

**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
GLADE SPRINGS VILLAGE PROPERTY OWNERS ASSOCIATION, INC.'S
MOTION FOR PRELIMINARY INJUNCTION**

On April 8, 2022, came before the Court *Glade Spring Village Property Owners Association, Inc.'s Verified Motion for Temporary Restraining Order and Preliminary Injunction*

Regarding That Certain Cart Path Between the No. 1 Tee and the No. 18 Green (the "Motion").

Mark A. Sadd of Lewis Glasser PLLC appeared on behalf of the plaintiff, Glade Springs Village Property Owners Association, Inc. ("GSVPOA"). Arie M. Spitz and Clayton T. Harkins of Dinsmore Shohl LLP and Shawn P. George of Lorensen & George PLLC appeared on behalf of the defendants, GSR, LLC and EMCO Glade Springs Hospitality, LLC. Bryan N. Price of Flaherty Sensabaugh Bonasso PLLC appeared on behalf of the defendants, Elmer Coppoolse, James Terry Miller, and R. Elaine Butler. Charles R. Steele of Steele McMunn PLLC appeared on behalf of Rennie Hill.

Procedural History

On a prior day, GSVPOA filed the instant motion seeking the issuance of a temporary restraining order and then a preliminary injunction enjoining GSR and its agents from blocking, impeding, or altering GSVPOA and its Members' access and use of the cart path accessing the No. 1 tee and connecting the No. 1 tee to the No. 18 green of GSVPOA's Stonehaven Golf Course.

For its motion, GSVPOA, citing W. Va. R. Civ. P. 65 and W. Va. Code § 53-5-4 (1923), asked this Court to temporarily restrain and preliminarily enjoin Defendants GSR, LLC ("GSR") and EMCO Glade Spring Hospitality, LLC ("EMCO"), their employees, agents, contractors and others from blocking, impeding, or altering GSVPOA and its Members' access and use of the cart path accessing the No. 1 tee and connecting the No. 1 tee to the No. 18 green of GSVPOA's Stonehaven Golf Course (the "Cross-Over Path").

GSVPOA represented that GSR (or someone under its direction) had erected fencing around a parcel identified by GSVPOA in its brief as Parcel G, which is located between Stonehaven's No. 1 tee and No. 18 green. GSR argues that GSR is the title owner of Parcel while GSVPOA claims that it and its Members have the right to use the Cross-Over Path as they have for the nearly

20 years that it has been in existence and use.

GSVPOA represented that GSR (or someone under its direction) had imminent plans to "fell trees" across the Cross-Over and other paths on Parcel G "to impede GSVPOA's access to the cart paths" and that Elmer Coppoolse, who runs GSR, told Matthew E. Felber, Stonehaven's PGA golf professional, "that GSR plans to install a fence to block" the paths. Attached to its Motion are photographs illustrating GSR's work on Parcel G. During the hearing, GSVPOA tendered photographs that GSVPOA represented had been taken the morning of the hearing showing that GSR was executing on the plan as described in GSVPOA's motion and in the Affidavit of Matthew E. Felber tendered in support of the motion.

In the Response to the Motion, GSR and EMCO do not contest nor dispute the truthfulness of GSVPOA's factual claims leading to the Motion while they dispute that GSVPOA and its Members have a protected real interest in the Cross-Over Path. *See generally GSR and EMCO's Response to the POA's Motion for a Preliminary Injunction.*

GSVPOA had written GSR demanding that GSR cease blocking access to GSVPOA, its Members and their guests. GSR refused. As late as the morning of the hearing for this matter, GSVPOA alleged that GSR was continuing to erect the barrier for the purpose of blocking access. GSR did not contest nor dispute GSVPOA's allegations.

After GSVPOA filed the Motion, GSR filed its Response. Upon agreement of the parties, this Court set and conducted a hearing on the Motion on April 8, 2021, at 1:30 pm. The Court has reviewed and considered Plaintiff's proposed order, Plaintiff's letter placed in the Court file April 26, 2022, and GSR's objections to the proposed order.

Based on the GSVPOA's representations and GSR's and EMCO's notice of and presence during the hearing on the Motion, the Court finds and concludes GSVPOA's need for a temporary

restraining order against GSR and EMCO is moot because all proper parties received notice of the hearing on the motion for a preliminary injunction and were present for the hearing to defend their interests.

GSVPOA's Motion for Preliminary Injunction

GSVPOA then presented its motion for a preliminary injunction under W. Va. R. Civ. P. 65 and W. Va. Code § 53-5-4, which gives this Court the express authority to grant injunctive relief under its general jurisdiction and powers founded in equity. In support of its motion, GSVPOA argued that GSVPOA and its Members were entitled to use the Cross-Over Path based on title, possession and use claims arising under the Declaration for Glade Springs Village and the deed by which GSVPOA acquired title to Stonehaven as a part of the Common Property of GSVPOA. GSR and EMCO disputed that GSVPOA and its Members have either possessory or non-possessory rights to the Cross-Over Path and laid out their legal arguments in their Response to the Motion. GSR and EMCO argued that GSR only "permitted the POA access to the Cross-Over Path as a convenience because the Resort was supplying golf carts for use on Stonehaven." *GSR and EMCO Response* at p. 4 citing the *Affidavit of Elmer Coppoolse* ¶ 7. GSR and EMCO also countered in its Response and during argument that blocking the Cross-Over Path, despite its 20 years of use by Stonehaven golfers, would not make playing conditions on the course unsafe.

Having reviewed the briefs submitted, together with exhibits, documents and affidavits and having carefully considered the arguments of counsel, 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:

Factors for Issuance of Preliminary Injunction

The standard for reviewing whether a preliminary injunction should issue in a particular

circumstance. “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; regard being had 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.” *Camden-Clark Mem'l Hosp. Corp. v. Turner*, 212 W. Va. 752, 756; 575 S.E.2d 362, 366 (2002). The “[c] must consider, in ‘flexible interplay,’ the following four factors in determining whether to issue a preliminary injunction: (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 plaintiff’s likelihood of success on the merits; and (4) the public interest.” *Id.*, 212 W. Va. 752, 756; 575 S.E.2d 362, 366. 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).

Factor 1: Irreparable Harm

GSVPOA claims irreparable harm based on deprivation of its long use of the Cross-Over Path that would made playing conditions unsafe at Stonehaven if GSR blocked access of the Cross-Over Path. GSR and EMCO denied the accuracy of GSVPOA's claims, in support of which GSVPOA tendered documentary evidence and affidavit testimony of Tom Clark, who designed the course, and Stonehaven's PGA professional, Matthew E. Felber, who supervises play there. *Affidavits of Tom Clark and Matthew E. Felber*. In his Affidavit, Mr. Clark testified that the Cross-Over Path was incorporated into the design of golf course and is generally depicted on architectural

drawings whether along or within the boundaries of Parcel G. In his Affidavit, Mr. Felber testified that the Cross-Over Path has existed since 2003, when Stonehaven first opened, and that access to it is important to maintain safe playing conditions for Stonehaven golfers.

Further, GSVPOA claims it has a vested property interest in the Cross-Over Path by virtue of the documents creating Glade Springs Village and related to the ownership of Stonehaven as a part of the Common Property. The Court notes that under the May 25, 2001 Declaration for Glade Springs Village, declared by Cooper Land Development, Inc. (the “GSV Declaration”), “Common Property” is defined as “any property, real, person or mixed, owned or leased by the Association or in which the Association otherwise has possessory or use rights, those areas reflected as such upon any recorded subdivision plat of Glade Springs Village, and those areas so designated from time to time by the Developer and intended to be devoted to the common use and enjoyment of the Members.” Article I(6) of the Declaration for Glade Springs Village, dated May 25, 2001, and recorded in the Raleigh County Clerk’s Office in Deed Book 5004, at page 6485. Further, around 2003, Cooper Land Development, Inc., the developer, and the declarant of Glade Springs Village including Stonehaven as a Member-owned course, completed construction of the course. GSVPOA Members and guests began using it in July 2003. The GSVPOA’s position is that at the time, Cooper Land designated the property for both the Stonehaven Golf Course as well as the layout for the cart paths, on property that Cooper Land owned and controlled, and that following Stonehaven’s completion, Cooper Land conveyed the course to GSVPOA by a deed dated May 24, 2004 and recorded in the Raleigh County Clerk’s office in Deed Book 5013, at page 3876. However, the Court notes that with regard to Parcel G, there is a dispute as to whether or not the cart path is included in this property that Cooper Land owned, controlled, and conveyed to GSVPOA.

The threatened barrier would unnecessarily jeopardize the safety and wellbeing of

GSVPOA members and golf patrons on the Stonehaven Golf Course¹. This harm is irreparable.

As noted by the Supreme Court of Appeals of West Virginia:

the term ‘irreparable’ does not always mean what it seems to signify, that is, a physical impossibility of reparation. *Mullens Realty & Ins. Co. v. Klein*, 85 W. Va. 712, 102 S.E. 677, 680 (1920). West Virginia law is clear that ‘[e]quity will entertain jurisdiction to prevent a threatened injury[.]’ *Summers v. Parkersburg Mill Co.*, 77 W. Va. 563, 88 S.E. 1020, 1021 (1916). An ‘irreparable injury’ is one that is ‘actual and imminent’ and ‘it is likely that the [past] offensive conduct will recur.’ 3 N.Y. Practice, Com. Litig. in New York State Courts § 18:9 (4th ed.). *See also, Fretz v. Burke*, 247 Cal. App. 2d 741, 744-45, 55 Cal. Rptr. 879 (Ct. App. 1967) (‘[A]n injunction may be granted as to past acts if there is evidence that they will probably recur.’).

Northeast Nat. Energy LLC v. Pachira Energy LLC, 243 W. Va. 362, 369, 844 S.E.2d 133 140 (2020). Here, construction of the proposed barrier would threaten members and golf patrons with risk of physical injury by requiring golfers to reverse course from the 18th green and travel into oncoming tee shots in order to exit the Stonehaven course. The public interest favors protection of individuals from exposure to an unnecessary risk of physical harm.

GSVPOA, its members and golf course patrons will be deprived of the use of the cart path that has been used for almost twenty years (although it is disputed whether or not it constitutes GSVPOA Common Property) that provides a safe and necessary means of ingress and egress from the Stonehaven Golf Course. The construction of such a barrier would require Members and golf patrons to travel from the 18th green toward the 18th tee into the path of oncoming golf balls in order to exit the Stonehaven course or upon public roadways – both of which pose serious safety hazards.

¹ The Court notes that if the GSVPOA eventually prevails on their interpretation of the ownership of the cart path as common property, then the cart path barrier/fence would also deprive GSVPOA and its members of an established interest in real estate (*i.e.*, an appurtenance to the Stonehaven Golf Course that would then constitute Common Property).

Factor 2: Public Interest

The next factor to consider is the public interest. Similar to the Court's consideration of harm to GSVPOA, there is a large number of people, including its Members and the Resort's own guests, who will likely be playing at Stonehaven. Keeping the Cross-Over Path open, as it has been for 20 years, until the underlying dispute regarding the interests in Parcel G is resolved, will keep play on the Stonehaven golf course safe and efficient.

Factor 3: Likelihood of Harm to GSR or EMCO

The third factor is the likelihood of harm to GSR or EMCO if the Court was to grant the preliminary injunction. The Cross-Over Path has been used since 2004, almost 20 years, without impeding access to GSVPOA Members and guests and the Resort guests support keeping the Cross-Over Path open until the merits of the underlying disputed interests in Parcel G are resolved. Thus, consistent with case law, if the *status quo* is restored with the issuance of a preliminary injunction, neither GSR nor EMCO would suffer significant harm until the Court, upon further action of the parties, decides the merits of the underlying disputed interests in Parcel G.

Factor 4: GSVPOA's Likelihood of Success on the Merits

This Court concludes that it is premature to address the arguments set forth in the briefing on whether GSVPOA has possessory, non-possessory, prescriptive or no rights to use the Cross-Over Path, regarding the likelihood that the movant would prevail on the merits of GSVPOA's underlying claim. The Court puts greater weight on the the exigent circumstances discussed in Factors 1 and 2. However, in considering GSVPOA's likelihood of success on the merits, the Court determines that this a complicated issue which cannot be decided at this time. It would be premature at this stage. When the issue is developed and the facts and authority are brought before the Court for ultimate resolution, the GSVPOA very well may be meritorious.

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

Here, for years, the status quo was that the POA and its members were able to use the cart path at issue in order to safely travel between the #18 Green and the #1 Hole, without traveling on a trafficked road not designed for carts to travel on or through a path where golfers are playing. 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.

Thus, considering the four factors "in flexible inter-play", this Court concludes that in light of the public interest and the case law on *status quo ante*, the circumstances leading to GSR's actions to cut off golfers' access to and use of the Cross-Over Path favors the granting of GSVPOA's motion for preliminary injunction that GSR remove the barriers until such time as the underlying disputed interests in Parcel G are resolved and adjudicated in a final judgment and, further, that GSR and EMCO allow GSVPOA, its Members and guests free and unencumbered access over and through the Cross-Over Path for all purposes as they were before GSR took steps to impede access. In conclusion, the Court finds and concludes that GSVPOA has met its burden of satisfying the four factors "in flexible inter-play" for the issuance of a preliminary injunction. Accordingly, GSVPOA's Motion for Preliminary Injunction should be granted.

The Court notes and addresses the fact that it specified at the hearing that this decision relates to the cart path and access to, and use of, the cart path. This Order, and the decisions relating to irreparable harm and status quo, relate to GSVPOA and its Members and guests' use of the cart

path specifically. That is the scope of this Court's decision. Therefore, GSR must ensure that no fencing or other barriers block the paved cart path for safe ingress and egress between the #18 Green and the #1 Hole. To be clear, removal of the any remaining fencing was not and is not ordered by this Court, meaning fencing that does not impede traveling the paved cart path at issue here.

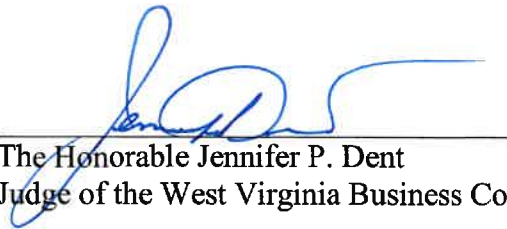
Conclusion

WHEREFORE, it is hereby ADJUDGED, ORDERED and DECREED that *Glade Spring Village Property Owners Association, Inc.'s Verified Motion for Preliminary Injunction Regarding That Certain Cart Path Between the No. 1 Tee and the No. 18 Green* is hereby GRANTED and GSR and EMCO are hereby ENJOINED and ORDERED to cease further construction and erection of fencing, posts, gates or barriers on Parcel G affecting the cart path between No. 1 Tee and No. 18 Green and, further to remove all such fencing, posts, gates or barriers on Parcel G that obstruct the cart path between the No. 1 Tee and the No. 18 Green, and to restore that portion of Parcel G to the conditions before such construction and erection of fencing, posts, gates or barriers began to keep the property, specifically the golfers' ability to use the cart path at issue for ingress and egress, as it is currently being used as it has been used for the past 20 years.

The Court notes the objections of the any adverse ruling herein.

The Clerk is directed to enter this Order as of the date first hereinabove appearing and to send attested copies to all counsel of record, as well to the Business Court Central office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia 25401.

Entered this 27th day of April 2022.



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

Prepared and submitted By (with changes by the Court):

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