

In the Circuit Court of Raleigh County, West Virginia

**Glade Springs Village Property
Owners Association, Inc.,**
Plaintiff,

v.

Case No. CC-41-2021-C-129
Judge Joseph Reeder

**Cooper Land Development Inc,
Justice Holdings LLC,**
Defendants

ORDER

On March 23, 2023, Defendant Cooper Land Development, Inc. ("CLD") moved the Court pursuant to Rule 56 of the West Virginia Rules of Civil Procedure for entry of an order granting summary judgment in its favor and against Plaintiff Glade Springs Village Property Owners Association, Inc. ("GSVPOA" or "Plaintiff") upon grounds that all of Plaintiff's claims against CLD are barred by expiration of the applicable statutes of limitations and the equitable doctrine of laches. The Court, having considered the pleadings, evidence, written submissions of the parties and arguments of counsel, finds that there is no genuine issue of material fact in dispute and that all the Plaintiff's claims against CLD are barred by expiration of the applicable statutes of limitations and the doctrine of laches and should be dismissed, with prejudice. In support thereof, the Court finds and concludes as follows:

Findings of Fact

1. Defendant CLD is an Arkansas corporation formerly authorized to conduct business in West Virginia. *Cmplt.*, ¶2, *CLD's Answer*, at ¶2.
2. Plaintiff GSVPOA is a West Virginia corporation with its principal office in Daniels, Raleigh County, West Virginia. *Cmplt.*, ¶1, *CLD's Answer*, at ¶1.

3. CLD and GSVPOA are separate legal entities. *Compl.* at ¶ 1-2.

4. CLD and GSVPOA agreed to The Declaration of Covenants and Restrictions for Glade Springs Village (“Declaration”) and the same was recorded in the Office of the Clerk of the County Commission of Raleigh County, West Virginia on May 25, 2001, in Deed Book 5004, Page 6485. *Declaration*, pp. 1, 33.

5. CLD was Developer and Declarant of Glade Springs Village pursuant to the Declaration from May 25, 2001, until October 20, 2010, when CLD sold its entire interest in Glade Springs Village to Justice Holdings, LLC (“Justice”) and assigned all its “rights, duties, reservations and obligations, as Developer” and Declarant to Justice on that date. *Id.*; *Assignment and Assumption of Developer Rights*, p. 2.

6. Further, the Parties' Assignment and Assumption of Developer Rights explicitly released CLD from any and all liability "incident to such rights, duties, reservations, and obligations thereunder." *Assignment and Assumption of Developer Rights*, p. 2.

7. GSVPOA “is governed and managed by and acts solely through its Board of Directors.” *Compl.* at ¶ 23.

8. The Declaration reserved the right of the Declarant to appoint the directors of the GVSPOA Board. *Declaration*, Art. III, Sec. 2.

9. From time-to-time between 2001 and 2010, CLD appointed directors of the GSVPOA Board but never served as a director, officer, lawyer, or accountant of GSVPOA. *David McClure Depo.*, pp. 12-14.

10. After October 20, 2010, no one from CLD “played any role” in GSVPOA. *Id.*, at pp. 56, 99-101.

11. Plaintiff filed its Complaint in this civil action on April 30, 2021. *Compl.*, p. 1.

12. The Complaint asserts the following legal and equitable causes of action against CLD under West Virginia law: accounting (Count I); declaratory judgment that the Loan was unconscionable and void *ab initio* (Count II); breach of the Declaration (Count III), violation of the West Virginia Uniform Common Interest Ownership Act, W. Va. Code §36B-1-107, (“UCIOA”) (Count IV), breach of fiduciary duty (Count V), Negligence (Count VI), Conversion (Count VII), Unjust Enrichment (Count VIII), Mutual Mistake (Count IX); declaratory judgment and other relief related to the Declaration and Deed to the Woodhaven golf course (Counts X and XI). *See Compl., generally.*

13. All of the acts, omissions, and wrongdoing which GSVPOA alleges to be attributable to CLD in this civil action occurred, if at all, in and between May 25, 2001 and October 20, 2010. *Id.*

14. On March 23, 2023, CLD filed the instant motion, and on June 8, 2023, filed its *Supplement in Support of Cooper Land Development Inc.’s Motion for Summary Judgment on Statute of Limitations.*

15. On June 15, 2023, GSVPOA filed its *Response in Opposition to Cooper Land Development, Inc.’s Motion for Summary Judgment on Statute of Limitations*, arguing that the doctrine of adverse domination tolled the statutes of limitations.

16. On June 20, 2023, CLD filed its *Reply in Support of its Motion for Summary Judgment on Statute of Limitations.*

17. On June 23, 2023, the POA filed GSVPOA’s *Motion for Leave to File Surreply Memorandum in Opposition to Cooper Land Development, Inc.’s Motion for Summary Judgment on Statute of Limitations.*

18. Subsequently, on a prior day, CLD filed a memorandum opposing the *Motion for Leave to File Surreply Memorandum in Opposition to Cooper Land Development, Inc.’s Motion for Summary Judgment on Statute of Limitations.*

19. On June 27, 2023, this Court entered its *Order Denying GSVPOA's Motion for Leave to File Surreply Memorandum in Opposition to Cooper Land Development, Inc.'s Motion for Summary Judgment on Statute of Limitations*.

20. The Court now finds the instant Motion is ripe for adjudication.

STANDARD OF LAW

21. Motions for summary judgment are governed by Rule 56, which states that “judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” W. Va. R. Civ. P. 56(c). West Virginia courts do “not favor the use of summary judgment, especially in complex cases, where issues involving motive and intent are present, or where factual development is necessary to clarify application of the law.” *Alpine Property Owners Ass’n, Inc. v. Mountaintop Dev. Co.*, 179 W.Va. 12, 17 (1987).

22. Therefore, “[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” Syl. Pt. 3, *Aetna Cas. and Surety Co. v. Fed. Ins. Co. of New York*, 148 W.Va. 160, 171 (1963); Syl. Pt. 1, *Andrick v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992); Syl. Pt. 1, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52 (1995). A motion for summary judgment should be denied “even where there is no dispute to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom.” *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 59 (internal quotations and citations omitted).

23. However, if the moving party has properly supported their motion for summary judgment with affirmative evidence that there is no genuine issue of material

fact, then “the burden of production shifts to the nonmoving party ‘who must either (1) rehabilitate the evidence attacked by the movant, (2) produce additional evidence showing the existence of a genuine issue for trial or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f).” *Id.* at 60.

Conclusions of Law

24. GSVPOA’s statutory and common law tort claims against CLD alleging breach of W. Va. Code §36B-3-107 (Count IV), breach of fiduciary duty (Count V), negligence (Count VI) and conversion (Count VII) are subject to the 2-year statute of limitations found at W. Va. Code §55-2-12. *See Evans v. United Bank*, 775 S.E. 2d 500, 508 (W. Va. 2015), *Dunn*, 689 S.E. 2d 255, 268.

25. The tort claims alleged in Counts IV, V, VI, and VII are all based on CLD’s exemption from annual assessments beginning in 2001 and ending on October 20, 2010, when CLD sold all its right, title and interest in Glade Springs Village to Justice. *See Compl.*, ¶¶ 7, 127, 132, 137 and 141. The Court finds that because David McClure testified that CLD’s exemption for assessments was known “to anyone who wanted to know” as soon as the Declaration was publicly recorded on May 25, 2001. *McClure Depo.*, pp. 22-29, GSVPOA’s tort claims expired no later than October 20, 2012, and concludes that because GSVPOA did not file the Complaint in this civil action until April 30, 2021, Counts IV, V, VI, and VII were asserted at least eight years after expiration of the statute of limitations.

26. GSVPOA’s breach of contract claims against CLD alleging breach of the Declaration (Count III), seeking declaratory judgment related to Woodhaven (Count X), and breach of representation and special warranty deed related to Woodhaven (Count XI) are subject to the 10-year statute of limitations for written contracts found at W. Va. Code §55-2-6.

27. The contract claims alleged in Counts III, X, and XI are also based upon CLD's alleged failure to pay GSVPOA annual assessments on its developer lots within Glade Springs Village, alleged breaches of the Declaration, and alleged breaches of the Woodhaven golf course Quitclaim Deed while CLD was the Declarant. *Compl.*, ¶¶ 119-20, 155, 159-60.

28. The Court concludes that because CLD has not been the Declarant since it sold its rights in Glade Springs Village to Justice on October 20, 2010, that GSVPOA's breach of contract claims expired no later than October 20, 2020. *Compl.*, ¶ 7.

29. Further, the Court finds there is nothing in the record that indicates that CLD should be held responsible for the actions of Justice Holdings. In fact, Further, the Parties' Assignment and Assumption of Developer Rights explicitly released CLD from any and all liability "incident to such rights, duties, reservations, and obligations thereunder."

30. The Court further concludes that because GSVPOA did not file the Complaint in this civil action until April 30, 2021, Counts III, X, and XI were asserted more than one year after expiration of the statute of limitations. *See Harris v. County Commission of Calhoun County*, 797 S.E. 2d 62, 68 (W. Va. 2017).

31. GSVPOA's claim that CLD violated W. Va. Code §36B-3-107 (Count IV) is subject to the two-year statute of limitations embodied in W. Va. Code §55-2-12 inasmuch as the West Virginia Legislature has provided that "every action for which no limitation is otherwise prescribed shall be brought [...] within two years next after the right to bring the same shall have accrued..." and there is no other limitation period prescribed for the claim asserted in Count IV. W. Va. Code §55-2-12.

32. Plaintiff's claims in Count IV are based upon allegations that CLD, as Declarant from May 2001 until October 2010, was liable for all expenses in connection

with development of Glade Springs Village. *Compl.*, ¶¶ 126-28. However, GSVPOA admits that CLD's term as Declarant ended when Justice became the new Declarant on October 20, 2010. *Compl.*, ¶ 7.

33. The Court concludes that because CLD has not been the Declarant since it sold its rights in Glade Springs Village to Justice on October 20, 2010, that GSVPOA's breach of contract claims expired no later than October 20, 2012. *Id.*

34. The Court further concludes that because GSVPOA did not file the Complaint in this civil action until April 30, 2021, Count IV was asserted more than eight years after expiration of the statute of limitations.

35. GSVPOA's claims against CLD alleging breach of fiduciary duty (Count V), negligence (Count VI), and conversion (Count VII) are governed by a 2-year statute of limitations. W. Va. Code §55-2-12; *Evans*, at 508; *see also Dunn*, at 268

36. Count V of GSVPOA's Complaint alleges that CLD breached a fiduciary duty to GSVPOA by accepting payments on the Capital Expense and Operating Loan Agreement that GSVPOA and CLD entered in May 2001. *Compl.*, at ¶¶ 39 and 132.

37. Count VI alleges that CLD is liable to GSVPOA as Declarant of GSV for negligence arising out of its "acts or omissions related to or arising out of the Loan Agreement, including the acceptance of payments thereunder...." *Compl.*, at ¶ 137.

38. Count VII alleges that CLD, as Declarant, "converted GSVPOA assessment income received by GSVPOA required to pay the Common Expenses for its own use and to no benefit of use of GSVPOA or its Members...." *Compl.*, at ¶ 141.

39. GSVPOA acknowledges that CLD assigned and transferred the Loan Agreement in its entirety to Justice on October 20, 2010—after that date, CLD was no longer Declarant and did not accept any further payments pursuant to that agreement. *Compl.*, at ¶ 44.

40. The Court concludes that because CLD has not been the Declarant since it sold its rights in Glade Springs Village to Justice on October 20, 2010, that GSVPOA's breach of fiduciary duty, negligence, and conversion claims expired no later than October 20, 2012. *Id.*

41. The Court concludes that because GSVPOA did not file the Complaint in this civil action until April 30, 2021, Counts V, VI, and VII were asserted more than eight years after expiration of the statute of limitations.

42. GSVPOA argues that the dispositive statutes of limitations should be tolled as to CLD under the adverse domination doctrine recognized by the Supreme Court of Appeals of West Virginia in Syl. Pt. 1, *Clark v. Milam*, 452 S.E.2d 714 (W. Va. 1994). The Court disagrees.

43. CLD argues that the doctrine of adverse domination is not applicable to the undisputed facts of this case for four reasons: (1) the GSVPOA or any individual member thereof could have sued CLD at any time from May 2001 to 2010 pursuant to the Declaration; *Declaration*, Art. XVII, Sec. 6, *Lisman Depo.*, pp. 95-98 or pursuant to W. Va. Code §36B-4-117; (2) CLD is not one of the persons against whom the doctrine of adverse domination applies under West Virginia law (officer, director, lawyer, or accountant) and owed no fiduciary duty to the Plaintiff; *McClure Depo.*, pp. 12-21; *Lisman Depo.*, pp. 93-94; (3) GSVPOA has not presented any evidence that CLD-appointed Directors failed to exercise independent judgment in the interest of the GSVPOA and its representatives testified they have no evidence that a CLD-appointed director took any actions that were "inconsistent with any obligations they would have to the [GSV]POA." *McClure Depo.*, pp. 104-110; and (4) even if the adverse domination doctrine applied here, it could only toll statutes of limitations as to CLD "for so long as the corporation is controlled by [CLD]." *Clark* at 718.

44. While the Court is not entirely persuaded by CLD's narrow reading of *Clark*, the Court finds that it is undisputed that CLD's involvement at Glade Springs Village as Declarant—and any rights it reserved to appoint directors at GSVPOA—ceased on October 20, 2010, when CLD sold its interests in GSV to Justice. *Compl.*, ¶ 24. The Court notes that CLD proffered that the record is clear that CLD had no relationship with Justice and in fact, CLD was a competitor of Justice and sold its interests in GSV to Justice in an arm's length transaction. See Reply, p. 9. At any rate, the Court considers and finds that after October 20, 2010, when CLD sold its interests in GSV, it was not the Declarant and had no authority to appoint directors and played no role in GSV. *Id.* at 8.

45. GSVPOA's equitable claims which seek an accounting from CLD (Count I), allege the Loan Agreement was unconscionable (Count II), allege unjust enrichment (Count VIII), and mutual mistake (Count IX) are barred by the doctrine of laches and the 5-year statute of limitations under Arkansas law. *Ark. Code Ann.* § 16-56-111 (2021); *Ark. Code Ann.* § 16-56-115 (2021).

46. Laches is applicable where “a party knows [its] rights or is cognizant in a particular subject-matter but takes no steps to enforce the same until the condition of the other party has, in good faith, become so changed, that [it] cannot be restored to [its] former state if the right be then enforced.” *Carter v. Price*, 102 S.E. 685 (W. Va. 1920).

47. The doctrine of laches is only available to toll statutes of limitations and has never been applied to excuse untimely equitable claims in West Virginia. See *Condry v. Pope*, 166 S.E.2d 167 (W. Va. 1969) (“Laches applies to equitable demands where the statute of limitations does not.”).

48. Here, Counts I, II, VIII, and IX are based upon CLD's alleged improper

actions which GSVPOA knowingly ratified, accepted, endorsed, and approved of from 2001 to 2010 but now claims are inequitable. As the Court explained above, the facts upon which GSVPOA relies for these claims were publicly recorded and “available to any member” of GSVPOA. However, Plaintiff took no steps to assert claims against CLD until years after CLD was gone, and CLD’s rights had been prejudiced and its condition irrevocably changed.

49. Additionally, to the extent that GSVPOA is suing CLD for its own actions and conduct (action taken by the GSVPOA’s Board of Directors – not CLD), the Court notes that such claims are barred by the doctrines of equitable estoppel and collateral estoppel.

WHEREFORE, in consideration of these findings of fact and conclusions of law, it is hereby **ORDERED, ADJUDGED, AND DECREED** that:

Defendant Cooper Land Development, Inc.’s Motion for Summary Judgment on Statute of Limitations is **GRANTED**; and

All claims asserted in the Plaintiff’s Complaint against Defendant Cooper Land Development, Inc. are **DISMISSED**, with prejudice.

The Court further **ORDERS** that, given the issues involving CLD have been resolved, the stay in this matter which was previously entered by the July 11, 2023 Order is hereby **LIFTED**.

The Court **ORDERS** that nonmovants shall have 15 days from the entry of this ORDER to respond to any outstanding dispositive motions, including those that implicate potential application of UCIOA to GSVPOA. Thereafter, movants shall have 10 days after that to file any applicable Replies.

The Court notes the objections and exceptions of the Plaintiff to this ORDER and preserves them for the record.

The Circuit Clerk is directed to place this ORDER of record and provide a copy to all parties to this action, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTER: this 20th day of July, 2023.

/s/ Joseph K. Reeder
Circuit Court Judge
10th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.