

**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,

vs.

**Civil Action No.: 19-C-357
Presiding: Judge Dent
Resolution: Judge 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,

and

**EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company, and
GSR, LLC, a West Virginia limited liability company,**

Counterclaim Plaintiffs,

vs.

**Civil Action No.: 19-C-357
Presiding: Judge Dent
Resolution: Judge Lorensen**

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

Counterclaim Defendant.

**ORDER DENYING AS MOOT DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT ON THE WITHDRAWN ALLEGATION CONTAINED
IN PLAINTIFF'S AMENDED COMPLAINT**

This matter came before the Court on *Defendants' Motion for Summary Judgment on the Withdrawn Allegation Contained in Plaintiff's Amended Complaint* (the "Motion"). Defendants seek entry of an order from this based upon Glade Springs Village Property Owner's Association ("GSVPOA") withdrawal of certain allegations in the absence of a stipulation, motion, or proposed order to that effect. *See* Motion, p. 1. GSVPOA has now filed a *Corrected Notice of Withdrawal of Allegations*¹ set forth in subparts g-k of Paragraph 112 of its Amended Complaint. *See GSVPOA's Corrected Notice.*

In the motion, Defendants moved for dismissal of subparts g-k of Paragraph 112 of the Amended Complaint. *See* Def's Mot., p. 1. Rule 41 of the West Virginia Rules of Civil Procedure governs dismissal of actions. Defendants argued that Plaintiffs had acknowledged they would no longer pursue subparts g-k of Paragraph 112 in discovery responses but did not file a stipulation, motion, or proposed order withdrawing the same. *Id.* at 1-2. Therefore, the Court notes it is not in dispute that GSVPOA intends to withdraw subparts g-k of Paragraph 112.

In response, GSVPOA filed their Corrected Notice of Withdrawal of Allegations, confirming its intention to formally withdraw subparts g-k of Paragraph 112 and indicating it would not be pursuing the same in this litigation. However, the Court is cognizant of the fact that it is not ruling on the merits of the claims GSVPOA is no longer pursuing. The Court notes that the instant motion is titled a motion for summary judgment, but is indeed seeking "dismissal of these allegations". *See* Def's Mot., p. 1. Rule 41 of the West Virginia Rules of Civil Procedure governs dismissal of actions.

¹ The original *Notice of Withdrawal of Allegations* incorrectly referenced Paragraph 12 of the First Amended Complaint. In its *Corrected Notice of Withdrawal of Allegations*, GSVPOA noted the typographical error and clarified that the allegations in Paragraph 12 of the First Amended Complaint stand and that it withdrew the subparts g-k of Paragraph 112.

For these reasons, the Court finds that although dismissal of the subparts g-k of Paragraph 112 is appropriate, and even undisputed, granting of Defendants' motion for summary judgment and finding the matters are dismissed with prejudice, as Defendants urge, is not. The Court reiterates that it acknowledges the GSVPOA is not pursuing the allegations contained in subparts g-k of Paragraph 112 *in this litigation*. Indeed, Defendants explained in their reply that although the POA filed their Corrected Notice of Withdrawal of Allegations after the filing of the instant motion, Defendants still seek the granting of the instant motion for the result of a finding of a dismissal with prejudice. *See* Reply, p. 1-2. However, nothing in Rule 41 implies that a judge *must* dismiss an action with prejudice if justice and the nature of the cause do not so require. *See Belcher v. Greer*, 181 W. Va. 196, 198, 382 S.E.2d 33, 35 (1989). In this case, the Court has explained that in its discretion, it finds the appropriate course of action is to dismiss subparts g-k of Paragraph 112 without prejudice.

Accordingly, the instant *Motion* has been rendered moot.

WHEREFORE, it is hereby ADJUDGED, ORDERED and DECREED that Defendants' *Motion for Summary Judgment on the Withdrawn Allegation Contained in Plaintiff's Amended Complaint* is **MOOT** and hereby **DENIED AS MOOT**. The allegations contained Subparts g-k of Paragraph 112 of the Amended Complaint are hereby **DISMISSED WITHOUT PREJUDICE**.

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 the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia 25401.

ENTER this ORDER this 2nd day of November 2020.



JUDGE JENNIFER P. DENT
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION