

**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 PLAINTIFF'S MOTION TO COMPEL

This matter came before the Court this 27th day of September 2021, upon Plaintiff Glade Springs Village Property Owners Association, Inc.'s Rule 37 Motion to Compel Stacey Arthur to Answer Pending Deposition Question And Follow-Up Questions. The Plaintiff, Glade Springs

Village Property Owners Association, Inc., by counsel, Ramonda C. Marling, Esq., and Defendants, GSR, LLC, Elmer Coppoolse, James Terry Miller, R. Elaine Butler, and EMCO Glade Springs Hospitality, 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 Second Amended Complaint¹, wherein Plaintiff, Glade Springs Village Property Owners Association, Inc. (hereinafter “Plaintiff” or “POA”), asserted claims against Defendants, EMCO Glade Springs Hospitality, LLC, GSR, LLC, Elmer Coppoolse, James Terry Miller, and R. Elaine Butler (hereinafter “Defendants”), premised upon their alleged respective breach of various contracts with GSVPOA, as well as accounting claims and a claim of unjust enrichment. *See* Second Am. Compl.

2. Thereafter, on June 9, 2021, Defendant GSR, LLC (hereinafter “Defendant” or “GSR”) filed its Answer, Counterclaims, and Third-Party Complaint of GSR, LLC and Answer of EMCO Glade Springs Hospitality, LLC. *See* Ctrclm.

3. On August 4, 2021, Stacey Arthur, a witness in this matter, was deposed. *See* Pl’s Mot., p. 2. Plaintiff has proffered that Ms. Arthur served as controller for the POA financials from October 2018 to May 2019. *Id.*

¹ The Court notes that by Agreed Order Granting Plaintiff’s Motion for Leave to File Second Amended Complaint, entered May 20, 2021, the Second Amended Complaint in this civil action is deemed filed as of May 20, 2021. *See* Ord., 5/20/21.

4. On August 12, 2021, Plaintiff filed the instant motion, arguing a question that counsel for Defendant asked Ms. Arthur during her deposition should be answered because “Defendants had no grounds to instruct Witness Arthur not to answer the question posed by Plaintiff’s counsel”. *Id.* at 4. In support, Plaintiff argued the inquiry was relevant and determining her credibility is important to this civil action. *Id.*

5. On August 31, 2021, Defendants filed their Response in Opposition to the POA’s Motion to Compel Stacey Arthur to Answer Deposition Question and Follow-Up Questions, arguing the motion should be denied because Ms. Arthur has answered the question asked. *See* Def’s Resp., p. 2, 3. Defendants assert counsel for Defendants instructed her not to answer only after Ms. Arthur testified she began to feel harassed. *Id.* at 4.

6. On September 14, 2021, Plaintiff filed its Reply, disagreeing with the Response’s contention that Ms. Arthur did answer the question. *See* Reply, p. 2. Plaintiff avers the response Ms. Arthur gave was evasive and incomplete, and therefore must be treated as a failure to respond under the West Virginia Rules of Civil Procedure. *Id.* Further, Plaintiff argues Defendants’ assertion that counsel for Defendants instructed Ms. Arthur not to answer only after she felt harassed is not one of the three very limited circumstances counsel are permitted to instruct a witness not to answer a question under Rule 30 of the West Virginia Rules of Civil Procedure. *Id.* at 4-5.

7. The Court finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

In this matter, the POA filed the instant Motion to Compel, seeking entry of an Order compelling Stacey Arthur to answer a pending deposition question and any follow-up questions.

The Supreme Court of Appeals of West Virginia has recognized that the West Virginia Rules of Civil Procedure generally provide for broad discovery “to ferret out evidence which is in some degree relevant to the contested issue.” *State ex rel. Wausau Bus. Ins. Co. v. Madden*, 613 S.E.2d 924, 928 (2005); *see* W. Va. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.”). “However, there are various express provisions in the discovery rules which temper the breadth of this generic purpose in a variety of ways and for differing reasons.” *Madden*, 613 S.E.2d at 928; *see* Louis J. Palmer, Jr. & Robin Jean Davis, *Litigation Handbook on West Virginia Rules of Civil Procedure*, § 26(b)[1], at 744 (5th ed. 2017) (The broad nature of discovery has “never been a license to engage in an unwieldy, burdensome, and speculative fishing expedition.”). As such, a court may limit otherwise permissible discovery where the information requested is privileged, irrelevant, cumulative, duplicative, or obtainable from another source, or “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” W. Va. R. Civ. P. 26(b), (c).

Rule 37(a)(2) of the West Virginia Rules of Civil Procedure provides that if a deponent fails to answer a question propounded or if a party fails to respond to written discovery requests, “the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.” W. Va. R. Civ. P. 37(a)(2). “[A]n evasive or incomplete answer or response is to be treated as a failure to answer or respond.” W. Va. R. Civ. P. 37(a)(3).

Further, Rule 30(d)(1) of the West Virginia Rules of Civil Procedure permits counsel to instruct a witness during a deposition not to answer a pending question of three very limited

circumstances: in order to preserve a privilege, to enforce a limitation of evidence directed by the court, or to present a motion under paragraph (3) of W. Va. R. Civ. P. Rule 30(d).

At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the circuit court of the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c)... Upon demand of the objecting party or deponent the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

W. Va. R. Civ. P. Rule 30(d)(3) (emphasis added).

Witness Stacey Arthur was deposed on August 4, 2021. During her deposition, she was asked the following question regarding an email she sent to Counterclaim/Third Party Defendant David McClure: “So, when you told him those costs were handled separately, that was not accurate, correct, or truthful.” *See* Dep. T. P. 61: 14-15. Ms. Arthur answered by testifying “it was very vague.” *See* Dep. T. P. 61: 17-18. However, just moments before this exchange, Ms. Arthur admitted that “the costs” referenced in the email were not handled separately in any way. *See* Dep. T. P. 61: 8-13. Prior to that admission, Ms. Arthur testified that her entire salary and benefit package was billed to the POA during the relevant time period at issue in the email. *See* Dep. T. P. 59: 15-21. When asked if telling Mr. McClure that the costs were handled separately was accurate, Ms. Arthur testified, “Accurate, no.” *See* Dep. T. P. 61: 17-18. When asked if telling Mr. McClure that the costs were handled separately was correct, Ms. Arthur testified, “No.” *See* Dep. T. P. 61: 19-20. However, when asked if telling Mr. McClure that the costs were handled separately was truthful, Ms. Arthur testified, “It was vague.” *See* Dep. T. P. 61-21-22. Ms. Arthur was asked if the statement was truthful and was instructed by GSVPOA’s counsel to answer the question. *See*

Dep. T. P. 61: 23. Defendants' counsel lodged an asked and answered objection. *See* Dep. T. P. 61:24 – 62:1. Ms. Arthur was asked, for a third time, if the statement was truthful. *See* Dep. T. P. 62: 8. At that point, Defendant's counsel instructed Ms. Arthur that she did not have to answer the question. *See* Dep. T. P. 62: 9-10. When asked by Plaintiff's counsel if Defense counsel was instructing the witness not to answer, the following occurred:

MR. SPITZ: Yeah, Well, let me ask this: Stacey, do you feel at this point you're being harassed?

THE WITNESS: Yes.

MS. MARLING: All right.

MR. SPITZ: I'm Instructing her not to answer.

See Dep. T. P. 62: 11-19.

This Court finds that Ms. Arthur failed to provide a responsive, non-evasive answer in the affirmative answer or denial to the pending question. The pending question, "Was it truthful?", inquired as to whether her email was truthful. Specifically, the question, "Was it truthful?", inquired as to whether the statement Ms. Arthur communicated to David McClure in an email, at the direction of Defendant Elmer Coppoolse, was a truthful statement. Ms. Arthur's description of the statement as a "vague" was non-responsive to the pending question and shall be treated as a failure to answer or respond the pending question. The POA is entitled to a direct affirmative or negative response to the pending question. *DirectTV, Inc. v. Pallesen*, 2005 U.S. Dist. LEXIS 9534, 11 (D. Kan. 2005) (granting plaintiff's motion to compel defendant to respond to contention interrogatories with either a "yes" or "no" answer).²

² "Because the West Virginia Rules of Civil Procedure are practically identical to the Federal Rules, we give substantial weight to federal cases, especially those of the United States Supreme Court, in determining the meaning and scope of our rules. *See generally Burns v. Cities Serv. Co.*, 158 W. Va. 1059, 217 S.E.2d 56 (1975); *Aetna Casualty & Sur. Co. v. Federal Ins. Co. of New York*, 148 W. Va. 160, 133 S.E.2d 770 (1963); *Painter v. Peavy*, 192 W. Va. 189, 541 S.E.2d 755 (1994).

Further, the West Virginia Rules of Civil Procedure provide clear circumstances and instructions for when attorneys properly instruct a witness not to answer questions. Rule 30 provides, in pertinent part:

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3)

...

(3) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the circuit court of the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c)... Upon demand of the objecting party or deponent the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

W. Va. R. Civ. P. Rule 30(d)(1) and (3). Defendants have not argued that the instruction was given to preserve a privilege or to enforce a limitation on evidence by the Court. Defendants' counsel did not suspend the deposition in order to present a motion to this Court, but rather simply instructed the witness not to answer the pending question. Defendants did not suspend the deposition and make a motion for a protective order. Counsel for Defendants did not follow Rule 30(d)(3) by announcing his intention to suspend the deposition due to the harassment and move this Court for a protective order. Instead, Defense counsel improperly instructed Ms. Arthur not to answer the pending question. The Court finds that Defense Counsel's instruction to Ms. Arthur to not answer the pending question at issue in Plaintiff's Motion was clearly improper.

For these reasons, Glade Springs Village Property Owners Association's Motion to Compel is granted.

Further, it is ORDERED that Stacey Arthur return for completion of her deposition at a time and place to be determined by notice of deposition by Plaintiff and provide an affirming or denying response (*i.e.*, a "yes" or "no" response) to the pending question. With regard to follow-up questions, the Court directs the parties to engage in good faith to answer any needed follow-up questions propounded by Plaintiff's counsel to provide a clear and complete answer to this line of inquiry. The Court is not directing Ms. Arthur to answer any specific follow-up questions because, at this point, the questions are unknown. The parties are, therefore, directed to engage in good faith with regard to any needed follow-up questions to completely answer this line of inquiry. If Defendants' counsel has any objection to any future follow-up questions, it is instructed to file a separate motion in compliance with the West Virginia Rules of Civil Procedure.

For these reasons, Glade Springs Village Property Owners Association's Motion to Compel is granted.

Further, it is ORDERED that Stacey Arthur return for completion of her deposition at a time and place to be determined by notice of deposition by Plaintiff and provide an affirming or denying response (*i.e.*, a "yes" or "no" response) to the pending question and work in good faith to provide responsive, complete, and non-evasive answers to any follow-up questions propounded by Plaintiff's counsel to complete the line of inquiry. For this reason, the Court finds the instant motion is granted.

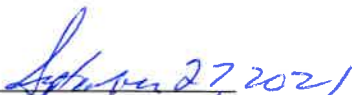
CONCLUSION

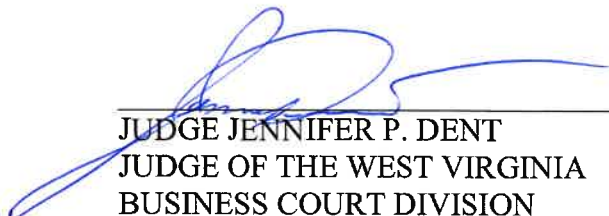
Accordingly, it is hereby ADJUDGED and Plaintiff Glade Springs Village Property Owners Association, Inc.'s Rule 37 Motion to Compel Stacey Arthur to Answer Pending

Deposition Question And Follow-Up Questions is hereby GRANTED to the extent as described herein.

It is ORDERED that Stacey Arthur return for completion of her deposition at a time and place to be determined by notice of deposition by Plaintiff and provide an affirming or denying response (*i.e.*, a “yes” or “no” response) to the pending question and to work in good faith to answer any follow-up questions needed which would reasonably complete this line of inquiry.

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.


date of entry


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