

**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 OF CLARIFICATION

This matter came before the Court upon the Court's receipt of the letter efiled in this matter on October 2, 2020 by counsel for Plaintiff. This Order is in response to said Letter to clarify the Court's Order Granting Defendants' Motion for Preliminary Injunction entered August 25, 2020. The Court notes the letter's request for a brief phone hearing on the issue but declines because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. Upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

The October 2, 2020 letter sought clarification of the Court's Order Granting Defendants' Motion for Preliminary Injunction entered August 25, 2020 regarding three (3) areas. Those areas were presented as questions and are outlined as follows:

1. If GSVPOA is not arranging or providing for contract food services at The Haven, can

its members or guests arrange those for themselves?

2. Are beverages included in the court's order as beverages are not included in the Restrictive Covenant? Yes.
3. May GSVPOA host an employee luncheon at no cost to them at the Haven?

The Court clarifies as follows. With regard to the first question, no, the members or guests may not arrange those contract food services for themselves. The Court reiterates and clarifies that the intent of its order was to leave the *status quo* at this stage which was no competition with the food service of GSR.

Second, with regard to the second question, yes, beverages are included in the court's order as it pertains to "food services". The Court agreed with Defendants' position that the POA cannot compete against the Resort with respect to golf and food services. *See Reply*, p. 5.

Paragraph 22 of the Protective Covenants states:

22. Non-Competition. No commercial lot or any parcel of land subject to these Protective Covenants or to this Declaration shall be used to operate any business which competes in any manner with Glade Springs Resort L.L.C.'s food, lodging, resort, conference, rental or property management businesses, including any timeshare program.

See Def's Mot., Ex. 1.

The Court agreed with Defendants' argument that the language of Paragraph 22 directs that the POA shall not use any land subject to the Declaration and Protective Covenants to operate any business which competes in any manner with the Resort's businesses. *See Def's Mot.*, p. 6.


The Court further finds and clarifies that a reasonable interpretation of food service would include beverage. For instance, by way of illustration, in the Initial Cooper Deed, which carved out an exception to the non-compete, it specified that the exception included "a golf course and

other recreational amenities...including a food service operation, with alcohol sales, at the clubhouses and other facilities servicing such amenities”. *See* Pl’s Resp., Ex A. The Court notes that the Supplemental Declaration contains no such exception to the non-compete clause excluding Woodhaven property from the non-compete clause, but asserts that a reasonable interpretation of the food services at issue at golf course clubhouses and restaurants includes beverage sales.

Third, with regard to the third question, yes, the POA may host its employee luncheon at The Haven. The Court would clarify that a no-charge event is not a competition in service, but rather an organized function of the Association located at The Haven. For this reason, the Court would find no impermissible competition would result from that sort of no-cost employee luncheon.

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that this Court’s August 25, 2020 Order is clarified as described herein. The Court notes the objections of the parties to any adverse ruling herein. The Clerk is directed to enter this Order, 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 13th day of October 2020.


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