

**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 MOTION FOR PROTECTIVE ORDER PROHIBITING  
SECOND DEPOSITION AND MOTION TO QUASH**

This matter came before the Court on the Plaintiff's *Motion for Protective Order Prohibiting Second Deposition and Motion to Quash* (the "Motion"). Pursuant to the *Briefing Order* entered by this Court, Defendants EMCO Glade Springs Hospitality, LLC and GSR, LLC (hereinafter "Defendants") filed their response in opposition to the Motion and Plaintiff Glade Springs Village Property Owners Association, Inc. (hereinafter "Plaintiff" or "GSVPOA") filed its rebuttal memorandum. As such, the Motion has been fully briefed and is now ripe for decision by this Court.

Plaintiff seeks a protective order prohibiting taking the second deposition of fact witness David McClure and an order quashing the subpoena issued to Mr. McClure for the second deposition. *See* Pl's Mot., p. 1. Alternatively, Plaintiff asks that any second deposition allowed by this Court be limited "solely topics not previously covered in his January 15, 2020 deposition

or based on a showing of new information on the previously covered topics”. See Pl’s Mem., p. 13.

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. As an initial matter, trial courts are given wide discretion to control the discovery process. See *Doe v. Wal-Mart, Inc.*, 558 S.E.2d 663, 673 (W. Va. 2001).

2. Rule 30 of the West Virginia Rules of Civil Procedure provides that “[a]fter commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination.” W. Va. R. Civ. Pro. 30.

3. West Virginia Rule of Civil Procedure 26 governs general provisions governing discovery. West Virginia Rule of Civil Procedure 26(b)(1) states:

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

W. Va. R. Civ. Pro. 26(b)(1). However, the Court shall limit discovery in the following instances:

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that:

- (A) The discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (B) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

*Id.*

4. Based on the Court's review of the motion and responsive pleadings, as well as the exhibits, the Court cannot conclude that prohibiting a second deposition of Mr. McClure is appropriate. The Court does not find that such a deposition would be unduly burdensome or cause annoyance or harassment. Simply, the Court does not find this request for a second deposition of Mr. McClure was brought in bad faith or is unreasonable.

5. The Court first considers that the first deposition of Mr. McClure held on January 15, 2020 lasted seven hours, and after seven hours, it was reasonable to conclude for the day. The Court agrees it would not have been practical for Mr. Spitz to have questioned Mr. McClure so late on January 15, 2020, and notes that he averred in the Response to the instant motion that he refrained from substantive questioning on that date to preserve his ability to question Mr. McClure on behalf of EMCO and GSR on another date. *See* Def's Resp., p. 2, 4. The Court notes that Mr. Spitz stated at the end of the day at the January 15, 2020 deposition that he intended to ask questions on behalf of his clients on another day.

6. Further, the Court considers that at the first deposition, half of that day was spent on another

litigation. As to the instant civil action, although counsel for the individual Defendants<sup>1</sup> in this matter questioned Mr. McClure, the Court notes and considers that counsel for separate Defendants EMCO and GSR did not ask substantive questions during the deposition. It is important to note it is undisputed that counsel for these entities did not get to question Mr. McClure and that it has been proffered that “several areas of inquiry and specific questions not asked by Individual Defendants’ counsel during the January 15, 2020 deposition which EMCO and GSR seek to obtain from McClure”. *See* Def’s Resp., p. 6. Further, it has been proffered that, specifically, invoices totaling \$842,190.49 were not discussed or attached as exhibits during the January 15, 2020 deposition and are central to the dispute at the heart of this case. *Id.* at 2. For these reasons, the Court does not find that the second deposition would be cumulative or duplicative.

7. The Court also does not conclude that the purpose of the second deposition would be to unduly burden Mr. McClure. Counsel for Defendant has proffered that he noticed the deposition to be held at the Resort at Glade Springs, the same neighborhood as Mr. McClure’s residence, and that he would be happy to reschedule the deposition to a time and place that would be more convenient for Mr. McClure if he wished. *See* Def’s Resp., p. 6. For these reasons, the Court does not make a finding of annoyance, harassment, or oppressive and unduly burdensome and expensive.

8. The Court also considers that counsel for Defendant has proffered that Mr. McClure is a key witness in this case and the only individual who possesses the information sought by EMCO and GSR through deposition, and that the information is not obtainable through some other source. *See* Def’s Resp., p. 5-6. Further, Defendant proffers some limited additional and new evidence

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<sup>1</sup> Defendants Elmer Coppoolse, James Terry Miller, and R. Elaine Butler have been referred as the “Individual Defendants” in many of the pleadings in this civil action.

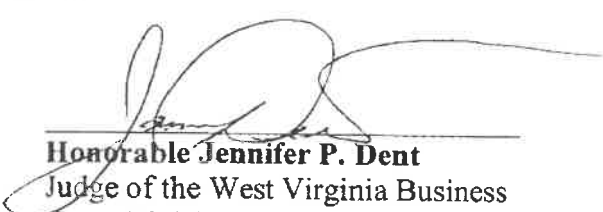
was produced after Mr. McClure's first deposition on January 15, 2020, including a new invoice. *Id.* at 4, 6; *see also Id.* at Ex. 4.

9. Taking into account all of the foregoing, the Court finds and concludes that the instant motion shall be denied and counsel for Defendants EMCO and GSR is permitted to take a deposition of Mr. McClure, as the requested second deposition is within the scope and limits of discovery permitted by West Virginia Rule of Civil Procedure 26. The Court finds that the deposition shall be taken at the convenience of Mr. McClure – either on the scheduled deposition date of March 13, 2020 or another date that is convenient with Mr. McClure's schedule, **but within 30 days of the entry of this order.** Further, the deposition location shall be at the Resort at Glade Springs as this is located conveniently to Mr. McClure's residence.

Therefore, it is hereby ADJUDGED, ORDERED and DECREED that Plaintiff's *Motion for Protective Order Prohibiting Second Deposition and Motion to Quash* 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 9<sup>th</sup> 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 09 day  
of March, 2020.  
PAUL H. FLANAGAN, Circuit Clerk of Raleigh Co., WV  
By ADJ Deputy