

**In the Circuit Court of Raleigh County, West Virginia**

**GLADE SPRINGS VILLAGE  
PROPERTY OWNERS,**  
Plaintiff,

v.

Case No. CC-41-2019-C-357  
Judge Joseph Reeder

**EMCO GLADE SPRINGS  
HOSPITALITY,  
ELMER COPPOOLSE,  
ELAINE B. BUTLER,  
GSR, LLC,  
JAMES TERRY MILLER ET AL,**  
Defendants

**ORDER**

This matter came before the Court on the 10th day of October, 2023, pursuant to Defendant GSR, LLC's *Motion for Expedited Hearing and Order to Enforce the Memorandum of Understanding and the Court's Orders*, filed on the 4th day of October, 2023. On the 6th day of October, 2023 this Court granted GSR's *Motion for Expedited Hearing* and ordered that a hearing on the matter be set for the 10th day of October, 2023.

Present at the hearing on behalf of the Plaintiff, Glade Springs Village Property Owners Association ("GSVPOA") was Ramonda C. Marling, Esq. and Mark A. Sadd, Esq.; present on behalf of the defendant GSR was Arie M. Spitz, Esq. and Clayton T. Harkins, Esq.; present on behalf of the defendant EMCO Glade Springs Hospitality, LLC was Shawn P. George, Esq.; and present on behalf of the defendants Elmer Coppoolse, James Terry Miller, and R. Elaine Butler was Bryan N. Price, Esq.

After a review of the *Motion* and subsequent pleadings and arguments of the parties, and reviewing all relevant legal authorities, the Court **FINDS** and **ORDERS** as

follows:

### **RELEVANT FACTS**

On or about May 4, 2001, GSR granted certain easements and rights to the POA in exchange for reimbursement of Easement Area Expenses under the Deed of Easements and Licenses ("DOE"). Under the DOE, GSR tenders .75% of its gross monthly revenue to GSVPOA for its share of Easement Area Expenses. Paragraph 3(a) of the DOE specifically states that GSR shall maintain and repair the Roads, including making any and all capital expenditures, repairs, and replacements, and that GSR may provide security guards to control access through the Glade Springs Resort and otherwise provide security and related services.

Paragraph 3(b) of the DOE provides that GSR shall invoice GSVPOA on the 15th day of each month for the preceding month's estimated expenses incurred under Paragraph 3(a), with GSVPOA's payment of the invoice due upon receipt. Under the DOE, GSVPOA has the right to review and audit any records of GSR relating to the expenditures, with a final reconciliation to be made on the 15th day of February for the previous calendar year.

On April 17, 2020, GSVPOA filed its *Motion for Preliminary Injunction to Enforce Specific Performance of the Easement*. In May 2019, GSVPOA stopped paying GSR's invoices for security and road maintenance services. Due to GSVPOA's non-payment, GSR reduced security and road maintenance services in Glade Springs Village. GSVPOA then filed its *Motion for Preliminary Injunction* seeking the Court to allow it to take over security and road maintenance services in Glade Springs Village and partial control of the Gatehouse.

While the *Motion for Preliminary Injunction* was pending, the Parties mediated this matter with the Honorable Judge Michael Lorensen on the 5th day of May, 2020.

The Parties reached an agreement which is memorialized in the Memorandum of Understanding (“MOU”). Under the MOU, GSR agreed to restore road maintenance and security services in Glade Springs Village and provide additional documentation regarding the services provided. In exchange, GSVPOA again agreed to pay GSR’s invoices upon receipt.

On May 20, 2020, the Court denied GSVPOA’s *Motion for Preliminary Injunction*. In doing so, the Court found that reimbursement for security and road maintenance services is mandatory under the DOE and GSVPOA is required to make such reimbursement upon receipt of GSR’s invoices. Further, the Court found that this obligation is unconditional.

On May 24, 2021, the Court issued an order granting in part and denying in part GSVPOA’s *Motion for Summary Judgment on [Plaintiff’s] Contribution for Expenses Under the Deed of Easements*. In that Order, the Court found that what exactly constitutes “security and related services” may be a question of fact. However, the Court noted that GSVPOA is “not able to reduce the figure they challenge in the invoice by an amount of money which is in dispute. The proper recourse is in Section 3(b) of the DOE, regarding overpayment or underpayment.” The Court again found that GSVPOA’s reimbursement obligation is unconditional.

GSR alleges that GSVPOA has refused to pay all of GSR’s July and August 2023 invoiced amounts for security services provided by GSR under the DOE and MOU. Specifically, GSVPOA contests the estimated costs for GSR incurs in connection with providing security vehicles that are used for security patrols and to respond to emergency calls.

In addition, GSR contends that GSVPOA has advised it that GSVPOA will not pay future invoices for road paving for which GSR contracts under the DOE and MOU,

unless GSVPOA has approved the budget for the specific paving and with any amount limited to no more than \$100,000 per year. GSR wishes to have the roads paved before the paving season ends in early November. Although GSR has sought pricing for the paving services, it has not yet invoiced GSVPOA for the same, nor has such paving been done.

## **LEGAL STANDARD**

Rule 25.14 of the West Virginia Trial Court Rules states that “[i]f the parties reach a settlement and execute a written agreement, the agreement is enforceable in the same manner as any other written contract.” W. Va. T.C.R. 25.14. 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 284 (W. Va. 1968)).

## **DISCUSSION**

### **I. Disputed Security Vehicle Charges**

GSVPOA argues that GSR is not entitled to relief as to the disputed vehicle charges because this Court has already determined it is a factual issue. While this Court agrees that, based on its prior ruling, that any dispute regarding what is considered “security and related services” would be a question for a trier of fact to determine, this Court also found in its same Order that GSVPOA’s reimbursement obligation is unconditional. Under the DOE and the MOU, GSVPOA has an opportunity to review and contest GSR’s charges with a final reconciliation in February of the next year.

GSVPOA argues that the reconciliation period is merely an accounting “true-up” process. However, this is the remedy that both GSR and GSVPOA agreed to in the DOE and further reiterated in the MOU. In its Order Granting in Part and Denying in Part Plaintiff’s Motion for Summary Judgment on its Contribution for Expenses Under the Deed of Easements, the Court reminded the Parties to work together in the reconciliation process in good faith. If the Parties are unable to in good faith come to an agreement regarding the disputed vehicle charges, GSVPOA may seek further remedy by civil suit. However, based on the clear, unambiguous language of both the DOE and MOU, GSVPOA must pay any invoices in full upon receipt, regardless of prior approval of the budget. Therefore, the Court **GRANTS** GSR’s *Motion* as to the July and August 2023 invoices.

## **II. Paving Costs**

GSR has proffered to the Court that GSVPOA has informed it that GSVPOA will not pay any future invoices for road paving for which GSR contracts under the DOE and MOU, unless GSVPOA has approved the budget for the same. However, while GSR has obtained pricing for the paving services, no work has begun, and no invoices have been sent for the same to GSVPOA.

“A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *State ex rel. Universal Underwriters Insurance Company v. Wilson*, 239 W. Va. 338, 346, 801 S.E.2d 216, 224 (2017) (quoting *Texas v. United States*, 523 U.S. 296, 300, 118 S.Ct. 1257, 140 L.Ed.2d 406 (1998) (internal quotation marks and citations omitted)).

Because paving has not even occurred yet for GSVPOA to be invoiced, the Court **FINDS** the Motion as to the potential paving charges is not ripe for adjudication. As such, the Court finds that such claim is not ripe for decision and **DENIES** GSR’s

*Motion* as to this claim.

### **CONCLUSION**

For these reasons, the Court hereby **GRANTS IN PART** and **DENIES IN PART** Defendant GSR's *Motion for Expedited Hearing and Order to Enforce the Memorandum of Understanding and the Court's Orders*. Plaintiff GSVPOA is hereby **ORDERED** to pay in full the July and August 2023 invoices.

It is further **ORDERED** that the Clerk of this Court shall provide a copy of this Order to all parties of record.

Entered this 13<sup>th</sup> day of October, 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/](http://www.courtswv.gov/e-file/) for more details.