

**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 REGARDING MOTIONS FOR SUMMARY JUDGMENT FILED BY PLAINTIFF  
GLADE SPRINGS VILLAGE PROPERTY OWNERS ASSOCIATION, INC.**

Pending before the Court are seven (7) Motions for Summary Judgment filed June 30, 2023, by Plaintiff, Glade Springs Village Property Owners Association, Inc.

(hereinafter “GSVPOA” or “POA”), against Defendants Cooper Land Development, Inc. (hereinafter “CLD”) and Justice Holdings LLC (hereinafter “Justice Holdings”): Plaintiff’s Motion for Summary Judgment on Count III, Declarant’s Breaches of the Declaration; Plaintiff’s Motion for Summary Judgment on Count IV, Declarant’s Violations of W. Va. Code § 36B-3-107; Plaintiff’s Motion for Summary Judgment that Cooper and Justice Holdings are the Declarant and successor Declarant of Glade Springs Village; Plaintiff’s Motion for Summary Judgment that Glade Springs Village is a Common Interest Community, that GSV is not an LELPC, and that GSV is subject to UCIOA; Plaintiff’s Motion for Summary Judgment that Declarant has Fiduciary Duties to the POA; Plaintiff’s Motion for Summary Judgment that Cooper Retains Liability under West Virginia Code § 36B-3-104; and Plaintiff’s Motion for Summary Judgment on Adverse Domination.

On July 3, 2023, CLD filed a Motion to Stay the action pending resolution of its *Motion for Summary Judgment on Statute of Limitations*. The Court granted CLD’s Motion to Stay on July 11, 2023.

On July 20, 2023, the Court granted CLD’s *Motion for Summary Judgment on Statute of Limitations*, dismissed all claims against CLD with prejudice, lifted the stay of the proceedings, and ordered Justice Holdings to file any responses to the motions filed on June 30 by the POA on or before August 4, 2023, and ordered the POA to file any replies in support by August 14, 2023. Justice Holdings responded to these individual motions globally. Thus, the Court will analyze and rule on these issues in one order.

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.

The Court, having considered the pleadings, evidence, written submissions of the parties and arguments of counsel, **FINDS** and **ORDERS** as follows:

### **FINDINGS OF FACT**

1. GSVPOA is a West Virginia corporation with its principal office in Daniels, Raleigh County, West Virginia.
2. Justice Holdings is a West Virginia limited liability company.
3. CLD and the POA agreed to the Declaration of Covenants and Restrictions for Glade Springs Village (hereinafter "Declaration") on May 25, 2001, and the Declaration was recorded in the Office of the Clerk of the County Commission of Raleigh County, West Virginia, on May 20, 2001, in Deed Book 5004, page 6485.
4. On May 14, 2001, the POA and CLD executed a Loan Agreement and Revolving Note to fund the initial operational and maintenance expenses of Glade Springs Village (hereinafter "GSV").
5. The Loan Agreement was disclosed and known by members of GSVPOA no later than May of 2003. Rennie Hill depo., p. 41.
6. On October 10, 2010, Justice Holdings purchased certain GSV assets from CLD, including the Revolving Note, and Justice Holdings accepted, assumed and agreed to perform all future obligations of CLD set forth in the Declaration. Assignment and Assumption of Development Rights, ¶ 2.
7. All advances on the Loan prior to October 20, 2010 were made by CLD.
8. The Loan was fully repaid and discharged by the POA in 2014.

9. The POA and Justice Holdings amended the Working Capital Loan in 2011, 2012, 2013, and 2014. Each amendment extended the date for repayment, but made no other changes to the Loan.

10. David McClure testified that the Developer's exemption for assessments was known "to anyone who wanted to know" as soon as the Declaration was publicly recorded in May 2001. McClure Depo., pp. 22-30.

11. GSVPOA is "governed by and acts solely through its Board of Directors." Compl. ¶ 23.

12. The Declaration reserved the right of the Declarant to appoint the directors of the POA Board. Declaration, Art. III, § 2.

13. CLD, as the sole Class B Member of GSVPOA, reserved and exercised the right to appoint or remove any officer of the association during the period of control beginning with the creation of GSV in early 2001 through October 20, 2010 when CLD transferred its special declarant rights to Justice Holdings.

13. From time to time between October 2010 and April 2019, Justice Holdings appointed directors of the POA Board, but never itself served as a director, officer, lawyer or accountant of the POA.

14. The period of declarant control for Glade Springs Village ended on or about April 30, 2019.

15. On April 30, 2021, GSVPOA filed its Complaint.

16. GSVPOA's Complaint asserted the following causes of action against Defendants CLD and Justice Holdings: Accounting (Count I); declaratory judgment that the Working Capital 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 ("UCIOA"), W. Va. Code § 36B-1-107 (Count IV); breach of fiduciary duty (Count V); Negligence (Count VI); Conversion (Count VII); Unjust Enrichment (Count VIII); Mutual Mistake (Count IX); and declaratory judgment and other relief related to the Declaration and Deed to the Woodhaven golf course (Counts X and XI).

17. GSVPOA previously asserted claims against Justice Holdings in a related case, including a claim for assessments and alleged violations of the Declaration. See *Justice Holdings, LLC v. Glade Springs Village Property Owners Association, Inc.* (Raleigh County, W. Va. Civil Action No. 19-C-481). These claims have been adjudicated by the Circuit Court of Raleigh County and Justice Holdings appealed to the West Virginia Supreme Court of Appeals, which issued a decision on or around June 15, 2023.

18. Discovery is complete and the remaining parties have filed dispositive motions.

19. GSVPOA previously agreed to dismiss its claims under Count 1, and has agreed that Counts X and XI are not applicable to Justice Holdings. Thus, the Court **FINDS** that these three counts are no longer pending before it.

20. The Court finds these issues ripe for adjudication.

## LEGAL STANDARD

19. Summary Judgment “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 judgment as a matter of law.” W. Va. R. Civ. P. 56(c).

20. “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. 1, *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 459 S.E.2d 329 (1995). A motion for summary judgment should be denied “even when there is no dispute to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom.” *Id.*, 459 S.E.2d at 336 (internal quotations and citations omitted).

21. 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

- I. **Plaintiff’s Motion for Summary Judgment that Glade Springs Village is a Common Interest Community, that GSV is not an LELPC, and that GSV is Subject to UCIOA**

GSVPOA moves this Court to declare that Glade Springs Village is subject to UCIOA, West Virginia Code § 36B-1-107. In *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.*, 2023 WL 4014141, No. 22-0002, (W. Va. June 15, 2023), the West Virginia Supreme Court of Appeals held that Glade Springs Village is a Common Interest Community subject to UCIOA. The Court is bound to follow the holdings of the WVSCA and recognizes its holding that GSV is subject to UCIOA. As such, this Court **FINDS** that GSVPOA's *Motion* is moot.

**II. Plaintiff's Motion for Summary Judgment that Cooper and Justice Holdings are the Declarant and Successor Declarant of Glade Springs Village**

GSVPOA moves this Court to declare that CLD is the Declarant of GSV, and Justice Holdings is the successor Declarant of GSV. In *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.*, 2023 WL 4014141, No. 22-0002, (W. Va. June 15, 2023), the West Virginia Supreme Court of Appeals held that CLD is the declarant and Justice Holdings is the successor declarant of GSV. Likewise, this Court is bound to follow the holdings of the WVSCA and recognizes its holding that CLD is the declarant and Justice Holdings is the successor declarant of GSV. Further, Justice Holdings argues that it has never denied it was the successor declarant of GSV. As such, this Court **FINDS** that GSVPOA's *Motion* is moot.

**III. Plaintiff's Motion for Summary Judgment that Cooper retains liability under W. Va. Code § 36B-3-104**

In its *Motion*, GSVPOA argues that CLD, as the initial declarant of GSV, retains liability for the declarant's acts and omissions under UCIOA, W. Va. Code § 36B-3-104. However, this Court previously granted CLD's *Motion for Summary Judgment on Statute of*

*Limitations* and ordered that all claims against CLD be dismissed. Therefore, the Court **FINDS** that GSVPOA's *Motion* is moot.

#### **IV. Plaintiff's Motion for Summary Judgment on Adverse Domination**

In its *Motion*, GSVPOA moves this Court to determine (1) if West Virginia applies the doctrine of adverse domination to persons other than those identified in a Certified Question to the Supreme Court of Appeals of West Virginia in *Clark v. Milam*, 192 W. Va. 398, 452 S.E.2d 714 (1994) as a matter of law; and (2) if West Virginia applies the doctrine of adverse domination to contract claims.

In its order granting CLD's *Motion for Summary Judgment on Statute of Limitations*, this Court found that the doctrine of adverse domination did not apply to CLD. Further, in its Order, this Court dismissed CLD from this civil action with prejudice. Therefore, this Court **FINDS** that GSVPOA's *Motion* is moot.

#### **V. Plaintiff's Motion for Summary Judgment on Count III**

GSVPOA moves for summary judgment that Defendant CLD is liable to GSVPOA for unpaid assessments on lots within GSV that CLD owned up through October 20, 2010. In its July 20, 2023 Order, this Court granted CLD's *Motion for Summary Judgment on Statute of Limitations* and ordered that all claims against CLD be dismissed.

To the extent that this *Motion* would apply to Justice Holdings, the Court **FINDS** that CLD's alleged failure to pay GSVPOA annual assessments on its developer lots is a contract claim, and subject to the ten-year statute of limitations. The Court **FINDS** that any claims against Justice Holdings derivative of CLD's failure to pay the assessments would have expired with the statute of limitations pertaining to CLD.



## **VI. Plaintiff's Motion for Summary Judgment on Count IV**

GSVPOA moves for summary judgment that Defendant CLD is liable for all unpaid expenses in connection with real estate in Glade Springs Village that were subject to the GSV Development Rights for each of GSVPOA's fiscal years of 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010, and for summary judgment that no lot owner other than CLD is subject to a claim for payment of those unpaid expenses in connection with real estate in GSV that were subject to the GSV Development Rights for those same fiscal years. In its July 20, 2023 Order, this Court granted CLD's *Motion for Summary Judgment on Statute of Limitations* and ordered that all claims against CLD be dismissed.

To the extent that this *Motion* would apply to Justice Holdings, the Court **FINDS** that any duty of Justice Holdings for alleged failure to pay expenses in connection with real estate in GSV were extinguished by the Court's granting of summary judgment as to CLD pursuant to the applicable statute of limitations.

## **VII. Plaintiff's Motion for Summary Judgment that the Declarant is a Fiduciary of the Association**

In its *Motion*, Plaintiff moves this Court to find that a declarant of a common interest community has fiduciary duties to the association and that, in this case, CLD as the declarant of GSV, and Justice Holdings as the successor declarant of GSV, had fiduciary duties to the POA.

To the extent Plaintiff's Motion is directed at CLD, this Court has already ruled in its July 20, 2023 Order that all claims against CLD are time barred. Therefore, the Court finds that this *Motion* as to CLD is moot.

UCIOA "shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it." W. Va. Code § 36B-1-110.

West Virginia courts have not determined if a declarant has fiduciary duties to an association. However, the courts of other jurisdictions that have adopted UCIOA acknowledge and hold that a declarant has fiduciary duties to the association in some instances. The Court finds these cases to be instructive.

Nine states have adopted UCIOA (Alaska, Nevada, Colorado, Washington, Minnesota, West Virginia, Vermont, Massachusetts, and Connecticut. Of the states that have adopted UCIOA, Colorado courts recognize that a declarant of a common interest community owes the association fiduciary duties, including "failing to assess" the declarant as the owner of units and to "lien" the declarant's units within the common interest community.<sup>1</sup> The Colorado court concluded that "[i]n addition, Defendants Harding and Fairways Builders breached their fiduciary duties to the Association and its members by, among other acts and omissions, failing to assess Fairways Builders and FD Interests during the declarant control period and to lien their Project property."

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<sup>1</sup> The Minnesota Supreme court directly held in *Larson v. Lakeview Lofts, LLC*, 804 N.W.2d 350 (Minn. Ct. App. 2011) that a declarant developer had fiduciary duties to unit owners. However, pursuant to the stipulation and request of the parties in that matter, the decision was vacated and remanded to the district court for further proceedings.

*Fairways at Buffalo Run Homeowners Ass'n v. Fairways Builders, Inc.*, No. 2016CV30393, 2017 Colo. Dist. LEXIS 825 at \*10 (Colo. Dist. Ct. June 2, 2017).

The Colorado court in *Fairways Builders, Inc.* concluded that a declarant that failed to assess its own units when otherwise required to—a contract cause of action—violated its fiduciary duty to the association.

In *Ireland v. Wynkoop*, 539 P.2d 1349 (Colo. App. 1975), the Colorado Court of Appeals discussed the nature and extent of the fiduciary duties of the affiliate of a declarant:

Virtually all of the dismissed claims involved allegations that Wynkoop, who held a fiduciary position as the Association's agent and promoter, breached his fiduciary position through mismanagement, self-dealing, and secret profits. In Colorado, such claims traditionally have been considered as corporation claims, whether raised by the corporation itself or by the stockholders in a derivative suit. See *Swafford v. Berry*, 152 Colo. 493, 382 P.2d 999; *Holland v. American Founders Life Insurance Co.*, 151 Colo. 69, 376 P.2d 162; *Northwest Development, Inc. v. Dunn*, 29 Colo.App. 364, 483 P.2d 1361. Moreover many of the dismissed claims involved recovery of corporate assets or concerned contracts to which the Association, rather than individual condominium unit owners, was a contracting party. See *Schaffer v. Universal Rundle Corp.*, 397 F.2d 893 (5th Cir.); *Bank of New Mexico v. Rice*, 78 N.M. 170, 429 P.2d 368. Thus although the Association will eventually assess the unit owners for the management expenditures, the owners' concern in these matters is only indirect, through the Association, and therefore, \*218 the Association is the proper claimant. See *Plaza Del Prado Condominium Ass'n, Inc. v. GAC Properties, Inc.*, 295 So.2d 718 (Fla.App.); *Northridge Cooperative Section No. 1 v. 32nd Avenue Construction Corp.*, 2 N.Y.2d 514, 161 N.Y.S.2d 404, 141 N.E.2d 802. *Contra*, *Friendly Village Community Ass'n, Inc.*, No. IV & *Silva & Hill Construction Co.*, 31 Cal.App.3d 220, 107 Cal.Rptr. 123.

539 P.2d 1349 at 1357.

Further, the drafters of Restatement Third, Property (Servitudes) discuss that:

*[t]he developer's relationship to the association is a fiduciary relationship during the period that the developer controls the association. The Uniform Common Interest Ownership Act requires that officers and members of the governing board appointed by the developer exercise the degree of care and loyalty required of a trustee, at the same time providing that officers and directors not appointed by the developer must exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation.*

*Restatement 3d of Prop: Servitudes, § 6.20 (3<sup>rd</sup> 2000) (emphasis supplied).*

The Court also finds it persuasive that under W. Va. Code § 36B-1-108, “The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with [UCIOA]” W. Va. Code § 36B-1-108. The Court **FINDS** that the conclusion of law that the declarant of GSV had fiduciary duties to the POA during the period of declarant control would not be inconsistent with UCIOA.

Therefore, the Court **GRANTS** GSVPOA’s Motion for Summary Judgment that a declarant of a common interest community has fiduciary duties to the association, and that, in this case, Justice Holdings as the successor declarant of GSV, a planned community, had fiduciary duties to the association. The Court **FINDS** that whether Justice Holdings breached any fiduciary duties to the association is a question of fact for the jury to decide.

## CONCLUSION

For these reasons, the Court hereby **GRANTS** GSVPOA's *Motion for Summary Judgment that the Declarant is a Fiduciary of the Association*. The Court further **FINDS** that the remaining six (6) Motions filed by GSVPOA on June 30, 2023 are moot.

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.

Entered this 4<sup>TH</sup> day of December, 2023.



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JOSEPH K. REEDER, CIRCUIT JUDGE