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 Reeder
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 Reeder
Resolution: Judge Lorensen

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

Counterclaim Defendant.

ORDER GRANTING JUSTICE HOLDINGS LLC'S MOTION TO QUASH GSVPOA NOTICES OF VIDEOTAPED DEPOSITIONS

This matter came before the Court on *Defendant Justice Holdings LLC's Motion to Quash GSVPOA Notices of Videotaped Deposition of Kent Burger, J. Neff Basore, and First*

Amended Notice of Videotaped 30(B)(7) of Cooper Land Development, Inc. (the "Motion"). The Court notes this motion was filed in both this case file and in 21-C-129, also assigned to the undersigned, and the case caption lists both cases. Defendants, GSR, EMCO, R. Elaine Butler, James Terry Miller, and Elmer Coppoolse, filed Defendants' Joinder of Justice Holdings LLC's Motion to Quash, wherein Defendants joined the motion. The Plaintiff, Glade Springs Village Property Owners Association, Inc., by counsel, Ramonda C. Marling, Esq., and Defendants, GSR, EMCO, R. Elaine Butler, James Terry Miller, and Elmer Coppoolse, by counsel, Arie M. Spitz, Esq., as well as Justice Holdings LLC, by counsel, Shawn P. George, 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.

Justice Holdings LLC and Defendants, GSR, EMCO, R. Elaine Butler, James Terry Miller, and Elmer Coppoolse (hereinafter "Defendants") seek to quash multiple deposition topics that it contends are relevant to issues that are subject of an appeal pending before the West Virginia Supreme Court of Appeals in *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.*, Raleigh County Civil Action No. 19-C-481 (referred to by the parties as the "Justice Appeal"). *See* Def's Mot., p. 3. Specifically, Defendants aver the issue upon appeal to be answered by the Supreme Court is whether or not the Uniform Common Interest Ownership Act (hereinafter "UCIOA" applies to Glade Springs Village. *Id.* Further, Defendants aver the topics include whether or not the Developer Lots are exempted from annual assessments, and Cooper Land's intent to exempt Glade Springs Village from the application of UCIOA. *Id.*

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:

1. W. Va. R. Civ. P. 26(b)(1) permits discovery of any non-privileged matter that is relevant to the subject matter of the action. "The scope of discovery in civil cases is broad." *State ex rel Shroades v. Henry*, 187 W. Va. 723, 725, 421 S.E.2d. 264, 266 (1992). Broad discovery is necessary to eliminate surprise and trial by ambush. *McDougal v. McCammon*, 193 W. Va. 229, 237, 455 S.E.2d 788, 796 (1995); *Graham v. Wallace*, 214 W. Va. 178, 184-85, 588 S.E.2d 167, 173-174 (2003).

2. Rule 26 of the West Virginia Rules of Civil Procedure provides, in pertinent part: Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." W. Va. R. Civ. P. 26.

3. Further, Rule 26(b) provides that "[t]he frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that:

> (A) The discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
> (B) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
> (C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation."

W. Va. R. Civ. P. 26.

4. Here, Defendants seek to quash multiple deposition topics that they contend are relevant to issues that are subject of an appeal pending before the West Virginia Supreme Court of Appeals in *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.*, Raleigh County Civil Action No. 19-C-481 (referred to by the parties as the "Justice Appeal"). *See* Def's Mot., p. 3.

5. Defendants aver that allowing these deposition topics to go forward on UCIOA related issues in this action, while UCIOA-centered motions were stayed by this Court, by Judge Dent, in Civil Action No. 19-C-357 would be illogical, contradictory, inefficient and expensive. *Id.*; *see also* Reply p. 3. The Court notes that the motions were stayed, and the civil action itself was not stayed. However, in this particular instance, since the deposition topics surround the precise question pending before the Supreme Court, the Court agrees that the most efficient management of this civil action would be for the instant topics to be quashed at this point in time, until such time that a definitive answer to the UCIOA question is provided by the Supreme Court.

6. In support of its motion, Defendants cite Rule 27(b) of the West Virginia Rules of Civil Procedure. Rule 27 governs "depositions before action or pending appeal". W. Va. R. Civ. P. 27. Rule 27(b) provides, in pertinent part: "If an appeal has been granted from a judgment of any court ... the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in such court." W. Va. R. Civ. P. 27.

7. This Court concludes Rule 27(b) does not apply to the instant motion, which discusses an appeal in Civil Action No. 19-C-481, as Rule 27(b) contemplates "*the court in which the judgment*

was rendered may allow the taking of the depositions.... W. Va. R. Civ. P. 27 (emphasis added).

8. However, the Court relies on Rule 26 of the West Virginia Rules of Civil Procedure in deciding this motion. Rule 26 provides, in pertinent part:

9. The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that:

> (A) The discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
> (B) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
> (C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.
>
> W. Va. R. Civ. P. 26.

10. Here, from a case management perspective, the Court finds that questioning witnesses on the subject deposition topics at this time would be duplicative and burdensome, taking into account the needs of this particular case, as instructed by Rule 26(c). It would also be premature. At this time, the parties are waiting on a final answer by the West Virginia Supreme Court of Appeals to a precise question regarding the property at the subject of this civil action: whether or not Glade Springs Village is a common interest community under UCIOA. The Court finds that questioning witnesses on this issue now, before that question has been answered by the Supreme Court would be duplicative, depending on the decision issued by the Supreme Court. In this particular case, the Court concludes the UCIOA question before the Supreme Court is not just on point, but adjudicates whether or not UCIOA applies to the same exact property at issue here, Glade Springs Village. Although the Court notes that Plaintiff argued quashing the subject topics would be duplicative, because certain Cooper witnesses would need to be deposed twice, the Court considers the

testimony regarding applicability of the UCIOA to Glade Springs Village and the Lots would only need to be given once, after the question has been adjudicated by the Supreme Court.

11. In the interest of efficiency and economy, for the reasons set forth above, the Court finds the instant motion shall be granted. The Court finds and concludes that the disputed deposition topics (applicability of UCIOA/Topics 2, 30-37, 39, and 47, the exemption of Developer Lots from annual assessments/Topics 3, 7, and Cooper's alleged intent to exempt Glade Springs Village from the application of UCIOA/Topics 35-37, 39) shall be quashed.

CONCLUSION

Therefore, it is hereby ADJUDGED, ORDERED and DECREED that *Defendant Justice Holdings LLC's Motion to Quash GSVPOA Notices of Videotaped Deposition of Kent Burger, J. Neff Basore, and First Amended Notice of Videotaped 30(B)(7) of Cooper Land Development, Inc.* is hereby GRANTED. The Court notes the objections and exceptions of the parties to any adverse ruling herein.

The Clerk of this Court shall enter the foregoing and forward attested copies hereof to all counsel, to all *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.

ENTERED this 9th day of November 2022.

Honorable Joseph K. Reeder
Judge of the West Virginia Business Court Division