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CC-41-2019-C-357
Raleigh County Circuit Clerk
Paul H. Flanagan

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 GRANTING DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION

This matter came before the Court on the Defendants' *Motion for Preliminary Injunction to Enforce the Declaration of Covenants and Restrictions* (the "Motion"). The Plaintiff, Glade Springs Village Property Owners Association, Inc., by counsel, Mark A. Sadd, Esq. and Ramonda C. Marling, Esq., and Defendants, EMCO Glade Springs Hospitality, LLC and GSR, LLC, by counsel, Kevin A. Nelson, Esq. and Arie M. Spitz, Esq., 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.

Defendants EMCO Glade Springs Hospitality, LLC and GSR, LLC (hereinafter "Defendants", "EMCO and GSR", or "the Resort") seek the entry of an Order from this Court

requiring Plaintiff Glade Springs Village Property Owners Association, Inc. (hereinafter "Plaintiff" or "POA") "to immediately cease operation of its new restaurant, known as 'The Haven', which is located at the POA's Woodhaven Golf Course property". *See* Defs' Mot., p. 1.

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:

I. Procedural History

1. On a prior day, EMCO and GSR filed the instant Motion seeking entry of a preliminary injunction enjoining the POA from operating its restaurant, The Haven, which is located on the POA's Woodhaven Golf Course property. *See* Defs' Mot., p. 1.

2. Thereafter, the POA filed a Response in Opposition to the Motion, asserting several factual and legal challenges to the same. *See* Pl's Resp.

3. EMCO and GSR then filed a Reply to the POA's Response, rebutting the arguments contained therein. *See* Defs' Reply.

4. Finally, the POA filed a Sur-Reply in Opposition to EMCO and GSR's Motion for Preliminary Injunction. *See* Pl's Sur-Reply.

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

II. Conclusions of Law

6. Defendants seek in the instant motion the entry of a preliminary injunction enjoining the POA from operating its restaurant, The Haven, which is located on the POA's Woodhaven Golf Course property. *See* Defs' Mot., p. 1. Defendants argue this is appropriate because the POA is operating The Haven in direct competition with Defendants' restaurants, in violation of a non-competition covenant the POA is bound to in the Declaration of Covenants and

Restrictions for Glade Springs Village, West Virginia. *Id.*; *see also* Def's Reply, Ex. 2.

7. Plaintiff, on the other hand, argues Defendants cannot enforce the covenants because they are not the original covenantee of the Declaration of Covenants and Restrictions. Instead, Plaintiff argues the original covenantee of the Declaration of Covenants and Restrictions is Glade Springs Resort, L.L.C., also and formally known as Glade Springs Resort Limited Liability Company, an entity which no longer exists as it terminated in 2015. *See* Pl's Resp., p. 3, 4-5. Further, Plaintiff avers the only parties to the Declaration of Covenants and Restrictions were Cooper Land Development and Plaintiff POA. *Id.* at 3.

8. As an initial matter, the Court notes the POA asserted it has two member owned golf courses and clubhouses called Stonehaven and Woodhaven. *See* Pl's Resp., p. 5.

9. By deed dated May 4, 2001, Glade Springs Resort Limited Liability Company conveyed unto Cooper Land Development 463 acres. *See* Def's Reply, p. 3. This deed acknowledged that Glade Springs Resort Limited Liability Company and Cooper entered into an Agreement for Sale of Real Property that covered the eventual sale of 2,950 acres; however, this deed conveyed only 463 of those 2,950 acres, while acknowledging that the parties entered into an Option Agreement that granted Cooper a lease on the remaining property and the exclusive right to purchase the remaining parts of the property in segments. *Id.*

10. This deed contains a non-compete clause containing an exception that Glade Springs Resort Limited Liability Company "consents that...[the POA] may own and operate...other recreational amenities to be constructed on the Property east of Glade Creek, including a food service operation, with alcohol sales, at the clubhouses and other facilities serving

such amenities"[1]. *Id.* The Court notes the Woodhaven property was not included in the 463 acres conveyed by this deed. *Id.* at 4.

11. Shortly thereafter, on May 25, 2001, Cooper Land Development, Inc. and Plaintiff Glade Springs Village Property Owners Association Inc. executed the Declaration of Covenants and Restrictions (hereinafter "Declaration") which incorporated Protective Covenants, including a non-compete clause which does not contain an exception to permit competition via operation of a golf course or restaurant. *Id.* The Court notes that Woodhaven golf course (as well as Stonehaven golf course) were not included in this original Declaration. *Id.*

12. On or about September 5, 2003, Supplemental Declarations were executed which annexed the Stonehaven golf course property, making Stonehaven subject to the original Declarations, including the non-compete provision. *Id.*

13. By deed dated August 6, 2004, Glade Springs Resort Limited Liability Company conveyed all the Resort property it owned to Defendant EMCO. *Id.* EMCO acknowledged that the POA could own and operate a golf course and food service on Woodhaven[2]. *Id.* EMCO did not acknowledge that the POA could own and operate a golf course and food service on Stonehaven. *Id.* The Court finds that at the time, the chain of title as presented to the Court, appears to reflect that this acknowledgement was valid because the Woodhaven golf course property had not yet been conveyed or annexed into the Declarations, unlike the Stonehaven golf course property.

14. By deed dated December 14, 2009, Defendant EMCO conveyed the resort

[1] The Court notes Plaintiff refers to this exception to the non-compete clause as the "Use Consent" in its Response and Sur-Reply to the instant motion. *See* Pl's Resp., p. 10.
[2] The Court notes this tract of property was referred to as the "Cooper Option Property". *Id.*

properties to Defendant GSR, LLC. *Id.* **To be clear, the Court notes Defendant GSR, LLC is not the same entity as Glade Springs Resort Limited Liability Company, the entity referred to previously in the chain of title.** This deed acknowledged it was made subject to the covenants and restrictions contained in the former deeds in the chain of title. *Id.*

15. Then, by deed dated February 10, 2010, Glade Springs Resort Limited Liability Company conveyed to Cooper Land Development, Inc. the tract of property that is now the Woodhaven properties. *Id.* Via this deed, Cooper exercised part of its option by purchasing part of the "Cooper Option Property" that is now the Woodhaven properties. *Id.*

16. Thereafter, on May 4, 2010, a Supplemental Declaration was executed by Glade Springs Resort Limited Liability Company and Cooper Land Development, Inc., annexing the Woodhaven golf course property, and making Woodhaven subject to the original Declarations, including the non-compete clause. *Id.* at 5; *see also* Def's Reply, Ex. 8. The Court notes the Supplemental Declaration did not contain an exception to the non-compete clause. *Id.*

17. The Court also notes its review of the Supplemental Declaration reveals the property was described in the Supplemental Declaration by metes and bounds and was labeled "WOODHAVEN GOLF COURSE". *See* Def's Reply, Ex. 8, p. 2-6. Further, the Court notes the Supplemental Declaration contained the following statement: "it is the desire of the Developer [Cooper Land Development, Inc.] that the properties hereinafter described shall be covered as fully by the Declaration aforesaid [the May 25, 2001 Declarations of Covenants and Restrictions with Protective Covenants (with Record Book back reference)] as though said tract had been included with the other property described in said Declaration". *Id.* at 1.

18. By quitclaim deed dated October 6, 2010, Cooper Land Development, Inc.

quitclaimed onto Plaintiff Glade Springs Village Property Owners Association, Inc. the Woodhaven golf course property. *Id.*; *see also* Def's Reply, Ex. 9. This quitclaim deed specifically states that the conveyance is made subject to the covenants and restrictions contained in the Declaration, including the Protective Covenants, as well as those set forth in the Supplemental Declaration executed for Woodhaven. *Id.*; *see also Id.* at 9. The Court notes this quitclaim deed does not contain an exception to the non-compete clause.

19. In 2015, Glade Springs Resort Limited Liability Company, also referred to as Glade Springs Resort, L.L.C., was terminated and dissolved. *See* Pl's Resp., p. 4. This is not to be confused with Defendant GSR, LLC, which is a separate business entity which has not terminated.

20. Since 2010, the Resort has ran and maintained golf operations on Stonehaven and Woodhaven, including The Haven restaurant, and not the POA. *See* Def's Reply, p. 5. In fact, the POA has never operated a restaurant in Glade Springs Village since the inception of the POA until now. *See* Def's Mot., p. 3. Specifically, EMCO managed Woodhaven and Stonehaven for the POA and EMCO provided food and beverage services at Woodhaven Clubhouse, known as Woodhaven Community Center[3]. *See* Pl's Resp., p. 6.

21. . In 2019, the POA admits in its Response that it "discharged EMCO as its manager". *Id.* However, the Court notes that its review of the Affidavit of David McClure, attached to Plaintiff's Response as Exhibit G, reveals that Mr. McClure stated that in August 2019, EMCO "unilaterally withdrew from providing food and beverage services at the Woodhaven Clubhouse". *See* Pl's Resp., Ex. G, p. 3. At any rate, the Court finds that in August 2019, evidence was proffered that EMCO stopped providing and operating food and beverage services at the Woodhaven golf

[3] At the same time, Plaintiff averred EMCO managed the Resort at Glade Springs for Defendant GSR, LLC and managed GSR's hotel and restaurant at the Resort at Glade Springs. *Id.*

course property.

22. Specifically, according to the Affidavit of David McClure, attached to Plaintiff's Response as Exhibit G, from approximately March 2010 to August 23, 2019, EMCO provided food and beverage services at the Woodhaven Clubhouse. *See* Pl's Resp., Ex. G, p. 3.

23. According to the Affidavit of David McClure, beginning in May 2020 and at least through early July 2020, upon information and belief, GSR and EMCO refused to provide food and beverage services to POA members from GSR's own facilities at the Resort at Glade Springs. *See* Pl's Resp., Ex. G, p. 3.

24. It appears undisputed by the parties that the POA opened The Haven at Woodhaven in May 2020. According to the Affidavit of David McClure proffered by Plaintiff, the POA opened The Haven at the Woodhaven Clubhouse, serving food and beverages beginning in May 2020[4]. *Id.* Defendants proffered evidence in their motion that on May 1, 2020, the POA sent an email to its members stating that "[b]eginning Monday morning, May 4th the Woodhaven Pro Shop will be open to members and guests...Once the restrictions for restaurants with inside seating [due to the COVID-19 pandemic] is lifted, we will be opening the Haven for golfer to enjoy before and/or after their round of golf". *See* Def's Mot., p. 3-4.

Factors for Issuance of Preliminary Injunction

25. Pursuant to W.Va, Code § 55-5-1, et. seq., and Rule 65 of the West Virginia Rules of Civil Procedure, Circuit Courts have authority, prior to the final adjudication of a case, to issue a preliminary injunction, if a party establishes the necessity for such an injunction.

[4] The Court notes Plaintiff averred in its Response that GSR "loosened" its policy of refusing to provide food and beverage services to POA members from GSR's own facilities at the Resort at Glade Springs on or about July 3, 2020. *See* Pl's Resp., p. 6, 17.

26. 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).

27. 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).

28. The burden of proof falls upon the movant, here the Defendants, 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

29. 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 Defendants have made a showing of a serious risk to significant and substantial irreparable harm sufficient to support the issuance for the entry of a preliminary injunction.

30. Defendants proffered the Resort is losing substantial revenue caused by customers eating at The Haven rather than the Resort's restaurants. *See* Def's Mot., p. 8. The Court notes that Defendants argue this substantial revenue is impossible to calculate with absolute certainty, causing monetary damages to be an inappropriate remedy. *Id.*

31. Moreover, the Defendants argue that Article XVII, Section of the Declaration provides for equitable relief. *See* Def's Reply, p. 6. The Supreme Court of Appeals recently considered a preliminary injunction which was granted, in part, to preserve monetary assets. *Ne. Nat. Energy LLC v. Pachira Energy LLC*, No. 18-1034, 2020 W. Va. LEXIS 374 (June 12, 2020). Although *Pachira* was largely decided based upon the Partnership Act, the Supreme Court of Appeals' reasoning is relevant to the instant Motion. Similar to Partnership Act, Article XVII, Section 6 of the Declaration specifically permits either party to initiate a proceeding **in equity** to restrain violation against any person or entity violating any covenant, condition or restriction contained therein. *See* Exhibit 1 to Defs' Mot., GSVPOA-000817. Further, like *Pachira*, the contemporary wrong at issue here – namely, the POA's competition with the Resort – is not only likely but is certain to continue.

32. The Court finds that here, the right to obtain relief in equity was specifically bargained for and included in the Declaration, and the POA took title to Woodhaven subject to the

Declaration, and for this reason, the Court finds issuance of a preliminary injunction – rather than monetary damages – constitutes a valid remedy between the parties.

33. Furthermore, upon considering the harm to Defendant, the Court notes there exists a limited customer pool for restaurant businesses in Glade Springs Village. *See* Def's Mot., p. 9. It was proffered in the instant motion that Glade Springs Village is a small, gated community wherein the opportunity for the Resort to generate revenue through its restaurant businesses is limited to Resort guests and POA members. *Id.* at 8.

34. A review of the deeds, declarations, and covenants in the chain of title presented to the Court, as outlined above, shows a common goal of such instruments was to limit competition at the Resort, so the Resort could remain afloat and thrive, to the benefit of all members, guests, and residents, given the limited customer pool that exists. The elimination of this type of irreparable harm would be precisely why such a non-compete clause was included in the Declaration, of which the quitclaim deed the POA took the property from was subject to. *See* Def's Mot., p. 9.

35. Further, for years, the Resort has not had any competition with regard to its restaurants. In fact, the POA has never operated a restaurant in Glade Springs Village since the inception of the POA until May 2020, a period after the filing of this lawsuit. *See* Def's Mot., p. 3.

36. Since 2010, when the property encompassing Woodhaven was added, the Resort has ran and maintained golf operations on Stonehaven and Woodhaven, including The Haven restaurant, and not the POA. *See* Def's Reply, p. 5. Evidence was proffered to the Court showing it wasn't until May 2020 that the POA began operating any restaurant at the Resort, when it began

operating The Haven. *See* Pl's Resp., Ex. G. According to the Affidavit of David McClure proffered by Plaintiff, the POA opened The Haven at the Woodhaven Clubhouse, serving food and beverages beginning in May 2020. *See* Pl's Resp., Ex. G, p. 3.

37. The Court considers the law's requirement to consider the status quo. The burden of proof falls upon the movant, here the Defendants, 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).

38. Here, for years, the status quo was that the POA did not compete with the Resort regarding food service/restaurants at Glade Springs Village, and the Resort was able to operate the same without competition. This matter is before the Court as a preliminary injunction. At this stage, the Court finds the factor of danger of irreparable harm supports not changing this status quo, until all legal arguments are fully resolved through trial or otherwise.

Factor 2: Likelihood of Harm to POA

39. 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. Here, as it is the Defendants' motion, the Court analyzes the potential for harm to the POA with the issuance of the instant preliminary injunction.

40. Again, the Court considers the status quo. The POA existed for years without relying on income from Resort restaurants. Rather, the POA has enjoyed a regular stream of income through assessments of its members. *See* Def's Mot., p. 9. The POA did not dispute this in its Response. *See* Pl's Resp. The POA only very recently, in May of 2020, while this litigation was pending, began operating a restaurant at Glade Springs Village. As such, the Court does not

find likelihood of harm to the POA with an injunction.

41. Additionally, the Court considers Plaintiff's argument regarding harm to it in the Response, wherein it averred it has expended capital to open The Haven for the Spring and Summer 2020 seasons, and a preliminary injunction will impair those resources. *See* Pl's Resp., p. 18. The Court finds the risk of this type of harm to Plaintiff can and should be protected at this stage by the issuance of a bond, which is more fully discussed below.

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

42. 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. Here, as Defendants brought the instant motion, the Court is considering Defendants' likelihood of success on the merits.

43. The Court considers the chain of title presented to it, and analyzes the Declaration and protective covenants. The POA took the instant property subject to the quitclaim deed from Cooper in 2010, knowing it was subject to the Declaration. By quitclaim deed dated October 6, 2010, Cooper Land Development, Inc. quitclaimed onto Plaintiff Glade Springs Village Property Owners Association, Inc. the Woodhaven golf course property. *See* Def's Reply, p. 4; *see also* Def's Reply, Ex. 9. This quitclaim deed specifically states that the conveyance is made subject to the covenants and restrictions contained in the Declaration, including the Protective Covenants, as well as those set forth in the Supplemental Declaration executed for Woodhaven. *Id.*; *see also Id.* at 9. The Court notes this quitclaim deed does not contain an exception to the non-compete clause.

44. At the preliminary injunction stage, the Court finds the chain of title of record does supports Defendants' likelihood of success on the merits. However, the Court acknowledges that

the legalities of the issue have yet to be determined and will develop through the instant civil action. The Court considers Plaintiff's arguments, one of which is that Defendant GSR, LLC is not a valid successor in interest. *See* Pl's Resp., p. 9. While this and other arguments discussed by Plaintiff may be developed in this litigation, the Court finds that at this stage, the status quo is the POA, prior to litigation, did not compete against the Resort in food service. For these reasons, the Court must weigh this factor in favor of Defendants at this stage of the litigation.

Factor 4: Public Interest

45. Finally, fourth, the Court considers the fourth factor for issuance of a preliminary injunction, the public interest. *Jefferson County Bd. of Educ.* at 662.

46. Plaintiff's sole argument in support of this factor is that if The Haven were to close, the workers employed there would have to be laid off for the foreseeable future, a circumstance not in the public interest. *See* Pl's Resp., p. 9.

47. While the Court is sympathetic, the non-compete clause was adhered to for many years. The POA was on notice of this requirement when it took the property by quitclaim deed. Because the POA decided to operate a restaurant recently in possible contravention of that covenant, an issue that has yet to be litigated, the risk of loss of jobs for the workers at that restaurant does not create the public interest consideration appropriate for the support of a denial of a preliminary injunction.

48. Further, the Court notes that it was proffered in the Motion that staff at Resort restaurants left those restaurants to work at The Haven. *See* Def's Mot., p. 8.

49. In conclusion, the Court finds and concludes that Defendants have met their burden with regard to the necessary factors for issuing a preliminary injunction. *See Jefferson County Bd.*

of Educ. at 662. Accordingly, the instant Motion should be granted upon consideration of the necessary factors.

50. The Court will address other arguments set forth in the briefing on the instant motion, standing and the applicability of the Declaration to common property, as well as lack of consideration and whether the non-compete constitutes a mere personal right.

Standing

51. First, the Court considers Plaintiff's argument that Defendants do not have standing to challenge the non-compete clause, because only Cooper and the POA are parties to the original Declaration. *See* Pl's Resp., p. 8. Additionally, Plaintiff avers Glade Springs Resort, Limited Liability Company terminated in 2015. *Id.* Plaintiff has argued GSR, LLC is not a successor in interest. *Id.* at 9. On the other hand, Defendant has averred it has proper standing as a successor to any party mentioned in the Declaration and protective covenants. See Reply, p. 6.

52. While it is possible Plaintiff may prove in this underlying case that Defendant GSR, LLC is no a valid successor in interest, at this stage – when considering the factors of preliminary injunction only – the Court's analysis of the factors clearly weighs in favor of Defendants. At this stage, the Court must preserve the status quo and *temporarily* halt the POA from operating The Haven until all underlying issues in this case may be resolved.

Applicability to Common Property, Consideration, Mere Personal Right

53. Plaintiff also challenges the applicability of the non-compete clause on Woodhaven golf course property on another ground: Plaintiff argues it alone has the right to manage the property as sits on common property, and not a lot. *See* Pl's Resp., p. 5-6. However, Defendant has put forth evidence showing the 2010 quitclaim deed specifically states the conveyance of the

Woodhaven property is made covenants and restrictions set forth in the Declaration. *See* Reply, p. 2.

54. Again, while the Court acknowledges facts related to this issue may be developed in the underlying case, at this stage, the Court must preserve the status quo and *temporarily* halt the POA from operating The Haven until all underlying issues in this case may be resolved.

55. Similarly, Plaintiff has set forth arguments regarding consideration and that the non-compete clause is a mere personal right to Glade Springs Resort, Limited Liability Company, which no longer exists. The POA argues that that Cooper Land Development, Inc. was required to provide consideration to the POA in conjunction with the Declaration. *See* Pl's Resp., pp. 13-15. Defendants proffered a case, *Wallace v. St. Clair*, 147 W. Va. 377, 391, 127 S.E.2d 742, 752 (1962), wherein the Supreme Court of Appeals recognized that limitations on the use of real property lots granted in a developed residential community are enforceable, despite the fact that a benefit is conferred to the detriment of the property owners.

56. Therefore, the Court again finds these underlying issues do not affect its analysis of the factors necessary for the issuance of a preliminary injunction. At this stage, the Court must preserve the status quo and *temporarily* halt the POA from operating The Haven until all underlying issues in this case may be resolved.

VII. Request for Attorney Fees

57. As the non-prevailing party to the instant motion, the POA's request for attorney fees is denied. *Nelson v. West Virginia Public Employees Insurance Board*, 300 S.E.2d 86, 92 (W. Va. 1982) (holding that an award of attorney fees in the absence of statutory authorization is permitted against a losing part who has acted in bad faith).

VIII. Issuance of a bond

58. Rule 65(c) of the West Virginia Rules of Civil Procedure provides:

> **(c) Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court in its discretion deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the State of West Virginia and its political subdivisions or of an officer or agency thereof.
>
> W. Va. R. Civ. P. 65.

59. The Court considers the issue of bond, and finds and concludes that a bond is appropriate in this matter. The Court agrees with Plaintiff that the POA is entitled to security during the pendency of this action while the injunction remains. *See* Pl's Resp., p. 20.

60. Within five (5) days from entry of this Order, Defendants EMCO Glade Springs Hospitality, LLC and GSR, LLC shall post a bond with the Clerk of the Circuit Court of Raleigh County, West Virginia in the form of a certified check or certified money order in the amount of five thousand dollars ($5,000.00) paid to the order of the Clerk of the Circuit Court of Raleigh County, West Virginia (the "Bond"). The Bond shall be held by the Clerk until an order of Court is entered directing further action.

CONCLUSION

In conclusion, the Court finds and concludes that EMCO and GSR have met their burden with respect to each of the necessary factors for issuing a preliminary injunction. *See Jefferson County Bd. of Educ.* at 662. Accordingly, the instant Motion should be granted.

WHEREFORE, it is hereby **ADJUDGED, ORDERED** and **DECREED** that EMCO's and

GSR's *Motion for Preliminary Injunction to Enforce the Declaration of Covenants and Restrictions* is hereby **GRANTED**. The Court notes the objections of the parties to any adverse ruling herein.

It is further **ADJUDGED, ORDERED** and **DECREED** that within five (5) days from entry of this Order, Defendants EMCO Glade Springs Hospitality, LLC and GSR, LLC shall post a bond with the Clerk of the Circuit Court of Raleigh County, West Virginia in the form of a certified check or certified money order in the amount of five thousand dollars ($5,000.00) paid to the order of the Clerk of the Circuit Court of Raleigh County, West Virginia. The Bond shall be held by the Clerk until an order of Court is entered directing further action.

It is further **ADJUDGED, ORDERED** and **DECREED** that Plaintiff will cease operation of The Haven by September 4, 2020 at 5:00 p.m.

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 24th day of August, 2020.

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

ELEVENTH JUDICIAL CIRCUIT
GREENBRIER AND POCAHONTAS COUNTIES

JENNIFER P. DENT, JUDGE
TELEPHONE: (304) 647-6619
TELECOPIER: (304) 647-6696

GREENBRIER COUNTY COURTHOUSE
912 COURT STREET NORTH
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LEWISBURG, WEST VIRGINIA 24901

FAX COVER SHEET

TO: Paul Flanagan, Circuit Clerk of Raleigh County

FAX: (304) 255-9353

DATE: August 24, 2020

RE: Glade Springs Village Prop. Owners Assoc. vs. EMCO, et als. 19-C-357 (Business Court)

PAGES: 18 incl. cover

This order needs to be entered and processed/sent to all parties listed. The original of this order will be sent by U.S. Mail.

If there are any problems with this transmission, please call Alison Burke, Administrative Assistant to Judge Jennifer P. Dent, at (304) 647-6619.