

**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 GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO
ENFORCE THE MAY 8, 2020 MEMORANDUM OF UNDERSTANDING THAT WAS
REACHED VIA THE MEDIATION HELD BY JUDGE LORENSSEN AND FOR
ACCOUNTING AND SETOFF**

This matter came before the Court this 24th day of May, 2021, upon Plaintiff, Glade Springs Village Property Owners Association, Inc.'s Motion (i) to Enforce the May 8, 2020 Memorandum of Understanding That Was Reached Via the Mediation Held By Judge Lorensen, (ii) For Accounting, and (iii) For Setoff/Recoupment. The Plaintiff, Glade Springs Village Property Owners Association, Inc., by counsel, Mark Sadd, Esq., and Defendants, EMCO Glade Springs Hospitality, LLC and GSR, LLC, by counsel, 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.

FINDINGS OF FACT

1. This matter surrounds the claims in the Amended Complaint, wherein Plaintiff, Glade Springs Village Property Owners Association, Inc. (hereinafter "Plaintiff" or "POA"), asserted claims against Defendants, EMCO Glade Springs Hospitality, LLC and GSR, LLC (hereinafter "Defendants" or "the Resort") premised upon their alleged respective breach of various contracts with GSVPOA. *See* Am. Compl.

2. On May 5, 2020, Resolution Judge Lorensen presided over a judicially-led mediation in the instant civil action, and a Memorandum of Understanding (hereinafter "MOU") was reached between GSR and the POA as a result of said mediation. *See* Pl's Mot., p. 2.

3. On March 31, 2021, Plaintiff filed its Motion (i) to Enforce the May 8, 2020 Memorandum of Understanding That Was Reached Via the Mediation Held By Judge Lorensen, (ii) For Accounting, and (iii) For Setoff/Recoupment, arguing that Defendant GSR, LLC is in breach of Paragraphs 3 and 5 of the MOU that was reached between the POA and GSR by failing

to provide a detailed outline of security and road maintenance services and failing to security logs, covenant logs, and a summary which highlights security's responses to the items noted in the logs. *See* Pl's Mot., p. 2. The POA further alleged GSR was improperly invoicing it. *Id.*

4. On April 23, 2021, Defendant filed GSR, LLC's Response to the POA's Motion to Enforce the May 8, 2020 Memorandum of Understanding, averring and explaining how it did comply with Paragraphs 3 and 5 of the MOU, and contending that the POA provided no evidence to substantiate its claim that GSR did not comply with Paragraphs 3 and 5 of the MOU. *See* Def's Resp., p. 1-2, 7. GSR attached exhibits to its Response supporting its claim that it provided the necessary information to the POA to be in compliance with Paragraphs 3 and 5 of the MOU. Further, GSR argued the MOU does not give the POA any accounting or setoff rights, and therefore, the POA cannot claim this as requested relief under a motion to enforce the MOU. *Id.* at 7.

5. On May 7, 2021, the POA filed its Reply, arguing the instant motion set forth that the POA was seeking relief beyond the enforcement of the MOU, and that the exhibits GSR attached to GSR's response to the instant motion "reveal[ed]" the POA did proffer evidence to support its claim that GSR breached Paragraphs 3 and 5 of the MOU. *See* Reply, p. 2-3, 4.

6. The Court finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

This matter comes before the court on a motion to enforce a mediation agreement. Pursuant to Trial Court Rule 25.14, as well as Syllabus Points 2 and 3 of *Riner v. Newbraugh*, 211 W. Va. 137, 563 S.E.2d 802 (2002), this Court has jurisdiction to hear GSR's request for enforcement of the MOU. Moreover, a "trial court possesses the inherent authority to enforce a settlement agreement and to enter judgment based on that agreement." *Reilley v. Carpenter et al.*, No. 14-

1260, 2015 W. Va. LEXIS 1003, at *8 (W. Va. Oct. 16, 2015) (memorandum decision) (citing *Williams v. Prof'l Transp., Inc.*, 294 F.3d 607, 613 (4th Cir. 2002) (applying West Virginia substantive law)). The Supreme Court of Appeals of West Virginia has recognized that “[t]he law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than by litigation; and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy.” Syl. pt. 4, *Horkulic v. Galloway*, 665 S.E.2d 284 (W. Va. 2008) (citing Syl. pt. 1, *Sanders v. Roselawn Mem’l Gardens, Inc.*, 159 S.E.2d 784 (W. Va. 1968)).

In analyzing whether to enforce a settlement agreement, the trial court will “determine whether the parties agreed to settle the action, and then, discern the terms of that settlement.” *Reilley*, 2015 W. Va. LEXIS 1003, at *8 (citing *Hensley v. Alcon Labs, Inc.*, 277 F.3d 535, 540–41 (4th Cir. 2002)). A settlement agreement is to be construed “as any other contract.” *Burdette v. Burdette Realty Improvement, Inc.*, 590 S.E.2d 641, 645 (W. Va. 2003) (citing *Floyd v. Watson*, 254 S.E.2d 687, 690 (W. Va. 1979)). And “[o]nce a competent party makes a settlement and acts affirmatively to enter into such settlement, his second thoughts at a later time as to the wisdom of the settlement do not constitute good cause for setting it aside.” *Burdette*, 590 S.E.2d at 646–47 (citing *Moreland v. Suttmilller*, 397 S.E.2d 910, 914 (W. Va. 1990)).

CONCLUSIONS OF LAW

Plaintiff filed the instant Motion (i) to Enforce the May 8, 2020 Memorandum of Understanding That Was Reached Via the Mediation Held By Judge Lorensen, (ii) For Accounting, and (iii) For Setoff/Recoupment, arguing that Defendant GSR, LLC is in breach of Paragraphs 3 and 5 of the MOU that was reached between the POA and GSR by failing to provide a detailed outline of security and road maintenance services and failing to security logs,

covenant logs, and a summary which highlights security's responses to the items noted in the logs. *See* Pl's Mot., p. 2. The POA further alleged GSR was improperly invoicing it. *Id.*

The POA requested entry of an Order finding that GSR is in breach of the MOU for failure to provide all required information under Paragraphs 3 and 5 of the MOU to support its invoices, and has also requested the Court order an accounting the proper amount, and any improper amount, GSR has charged the POA in all prior road maintenance and security invoices. *Id.* at 3. Further, the POA also requests an Order from this Court granting it a setoff and/or a recoupment as a credit GSR invoices for any amount determined to have been an improper charge under current or prior invoices. *Id.*

On the other hand, Defendant averred in its Response to the POA's Motion to Enforce the May 8, 2020 Memorandum of Understanding that it did comply with Paragraphs 3 and 5 of the MOU, and contended that the POA provided no evidence to "substantiate its baseless claim" that GSR did not comply with Paragraphs 3 and 5 of the MOU. *See* Def's Resp., p. 1-2, 7. The Court notes GSR attached numerous exhibits to its Response as evidence that it supplied the necessary information to the POA to be in compliance with Paragraphs 3 and 5 of the MOU. Further, GSR argued the MOU does not give the POA any accounting or setoff rights, and therefore, the POA cannot claim this as requested relief under a motion to enforce the MOU. *Id.* at 7.

As an initial matter, the Court notes and rules that Plaintiff's arguments regarding prior invoices are not subject to the MOU which its motion seeks to enforce. The first sentence of the MOU states that it is effective May 8, 2020. Paragraph 3 of the MOU, one of the provisions in which the motion claims Defendant is in breach of, explicitly states that the information to be provided shall occur within five days of the execution of the MOU. Paragraph 3 of the MOU

reads as follows: “Within five (5) business days of execution of this MOU, the Resort shall provide to the POA a detailed outline of the security and road maintenance services that it is providing...”.

Charges and invoices issued before the execution of the MOU have no relevance to the issue of whether or not the Resort has complied with the MOU. *See* Def’s Resp., p. 3. Invoices from May 2020 forward are relevant to the MOU which the instant motion seeks to enforce. Therefore, the instant motion is denied as to the extent it seeks relief from any invoices dating before the execution of the MOU.

Next, the POA argues that Defendant GSR, LLC is in breach of Paragraphs 3 and 5 of the MOU that was reached between the POA and GSR by failing to provide a detailed outline of security and road maintenance services and failing to provide security logs, covenant logs, and a summary which highlights security’s responses to the items noted in the logs. *See* Pl’s Mot., p.

2. Paragraph 3 of the MOU reads as follows:

“Within five (5) business days of execution of this MOU, the Resort shall provide to the POA a detailed outline of the security and road maintenance services that it is providing, including descriptions of the number and type of security and road maintenance employees, their duties and tasks, patrol schedules, maintenance schedules, routine work, and, in general, give the POA a breakdown and description of what it is that the Resort is doing to provide security and maintenance. This description shall include all such activities within Glade Springs Village including the provision of security at Chatham Lake. The Resort shall update his outline as necessary should the extent of such services materially change for any reason”.

Paragraph 5 of the MOU reads as follows:

“Simultaneous with submission of the Resort’s Invoices, the Resort shall provide the POA with copies of the previous months: *[sic]* a) security logs (including call times); b) covenant violation logs; and c) a summary which highlights security’s responses to the items noted in the logs.”

The Court reviewed Exhibits 3 to 13 of Defendant's Response, which encompassed security logs, public works logs, and invoices with backup documents. *See* Def's Resp., p. 2. The POA argued in the Reply that the logs, provided as exhibits to Defendant's Response, are inadequate because they don't highlight security's response, meaning how security responded to incidents or if they were resolved. *See* Reply, p. 5, 6. They do not advise the POA Board of Directors if the incidents were resolved. *Id.* at 6. The POA avers the logs (and other paperwork submitted to it and the Court), contain a "lack of substance with regard to critical safety incidents". *Id.* at 7.

The Court has reviewed the exhibits attached to Defendant's Response. The Court considers that the logs contain a "detailed outline of the security and road maintenance services that it is providing", as required by the MOU. Further, the Court finds the logs are detailed and include "give the POA a breakdown and description of what it is that the Resort is doing to provide security and maintenance", as required by the MOU.

The Court notes Defendant has proffered that the POA never once communicated to it that the POA believed Defendant had not provided the outline of services, or had failed to provide the monthly security logs package as required by Paragraphs 3 and 5 of the MOU. *See* Def's Resp., p. 2. The Court considers that the invoice packages (encompassed security logs, public works logs, and invoices with backup documents), attached to Defendant's Response, cover May 2020 (the month of the execution of the MOU) to March 2021. The Court considers that in all of these months, no evidence was proffered that the POA requested a line item/column in the logs for how incidents were resolved, and it was not proffered that the POA requested more detail on how security responded to any line items which required follow-up, both of which are reasons the POA complains the logs are "inadequate" in the Reply to the instant motion. *See*

Reply, p. 5, 6. The Court notes that if the POA desired/desires more detail as to a specific call, then it can inquire with specificity, by telling Defendant which one, and that it wants more detail as to the disposition of the specific charge. The Court notes the logs are to be provided monthly, and it appears any final reconciliation on the amount and service would be done in February of each calendar year under the DOE. At that time, during the reconciliation process, the POA could request detail on how a charge was resolved, or if a charge was unresolved. Such request must be done with specificity as to which specific charge or incident is at issue.

The Court also notes the logs contain a row to fill in whether or not follow up was needed. *See* Def's Resp., p. Ex. 3(a), 4(a), 5(a), 6(a), 7(a), 8(a), 9(a), 10(a), 11(a), 12(a), and 13(a). Many of these are filled in with "no". It can be assumed that many of the line items in the log which required no follow up were resolved.

The Court's review of the logs causes the Court to opine that the logs were sufficiently detailed, within the meaning of the MOU. Further, at the beginning of each month's log, there is a "Security Summary" which gives a general update as to what was focused on that month. *See* Def's Resp., p. Ex. 3(a), 4(a), 5(a), 6(a), 7(a), 8(a), 9(a), 10(a), 11(a), 12(a), and 13(a). The Court finds this also "give[s] the POA a breakdown and description of what it is that the Resort is doing to provide security and maintenance" as contemplated by the MOU.

With regard to an accounting, the DOE dictates that the POA gets an accounting by February 15 of each calendar year. First, Paragraph 8 of the MOU points out that the "POA's payment of the Resort's Invoices does not alter the POA's rights under Paragraph 3(b) of the DOE, including the POA's rights with respect to the final reconciliation process described in Paragraph 3(b) of the DOE".

Second, as acknowledged in the MOU, Paragraph 3(b) of the DOE lays out a reconciliation process and allows the Resort to be timely reimbursed but gives the POA the opportunity to review and contest the Resort's charges. The DOE dictates that the parties complete this process by receiving an invoice on the 15th of each month, and receiving a final reconciliation in reasonable detail for the previous calendar to be made on February 15 of each year.

Specifically, Section 3 of the DOE, in pertinent part, reads as follows:

3. Operation, Maintenance and Repair of Easement Area.

...

- (b) The POA shall pay the costs incurred by Glade pursuant to paragraph 3(a) hereunder (the "Glade Costs"). For Glade's Share of the Glade Costs, Glade shall pay to POA by the 15th day of each month an amount equal to .75% of the gross sales from Glade's operation of the Glade Springs Resort, excluding real property sales for the previous month Glade shall invoice the POA on the 15th day of each month for the estimated entire amount of the preceding month's Glade Costs, with a final reconciliation in reasonable detail for the previous calendar year to be made on February 15 of each year. Payment shall be due upon receipt of the invoice from Glade. To the extent the POA has overpaid Glade for the Glade Costs for the preceding calendar year, any overpayment will be refunded within ten (10) days of the determination that an overpayment has been made. To the extent the POA has underpaid Glade for the Glade Costs for the preceding calendar year, the POA shall pay any additional amounts due within ten (10) days of demand for payment by Glade. The POA shall have the right to review and audit any records of Glade relating to such expenditures.

Therefore, the POA still is entitled to its yearly accounting, and the 2020 accounting and recoupment should have been performed on or by February 15, 2021. If the parties have not done so, they are directed to. As for an accounting regarding years 2010-2019, which the parties

apparently did not opt to do at the time, the Court finds that goes to the underlying issues of the case, which are not ripe for review.


Because the Court finds the POA is entitled to its accounting for the year 2020 via the DOE, the Court concludes the instant motion is granted in part.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Plaintiff's Motion (i) to Enforce the May 8, 2020 Memorandum of Understanding That Was Reached Via the Mediation Held By Judge Lorensen, (ii) For Accounting, and (iii) For Setoff/Recoupment is hereby GRANTED IN PART and DENIED IN PART.

The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, to any *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.

May 24, 2021
date of entry



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