

**IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA
BUSINESS COURT**

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

Plaintiff,

v.

**Civil Action No. 19-C-357
Presiding Judge: Jennifer P. Dent
Resolution Judge: Michael D. Lorensen**

**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.

**ORDER DENYING EMCO AND GSR'S
MOTION FOR A PRELIMINARY INJUNCTION TO ENFORCE
SPECIFIC PERFORMANCE OF THE EASEMENT**

This matter came before the Court on *EMCO and GSR's Motion for Preliminary Injunction to Enforce Specific Performance of the Easement* (the "Motion"). Pursuant to the briefing schedule established by this Court, Plaintiff Glade Springs Village Property Owners Association, Inc. ("Plaintiff" or "POA") filed its response in opposition to the *Motion* and EMCO Glade Springs Hospitality, LLC ("EMCO") and GSR, LLC ("GSR") (collectively with EMCO, the "Moving Defendants") filed their reply memorandum. An evidentiary hearing was held on January 29, 2020. Stacey Arthur, Assistant Controller for GSR, testified on behalf of EMCO and GSR. David McClure, President of the POA, testified on behalf of the POA. As such, the *Motion* has been

fully briefed, the parties have developed an evidentiary record on the *Motion* and this matter is ripe for decision by this Court.

The *Motion* focuses upon the Deed of Easements and Licensees (the “DOE”) between GSR and the POA. To summarize, under the DOE GSR provides certain services such as security and maintenance to Glade Springs Village (“GSV”), which includes both Glade Springs Resort and the common interest community. *Motion*, Exh. 1. In turn, the DOE provides that the POA will reimburse GSR for the Easement Area Expenses (which include employee salaries associated with the services provided by GSR under the DOE) and GSR will tender $\frac{3}{4}$ of 1% of its monthly revenue to the POA for its share of Easement Area Expenses. *Id.*

In support of their *Motion*, EMCO and GSR presented evidence that the POA has not tendered payment to GSR under the DOE since May 2019 when the Elected Board of Directors assumed control of the POA. As such, the POA is allegedly in arrears under the DOE in the amount of \$611,501.36.¹ Further, the POA’s nonpayment under the DOE has placed GSR and EMCO in a financial crisis and it will be unable to tender wage payments to its employees and premium payments to the employees’ health plan provider during the month of February. EMCO and GSR request a preliminary injunction

The POA concedes that it has not tendered payments to GSR under the DOE since May 1, 2019, but argues that many of the charges under the DOE are in dispute and that it offset amounts purportedly due under the DOE against GSR’s arrearage under other contracts at issue in this matter. Considering each of the contracts at issue in this matter, the POA argues that EMCO and GSR continue to owe money to the POA.

¹ During the hearing, Ms. Arthur testified that another payroll had been made since the filing of the *Motion* and that the current arrearage is \$624,924.62. Defendant Hrg. Ex. 3

This Court having proper jurisdiction and having been fully advised of the matters herein, HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. Injunctive relief is a harsh remedy to be used only in cases of great necessity and is not looked upon with favor by the judiciary. *State ex rel. Bronaugh v. Parkersburg*, 148 W. Va. 568, 136 S.E.2d 783 (1964). The granting or refusal of an injunction, whether mandatory or preventive, calls for the exercise of sound judicial discretion in view of all the circumstances of the particular case with due regard to the nature of the controversy, the object for which the injunction is being sought, and the comparative hardship or convenience to the respective parties involved in the award or denial of the writ. Syl. Pt. 4, *State ex rel. Donley v. Baker*, 112 W.Va. 263, 164 S.E. 154 (1932).

The standard for issuance of a preliminary injunction under West Virginia law is well established:

[t]he customary standard applied in West Virginia for issuing a preliminary injunction is that a party seeking temporary relief must demonstrate by **a clear showing** of a reasonable likelihood of the presence of irreparable harm; **the absence of any other appropriate remedy at law**; and the necessity of a balancing of hardship test including: “(1) the likelihood of irreparable harm to the plaintiff without the injunction; (2) the likelihood of harm to the defendant with an injunction; (3) the plaintiff's likelihood of success on the merits; and (4) the public interest. *Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass’n*, 183 W. Va. 15, 24, 393 S.E.2d 653, 662 (1990) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley*, 756 F.2d 1048, 1054 (4th Cir. 1985)[)].

State ex rel. McGraw v. Imperial Mktg., 196 W. Va. 346, 352 n. 8, 472 S.E.2d 792, 798 n. 8 (1996) (emphasis added).

The burden of proof falls upon the movant, here EMCO and GSR, as the parties attempting to change the status quo to show that it is entitled to a preliminary injunction. *Camden-Clark Mem’l Hosp. Corp. v. Turner*, 212 W. Va. 752, 575 S.E.2d 362 (2002). The moving parties must satisfy each of the four factors to be entitled to preliminary injunctive relief.

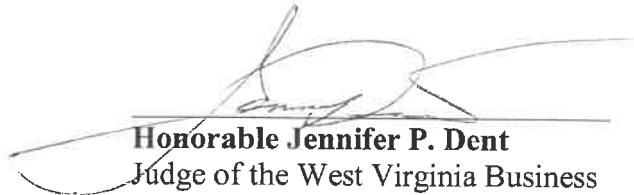
2. Based upon the record before the Court, EMCO and GSR have not carried their burden of proof. The claims and defenses asserted in this matter involve breach of contract claims under multiple contracts between the parties. EMCO and GSR posit that there is no dispute as to the validity of the DOE, that it has paid Easement Area Expenses (including employee wage payments) since May of 2019, and that the POA has not reimbursed GSR for those. From these premises, EMCO and GSR argue that they are entitled to a preliminary injunction compelling the POA to tender \$243,231.00 to GSR so that it can fund its payroll obligations.

3. In light of all the circumstances of this particular case and with due regard to the nature of the underlying controversies, *see* Syl. Pt. 4, *State ex rel. Donley v. Baker*, 112 W.Va. 263, 164 S.E. 154 (1932), this Court declines the invitation to consider the DOE in a vacuum, separate and apart from the remaining breach of contract claims asserted by the POA against EMCO and GSR in this matter. In addition, when considering the factors relevant to the issuance of a preliminary injunction, the Court finds that EMCO and GSR have failed to prove irreparable harm. GSR has argued that it cannot make payroll due to the POA's failure to pay, but this is a breach of contract case where monetary damages could make GSR whole should they prevail on the merits. Therefore, EMCO and GSR are not **irreparably** harmed by denial of injunctive relief. As to which party or parties will ultimately prevail, based on the entire case and not on the deed of easement alone, the Court finds that EMCO and GSR have not proved that they will likely be successful on the merits. Lastly, the Court finds that granting injunctive relief on a contract by contract basis, where there are multiple contracts and multiple alleged breaches, is contrary to public interest. As such, and based upon the evidence and argument presented during the hearing, EMCO and GSR have failed to carry their burden of proof necessary to entitle them to a preliminary injunction under *State ex rel. McGraw v. Imperial Mktg.*, 196 W. Va. 346, 352 n. 8, 472 S.E.2d 792, 798 n. 8 (1996).

WHEREFORE, it is hereby **ADJUDGED, ORDERED** and **DECREED** that *EMCO and GSR's Motion for Preliminary Injunction to Enforce Specific Performance of the Easement* is hereby **DENIED**.

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

ENTERED this 3rd day of March, 2020.


Honorable Jennifer P. Dent
Judge of the West Virginia Business
Court Division

The foregoing is a true copy of an order
entered in this office on the 06 day
of March, 2020.
PAUL H. FLANAGAN, Circuit Clerk of Raleigh Co., WV
By adw Deputy