the tenth day following each month." The accounting must include the number of rounds played each day by category, including applicable sales taxes collected.

90. Defendant EMCO has not provided the daily accounting to GSVPOA by the tenth day of the following month as required by the 2003 Agreement. In fact, for many years no accounting was given to GSVPOA.

91. Defendant EMCO's failure and refusal to provide accountings to GSVPOA constitutes a breach of the 2003 Agreement.

92. GSVPOA is entitled to a full accounting from Defendant EMCO under the 2003 Agreement.

93. GSVPOA has been damaged by the aforesaid breaches of the 2003 Agreement.

94. As further set forth above, under the 2010 Letter Agreement Defendant EMCO is also required to provide an accounting to GSVPOA.

95. For many years, Defendant EMCO has not provided a full accounting to GSVPOA under the 2010 Letter Agreement.

96. Defendant EMCO's failure and refusal to provide a full accounting to GSVPOA under the 2010 Letter Agreement constitutes a beach of the 2010 Letter Agreement.

97. GSVPOA has been damaged by the aforesaid breaches of the 2010 Letter Agreement.

98. GSVPOA is entitled to a full accounting from Defendant EMCO under the 2010 Letter Agreement.

99. Under the 2011 Golf Course Agreement, Defendant GSR was required to provide daily accounting along with the payment due GSVPOA by the thirtieth day of the month following each month of operations. The accounting was to include the number of rounds of golf played each day by category, including applicable sales taxes collected.

100. Defendant GSR repeatedly failed to provide a full accounting to GSVPOA under the terms of the 2011 Golf Course Agreement.

101. GSVPOA has repeatedly requested a full accounting from Defendant GSR under the 2011 Golf Course Agreement; however, Defendant GSR refused to provide a full accounting.

102. Defendant GSR failed to remit all amounts due and owing under the 2011 Golf Course Agreement and is currently in arrears to GSVPOA.

103. GSVPOA has not been able to determine the full amount of Defendant GSR's arrearage under the 2011 Golf Course Agreement because of Defendant GSR's failure and refusal to provide a full accounting to GSVPOA.

Count II – Breach of Contract Against EMCO

104. Plaintiff incorporates by this reference all of the averments set forth in the previous paragraphs 1 through 103 as if set forth fully in Count II of this Amended Complaint.

105. Defendant EMCO was continually late in remitting payments due and owing to GSVPOA under both the 2010 Lease Agreement and the 2010 Letter Agreement.

106. Defendant EMCO is currently in substantial arrears to GSVPOA under the 2003 Lease Agreement.

107. Defendant EMCO is currently in arrears to GSVPOA on the round fees due and owing to GSVPOA under the 2010 Letter Agreement.

108. Defendant EMCO's failure to tender full and timely payments to GSVPOA under both the 2010 Lease Agreement and the 2010 Letter Agreement constitute breaches of those agreements.

Count III – Breach of Fiduciary Duty Against the Declarant Board of Directors

109. Plaintiff incorporates by this reference all of the averments set forth in the previous paragraphs 1 through 108 as if set forth fully in Count III of this Amended Complaint.

110. The Declarant Board of Directors breached its fiduciary duties as it permitted GSVPOA's assessment receivables to increase from \$177,000.00 as of December 31, 2010, to approximately \$1,500,000.00 as of December 31, 2018.

111. Defendant EMCO breached its contractual and other duties to GSVPOA by failing to manage GSVPOA's assessment receivables.

112. Cooper Land and the Declarant Board of Directors entered into a so-called 2001 interest-free Loan Agreement and Promissory Note⁸ wherein Cooper Land as the Declarant required GSVPOA as borrower to be liable and "responsible for funding the construction and installation of the water, waste water and electric utilities to serve" GSV, contractual obligations for which GSVPOA, all for no adequate consideration or for which GSVPOA had the financial capacity to repay.

- a. At Glade's annual Association meeting on May 22, 2018, Defendant Coppoolse told Plaintiff and other GSV lot owners that the 2001 interest-free Loan Agreement/Note indebtedness by GSVPOA to Justice Holdings approximated \$14 million, a false statement. Defendant Coppoolse also claimed the alleged \$14 million debt was disclosed in documents furnished to all GSV lot owners, a false statement. The 2001 GSV Declaration provides Declarant, is responsible for the construction of public and private streets in Glade and the cost of maintenance "shall be paid from assessments". Declaration, Article VII, Section 1 and Article VI, Section 4.
- b. By the specific terms of the 2001 interest free Loan Agreement/Note – the debt now alleged by Defendant Coppoolse to be \$14 million – provided that loan moneys were to be used only to fund "water, waste water and electric utilities" in GSV and did not fund clearing for roads, road construction, bridge construction, gas and telephone utilities, water(s)/pump(s) from Chatham Lake to golf course(s) and irrigation system(s) and related expenditures.

⁸ Reference to the purported Loan Agreement and Promissory Note and amendments thereto is not intended to imply that the Elected Board of Directors of GSVPOA considers these documents legally valid and enforceable contracts. To the contrary, GSVPOA specifically reserves its right to challenge the validity and enforceability of the purported Loan Agreement and Promissory Note and amendments thereto.

- c. By Assignment and Assumption of Utility Loan Agreement dated October 20, 2010, Justice Holdings assumed Cooper's "rights and obligation of every kind in (regard to the 2001 Loan Agreement/Note)" . . . "to fund construction of the water, waste water and electric utilities to serve Glade Springs Village."
- d. GSVPOA, under the direction and command of the Declarant Board of Directors, authorized the execution of the Third, Fourth, Fifth and Sixth Amendments to the 2001 interest free Loan Agreement/Note to Justice Holdings, with certain of amendments to be signed by Defendant Coppoolse as Director of GSVPOA, by Defendant Miller, as Manager of Justice Holdings and by Defendant Coppoolse as Director of GSVPOA.
- e. All members of the Declarant Board of Directors authorized each of the Third – dated June 30, 2011; the Fourth – dated June 30, 2012; the Fifth – dated June 30, 2013; and Sixth – dated June 30, 2018, Amendments to the 2001 interest-free Loan Agreement/Note, which specifically provided that the loan proceeds were to be used only to fund "water, waste water and electric utilities" in GSV and did not include any other development costs.
- f. Since 2010, the amounts due on the principal of the 2001 interest-free Loan Agreement/Note have been paid down and reduced, or should have been, resulting in enrichment of Justice Holdings to the detriment of Plaintiff.
- g. Meanwhile, Justice Holdings has been receiving TIF funding arising from the *ad valorem* taxes from GSV to repay the costs of constructing the very same utility lines referenced above. Indeed, the TIF funding paid for, and continues to pay for, "water, sewer (waste water) and electric, gas and telephone".
- h. Upon information and belief, when added to TIF claims for reimbursement, the total monetary benefits to Cooper and Justice Holdings for certain select utility work in GSV exceeds \$30 million, or approximately \$19,000.00 for every TIF-funded GSV lot completed.
- i. Defendants EMCO, Coppoolse, Miller and Butler knew on May 22, 2018 and have known since 2010 that Justice Holdings was receiving Glade TIF moneys paid by Plaintiff and the Association lot owners by their *ad valorem* real estate taxes, for the installation of certain specified utilities in GSV, while at the same time Defendant EMCO was seeking on behalf of Justice Holdings to recover and did recover from Plaintiff and GSV lot owner moneys by the 2001 interest-free Loan Agreements/Note, *i.e.*, \$14 million, thus seeking to be paid and being partially paid far in excess of the cost of utility installation, all with the intent to defraud Plaintiff and GSVPOA property owners and taxpayers of millions of dollars.

- j. In an effort to cover up the scheme to deceive and defraud Plaintiff and GSV property owners to the direct and indirect financial gain of Defendant EMCO by seeking to be paid twice for the same utilities, *i.e.* "water, wastewater (sewer) and electric", Defendant Coppoolse, a member of the Declarant Board of Directors, on May 22, 2018, at the Association annual meeting, intentionally and falsely stated to Plaintiff, its members and others that the money from the claimed \$14 million debt owed to Justice Holdings by GSVPOA by the 2001 interest-free Loan Agreement/Note "was used to build all the roads and to build the infrastructure" in GSV. In fact, Defendant Coppoolse, knew that statement to be false, *i.e.* the specific terms of the 2001 interest free Loan Agreement/Note was to fund only "water, waste water and electric utilities" in GSV. Defendant Coppoolse failed to tell GSV that Justice Holdings had been paid, and was being paid TIF funds for the same utility work. Defendant Coppoolse failed to tell GSVPOA and its Members that on March 1, 2008, under the First Amendment to Loan Agreement the revolving note line of credit was increased from \$8 million to \$15 million, when Cooper had just submitted expenses for TIF reimbursement in the amount of \$6,781,577.09 as of June 30, 2007. The Declarant seeks to be paid by GSV property owners for work the TIF has already paid to Cooper Land or Justice Holdings.
- k. Further, Defendant Coppoolse intended to fraudulently mislead GSVPOA and all GSV property owners by stating that \$14 million "was used to build all the roads and to build the infrastructure" in GSV so GSV members and lot owners would not question the legitimacy of the claimed \$14 million debt from GSVPOA, all to the direct and indirect financial gain of Defendant EMCO. Further, Defendant Coppoolse, as a director and officer of the Declarant Board of Directors signed two versions of the Sixth Amendment to Loan Agreement, both dated June 30, 2018, wherein both specifically stated the 2001 interest-free Loan Agreement/Note was used "for funding the construction and installation of the water, waste water and electric utilities to serve the Village of Glade Springs", in direct contravention of Defendant Coppoolse's statements on May 22, 2018, to the GSV lot owners. The two Sixth Amendment to Loan Agreement documents both were signed by Defendant Coppoolse, as a member of the Declarant Board of Directors and by Defendant Miller, Manager of Justice Holdings, each with authority to act on behalf of GSVPOA and Justice Holdings and each with the consent and approval of their respective boards of directors. Further, Defendant Coppoolse caused his intentionally false statement, intended to deceive and defraud Plaintiff and all GSVPOA property owners, to be recorded, filmed and placed on the Association website, all designed to reach all GSV lot owners both within and outside of West Virginia.

113. As set forth above, the Declarant Board of Directors also entered into the 2011 Letter that reduced the price of each golf round arranged for and managed by Defendant EMCO

due to GSVPOA from \$33.58 to \$22.00, to no benefit to GSVPOA failed to comply with the 2010 Agreement that overcharged GSVPOA members for golf cart rental for several years.

114. The actions of the Declarant Board of Directors described above constitute a breach of the fiduciary duties the individual board members owed to GSVPOA members and lot owners.

115. As set forth above, the Declarant Board of Directors has not complied with the Club Lease Agreement in the amount to charge GSVPOA members and has in fact overcharged GSVPOA members for cart rentals for several years.

116. As a direct result of the Declarant Board of Directors' breaches of their statutory fiduciary duties, GSVPOA was and continues to be deprived of substantial and material moneys that it could have and should have used to benefit GSVPOA and to maintain common elements.

Count IV – Breach of Contract against GSR on Real Property Rights of GSVPOA

117. Plaintiff incorporates by this reference all of the averments set forth in the previous paragraphs 1 through 116 as if set forth fully in Count IV of this Amended Complaint.

118. Defendant GSR has breached and continues to breach written agreements for the use, benefit and enjoyment of GSVPOA's real estate interests.

119. Defendant GSR's contract breaches have caused and are causing substantial and continuing injury and damage to GSVPOA and its members

Count V – Breach of Contract Against GSR

120. Plaintiff incorporates by this reference all of the averments set forth in the previous paragraphs 1 through 119 as if set forth fully in Count V of this Amended Complaint.

121. Defendant GSR breached written agreements for management duties to GSVPOA and its members.

122. Defendant GSR's contract breaches caused substantial and continuing injury and damage to GSVPOA and its members.

Count VI – Punitive Damages Against GSR and EMCO

123. Plaintiff incorporates by this reference all of the averments set forth in the previous paragraphs 1 through 122 as if set forth fully in Count VI of this Amended Complaint.

124. Defendants GSR's and EMCO's conduct has been and continues to be intentional, vexatious and designed to cause maximal injury and damage to GSVPOA and its members in relation to the affairs of GSVPOA.

WHEREFORE, Plaintiff, Glade Springs Village Property Owners Association, Inc., prays that this Honorable Court award and give the following relief and remedies:

1. Enter an order appointing an expert special commissioner in accounting at the sole expense of Defendants to audit all books and records Defendants EMCO and GSR as well as the books of GSVPOA, of the TIF, and of WV/Commission to determine the following:

- a. What moneys if any, are owed to GSVPOA by Defendant EMCO or others under the 2010 Lease Agreement and the 2010 Letter Agreement;
- b. The accuracy and validity of all Glade TIF expenditures submitted by Defendant EMCO to the State of West Virginia or the Raleigh County Commission for the specific GSV utilities;
- c. Whether Defendants EMCO, Coppoolse, Miller and Butler acted or failed to act in the best interests of GSVPOA and its Members, they breached their fiduciary duties to GSVPOA and its Members, and they properly discharged or failed to properly discharge their duties as fiduciaries to GSVPOA and its members under the Declaration, the Bylaws, UCIOA and other West Virginia law;

- d. Depending on the audit results, refer the results of the audit to whichever West Virginia or federal agency this Honorable Court deems appropriate for review; and
 - e. Depending on the audit results, award such compensatory and punitive damages and other relief against Defendants named in this Amended Complaint as is appropriate for Defendants' willful, wanton, intentional and fraudulent acts; and
 - f. Award Plaintiff reasonable attorneys' fees together with costs on its behalf expended;
2. Enter an order assessing costs for the services of an court-appointed examiner/Certified Public Accountant as against all Defendants as this Honorable Court deems just and proper;
3. Award GSVPOA compensatory damages;
4. Award GSVPOA incidental damages;
5. Award GSVPOA its costs in litigation and attorneys' fees under the Declaration and Bylaws of the Association, UCIOA and other provisions of West Virginia law;
6. Assess pre-judgment and post-judgment interest as applicable in accordance with West Virginia law with regard to any funds deemed to be subject to disgorgement by Defendants until such time as said funds are repaid to the Association;
7. Award GSVPOA immediate and complete access and control of its real and personal property assets including the Stonehaven and Woodhaven golf courses;
8. Award GSVPOA access to and use of any all GSR property as set forth in the various contracts between the parties or as otherwise provided under the statutory and/or common law of West Virginia;
9. To the extent this Honorable Court finds that there has been a breach of fiduciary

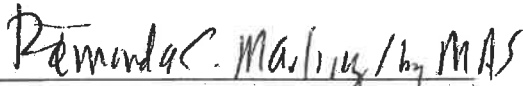
duty by the Declarant Board of Directors, conversion of assets of GSVPOA by or for the benefit of any defendant, a breach of a contract with provisions for attorney's fees and costs to the prevailing party, or that there has been violation of West Virginia statutory or regulatory authority, including but not limited to, UCIOA and any and all codes and regulations affecting the TIF, assessment of punitive damages as against Defendants as deemed appropriate by this Honorable Court;

10. Granting unto Plaintiff such further relief as it deems just and proper.

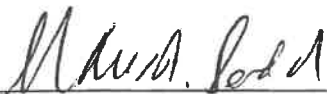
Plaintiff demands a trial by jury as to all claims so triable.

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.

By Counsel



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Patty Quesenberry, Office Manager

August 20, 2019

Mark A. Sadd
Attorney at Law
PO Box 1746
Charleston, WV 25326

Re: My Clients, EMCO Hospitality, LLC.
GSR, LLC

Dear Mr. Sadd:

As you know, my clients have received multiple letters from GSVPOA (David McClure) stating essentially "do as we wish or we, GSVPOA, will not fulfill any future financial or reimbursement obligations to GSR, LLC, for employee and staff costs." You further stated that you were prepared to assume employment of the maintenance staff for each golf course.

We cannot provide services to you under these conditions for multiple reasons. One of the reasons is our concerns about liability coverage. The current policy is based upon professional management and care of the facility by GSR, LLC. We doubt that the same coverage would apply to the POA. The doubling of the fee per round is prohibitive and your phrase "provided said play does not adversely impact the play of GSVPOA" would allow you to cancel or modify play for practically any reason. It could be argued that taking just one 4-player slot on a sunny Saturday would be adversely impacting play of the GSVPOA.

Due to these and other obvious shortcomings in your offer, we will unfortunately have to do the following;

1. We will insist that you do not operate any business that competes with the resort service centers, such as retail, golf, cart rental, food and beverage and green fees. This is as per the protective covenants long in place.
2. We will remove all golf carts from Woodhaven. We will continue to provide golf carts for Stonehaven.



Re: My Clients, EMCO Hospitality, LLC.
GSR, LLC

3. The Resort will no longer manage tee times for the POA. You will have to obtain your own software and tee sheets.
4. Our employees generally will be retained and relocated unless they decide to leave our employment for employment with you at considerably less benefits.
5. Further, you will have to share preexisting employee obligations such as COBRA coverage and PTO costs.
6. Keith Honaker will no longer be available for any work, maintenance or advice regarding the POA courses.
7. You will need to remove all of your vehicles, equipment and the like from our buildings and store them in you own facilities.
8. We will not sign over the ABC alcohol license and will maintain said license.
9. You will need to remove the Stonehaven dumpster from our property and relocate the same to your property.
10. Other than public parking, you will not be allowed to park on any property that belongs to the Resort.
11. You will no longer be allowed to use the landfill owned by the Resort for the dumping of any material whatsoever.
12. You cannot use or be upon any of the maintenance areas of the Resort.
13. WiFi will no longer be available for Woodhaven. I note that the tower is owned and maintained by the Resort.
14. The pathway to #10 at Stonehaven is owned by the Resort and is no longer available for your use.
15. The Resort owns the Stonehaven halfway house and the bathrooms. This will be closed and will not be available for your use.
16. I understand that the GSVPOA obtains discount rates and rebates due to volume purchases with the Greenbrier. These will no longer be available to you.

Page Three
August 20, 2019

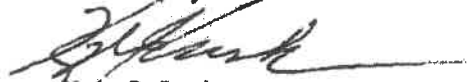
Re: My Clients, EMCO Hospitality, LLC,
GSR, LLC

We will inform you if we will forward golfers to your courses. We have 2,800 rounds of golf already scheduled. Most of these were scheduled prior to your first letter in May. The potential lost revenue to us is at the very least \$35,000.00, plus the cost of cancelled rooms. We intend to assert these damages in a counterclaim. Further, I note that the potential loss to the members of your POA is \$45,000.00.

You have asserted that we have made no proposal when we have in fact done so. Again, we propose to continue the contract under exactly the same terms as the last few months until the end of the year. During that time, we will earnestly strive to identify and resolve our issues while conducting non-binding arbitration. To do this is a win-win situation for both sides. To fail to do this is a true loss for everyone.

Please consult with you clients and advise me of your response. We can work together to avoid these difficulties.

Yours Truly,


Kyle G. Lusk

KGL/mcc
cc: GSP, LLC
EMCC, LLC

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,
a West Virginia non-profit corporation,

Plaintiff,

v.

Civil Action no. 19-C-357
The Honorable Robert A. Burnside, Jr.

EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company;
ELMER COPPOOLSE, an individual;
JAMES TERRY MILLER, an individual;
R. ELAINE BUTLER, an individual; and
GSR, LLC, A West Virginia limited liability Company.

Defendants.

CERTIFICATE OF SERVICE

RALEIGH COUNTY
RECEIVED AND FILED
AUG 28 2019
PAUL H FLANAGAN
CIRCUIT CLERK

The undersigned hereby certifies that a true and accurate copy of the foregoing *Amended Complaint* was served via Hand Delivery this 28th day of August 2019, as follows:

Kyle G. Lusk, Esq.
Lusk & Bradford, PLLC
220 N. Fayette Street
Beckley, W. Va. 25801


Mark A. Sadd

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,
a West Virginia non-profit corporation,**

Plaintiff,

v.

CIVIL ACTION NO.: 19-C-357

**EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company;
ELMER COPPOOLSE, an individual;
JAMES TERRY MILLER, an individual; and
R. ELAINE BUTLER, an individual; and GSR,
a Limited Liability Company**

Defendants.

**AMENDED ANSWER OF EMCO GLADE SPRINGS HOSPITALITY, LLC
and GSR, LLC TO FIRST AMENDED COMPLAINT**

COMES NOW, now Emco Glade Springs Hospitality, LLC and GSR, LLC, who answer
as follows:

HISTORY

The Glade Springs Community is a long standing housing and entertainment area located in Daniels, West Virginia. A succession of entities managed this property starting with representatives of the former Slab Fork Coal Company. The property is made-up of three phases; One - Old Glade and resort property, including but not limited to Cobb Golf Course, the hotel and the clubhouse; two - Stonehaven housing area and golf course; and three- Woodhaven housing, golf course and clubhouse. Over the years the various groups involved worked very well together. Glade Springs is now a premier housing and recreational area with international



reputation. The resort hosts collegiate national golf championships and a PGA qualifier. Most importantly, all services are very well maintained and residents of Glade Springs enjoy a life style not equaled in West Virginia. The monthly assessments are very low considering the services that are maintained.

That to achieve this level of professionalism and service the various entities involved had interlocking and overlapping agreements. The harmony of the community and the services provided relied on the totality of the agreement. However, some members became dissatisfied with the appointed Board of Directors. An agreement between all parties was reached and an election was held.

That since the installation of the New POA Board, the Defendants herein have provided all of the voluminous records to the POA Board in 2018. The POA Board has yet to find any evidence of any wrong doing by the previous POA Board; despite having these records for months, however, this action was filed.

In a paragraph by paragraph answer, the Defendants respond as follows:

1. Deny paragraph 1.
2. Admit paragraph 2.
3. Admit paragraph 3.
4. Admit paragraph 4.
5. Deny paragraph 5.
6. Admit paragraph 6.
7. Deny paragraph 7.
8. Admit paragraph 8.

9. Admit paragraph 9.
10. Admit paragraph 10.
11. Admit paragraph 11.
12. Deny paragraph 12.
13. Admit. These three Defendants served on the board, but a current POA Board member was also a part of the said Board and should be a part hereof.
14. Admit paragraph 14.
15. Deny paragraph 15..
16. Admit paragraph 16.
17. Admit paragraph 17.
18. Admit paragraph 18.
19. Admit paragraph 19.
20. Admit paragraph 20.
21. Admit paragraph 21.
22. Deny paragraph 22.
23. Admit, except for Phase one. The document speaks for itself.
24. The document speaks for itself in its entirety. One of the Cooper entities was the Declarant.
25. Defendants do not have sufficient information to affirm or deny paragraph 25, however the document speaks for itself.
26. Defendants do not have sufficient information to affirm or deny paragraph 26 and the document speaks for itself in its entirety.

27. The Bylaws, in its entirety, speaks for itself.
28. Deny paragraph 28.
29. The 2001 Letter Agreement speaks for itself.
30. The 2001 Letter Agreement speaks for itself.
31. Deny paragraph 31.
32. The Club House Letter speaks for itself.
33. The 2003 Letter Agreement speaks for itself.
34. These terms were modified several times. The document speaks for itself in its entirety.
35. The word "purported" is denied. The document speaks for itself in its entirety.
36. The word "purportedly" is denied. The document speaks for itself in its entirety.
37. Admit, except the word "obtained" is denied.
38. Admit paragraph 38.
39. Deny paragraph 39.
40. Admit paragraph 40 as Miller was on the POA Board, but there were additional members.
41. Deny paragraph 41.
402. Admit paragraph 42.
43. Deny paragraph 43.
44. Defendants admit that the three individuals are referred to in such a manner in the Complaint, but they deny such reference is correct. There were at least three members of the prior board who were not referred to, one of which is a current

- member of the POA Board, Allen Teinert.
45. Denied as the assertions in paragraph 45 are incomplete conclusions of law.
 46. Defendants fulfilled their obligations. However, they were not the complete POA Board.
 47. Denied. Defendants demand strict proof thereof.
 48. Denied. Defendants demand strict proof thereof.
 49. Denied. Defendants demand strict proof thereof.
 50. Denied. Defendants demand strict proof thereof.
 51. Denied. Defendants demand strict proof thereof.
 52. The document speaks for itself in its entirety.
 53. The 2010 Lease Agreement speaks for itself.
 54. Denied. Defendants demand strict proof thereof.
 55. It is admitted the GSVPOA has requested some records. All records available have been provided. It is denied that a full accounting has not been submitted.
 56. Denied. Actually, it is the GSVPOA that is in arrears to the Defendants.
 57. That the Defendants do not have sufficient information to affirm or deny what the GSVPOA has been "able" to do. Defendants deny there was any failure or refusal to provide proper information to the GSVPOA.
 58. Admit paragraph 58.
 59. The 2010 Letter speaks for itself in its entirety.
 60. The 2010 Letter speaks for itself in its entirety.
 61. The 2010 Letter speaks for itself in its entirety.

62. The 2010 Letter speaks for itself in its entirety.
63. Denied. Defendants demand strict proof thereof.
64. Denied. Defendants demand strict proof thereof.
65. Denied. Defendants demand strict proof thereof.
66. Defendants do not have sufficient information to determine what the GSVPOA is "able" to do, but denies that a full accounting has not been provided.
67. Admit paragraph 67.
68. Admit paragraph 68 except the word "purported" is denied.
69. The 2011 Golf Course Agreement speaks for itself in its entirety.
70. Denied. Defendants demand strict proof thereof.
71. The 2011 Golf Course Agreement speaks for itself in its entirety.
72. Denied. Defendants demand strict proof thereof.
73. Defendants admit that the GSVPOA has made some requests, but Defendants deny that the information was not supplied.
74. Denied. Defendants demand strict proof thereof.
75. Defendants do not have sufficient knowledge to determine what the GSVPOA is "able" to do. Defendants deny that the information was not provided and the accounting was not made available.
76. This does not apply to these Defendants, but to the extent necessary it is denied.
77. Deny paragraph 77.
78. Defendants deny paragraph 78 as stated. The former Board of Directors were not "ousted". The parties reached an agreement for the Board of Directors to step

- down. It is of interest that only the Defendants have followed the agreement.
79. Admit paragraph 79.
80. Admit that David McClure terminated the 2011 Golf Course Agreement.
Defendants do not know if an actual vote was taken by all three members of the Board. Further, the statement is an incomplete statement of the law.
81. Admit paragraph 81.
82. Denied. The subject letter was written to assert the Defendants rights and was not in any manner intended to improperly interfere with use of the two golf courses.
83. Paragraph 83 is too vague to accurately answer. There are written documents regarding one of the various locations. Obviously, the Plaintiff does not have a right to use the Defendants resources and facilities without agreement and compensation.
84. Paragraph 84 is too vague to properly answer. "These real property rights" is not a statement of fact. To the extent necessary, if any, Defendants deny paragraph 84.
85. Again, "these real property rights" is not a specific statement of fact to which a proper answer can be made. What real property rights? To the extent necessary, if any, Defendants deny the assertions of paragraph 85.
86. Denied. Defendants demand strict proof thereof.
87. Paragraph 87 is not a new statement of fact for which an answer is required.
88. Denied. Defendants demand strict proof thereof.
89. Denied. Defendants demand strict proof thereof.

90. Denied. Defendants demand strict proof thereof.
91. Denied. Defendants provided a full accounting.
92. The Plaintiff has already received this material. The 2003 Agreement was replaced by the 2011 Agreement.
93. Deny paragraph 93.
94. The 2010 Letter Agreement speaks for itself in its entirety.
95. Denied. Defendants demand strict proof thereof.
96. Denied. There was no failure to provide the information.
97. Denied. Defendants demand strict proof thereof.
98. Admit. Such information has already been provided, however the 2010 Agreement was replaced by the 2011 Agreement.
99. Admit paragraph 99.
100. Denied. Defendants demand strict proof thereof.
101. Deny paragraph 101.
102. Deny paragraph 102.
103. Defendants do not have sufficient information to determine what the GSVPOA is "able" to do, but Defendants deny that all of the required information has not been provided.
104. That paragraph 104 is not a statement of fact for which an answer is required.
105. Denied. Defendants demand strict proof thereof.
106. Denied. In fact, it is the Plaintiff who owes payments to the Defendants.
107. Denied. Defendants demand strict proof thereof.

108. Denied. Defendants have not failed in any of their obligations.
109. Paragraph 109 is not a new statement of fact that requires an answer.
110. Denied. These receivables are secured by the lots. However, these debts were due to the Plaintiff's membership's failure to pay their respective lot fees.
111. Deny paragraph 111.
112. That paragraph 112 and subsections a, i, j and k contain multiple allegations and alleged facts which cannot be answered in an organized manner due to the lack of any organization of the statement. These paragraphs violate Rule 10b of the West Virginia Rules of Civil Procedure which requires all averments of claim should be made in numbered paragraphs, the contents of each of which shall be limited as far as practical to a single set of circumstances.
- To the extent that an answer is required to all paragraphs, the paragraphs are denied. The Defendants were not on the Board of Directors in 2001 and did not enter into the said agreement with Cooper Land. Defendants deny all assertions of wrong doing.
113. That paragraph 113 is not a full complete sentence, but rather is a loose collection of non-connected statements. Defendants admit that the 2011 contract reduced the price of each golf round. Defendants deny the remainder of the paragraph.
114. Deny paragraph 114.
115. Deny paragraph 115.
116. Deny paragraph 116.
117. Paragraph 117 is not a new statement of fact for which an answer is required.

118. Deny paragraph 118.
119. Deny paragraph 119.
120. Paragraph 120 is not a new statement of act for which an answer is required.
121. Deny paragraph 121.
122. Deny paragraph 122.
123. Paragraph 123 is not a new statement of fact for which an answer is required.
124. Deny paragraph 124.
125. Defendants generally deny all assertions that are not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. That the Plaintiff's "Prefatory Statement" does not comply with the West Virginia Rules of Procedure. However, the Defendants deny the false and slanderous contents of the statement.
2. That the Plaintiff has failed to state a cause of action for which relief may be granted.
3. That the Plaintiff has generally and vaguely asserted different acts of fraud. These allegations fail to comply with Rule 9 (b) of the West Virginia Rules of Civil Procedure which require that all averments of fraud the circumstances constituting fraud... shall be stated with particularity.
4. That the Plaintiff has failed to join in parties as required by Rule 9 of the West Virginia Rules of Civil Procedure. The Plaintiff has Allen Teinert as a POA Board member. Mr. Teinert was also a POA Board Member with the Defendants during the critical years in controversy herein. There are other parties as well,

including Justice Holdings, LLC.

5. That the Plaintiff's claims are barred by the applicable statutes of limitations.
6. That the Defendants assert accord and satisfaction, contributory negligence, estoppel, fraud, license, payment, release and waiver.
7. That Plaintiff cannot challenge the validity of the 2001 loan agreement and promissory note without having the real party of interest, the holder of the note, Justice Holdings, LLC as a party to this action, as required by Rule 19 of the West Virginia Rules of Civil Procedure.
8. That all actions taken by these Defendants were taken as board members of the properly constituted Glade Springs Village Property Owners Association (GSVPOA).
9. That the Defendants assert the Equitable Doctrine Laches.
10. That the Defendants reserve the right to raise any affirmative defenses that may be raised under the West Virginia Rules of Civil Procedure.

COUNTERCLAIM

Comes now the Defendants who state as follows:

1. Defendants reasserts paragraphs 2, 3, 4, 14, 15, 16, 17, 18, 19, 27, 29, 31, 67, 68, 69, 70, 79 and 80 of Plaintiff's Complaint as if it were set forth fully herein.
2. That under the prior agreements the Plaintiff was to reimburse the Defendants for certain costs, including but not limited to staff payroll, and the like.
3. That the Plaintiff has been provided proper billing for said services but the Plaintiff has repeatedly refused to pay said debts.

4. That pursuant to prior agreements and contracts these Defendants were to pay certain amounts to the Plaintiff for GSR, LLC guests to play the golf courses. When the billing was submitted, the Plaintiff billed for hundreds of golf rounds that were not actually used by guests of the Defendants.

5. That as a direct consequence of the Plaintiff's failure to honor the contracts the Defendants have incurred monetary losses.

WHEREFORE, Defendants request the following relief:

1. That the Plaintiff's prayers for relief be denied.
2. That the Plaintiff's Complaint be dismissed.
3. The Defendants are not seeking monetary damages for Plaintiff's prior tortuous interference with Defendants or any other potential tort claims.
4. That the Defendants be awarded compensatory and special damages against the Plaintiff for the Plaintiff's failure to honor contractual obligations.
5. That the Court grant such other relief as the Court deems proper.

**EMCO GLADE SPRINGS
HOSPITALITY, LLC, et al.**
By Counsel



LUSK & BRADFORD, PLLC

Attorneys at Law

Kyle G. Lusk (WV State Bar I.D. No.: 2273)

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220 N. Fayette Street

Beckley, WV 25801

(304) 255-5628

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,**
a West Virginia non-profit corporation,

Plaintiff,

v.

CIVIL ACTION NO.: 19-C-357

EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company;
ELMER COPPOOLSE, an individual;
JAMES TERRY MILLER, an individual; and
R. ELAINE BUTLER, an individual; and GSR,
a Limited Liability Company


Defendants.

Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing
“**AMENDED ANSWER OF EMCO GLADE SPRINGS HOSPITALITY, LLC and GSR,
LLC TO FIRST AMENDED COMPLAINT**” was served on this 8 day of October,
2019 as follows:

Mark A. Sadd , Esq.
Ramonda C. Marling, Esq.
Lewis Glasser, PLLC
P. O. Box 1746
Charleston, WV 25326



Kyle G. Lusk

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,
a West Virginia non-profit corporation**

Plaintiff,

v.

Civil Action No. 19-C-357

**EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company;
ELMER COPPOOLSE, an individual;
JAMES TERRY MILLER, an individual; and
R. ELAINE BUTLER, an individual; and
GSR, LLC, a West Virginia limited liability company,**

Defendants.

**DEFENDANTS ELMER COPPOOLSE, JAMES TERRY MILLER, AND R. ELAINE
BUTLER'S ANSWER TO FIRST AMENDED COMPLAINT**

Now comes Defendants Elmer Coppoolse, James Terry Miller, and B. Elaine Butler
incorrectly named as "R. Elaine Butler", by counsel, and for their Answer to the First Amended
Complaint state as follows.

FIRST DEFENSE

The First Amended Complaint is barred by the statute of limitations.

SECOND DEFENSE

The First Amended Complaint is barred by the Equitable Doctrine of Laches.

THIRD DEFENSE



All actions taken by these Defendants were taken as board members of the properly constituted Glade Springs Village Property Owners Association ("GSVPOA").

FOURTH DEFENSE

These Defendants deny the general statements contained in the "Prefatory Statement" on pages 1-2 of the First Amended Complaint as being incomplete conclusions of law and fact. These Defendants specifically deny they have breached any statutory duty to the GSVPOA or permitted others to do so. Further, Allen Teinert was a member of the previous board of directors of GSVPOA and is on the current board. As such, the Plaintiff through its current Board of Directors is seeking to place into controversy decisions joined in by a member of its current board of directors.

FIFTH DEFENSE

Plaintiff cannot challenge the validity of the 2001 Loan Agreement and Promissory Note without naming the real party in interest, the holder of the note, Justice Holdings, LLC as a party to this action as required by Rule 19 of the West Virginia Rules of Civil Procedure.

SIXTH DEFENSE

The First Amended Complaint does not plead fraud or mistake with particularity as required by Rule 9(b) of the West Virginia Rules of Civil Procedure.

SEVENTH DEFENSE

These Defendants assert all affirmative defenses pursuant to Rule 8(c) of the West Virginia Rules of Civil Procedure which further discovery prove to be applicable herein, including but not limited to waiver, license and accord and satisfaction.

EIGHTH DEFENSE

There is no need for the appointment of an “expert special commissioner in accounting” inasmuch as Plaintiff has had possession of all accounting records of the GSVPOA since May of 2019 and has had ample time to perform any type of audit of its choosing.

NINTH DEFENSE

1. These Defendants deny the allegations contained in Paragraph 1 of the First Amended Complaint.
2. These Defendants admit the allegations contained in Paragraph 2 of the First Amended Complaint.
3. These Defendants admit the allegations contained in Paragraph 3 of the First Amended Complaint.
4. These Defendants admit the allegations contained in Paragraph 4 of the First Amended Complaint.
5. These Defendants deny the allegations contained in Paragraph 5 of the First Amended Complaint.
6. These Defendants admit the allegations contained in Paragraph 6 of the First Amended Complaint.
7. These Defendants deny the allegations contained in Paragraph 7 of the First Amended Complaint.

8. These Defendants admit the allegations contained in Paragraph 8 of the First Amended Complaint.
9. These Defendants admit the allegations contained in Paragraph 9 of the First Amended Complaint.
10. These Defendants admit the allegations contained in Paragraph 10 of the First Amended Complaint.
11. These Defendants admit the allegations contained in Paragraph 11 of the First Amended Complaint.
12. These Defendants deny the allegations contained in Paragraph 12 of the First Amended Complaint and state Elaine Butler was the Chief Financial Officer of EMCO from August 17, 2006 until December 31, 2018.
13. These Defendants admit they served on the GSVPOA Board of Directors but object to the definition of "Declarant Board of Directors" inasmuch as Allen Teinert also served on the Board of Directors of the GSVPOA.
14. These Defendants admit the allegations contained in Paragraph 14 of the First Amended Complaint.
15. These Defendants deny the allegations contained in Paragraph 15 of the First Amended Complaint.
16. These Defendants admit this Court has subject matter jurisdiction over this matter.
17. These Defendants have insufficient information or knowledge to form a belief as to the personal jurisdiction allegation as to Defendant EMCO.
18. These Defendants have insufficient information or knowledge to form a belief as to the personal jurisdiction allegation as to Defendant GSR.

19. These Defendants admit venue is proper in this Court.
20. These Defendants admit venue is proper in this Court but deny Defendant Elmer Coppoolse resides in Raleigh County.
21. These Defendants admit venue is proper in this Court.
22. These Defendants admit the allegations contained in Paragraph 22 of the First Amended Complaint.
23. The Declaration of Covenants and Restrictions is a public document filed with the Clerk of the County Commission of Raleigh County and speaks for itself in its entirety.
24. The Declaration of Covenants and Restrictions is a public document filed with the Clerk of the County Commission of Raleigh County and speaks for itself in its entirety.
25. The Declaration of Covenants and Restrictions is a public document filed with the Clerk of the County Commission of Raleigh County and speaks for itself in its entirety.
26. The Declaration of Covenants and Restrictions is a public document filed with the Clerk of the County Commission of Raleigh County and speaks for itself in its entirety.
27. The Bylaws of the GSVPOA speak for themselves in their entirety.
28. These Defendants are without sufficient information or knowledge as to what the GSVPOA "considered" in 2001.
29. The "Resort Guests Use of New GSVPOA Golf Courses" ("2001 Letter Agreement") speaks for itself in its entirety.
30. The "2001 Letter Agreement" speaks for itself in its entirety.
31. These Defendants deny the allegations contained in Paragraph 31 of the First Amended Complaint.
32. The Club Lease Agreement speaks for itself in its entirety.

33. The "2003 Letter Agreement" speaks for itself in its entirety.
34. The "2003 Letter Agreement" speaks for itself in its entirety.
35. The 2010 Agreement between Cooper Land and Justice Holdings, LLC speaks for itself in its entirety.
36. These Defendants deny the allegations contained in Paragraph 36 of the First Amended Complaint.
37. These Defendants admit Defendant Elmer Coppoolse was appointed to the GSVPOA Board of Directors from 2010 to April 30, 2019 in accordance with the Bylaws of the GSVPOA and controlling West Virginia Statutory Law.
38. These Defendants deny the allegations contained in Paragraph 38 of the First Amended Complaint.
39. These Defendants deny the allegations contained in Paragraph 39 of the First Amended Complaint.
40. These Defendants admit James Terry Miler was a member of the GSVPOA Board of Directors from 2010 to April 30, 2019 and incorporate by reference their response to the allegations contained in Paragraph 13 of the First Amended Complaint.
41. These Defendants deny the allegations contained in Paragraph 41 of the First Amended Complaint.
42. These Defendants admit Elaine Butler was a member of the Board of Directors of GSVPOA from 2010 until December 21, 2018 and incorporate their response to the allegations contained in Paragraph 13 of the First Amended Complaint.
43. These Defendants deny the allegations contained in Paragraph 43 of the First Amended Complaint and state that Elaine Butler was CFO of EMCO from August 17, 2006 to

December 31, 2018; CFO of Justice Holdings LLC from October 20, 2010 to December 31, 2018 and CFO of GSR from March 30, 2010 to December 31, 2018.

44. These Defendants deny they are accurately referred to as the “Declarant Board of Directors” and point out that current board member Allen Teinert was also a member of the GSVPOA Board of Directors.
45. These Defendants object to the allegations contained in Paragraph 45 as incomplete conclusions of law of the Uniform Common Interest Ownership Act W. Va. Code §36B-1-101 *et seq.*
46. These Defendants incorporate their response to the allegation contained in Paragraph 13 as to the definition of “Declarant Board of Directors” and further state they complied with all duties of board members during their period of service.
47. These Defendants deny the allegations contained in Paragraph 47 of the First Amended Complaint.
48. These Defendants deny the allegations contained in Paragraph 48 of the First Amended Complaint.
49. These Defendants deny the allegations contained in Paragraph 49 of the First Amended Complaint.
50. These Defendants deny the allegations contained in Paragraph 50 of the First Amended Complaint.
51. These Defendants deny the allegations contained in Paragraph 51 of the First Amended Complaint.
52. The 2010 Lease Agreement speaks for itself in its entirety.
53. The 2010 Lease Agreement speaks for itself in its entirety.

54. These Defendants deny the allegations contained in Paragraph 54 of the First Amended Complaint.
55. These Defendants deny the allegations contained in Paragraph 55 of the First Amended Complaint.
56. These Defendants deny the allegations contained in Paragraph 56 of the First Amended Complaint.
57. These Defendants deny the allegations contained in Paragraph 57 of the First Amended Complaint.
58. The 2010 Letter Agreement Speaks for itself in its entirety.
59. The 2010 Letter Agreement Speaks for itself in its entirety.
60. The 2010 Letter Agreement Speaks for itself in its entirety.
61. The 2010 Letter Agreement Speaks for itself in its entirety.
62. The 2010 Letter Agreement Speaks for itself in its entirety.
63. These Defendants deny the allegations contained in Paragraph 63 of the First Amended Complaint.
64. These Defendants deny the allegations contained in Paragraph 64 of the First Amended Complaint.
65. These Defendants deny the allegations contained in Paragraph 65 of the First Amended Complaint.
66. These Defendants deny the allegations contained in Paragraph 66 of the First Amended Complaint.
67. The 2011 Golf Course Agreement speaks for itself in its entirety.
68. The 2011 Golf Course Agreement speaks for itself in its entirety.

69. The 2011 Golf Course Agreement speaks for itself in its entirety.
70. The 2011 Golf Course Agreement speaks for itself in its entirety.
71. The 2011 Golf Course Agreement speaks for itself in its entirety.
72. These Defendants deny the allegations contained in Paragraph 72 of the First Amended Complaint.
73. These Defendants deny the allegations contained in Paragraph 73 of the First Amended Complaint.
74. These Defendants deny the allegations contained in Paragraph 74 of the First Amended Complaint.
75. These Defendants deny the allegations contained in Paragraph 75 of the First Amended Complaint.
76. These Defendants admit that in 2018 certain property owners of GSV desired to change the method for appointment of GSVPOA Board members.
77. These Defendants deny the allegations contained in Paragraph 77 of the First Amended Complaint.
78. These Defendants admit a new Board of Directors was elected in April 2019 and further incorporate their response to the allegations contained in Paragraph 13 of the First Amended Complaint.
79. These Defendants admit the allegations contained in Paragraph 79 of the First Amended Complaint.
80. The May 24, 2019 Letter referenced in Paragraph 80 of the First Amended Complaint speaks for itself and these Defendants further state Paragraph 80 of the First Amended Complaint contains incomplete conclusions of law.

81. These Defendants admit that the May 24, 2019 Letter sought to terminate the 2011 Golf Course Agreement as to Stonehaven and Woodhaven Golf Courses as of August 23, 2019.
82. These Defendants deny the allegations contained in the first sentence of Paragraph 82 of the First Amended Complaint and further state that the August 20, 2019 Letter attached as Exhibit 1 speaks for itself in its entirety.
83. These Defendants deny the allegations contained in Paragraph 83 of the First Amended Complaint.
84. These Defendants deny the allegations contained in Paragraph 84 of the First Amended Complaint.
85. These Defendants deny the allegations contained in Paragraph 85 of the First Amended Complaint.
86. These Defendants deny the allegations contained in Paragraph 86 of the First Amended Complaint.
87. These Defendants incorporate their responses to the allegations contained in Paragraphs 1-86 of the First Amended Complaint as their response to the allegations contained in Paragraph 87 of the First Amended Complaint
88. These Defendants deny the allegations contained in Paragraph 88 of the First Amended Complaint and state that the current Board of Directors has had access to all accounting information of the GSVPOA since May of 2018.
89. The 2003 Agreement speaks for itself in its entirety.
90. These Defendants deny the allegations contained in Paragraph 90 of the First Amended Complaint.

91. These Defendants deny the allegations contained in Paragraph 91 of the First Amended Complaint.
92. These Defendants deny the allegations contained in Paragraph 92 of the First Amended Complaint.
93. These Defendants deny the allegations contained in Paragraph 93 of the First Amended Complaint.
94. These Defendants deny the allegations contained in Paragraph 94 of the First Amended Complaint.
95. These Defendants deny the allegations contained in Paragraph 95 of the First Amended Complaint.
96. These Defendants deny the allegations contained in Paragraph 96 of the First Amended Complaint.
97. These Defendants deny the allegations contained in Paragraph 97 of the First Amended Complaint.
98. These Defendants deny the allegations contained in Paragraph 98 of the First Amended Complaint.
99. The 2011 Golf Course Agreement speaks for itself in its entirety.
100. These Defendants deny the allegations contained in Paragraph 100 of the First Amended Complaint.
101. These Defendants deny the allegations contained in Paragraph 101 of the First Amended Complaint.
102. These Defendants deny the allegations contained in Paragraph 102 of the First Amended Complaint.

103. These Defendants deny the allegations contained in Paragraph 103 of the First Amended Complaint.
104. These Defendants incorporate their response to the allegations contained in Paragraphs 1-103 as their response to the allegations contained in Paragraph 104 of the First Amended Complaint.
105. Upon information and belief, these Defendants deny the allegations contained in Paragraph 105 of the First Amended Complaint.
106. Upon information and belief, these Defendants deny the allegations contained in Paragraph 106 of the First Amended Complaint.
107. Upon information and belief, these Defendants deny the allegations contained in Paragraph 107 of the First Amended Complaint.
108. Upon information and belief, these Defendants deny the allegations contained in Paragraph 108 of the First Amended Complaint.
109. These Defendants incorporate their response to the allegations contained in Paragraphs 1-108 as their response to the allegations contained in Paragraph 109 of the First Amended Complaint.
110. These Defendants deny the allegations contained in Paragraph 110 of the First Amended Complaint and further state that any receivables due from the GSVPOA members are the responsibility of those individual members.
111. These Defendants deny the allegations contained in Paragraph 111 of the First Amended Complaint.
112. These Defendants deny the allegations contained in Paragraph 112 of the First Amended Complaint and its subparts as directed to these Defendants inasmuch as they

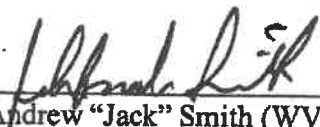
were not on the Board of Directors in 2001 and therefore did not enter into the Loan Agreement and Promissory Note with Cooper Land. These Defendants further state that the Loan Agreement and Promissory Note and subsequent Amendments thereto speak for themselves in their entirety. These Defendants further specifically deny all allegations of wrongdoing or fraud alleged in Paragraph 112 of the First Amended Complaint and state the discussions had at annual Board meetings speak for themselves in their entirety and the documents themselves reflect no impropriety by these Defendants.

113. The 2011 Letter Agreement speaks for itself in its entirety.
114. These Defendants deny the allegations contained in Paragraph 114 of the First Amended Complaint.
115. These Defendants deny the allegations contained in Paragraph 115 of the First Amended Complaint.
116. These Defendants deny the allegations contained in Paragraph 116 of the First Amended Complaint.
117. These Defendants incorporate their response to the allegations contained in Paragraphs 1-116 as their response to the allegations contained in Paragraph 117 of the First Amended Complaint.
118. Upon information and belief, these Defendants deny the allegations contained in Paragraph 118 of the First Amended Complaint.
119. Upon information and belief, these Defendants deny the allegations contained in Paragraph 119 of the First Amended Complaint.

120. These Defendants incorporate their response to the allegations contained in Paragraphs 1-119 as their response to the allegations contained in Paragraph 120 of the First Amended Complaint.
121. Upon information and belief, these Defendants deny the allegations contained in Paragraph 121 of the First Amended Complaint.
122. Upon information and belief, these Defendants deny the allegations contained in Paragraph 122 of the First Amended Complaint.
123. These Defendants incorporate their response to the allegations contained in Paragraphs 1-122 as their response to the allegations contained in Paragraph 123 of the First Amended Complaint.
124. These Defendants deny the allegations contained in Paragraph 124 of the First Amended Complaint.
125. All allegations in the First Amended Complaint not specially admitted herein are hereby denied.

Wherefore, these Defendants request Plaintiff be denied any other relief requested in the Ad Damnum Paragraphs of the First Amended Complaint, that these Defendants be awarded their costs and attorney fees in defending this action and for such further relief as the Court deems appropriate.

**ELMER COPPOOLSE, JAMES TERRY MILLER,
And B. ELAINE BUTLER
BY COUNSEL,**



John Andrew "Jack" Smith (WV Bar No. 3470)
Flaherty Sensabaugh Bonasso PLLC
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Charleston, WV 25301
Telephone: (304) 345-0200
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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,
a West Virginia non-profit corporation

Plaintiff,

v.

Civil Action No. 19-C-357

EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company;
ELMER COPPOOLSE, an individual;
JAMES TERRY MILLER, an individual; and
R. ELAINE BUTLER, an individual; and
GSR, LLC, a West Virginia limited liability company,

Defendants.

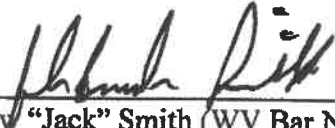
CERTIFICATE OF SERVICE

I, John Andrew "Jack" Smith, counsel for Elmer Coppoolse, B. James Terry Miller, and B. Elaine Butler, hereby certify that service of the "*Defendants Elmer Coppoolse, James Terry Miller, and R. Elaine Butler's Answer to First Amended Complaint*" has this 9th day of October, 2019 been served upon counsel of record by email and U.S. Mail to the following:

Kyle G. Lusk, Esq.
Lusk & Bradford, PLLC
220 N. Fayette Street
Beckley, WV 25801
Counsel for Defendants

Mark A. Sadd, Esq.
Romanda C. Marling, Esq.
Lewis Glasser PLLC
300 Summers Street Suite 700
Charleston, WV 25326
Counsel for Plaintiff

**ELMER COPPOOLSE, JAMES TERRY MILLER,
And B. ELAINE BUTLER
BY COUNSEL,**

A handwritten signature in black ink, appearing to read 'John Andrew Smith', is written over a horizontal line.

John Andrew "Jack" Smith (WV Bar No. 3470)
Flaherty Sensabaugh Bonasso PLLC
200 Capitol Street
Charleston, WV 25301
Telephone: (304) 345-0200
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Civil
Case Information
Tenth Judicial Circuit of Raleigh County

19-C-357

Judge: ROBERT A. BURNSIDE, JR

GLADE SPRINGS VILLAGE PROPERTY OWNERS VS. EMCO GLADE SPRINGS HOSPITALITY

Plaintiff(s)

Plaintiff Attorney(s)

GLADE SPRINGS
GLADE SPRINGS VILLAGE PROPERTY
RAMONDA C. MARLING

Defendant(s)

Defendant Attorney(s)

BUTLER, ELAINE B.
COPPOOLSE, ELMER
EMCO GLADE
EMCO GLADE SPRINGS HOSPITALITY
MILLER, JAMES TERRY

N/A

Date Filed: 08/14/2019

Case Type:

Appealed: 0

Final Order Date: N/A

Statistical Close Date: N/A

<u>Line</u>	<u>Date</u>	<u>Action / Result</u>
0001	08/14/2019	CASE FILED-ISSUED SUMMONS & COMPLAINT SENT TO ATTY FOR SERVICE
0002		(AMY) (CC)
0003	08/22/2019	AFFIDAVIT OF SERVICE 'PERSONAL' AS TO B. ELAINE BUTLER, 8/17/19.
0004		DP (VLS)
0005	08/22/2019	AFFIDAVIT OF SERVICE 'PERSONAL' AS TO ELMER COPPOOLSE, 8/17/19.
0006		DP (VLS)
0007	08/22/2019	AFFIDAVIT OF SERVICE 'PERSONAL' AS TO JAMES TERRY MILLER,
0008		8/17/19. DP (VLS)
0009	08/26/2019	NOTICE OF HEARING ON MOTION FOR EMERGENCY TEMPORARY RESTRAINING



0010 ORDER SET FOR AUG.28,2019 @ 3PM /CERT OF SERV. (AP)(VLS)

0011 08/27/2019 MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER W/EXHIBITS

0012 (AMY) (VLS)

0013 08/27/2019 FAX COVER LETTER PAGE FROM RAMONDA MARLING, TO PAUL FLANAGAN ON

0014 8/27/19, LETTER FROM LEWIS GLASSER TO PAUL FLANAGAN ON 8/27/19,

0015 CIVIL SHEET, VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER AND

0016 PRELIMINARY INJUNCTION AND SUPPORTING MEMORANDUM OF LAW, W/CERT

0017 OF SERV. (SJ) (LS)

0018 08/28/2019 PLAINTIFF GLADE SPRINGS VILLAGE PROPERTY OWNERS ASSOCIATION,

0019 INC'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR

0020 EMERGENCY TEMPORARY RESTRAINING ORDER W/CERT OF SERV. GLH(LS)

0021 08/26/2019 NOTICE OF HEARING ON MOTION FOR TEMPORARY RESTRAINING ORDER SET

0022 FOR AUGUST 28,2019 @ 3PM /CERT OF SERVICE. (AP) (VLS)

0023 08/28/2019 FIRST AMENDED COMPLAINT/CERT OF SERV. MBS (LS)

0024 08/29/2019 LETTER FROM LUSK & BRADFORD TO PAUL FLANAGAN ON 8/28/19, ANSWER

0025 TO PL'S MOTION FOR TEMPORARY RESTRAINING ORDER, W/CERT OF SERV.

0026 (SJ) (VLS)

0027 09/30/2019 VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY

0028 INJUNCTION AND SUPPORTING MEMORANDUM OF LAW W/EXHIBITS AND CERT

0029 OF SERV (FS) (LS)

0030 09/09/2019 NOTICE OF BONA FIDE DEFENSE W/CERT OF SERV (AMY) (VLS)

0031 09/10/2019 DEFTS' OBJECTION TO PROPOSED ORDER W/ CERT OF SREV. DP (LS)

0032 09/30/2019 TRANSCRIPT OF HEARING ON "PLTFS' VERIFIED MOTION FOR TEMPORARY

0033 RESTRAINING ORDER & PRELIMINARY INJUNCTION & DEFTS' MOTION FOR

0034 EMERGENCY TEMPORARY RESTRAINING ORDER" ON 8-28-19. (ADV) (LS)

0035 10/04/2019 ANSWER OF EMCO GLADE SPRINGS HOSPITALITY, LLC AND GSR, LLC TO

0036 FIRST AMENDED COMPLAINT W/ CERT OF SERV. DP (VLS)

0037 10/03/2019 ACCEPTANCE OF SERV 'PERSONAL' AS TO KYLE LUSK ON BEHALF OF EMCO

0038 GLADE SPRINGS HOSPITALITY, LLC. DP (LS)

0039 10/09/2019 DEFT ELMER COPPOOLSE, JAMES MILLER AND ELAINE BUTLER'S ANSWER TO

0040 FIRST AMENDED COMPLAINT W/CERT OF SERV (FS) (VLS)

0041 10/09/2019 AMENDED ANSWER TO EMCO GLADE PRINGS HOSPITALITY AND GSR LLC TO

0042 FIRST AMENDED COMPLAINT W/CERT OF SERV (FS) (VLS)

0043 10/11/2019 DEFTS ELMER COPPOOLSE, JAMES TERRY MILLER, AND R. ELAINE

0044 BUTLER'S ANSWER TO FIRST AMENDED COMPLAINT W/ CERT OF SERV.

0045 DP

