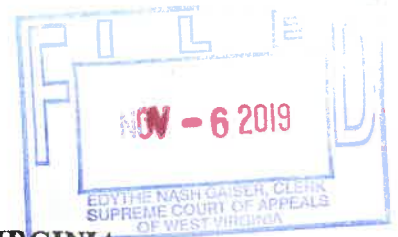


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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

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

Plaintiff,

v.

**Civil Action No. 19-C-357
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; and
R. ELAINE BUTLER, an individual; and
GSR, LLC, a West Virginia limited liability company,**

Defendants.

**DEFENDANTS ELMER COPPOOLSE, JAMES TERRY MILLER, AND B. ELAINE
BUTLER'S REPLY IN OPPOSITION TO PLAINTIFF'S MOTION TO REFER TO
BUSINESS COURT DIVISION**

Now come Defendants Elmer Coppoolse, James Terry Miller, and B. Elaine Butler, incorrectly named as "R. Elaine Butler", (collectively "Defendants") by counsel, John Andrew "Jack" Smith, and the law firm of Flaherty Sensabaugh Bonasso, PLLC, and pursuant to West Virginia Trial Court Rule 29.06(a)(4), submit their Reply in Opposition to Plaintiff Glade Springs Village Property Owners Association, Inc.'s ("Plaintiff") Motion to Refer to Business Court Division. This case does not require "specialized treatment" in Business Court. The Honorable Robert A. Burnside, Jr. ("Judge Burnside") is eminently capable of handling this case and the contractual issues it entails. The issues presented by Plaintiff's First Amended Complaint are not outside the expertise of Judge Burnside. Thus, the present case does not

warrant referral to the Business Court Division and should remain before Judge Burnside. In support of their Reply, Defendants state the following:

STATEMENT OF FACTS

1. Plaintiff originally filed Civil Action 19-C-357 against Defendants and Emco Glade Springs Hospitality, LLC ("Emco") in Raleigh County, West Virginia on August 4, 2019. The Complaint asserted counts of accounting and breach of contract against Emco under various contracts, and a count of breach of fiduciary duty against the "Declarant Board of Directors," which includes Defendants, under the Uniform Common Interest Ownership Act, W. Va. Code § 36B-1-101 *et seq.*
2. On or about August 28, 2019, Plaintiff filed its First Amended Complaint. The First Amended Complaint added GSR, LLC ("GSR") as a defendant and added it to the counts of accounting and breach of contract brought against Emco in the original Complaint.
3. On or about October 4, 2019, Emco and GSR filed an Answer to the First Amended Complaint. Emco and GSR later filed an Amended Answer to the First Amended Complaint on October 9, 2019.
4. Emco's and GSR's Amended Answer contained counterclaims against Plaintiff for breach of contract.
5. On October 9, 2019, Defendants filed their Answer to the First Amended Complaint.
6. On or about October 15, 2019, Plaintiff filed the pending motion to transfer this case to the Business Court Division.
7. The filing of this Reply is within twenty days of the filing of Plaintiff's Motion to Refer Business Court and is therefore timely. W. Va. Trial Court Rule 29.06(a)(4).

ARGUMENT

Plaintiff's Motion should be denied because the allegations at issue in Plaintiff's First Amended Complaint are not outside the expertise of Judge Burnside. This matter would not benefit from a transfer to Business Court. The case is properly in the Circuit Court of Raleigh County before Judge Burnside, who is adept at overseeing breach of contract actions. Stated simply, nothing will be gained by the transfer of this case to a Business Court judge.

The purpose of the Business Court Division is to address complex business issues that are outside the expertise of circuit court judges. Such complex commercial issues are eligible for referral to Business Court. In the preamble to West Virginia Trial Court Rule 29, Trial Court Rule 29.01, it states that the Trial Court Rules adopted "a process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses that includes the establishment of a Business Court Division to handle a specialized court docket within the circuit courts." W. Va. Trial Court R. 29.01. Pursuant to Trial Court Rule 29.04(a), "Business Litigation" is defined as one or more pending actions in circuit court in which: (1) the principal claims involve matters of significance to the transactions, operations, or governance between business entities; and (2) the dispute presents commercial and/or technological issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and (3) the principal claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial

policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as Landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies. W. Va. Trial Court R. 29.04(a).

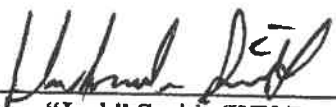
This matter is not outside of the expertise of this Court, as Judge Burnside is experienced and competent in presiding over breach of contract and breach of fiduciary duty cases. Judge Burnside is capable of providing a fair and reasonable resolution of this controversy to the parties. Specialized treatment is not required. In addition, the main issue in this litigation, *i.e.*, whether Defendants breached their statutory fiduciary duties to Plaintiff's members and permitted Emco and GSR to breach certain contracts with Plaintiff, is not a complex commercial issue requiring the need for specialized knowledge or expertise in the subject matter which necessitates referral to the Business Court. Thus, the parties will be best served if this case remains before Judge Burnside in Raleigh County.

Wherefore, these Defendants respectfully request this Court deny Plaintiff's Motion to transfer this case to the Business Court Division.

Respectfully submitted,

**ELMER COPPOOLSE, JAMES TERRY MILLER,
and B. ELAINE BUTLER**

BY COUNSEL,



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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 Reply in Opposition to Plaintiff's Motion to Refer to Business Court Division*" has this 31st day of October, 2019 been served upon counsel of record by email and U.S. Mail to the following:

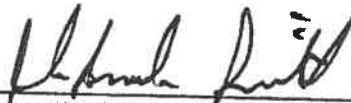
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