

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

Justice Holdings LLC

Plaintiff,

v.

Civil Action No.: 19-C-481

Honorable Robert A. Burnside, Jr.

Glade Springs Village Property Owners Association, Inc.

Defendant.

**REPLY MEMORANDUM OF JUSTICE HOLDINGS LLC
TO DEFENDANT’S MOTION TO REFER TO THE BUSINESS COURT DIVISION**

Pursuant to Trial Court Rule 29.06(4) and the Notice of February 25, 2020 from the Supreme Court of Appeals of West Virginia), Plaintiff, Justice Holdings LLC (“Plaintiff” or “Justice Holdings”), files this Reply Memorandum in opposition to Defendant’s Motion to Refer to the Business Court Division (“Motion”). The Chief Justice should deny the Motion because: 1) it does not meet the definition or requirements for referral; 2) it was filed only after Judge Burnside heard and granted in part Plaintiff’s motion to dismiss Defendant’s counterclaims, including all of Defendant’s purported claims under the West Virginia Consumer Credit and Protection Act; and 3) Judge Burnside has entered a Scheduling Order with a trial date of November 9, 2020, which is considerably more expeditious than any resolution could be achieved in Business Court.¹

This is a straightforward two-party action for breach of contract and specific performance. Plaintiff asks the Circuit Court of Raleigh County to enforce the terms of a written Loan Agreement and Revolving Note, as amended. To do so requires no specialized knowledge

¹ This is 5 months sooner than the Business Court has scheduled the trial date of a separate action filed 3 months earlier by the Defendant, but which does not include Plaintiff and involves vastly different issues.

or expertise, just an understanding of basic contract law, defenses and remedies. There is no showing that a referral to the Business Court Division is likely to improve the expectation of a fair trial, or to expedite consideration and resolution of the dispute. Judge Burnside, the Presiding Judge, has over 32 years on the bench. He is an accomplished, experienced jurist, who is more than capable of fairly and expeditiously resolving this action. Further, Judge Burnside has been actively engaged in ruling upon issues of law and expediting consideration and resolution of various issues in the action.

Defendant attempts to paint this action as an exotic, never before seen creature in West Virginia. It is not. Defendant asserts that issues it seeks to raise under the Uniform Common Interest Ownership Act (“UCIOA”) mandate the referral, while also excusing Defendant’s obligations under the Loan Agreement and Promissory Note, 19 years after they were first entered into and despite full performance thereunder by Plaintiff or its assignor.

The Trial Court Rules define “Business Litigation” eligible for transfer to the Business Court Division as litigation in which: 1) the claims involve transactions between business entities; 2) the dispute presents 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. W. Va. Trial Court Rule 29.04(a). Defendant’s Motion does not and cannot make the case that specialized treatment is likely to improve the expectation of a fair trial, or that there is a need for specialized knowledge or expertise in this case.

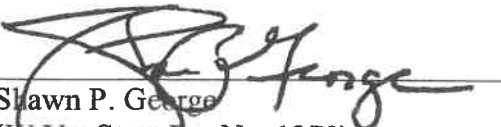
The factual background is not disputed. In 2001, Defendant GSVPOA first executed the Loan Agreement and Revolving Note to fund construction and installation of water, sewer and electric utilities to serve the Village of Glade Springs, which Defendant was obligated to fund and pay. Motion Ex. A, ¶ 5. On October 20, 2010, Justice Holdings purchased the Loan Agreement or Revolving Note, as a part of its purchase of certain assets. *Id.* Justice Holdings and its assignor installed the utilities and Defendant owns them, but has not paid for them. Motion Ex. A, ¶ 11.

The claims and counterclaims are not complex and Judge Burnside has already been actively engaged in addressing them, including various defenses Defendant has raised under the UCIOA. Plaintiff asserts Defendant has defaulted on the Loan by its failure to make payments when due as required under the Loan Agreement and Revolving Note. Motion Ex. A, ¶ 20-21. Defendant's Answer at ¶ 20, admits that Defendant failed to pay the Revolving Note as and when due and defaulted thereon. Judge Burnside has dismissed Defendants' WVCCPA counterclaims (Counts I, II, V, VI and VII) and Defendant has in response to Plaintiff's challenge, withdrawn Count XII. Defendant's six remaining counterclaims assert unconscionability (Motion Ex. B, Counterclaim Counts III and IV); request a declaratory judgment that the Loan Agreement and Revolving Note have been terminated (Ex. B, Counterclaim Count VIII); request an accounting (Ex. B, Counterclaim Count IX); assert a right to payment in cash for assessments credited against the loan balance (Ex. B, Counterclaim Count X); and allege a violation of the UCIOA provision regarding election of the executive board members of a common interest community (Ex. B, Counterclaim Count XI). None of these claims or counterclaims is beyond the knowledge or expertise of Judge Burnside on specific law

or legal principles, and referral does not improve the expectation of a fair and reasonable resolution of the controversy.

Wherefore, Plaintiff Justice Holdings asks the Chief Justice to deny the Motion for failure to meet the criteria set out in Trial Court Rule 29.04(a).

JUSTICE HOLDINGS LLC
By Counsel



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GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.

Defendant.

CERTIFICATE OF SERVICE

I Shawn P. George do hereby certify that I served Reply Memorandum of Justice Holdings LLC to Defendant's Motion to Refer to the Business Court Division upon counsel of record via US Mail this 3rd day of March, 2020, as follows:

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March 3, 2020

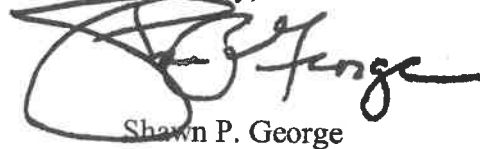
Edythe Nash Gaiser, Clerk
West Virginia Supreme Court of Appeals
State Capitol, Room E-317
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

RE: Justice Holdings LLC v. Glade Springs Village Property Owners
Association, Inc.
Civil Action No. 19-C-481

Dear Ms. Gaiser:

Enclosed is the Reply Memorandum of Justice Holdings LLC to Defendant's Motion to Refer to the Business Court Division. By copy of this letter, I have served counsel of record. Please call with any questions.

Sincerely,



Shawn P. George

cc: Honorable Robert A. Burnside, Jr. (Via US Mail)
Ramonda C. Marling, Esquire (Via US Mail)
Mark A. Sadd, Esquire (Via US Mail)
Lorri Stotler West Virginia Business Court Division
Paul Flanagan Circuit Clerk of Raleigh County