

**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,

v.

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;
GSR, LLC, a West Virginia limited liability company,

Defendants,

and

GSR, LLC, a West Virginia limited liability company,

Counterclaim Plaintiff,

v.

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

Counterclaim/Third-Party Defendant.

**Civil Action No. 19-C-357
Presiding: Judge Reeder
Resolution: Judge Lorensen**

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ORDER GRANTING MOTION TO FILE THIRD AMENDED COMPLAINT

This matter came before the Court on Plaintiff/Counterclaim Defendant Glade Springs Village Property Owners Association, Inc.'s ("GSVPOA") *Motion to File Third Amended Complaint* ("Motion"). Pursuant to the briefing schedule established by this Court, Defendants filed their response in opposition to the *Motion* and GSVPOA filed its reply memorandum in

further support of the *Motion*. A hearing was held on October 20, 2023. As such, the *Motion* has been fully briefed, the parties have developed a record on the *Motion* and this matter is ripe for decision by this Court.

Under the Motion, GSVPOA seeks leave, under WVCRCP 15, to file a Third-Amended Complaint in this civil action. In the Response, Defendants oppose the amendment by alleging that GSVPOA has been dilatory in seeking amendment to assert certain of the claims in the proposed Third Amended Complaint. In the Reply, GSVPOA advances the liberal standard for amendment of pleadings and further asserts that the Defendants allege no prejudice, and will not, in fact, suffer prejudice, from the amendment sought by GSVPOA.

Rule 15 should be construed liberally to promote the ends of justice. *See Muto v. Scott*, 224 W. Va. 350, 355 (2008). As such, the analysis begins with the presumption in favor of amendment.

The only argument Defendants make in the Response is that GSVPOA has been dilatory in asserting Counts IV, V and VI contained in the proposed Third Amended Complaint. However, Defendants make no allegation in the Response that the amendment would be prejudicial.

The West Virginia Supreme Court has made it clear that, given the liberal standard for amendment under Rule 15, prejudice is the paramount concern:

Rule 15 should be construed liberally to promote the ends of justice. Rule 15(a) states that leave to amend a complaint should be "freely given when justice so requires." We have previously explained that,

"The purpose of this policy statement is to secure an adjudication on the merits of the controversy as would be secured under identical factual situations in the absence of procedural impediments." Franklin D. Cleckley, et al., *Litigation Handbook on West Virginia Rules of Civil Procedure* § 15(a) at 334 [Juris Publishing, 2002]. See also, Syllabus Point 3, *Rosier v. Garron, Inc.*, 156 W.Va. 861, 199 S.E.2d 50 (1973). "The goal behind Rule 15, as with all the Rules of Civil Procedure, is to insure that cases and controversies be determined upon their merits and not upon legal technicalities or procedural niceties." *Doyle v. Frost*, 49 S.W.3d 853, 856 (Tenn.

2001) (citations omitted). *See also, Perdue v. S. J. Groves & Sons, Co.*, 152 W.Va. 222, 161 S.E.2d 250 (1968) (recognizing liberality to amend pleadings existed prior to the adoption of the West Virginia Rules of Civil Procedure).

Brooks, 213 W.Va. at 684, 584 S.E.2d at 540 (footnote omitted). Further, we held in Syllabus Point 3 of *Rosier v. Garron, Inc.*, 156 W.Va. 861, 199 S.E.2d 50 (1973):

The purpose of the words "and leave [to amend] shall be freely given when justice so requires" in Rule 15(a) W.Va. R. Civ. P., is to secure an adjudication on the merits of the controversy as would be secured under identical factual situations in the absence of procedural impediments; therefore, motions to amend should always be granted under Rule 15 when: (1) the amendment permits the presentation of the merits of the action; (2) the adverse party is not prejudiced by the sudden assertion of the subject of the amendment; and (3) the adverse party can be given ample opportunity to meet the issue.

Finally, we have made clear that "[p]rejudice to the adverse party is the paramount consideration in motions to amend. Absent a showing of prejudice to an adverse party motions to amend should be granted." *State ex rel. Bd. of Ed., etc. v. Spillers*, 164 W.Va. 453, 455, 259 S.E.2d 417, 419 (1979) (citations omitted).

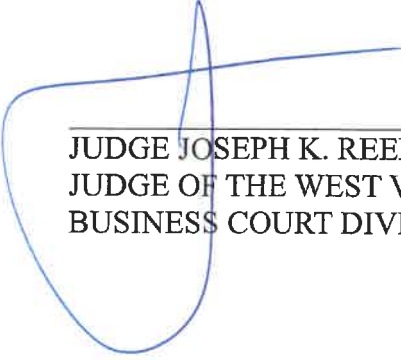
Muto v. Scott, 224 W. Va. 350, 355 (2008).

Defendants have not made a showing of prejudice. In fact, Defendants make no allegation in the Response that they would be prejudiced by the amendment. Moreover, the Court finds that there would be no prejudice in fact to Defendants under the circumstances.

First, the Court finds that is no current scheduling order in place in this civil action. As a result, all parties still have the full complement of discovery resources at their disposal, including the taking of depositions, to address the amended claims in the Third Amended Complaint. Additionally, Defendants would still have an opportunity for dispositive motions to the extent Defendants believe they can advance any appropriate dispositive motion on amended (or previously asserted) claims. This would facilitate our Supreme Court's preference for adjudication of claims on the merits.

It is ORDERED that the Motion is GRANTED. GSVPOA shall have ten (10) business days to file the Third Amended Complaint and Defendants shall have twenty (20) days thereafter to answer or otherwise respond to the Third Amended Complaint.

ENTER: 10/22/23



JUDGE JOSEPH K. REEDER
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION

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