

**IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**JUSTICE HOLDINGS, LLC,**

**Plaintiff/Counterclaim Defendant,**

**vs.**

**Civil Action No.: 21-C-129  
Presiding: Judge Reeder  
Resolution: Judge Lorensen**

**GLADE SPRINGS VILLAGE PROPERTY  
OWNERS ASSOCIATION, INC.,**

**Defendant/Counterclaim Plaintiff.**

**and**

**GLADE SPRINGS VILLAGE  
PROPERTY OWNERS ASSOCIATION, INC.,**

**Plaintiff,**

**vs.**

**COOPER LAND DEVELOPMENT, INC.,  
An Arkansas corporation, and  
JUSTICE HOLDINGS, LLC,  
A West Virginia limited liability company,**

**Defendant.**

**ORDER GRANTING IN PART AND DENYING IN PART JUSTICE HOLDINGS LLC'S  
MOTION FOR SUMMARY JUDGMENT ON COUNTS I, II, IV, V, VI, VII, VIII AND IX  
AND MOTION TO DISMISS COUNTS III, X, AND XI**

This matter came before the Court this 4th day of December, 2023 upon Defendant Justice Holdings LLC's Motion for Summary Judgment on Counts I, II, IV, V, VI, VII, and IX and Motion to Dismiss Counts III, X, and XI. The parties 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.

### **FINDINGS OF FACT**

1. The Complaint in this matter was filed on a prior day, and the claims surround alleged damages resulting from a Working Capital Loan, attached as Exhibit B to the instant motion. On May 14, 2001, Plaintiff Glade Springs Village Property Owners Association, Inc. (hereinafter “Plaintiff” or “the POA”) and Defendant Cooper Land Development, Inc. (hereinafter “Cooper” or “CLD”) executed a Loan Agreement and Revolving Note to fund the initial operational and maintenance expenses of Glade Springs Village. *See* Def’s Mem., p. 5; *see also* Pl’s Joint Resp., p. 8.

2. Advances on the Loan were made by Cooper between 2001 and 2010. *Id.* During this period, the POA made several payments of principal and interest to Cooper. *Id.*

3. On October 20, 2010, Defendant Justice Holdings LLC (hereinafter “Defendant” or “Justice Holdings”) acquired Cooper’s interest in Glade Springs Village, and this included acquiring the Loan. *See* Def’s Mem., p. 6. It appears undisputed that Justice Holdings paid more than fair market value for the Loan. *Id.*

4. Subsequently, the POA and Justice Holdings amended the Working Capital Loan in 2011, 2012, 2013, and 2014. *Id.* Justice Holdings avers each amendment extended the date for repayment, but made no other changes to the Loan. *Id.*; *see also* Def’s Mem., Ex. B. The POA posits that the amendments increased the credit line to \$2.5 million. *See* Pl’s Joint Resp., p. 8.

5. The POA made payments to Justice Holdings over those four years, and paid off the Working Capital Loan in July 2014. *See* Def’s Mem., p. 6.

6. On or about June 8, 2023, Defendant Justice Holdings filed Defendant Justice Holdings LLC's Motion for Summary Judgment on Counts I, II, IV, V, VI, VII, and IX and Motion to Dismiss Counts III, X, and XI, arguing no genuine issue of material fact exists as to Counts I, II, IV, V, VI, VII, and IX and it is entitled to dismissal of Counts III, X, and XI.

7. On or about June 15, 2023, the POA filed Glade Springs Village Property Owners Association, Inc.'s Joint Response in Opposition to Cooper Land Development, Inc.'s Motion for Summary Judgment and Justice Holdings LLC's Motions for Summary Judgment and Motion to Dismiss Counts III, X, and XI.

8. On June 30, 2023, after the opinion of the West Virginia Supreme Court of Appeals in the related matter *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.*, No. 22-0002, Civil Action No. 19-C-481, Circuit Court of Raleigh County, West Virginia, the POA filed is Supplemental Response. On July 3, 2023, the POA filed its Corrected Supplemental Response.

9. The Court finds the issue ripe for adjudication.

#### **STANDARD OF LAW**

This matter comes before the Court upon a motion for summary judgment on certain counts and a motion to dismiss certain counts filed by Justice Holdings. 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).

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).

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.

This matter also comes before the Court upon a motion to dismiss. Motions to dismiss are governed by Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. “The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Syl. Pt. 3, *Chapman v. Kane Transfer Co., Inc.*, 160 W.Va. 530 (1977). “Since the preference is to decide cases on their merits, courts presented with a motion to dismiss for failure to state a claim construe the complaint in the light most favorable

to the plaintiff, taking all allegations as true.” *Sedlock v. Moyle*, 222 W.Va. 547, 550, 668 S.E.2d 176, 179 (2008). “We recognized, however, that liberalization in the rules of pleading in civil cases does not justify a carelessly drafted or baseless pleading.” *Par Mar v. City of Parkersburg*, 183 W.Va. 706, 711 (1990).

A motion to dismiss under Rule 12(b)(6) enables a circuit court to weed out unfounded suits. *Williamson v. Harden*, 214 W.Va. 77, 79 (2003).

### **CONCLUSIONS OF LAW**

As an initial matter, the Court notes that Count XI, as to Justice Holdings, and Count I, have been voluntarily dismissed by the POA. *See* Pl’s Joint Resp., p. 9, 21-22.

The Court also notes that in its first Response filed June 15, 2023, the POA averred that: “In accordance with this Court’s June 14, 2023 bench ruling that amended the amended scheduling order for dispositive motions, GSVPOA will follow with its own motions for summary judgment and supplemental responses to the Cooper MSJ and the JH MSJ. Thus, this Court’s consideration of the Cooper MSJ on Counts II, III, IV, V, VII and VIII and the JH MSJ on Counts II, IV, V, VI, VII, and VIII is premature. Justice Holdings’ motion to dismiss on Counts III, X, and XI should be denied for the reasons stated below.” *See* Pl’s Joint Resp., p. 1-2. Then, on June 30, 2023, the POA filed Glade Springs Village Property Owners Association, Inc.’s Joint Supplemental Response in Opposition to Cooper Land Development, Inc.’s Motion for Summary Judgment and Justice Holdings LLC’s Motions for Summary Judgment and to Dismiss Counts III, X and XI, supplementing its responses to the aforementioned motions in light of the June 15, 2023 West Virginia Supreme Court of Appeals decision. On July 3, 2023, the POA filed a Corrected Response. The Court will take the issues in turn.

Count II – Unconscionability

With regard to Count II, Justice Holdings argues its extension of the loan repayment by the Loan Amendments was not unconscionable and it is entitled to judgment on Count II as a matter of law. *See* Def’s Mem., p. 4.

The POA, on the other hand, argues “[t]here is procedural unconscionability because the declarant controlled GSVPOA’s board”. *See* Pl’s Joint Resp., p. 18. The POA also argues there is substantive unconscionability because there was no need for a loan had the declarant not breached its obligations to contribute its fair share of the common expense liability for the upkeep of Glade Springs Village by paying assessments. *Id.* Further, the POA argues that UCIOA guarantees the POA the “reasonable opportunity to present evidence as to

- (1) The commercial setting of the negotiations;
- (2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy, inability to understand the language of the agreement, or similar factors; [and]
- (3) The effect and purpose of the contract or clause.”

*Id.* citing W. Va. Code ¶36B-1-111.

Further, in its Supplemental Response, the POA argues that because UCIOA applies to Glade Springs Village, its “allegations in Count II that the Working Capital Loan was unconscionable must continue beyond Defendants’ MSJs.” *See* Pl’s Suppl. Resp., p. 6.

Here, Justice Holdings did not negotiate the Working Capital Loan. *See* Def’s Mem., p. 8. Justice Holdings avers that as to any allegations that the 7<sup>th</sup> through 10<sup>th</sup> Amendments of the Working Capital Loan made by the POA and Justice Holdings are unconscionable, the amendments merely extended the date of repayment by one year without changing any other terms.

*Id.* Justice Holdings argues there is no evidence or any allegations that these amendments were harmful to the POA. *Id.*

The Court considers the argument that the POA had the legal authority to enter into the Working Capital Loan in 2001, and to amend it thereafter<sup>1</sup>. *Id.* at 7. The Court also considers that Justice Holdings acquired the Loan for full value in October 2010 and extended the time for repayment without altering its terms, and accepted payments by the POA until the Loan was discharged. *Id.* The Court notes Justice Holdings proffered the testimony of David McClure, President of the POA Board elected by the unit holders in 2019, who agreed that there is nothing with respect to the Working Capital Loan to indicate that Justice Holdings did anything other than perhaps overpay for it and service it until it was paid off (and further that the corporate representative of the POA adopted the McClure testimony on the topic of the Working Capital Loan). *Id.* at 7-8.

Further, with regard to UCIOA's applicability, it has now been decided that UCIOA applies to Glade Springs Village; however, the Court is not persuaded that because of this, the POA's "allegations in Count II that the Working Capital Loan was unconscionable must continue beyond Defendants' MSJs." *See* Pl's Suppl. Resp., p. 6.

Accordingly, the Court finds there is no genuine issue of material fact remaining. Justice Holdings is entitled to summary judgment on Count II – Unconscionability.

#### Count V – Breach of Fiduciary Duty

With regard to Count V, Justice Holdings argues it is entitled to judgment as a matter of law because it acted in good faith in purchasing and servicing the obligation owed by the POA to

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<sup>1</sup> The Court also notes that the POA has averred that meeting minutes, which were attached to the Response as an Exhibit, of the POA Board of Directors do not demonstrate that corporate authority was granted to enter into the Working Capital Loan, and that there were no corporate resolutions related to the Working Capital Loan. *See* Joint Resp., p. 8.

Cooper in 2010. *See* Def’s Mem., p. 4. Count V alleges a Breach of Fiduciary Duty imposed by West Virginia Code § 36B-1-112 (good faith in contracts) with respect to the Working Capital Loan. *Id.* at 8. Justice Holdings it had no notice of any real or alleged infirmity with the Working Capital Loan until this lawsuit in 2021. *Id.* at 9.

The POA argues that with regard to the POA’s tort-based claims, they all turn on whether the declarant had primary and direct obligations to the POA to pay assessments and those expenses the POA incurred “in connection with real estate subject to the development rights”. *See* Pl’s Joint Resp., p. 13. Further, the POA argues whether any tort-based duties were breached is a question of fact for the jury. *Id.*

The POA admits that there is no West Virginia decision that a declarant of a common interest community has fiduciary duties to association members who bought lots from the declarant, urging that this Court must decide the issue. *Id.* The POA also posits that to the extent the declarant’s duties to an association are not fiduciary, then the declarant is subject to the lesser standard of care of negligence (see Count VI). *Id.*

Further, in its Supplemental Response, the POA argues that because UCIOA applies to Glade Springs Village, its tort-based claims all turn on whether the declarant had primary and direct obligations to the POA to pay assessments and those expenses the POA incurred in connection with real estate subject to the development rights, and thus the motion for summary judgment as to the tort-based claims must be denied “because the basis of the declarant’s liability is not subject to dispute”. *See* Pl’s Suppl. Resp., p. 6.

Here, after reviewing the case law from other jurisdictions, the Court concludes that the declarant of the common interest community has fiduciary duties to association members who bought lots from the declarant, for reasons explained more fully in this Court’s Order Granting



Plaintiff's Motion for Summary Judgment That Declarant is a Fiduciary of the Association. Accordingly, Justice Holdings is not entitled to summary judgment as to Count V, which alleges a Breach of Fiduciary Duty imposed by West Virginia Code § 36B-1-112 (good faith in contracts) with respect to the Working Capital Loan. The instant motion is DENIED as to Count V.

Count VI – Negligence

Next, Justice Holdings argues it is entitled to judgment as a matter of law on Count VI because it acted in good faith in purchasing and servicing the obligation owed by the POA to Cooper in 2010, and that the facts show no breach of any duty owed by Justice Holdings to the POA with respect to the Working Capital Loan. *See* Def's Mem., p. 4. Count VI alleges negligence arising out of the Working Capital Loan. *Id.* at 8. Justice Holdings argues that the POA has not established any evidence that Justice Holdings owed a duty to the POA, that it breached that duty, which was a proximate cause of damages to the POA. *Id.* Justice Holdings further argues that even if the presumed duty POA seeks to rely on would be the duty of good faith and fair dealing in contracts, the POA has not presented any evidence of bad faith by Justice Holdings. *Id.* at 8-9.

The POA argues that with regard to the POA's tort based claims, they all turn on whether the declarant had primary and direct obligations to the POA to pay assessments and those expenses the POA incurred "in connection with real estate subject to the development rights". *See* Pl's Joint Resp., p. 13. Further, the POA argues whether any tort-based duties were breached is a question of fact for the jury. *Id.*

Further, in its Supplemental Response, the POA argues that because UCIOA applies to Glade Springs Village, its tort-based claims all turn on whether the declarant had primary and direct obligations to the POA to pay assessments and those expenses the POA incurred in

connection with real estate subject to the development rights, and thus the motion for summary judgment as to the tort-based claims must be denied “because the basis of the declarant’s liability is not subject to dispute”. *See* Pl’s Suppl. Resp., p. 6.

The Court finds that because of UCIOA’s application to Glade Springs Village, summary judgment is not appropriate as to Count VI. This claim of negligence turns on whether the declarant had primary and direct obligations to the POA to pay assessments and those expenses the POA incurred in connection with real estate subject to the development rights. There is no factual dispute that the declarant and successor declarant did not pay assessments when they became due. *See* Pl’s Joint Resp., p. 9. The Supreme Court’s decision made it clear that the attempted exemptions from paying these assessments were not valid. Accordingly, this Court cannot conclude no genuine issue of material fact remains, and this Court cannot grant summary judgment in Justice Holdings’s favor as to the negligence cause of action. The instant motion is DENIED as to Count VI.

#### Count VII – Conversion

Count VII alleges the Declarant converted assessment income received by the POA to its own use by using it to fund payments on the Working Capital Loan. *See* Def’s Mem., p. 11. Justice Holdings avers Count VII alleges conversion because it accepted and retained payments from the POA on the Working Capital Loan from October 2010 to July 2014 (when it was paid off). *See* Def’s Mem., p. 4. Justice Holdings also argues it is entitled to summary judgment on the cause of action for conversion because all of the payments occurred and the loan was discharged no less than seven years before any challenge to the Working Capital Loan was raised, and Justice Holdings was entitled to accept the payments on a valid legal obligation of the POA. *Id.*

Further, Justice Holdings argues no evidence supports this claim, and that the testimony of Cooper's corporate witness dismantles this claim, as does the individual testimony of Mr. Burger and Mr. Basore. *Id.* at 11-12. Further, Justice Holdings posits that testimony from multiple witnesses, including Mr. McClure, indicates that the proceeds from the Working Capital Loan were used to pay the common expenses of the POA. *Id.* at 12. Justice Holdings avers that accepting payments on a loan does not constitute conversion. *Id.* at 13.

The POA argues that with regard to the POA's tort based claims, they all turn on whether the declarant had primary and direct obligations to the POA to pay assessments and those expenses the POA incurred "in connection with real estate subject to the development rights". *See* Pl's Joint Resp., p. 13.

Further, in its Supplemental Response, the POA argues that because UCIOA applies to Glade Springs Village, its tort-based claims all turn on whether the declarant had primary and direct obligations to the POA to pay assessments and those expenses the POA incurred in connection with real estate subject to the development rights, and thus the motion for summary judgment as to the tort-based claims must be denied "because the basis of the declarant's liability is not subject to dispute". *See* Pl's Suppl. Resp., p. 6.

Here, the Court has determined that the Working Capital Loan was not unconscionable. The acceptance of payments on this loan by Justice Holdings does not constitute conversion. The Court notes all of the payments occurred and the loan was discharged no less than seven years before any challenge to the Working Capital Loan was raised, and Justice Holdings was entitled to accept the payments on a valid legal obligation of the POA. Accordingly, the Court finds the motions should be GRANTED as to Count VII.

Count VIII – Unjust Enrichment

Justice Holdings avers Count VIII alleges unjust enrichment because it accepted and retained payments from the POA on the Working Capital Loan from October 2010 to July 2014 (when it was paid off). *See* Def’s Mem., p. 4, 11. Justice Holdings also argues it is entitled to summary judgment on the cause of action for conversion because all of the payments occurred and the loan was discharged no less than seven years before any challenge to the Working Capital Loan was raised, and Justice Holdings was entitled to accept the payments on a valid legal obligation of the POA. *Id.* Justice Holdings avers that retaining payments on a valid obligation does not constitute unjust enrichment. *Id.* at 13.

The POA argues that under UCIOA’s application, the POA has valid and equitable claims that the repayment of the Working Capital Loan (either to Cooper or Justice Holdings) constitutes unjust enrichment of the declarant for its primary and direct obligations to pay its share of the costs of upkeep of Glade Springs Village. *See* Pl’s Joint Resp., p. 19.

Like the Court’s analysis as to unconscionability and conversion, this Court cannot conclude that because Justice Holdings accepted and retained payments from the POA on the Working Capital Loan from October 2010 to July 2014 (when it was paid off) that Justice Holdings was unjustly enriched. Like the Court’s conclusion regarding conversion, this Court concludes that retaining payments on a valid obligation does not constitute unjust enrichment. Accordingly, the Court finds the motions should be GRANTED as to Count VIII.

Count IX – Mutual Mistake

Justice Holdings posits that a liberal interpretation of Count IX is that it alleges that (1) the Loan Agreement was the result of a mutual mistake; and (2) its failure to pay assessments to the POA on developer lots was the result of mutual mistake. *See* Def’s Mem., p. 13; *citing* Compl.,

¶¶150, 152. Justice Holdings argues the undisputed facts contradict any allegations of mutual mistake. *See* Def's Mem., p. 4. First, it alleges the first allegation doesn't relate to it, because Cooper and the POA negotiated the Working Capital Loan, and that it was not involved and it was impossible for it to be involved in a mutual mistake in 2001. *Id.* at 13. Second, Justice Holdings argues it did not pay assessments on developer lots, not because of mutual mistake, but because the Declaration expressly exempts developer lots from assessment. *Id.*

The POA argues that under UCIOA's applicability, Count IX is valid as UCIOA endorses a reference to equity where UCIOA itself is not inconsistent with its application. *See* Pl's Joint Resp., p. 19.

Here, the Court considers Cooper and the POA negotiated the Working Capital Loan, and that Justice Holdings was not involved and it was impossible for it to be involved in a mutual mistake in 2001. Although we now know, because the West Virginia Supreme Court of Appeals has conclusively established that UCIOA applies to Glade Springs Village and the Declaration's purported exemption of developer lots from assessment is invalid under UCIOA, the Court considers that the Declaration attempted to exempt developer lots from assessment, albeit unsuccessfully. For this reason, the Court finds summary judgment cannot be granted as to Count IX. The motion is DENIED as to Count IX.

#### Count III – Breach of Declaration

The POA explains that in Count III it seeks the enforcement of Cooper's contract obligation in the GSV Declaration to pay the POA assessments on the Lots that Cooper owned but had not first yet sold or conveyed. *See* Pl's Joint Resp., p. 9. The POA argues Justice Holdings, as successor Declarant (as well as Cooper, as Declarant), has not paid assessments, because it had

claimed to be exempt from the obligation to pay assessments by virtue of provisions in Article X(6) and Article X(9)(f) of the GSV Declaration. *Id.*

Justice Holdings argues Count III, Breach of Declaration through failure to pay annual assessments, is on a pending appeal in another action and should not be litigated in this action. *See* Def's Mem., p. 9. As noted above, the opinion of the West Virginia Supreme Court of Appeals in the related matter *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.*, No. 22-0002, Civil Action No. 19-C-481, Circuit Court of Raleigh County, West Virginia was issued on or about June 15, 2023.

In its Supplemental Response filed June 30, 2023, the POA argued that because UCIOA applies to Glade Springs Village, the declarant is obligated under Article X of the Declaration to pay the assessments, and that "the Raleigh County Circuit Court's decision to sever the Exemption Provisions, rendering them unenforceable from the beginning of Glade Springs Village, applies with equal vigor and effect against both Copper and Justice Holdings for their failure to pay assessments on hundreds of Lots that they owned." *See* Pl's Suppl. Resp., p. 4.

In its Corrected Response filed July 3, 2023, the POA argued that Justice Holdings (and Cooper) adversely dominated the POA's Board of Directors, causing the POA to fail to pursue these entities for not paying assessments. *See* Resp., p. 10; *see also* Pl's Joint Resp., p. 10.

For the same reasons as its analysis with regard to Count IX, this Court cannot dismiss Count III. Again, this Court considers that the parties attempted to carve out an exemption for developer lots from assessment, albeit unsuccessfully. For these reasons, the motion is DENIED as to Count III.

Count IV – Violations of WV Code §36B-3-107(b)

Count IV alleges violations of West Virginia Code §36B-3-107(b), which requires a developer to pay all expenses in connection with real estate subject to development rights. *See* Def's Mem., p. 9; *see also* Pl's Joint Resp., p. 12. Justice Holdings argues that the Declarant did not comply with the statutory requirements for reserving development rights, and therefore no property in Glade Springs Village is subject to this provision. *See* Def's Mem., p. 9.

The POA argues that the Declarant (whether Cooper or Justice Holdings) has direct and primary obligations to the POA for its failure to perform its financial obligations under West Virginia Code §36B-3-107(b), with respect to the development rights. *See* Pl's Joint Resp., p. 12.

West Virginia Code §36B-3-107 governs upkeep of a common interest community. W. Va. Code Ann. § 36B-3-107 (West). Virginia Code §36B-3-107(b) provides that the Declarant "alone is liable for all expenses in connection with real estate subject to the development rights". *Id.*

"Development rights" is a defined term in UCIOA, meaning:

...any right or combination of rights reserved by a declarant in the declaration to: (i) Add real estate to a common interest community; (ii) create units, common elements or limited common elements within a common interest community; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a common interest community.

W. Va. Code §36B-1-1-3(14).

Further, "development rights" is among 14 enumerated items that must be included in a declaration, and UCIOA requires a legal description of the real estate subject to development rights and a time limit within the rights must be exercised. West Virginia Code §36B-2-105(a) provides:

The declaration must contain:...(8) a description of any development rights...reserved by the declarant, together with a legally sufficient description of the real estate to which each of those

rights applies, and a time limit within which each of those rights must be exercised...

W. Va. Code §36B-2-105(a).

Here, Justice Holdings argues there is no legal description of the real estate subject to development rights and no time limit within which the rights must be exercised. *See* Def's Mem., p. 10. Therefore, Justice Holdings argues there is no property to which West Virginia Code §36B-3-107(b) applies and it requests this Court enter judgment for it on Count IV as a matter of law. *Id.*

In its Supplemental Response, the POA argues that because UCIOA applies to Glade Springs Village, Justice Holdings (as successor declarant) had direct and primary obligations to the POA for its failure to perform its financial obligations under West Virginia Code §36B-3-107(b), namely all expenses in connection with real estate subject to the development rights. *See* Pl's Suppl. Resp., p. 5-6.

Here, to the extent that Justice Holdings argues summary judgment should be awarded in its favor as to Count IV because there is no property in Glade Springs Village that is subject to UCIOA because of a lack of property description, the Court rejects that argument. As an initial matter, the Court notes in its written discovery in this case, Cooper admitted that it "owned real estate within Glade Springs Village...subject to development rights" reserved in the GSV Declaration. *See* Joint Resp., p. 12. Further, the West Virginia Supreme Court of Appeals concluded that UCIOA applies to Glade Springs Village in its June 15, 2023 decision in *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.*, No. 22-0002, Civil Action No. 19-C-481, Circuit Court of Raleigh County, West Virginia. In doing so, it specifically mentioned that: "The Uniform Act sets forth many requirements for a common interest community's declaration that the GSV Declaration lacks or directly contravenes. *See* W. Va. Code



§ 36B-2-105 (regarding required contents of a declaration).” *Just. Holdings, LLC v. Glade Springs Vill. Prop. Owners Ass’n, Inc.*, No. 22-0002, 2023 WL 4014141, at \*18 (W. Va. June 15, 2023). The Court also notes that Judge Dent rejected this exact argument brought by the defendants in Civil Action No. 19-C-357 by Order entered September 9, 2021. In sum, the basis for declarant’s liability is not in dispute as the applicability of UCIOA to Glade Springs Village has been conclusively established, and Justice Holdings’ argument must fail. The motion is DENIED as to Count IV.

Count X – Declaratory Judgment

Count X seeks a declaratory judgment that the POA is entitled to provide food and beverage services at Woodhaven. *See* Def’s Mem., p. 14. Justice Holdings this is at issue in Civil Action No. 19-C-357 and should be dismissed in this civil action. *Id.*

The POA argues that it, and its members, have been injured because of rulings made by Judge Dent in Civil Action 19-C-357 (also referred to the Business Court Division and also currently assigned to the undersigned), because of which the POA posits it cannot offer food or beverage services in Woodhaven Clubhouse serving the Woodhaven golf course. *See* Pl’s Joint Resp., p. 20. The POA argues that Count X implicates UCIOA because UCIOA reserves, allocates, or assigns liability of the declarant under West Virginia Code §36B-3-104, and the POA’s damages flow from the intention, fault, or incompetence of the declarant in subjecting the Woodhaven Clubhouse to Covenant No. 22. *Id.* In its Supplemental Response, the POA reiterates this argument regarding the claim being brought pursuant to West Virginia Code §36B-3-104, and argues Justice Holdings’ motion to dismiss this count is premature. *See* Pl’s Suppl. Resp., p. 8-9.

Here, the Court finds the issue of whether or not the POA is entitled to provide food and beverage services at Woodhaven to be at issue in Civil Action No. 19-C-357. The POA argues

that it, and its members, have been injured because of rulings made in that civil action that, it argues, preclude it from offering food or beverage services in Woodhaven Clubhouse serving the Woodhaven golf course. *See* Pl's Joint Resp., p. 20. The POA argues its damages flow from the intention or fault of the declarant in subjecting the Woodhaven Clubhouse to Covenant No. 22. *Id.* To the extent this Count is directed at Cooper the court finds it moot. To the extent this Count would be directed at Justice Holdings, the Court finds it should be dismissed because: 1) Cooper was the Declarant at the time of the enactment of the Declaration; and 2) the count surrounds an issue that is subject to litigation in 19-C-357. The motion shall be GRANTED as to Count X.

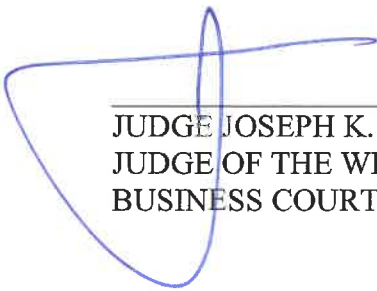
### CONCLUSION

**WHEREFORE**, it is hereby **ORDERED** and **ADJUDGED** that Defendant Justice Holdings LLC's Motion for Summary Judgment on Counts I, II, IV, V, VI, VII, and IX and Motion to Dismiss Counts III, X, and XI is hereby **GRANTED IN PART and DENIED IN PART**.

The Court notes the objections of the parties to any adverse ruling herein. The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

12/4/23

date of entry



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