

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

**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 PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION TO
ENFORCE SPECIFIC PERFORMANCE OF THE EASEMENT**

This matter came before the Court upon Plaintiff Glade Springs Village Property Owners' Association, Inc.'s (hereinafter "Plaintiff" or "POA") Motion for Preliminary Injunction to Enforce Specific Performance of the Easement. The parties have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. On a prior day, Plaintiff filed the instant Motion for Preliminary Injunction to Enforce Specific Performance of the Easement, seeking a preliminary injunction compelling Defendant, GSR, LLC (hereinafter “Defendant”, “GSR”, or “the Resort”) to permit Plaintiff to directly provide security services within Glade Springs Village to its members as a result of the Resort providing reduced security services at Glade Springs Village. *See* Pl’s Mot., p. 2.

2. Thereafter, Defendant filed GSR, LLC’s Response to Plaintiff’s Motion for Preliminary Injunction to Enforce Specific Performance of the Easement, arguing the motion should be denied because Plaintiff is in breach of the parties’ agreements, including the Deed of Easement, by failing to pay invoices for security and road maintenance since May 2019, and that the Plaintiff does not meet the factors required for a preliminary injunction. *See* Def’s Resp., p. 1, 4, 7-8.

3. No Reply was filed.

4. The Court now finds the instant Motion is ripe for adjudication.

CONCLUSIONS OF LAW

Plaintiff filed the instant Motion for Preliminary Injunction to Enforce Specific Performance of the Easement, seeking a preliminary injunction compelling Defendant, GSR, LLC (hereinafter “Defendant” or “the Resort”) to permit Plaintiff to directly provide security services within Glade Springs Village to its members as a result of the Resort providing reduced security services at Glade Springs Village. *See* Pl’s Mot., p. 2. Plaintiff argues that pursuant to Rule 65 of the West Virginia Rules of Civil Procedure and West Virginia Code §53-5-8, it should be entitled to the entry of a preliminary injunction prohibiting the Resort from interfering

with Plaintiff's easement rights/efforts to provide different security services to its members. *Id.* at 5.

The instant motion focuses upon the Deed of Easements and Licenses (the "DOE") between GSR and the POA, attached as Exhibit 6 to the instant motion. As summarized in this Court's prior Order entered March 6, 2020, under the DOE, GSR provides certain services, including security and road maintenance to Glade Springs Village ("GSV"), which includes both Glade Springs Resort ("the Resort") and the common interest community. *See* the DOE, Exhibit 6 to the POA's *Motion*. 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.* The Court notes it is undisputed that the DOE is valid and binding upon the parties. *See* the POA's *Motion* and GSR's *Response*.

This Court explained the standard for granting or denying a preliminary injunction in its aforementioned March 6, 2020 Order. As this Court previously explained, 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 plaintiffs 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 the POA, as the party 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 party must satisfy each of the four factors to be entitled to preliminary injunctive relief.

Factor 1: Irreparable Harm

First, the Court analyzes the first factor for issuance of a preliminary injunction, the likelihood of irreparable harm to the plaintiff without the injunction (*see Jefferson County Bd. of Educ.* at 662), and finds Plaintiff has not made a showing of irreparable harm sufficient for the issuance for the entry of a preliminary injunction.

Plaintiff argues it is suffering irreparable harm due to the reduced security coverage – that because Defendant has stopped routine patrols, “[e]ach day the lives and property of the members are placed in jeopardy by the lack of security”, and that the preliminary injunction would “alleviate [its members’] fear, anxiety and unrest”. *See* Pl’s Mot., p. 8

However, the Defendant has proffered to the Court that it has not stopped security services; rather, it has reduced them due to Plaintiff’s nonpayment of security invoices. Defendant proffers in the Response that with regard to Glade Springs Village (the area which Plaintiff analyzes in the

motion), security still responds to all emergency matters, screens guests and packages at the Gatehouse, serves as dispatch officer and accompanies first responders, and maintains security files for all contractors that enter the Village. *See* Def's Resp., p. 5. Accordingly, the Court finds Plaintiff's burden of showing irreparable harm has not been met.

Factor 2: Likelihood of Harm to Defendant

Second, the Court considers the second factor for issuance of a preliminary injunction, likelihood of harm to the defendant with an injunction. *Jefferson County Bd. of Educ.* at 662. As an initial matter, the Court notes that Defendant has averred it has a "substantial interest in providing, controlling, and monitoring security services and access because it depends on such access, and the security of such access, to operate its business (lodging, food, golf, etc.)". *See* Def's Resp., p. 12; *see also* Def's Resp., Ex. 4.

Further, the Court considers that the DOE only grants the POA the right to provide security services or restrict access if GSR determines "not to employ security guards or otherwise not to restrict access into Glade Springs Resort." *See* DOE at ¶ 2. Similarly, pursuant to Paragraph 10 of the Deed of Easements, the POA may only assume responsibility for maintenance, repair and operations of the Roads and Common Properties if the Resort transfers this right to the POA. *See Id.* at ¶ 10.

The Court finds that GSR has not made such a determination, has not discontinued its employment of security guards or maintenance personnel, has not stopped restricting access, has not stopped providing security and road maintenance services, and has not transferred any services or rights to the POA. As conceded by the POA, GSR is still providing security and road maintenance services at reduced levels throughout all of GSV. GSR proffered this is because of the reduced monies as a result of Plaintiff not paying invoices for these services since May 2019.

GSR has proffered it is still screening packages and guests and still providing emergency security response. Therefore, under the plain language of the DOE, the POA's ability to assume control over these services has not been triggered because the pre-condition for the POA assuming control – namely, GSR agreeing to let the POA take control or GSR failing to provide – has not been met. For that reason, an injunction surrendering Defendant's right to provide security and road services, and giving that right to Plaintiff, would be likely to harm Defendant, given the agreed-to terms of the DOE, and the substantial interest Defendant has in retaining these services for its business interests. Accordingly, the Court finds the second factor has not been met.

Factor 3: Plaintiff's Likelihood of Success on the Merits

Third, the Court considers the third factor for issuance of a preliminary injunction, the plaintiff's likelihood of success on the merits. *Jefferson County Bd. of Educ.* at 662. The Court, like in the previous section, considers that the DOE only grants the POA the right to provide security services or restrict access if GSR determines “not to employ security guards or otherwise not to restrict access into Glade Springs Resort.” Accordingly, the Court finds this fact creates doubt that the Plaintiff would be likely to succeed on the merits in seeking a final injunction.

Aside from that, the Court finds and considers that the Resort has proffered that Plaintiff has not paid invoices for road and security services since May 2019. *See* Def's Resp., p. 1. The Court notes that Plaintiff has the ability to solve and fix the problem regarding a reduction in services by payment. *Id.* at 2. Indeed, it has been proffered to the Court that Plaintiff has collected money from the members for these services. *Id.*

The POA's admitted refusal to remit payment to GSR under the DOE since May 1, 2019, coupled with the plan language of the DOE, foreclose the POA from making the “clear showing”

necessary for it to obtain preliminary relief. *State ex rel. McGraw v. Imperial Mktg.*, 196 W. Va. 346, 352 n. 8, 472 S.E.2d 792, 798 n. 8.

Further, the POA is not entitled to specific performance because it has “unclean hands” in its performance of the DOE. It is a well-settled tenet of contract law that specific performance of contract is an equitable remedy. *See Big Huff Coal Co. v. Thomas*, 76 W. Va. 161, 173, 85 S.E. 171, 176 (1915) (“Specific performance is not a matter of right, but is purely an equitable remedy, resting in sound judicial discretion; and a party who does not show himself to have been ready, prompt and eager to comply with his contract, will be denied the relief.”). Further, “[o]ne who seeks equity must have clean hands.” *St. Luke's United Methodist Church v. CNG Dev. Co.*, 222 W. Va. 185, 193, 663 S.E.2d 639, 647 (2008) (citing *Pittsburgh & W. Va. Gas Co. v. Nicholson*, 87 W. Va. 540, 547-48, 105 S.E. 784, 787 (1921) (“It is a maxim of equity that he who comes into equity must come with clean hands. Equity will not open its doors to entertain one who seeks its aid for the purpose of violating a contract.”)).

The POA does not have “clean hands” here because it admits that it has not reimbursed GSR for security and road maintenance services since May 2019. *See* Pl.’s Disc. Responses at Req. for Admission No. 7. Reimbursement for these services, however, is mandatory under the DOE and the POA is required to make such reimbursement upon receipt of GSR’s invoices. *See* Paragraph 3(b) of the DOE. The obligation of the POA to immediately reimburse GSR upon receipt of GSR’s invoices is unconditional. *Id.* While the POA has the right to review and audit the Resort’s records related to its expenditures for security and road maintenance, the DOE recognizes that these audit rights are not a precondition to the POA’s obligation to immediately reimburse GSR – which is why the DOE specifically acknowledges that GSR’s invoices are “the estimated entire amount of the preceding month's Glade Costs.” *Id.* The POA’s nearly yearlong

violation of the DOE bars it from seeking the specific performance it requests. *See Big Huff*, 76 W. Va. 161, 173, 85 S.E. 171, 176; *St. Luke's*, 222 W. Va. 185, 193, 663 S.E.2d 639, 647; and *Pittsburgh & W. Va. Gas Co.*, 87 W. Va. 540, 547-48, 105 S.E. 784, 787. For all of these reasons, the Court finds that the third factor has not been met.

Factor 4: Public Interest

Finally, fourth, the Court considers the fourth factor for issuance of a preliminary injunction, the public interest. *Jefferson County Bd. of Educ.* at 662. Plaintiff argues this factor is satisfied because the granting of the motion would allow it to employ its own private security choice to GSV, serving “several hundred residents”. *See* Pl’s Mot., p. 8. Plaintiff avers that aside from criminal or abuse and neglect proceedings, it can “contemplate few judicial actions that would serve a higher public interest than facilitating the protection of thousands of hundreds [sic] of people”. *Id.*

The Court does not find this argument persuasive. As mentioned previously in this Order, the residents of GSV are still receiving security services, including the screening of all guests and packages at the Gatehouse. The Court finds that instead, it is in the public interest for the parties contract/billing disputes to be resolved through the civil litigation process, rather than transferring responsibility for security/road services via preliminary injunction because of monetary disputes. For these reasons, the Court finds Plaintiff has not met its burden with regard to the fourth factor.

In conclusion, the Court finds and concludes that Plaintiff has not met its burden with any of the necessary factors for issuing a preliminary injunction. *See Jefferson County Bd. of Educ.* at 662. Accordingly, Plaintiff’s Motion for Preliminary Injunction to Enforce Specific Performance of the Easement must be denied.


CONCLUSION

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

The Court notes the objections of the parties to any adverse ruling herein.

The Clerk is directed to enter this Order as of the date first hereinabove appearing, and send attested copies to all counsel of record, as well as to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 20th day of May 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 20 day
of May, 2020.
PAUL H. FLANAGAN, Circuit Clerk of Raleigh Co., WV
By ABW Deputy