

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 GRANTING GLADE SPRINGS VILLAGE PROPERTY OWNERS
ASSOCIATION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT THAT
GLADE SPRINGS VILLAGE IS A PLANNED COMMUNITY SUBJECT TO THE
WHOLE OF UCIOA**

Pending before the court is Plaintiff, Glade Springs Village Property Owners Association, Inc.'s ("GSVPOA") *Motion for and Memorandum of Law in Support of Partial Summary Judgment that Glade Springs Village is a Planned Community Subject to the Whole of UCIOA*, filed on January 27, 2022. The parties have fully briefed the necessary issues. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and oral argument would not aid the decisional process. The Court, having considered the pleadings, evidence, and written submissions of the parties, FINDS and ORDERS as follows:

STANDARD OF LAW

This matter comes before the Court upon a motion for partial summary judgment. 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.

CONCLUSIONS OF LAW

1. GSVPOA argues that Glade Springs Village (“GSV”) is a common interest community as defined by the Uniform Common Interest Ownership Act (“UCIOA”), W.

Va. Code § 36B-1-101 *et seq.*

2. In supporting its argument, GSVPOA asserts that UCIOA defines three types of community interests – “cooperative,” “condominium,” and “planned community.” (Mot. at 16).

3. According to GSVPOA, GSV is neither a “cooperative,” nor a “condominium” as defined by UCIOA. Therefore, GSVPOA claims GSV is a “planned community,” which is defined by UCIOA as “a common interest community that is not a condominium or a cooperative.” W. Va. Code § 36B-1-103(23); (Mot. at 16).

4. GSVPOA continues by explaining that “[u]nder UCIOA a ‘planned community’ is subject to all provisions of UCIOA unless it qualifies as a ‘limited expenses liability planned community.’” (Mot. at 16) (citing W. Va. Code § 36B-1-203(2)).

5. Since GSVPOA filed its motion for partial summary judgment, the Supreme Court of Appeals was faced with determining in a related, but separate case whether GSV was subject to the whole of UCIOA.

6. In *Justice Holdings, LLC v. Glade Springs Vill. Property Owners Ass’n*, No. 22-0002, 2023 W. Va. LEXIS 280 (W. Va. June 15, 2023), the Court concluded that UCIOA “fully applies to GSV, as it is a common interest community.” *Id.* at *30.

7. Therefore, inasmuch as the Supreme Court of Appeals has ruled on this issue, the Court finds that GSV is a common interest community subject to the whole of UCIOA.

8. The Court notes that in opposing Plaintiff’s motion for partial summary judgment, Defendants concede that the Supreme Court of Appeals’ decision in *Justice Holdings*, requires that the Court conclude that GSV is a common interest community subject to the whole of UCIOA. (Resp. at 2).

9. However, the Court addresses Defendants' argument that partial summary judgment should not be granted here, arguing genuine issues of material fact exist concerning what property comprises GSV. (Resp. at 2). Their argument, which will be set forth more fully in a separate order ruling on a separate motion proffering said argument, is premised upon Defendants' admission that at the very least, one acre of real property comprises GSV. The Court notes Defendants' argument surrounds the requirements for adding additional real property to such a community.

10. The Court, having considered the relief requested in the instant motion, and Defendants' response, finds the arguments concerning what property comprises GSV are irrelevant to the relief requested in the instant motion.

11. Therefore, as noted above, the Court finds that GSV is subject to the whole of UICOA, no genuine issues of material fact remain as to that finding, and Plaintiff's request for partial summary judgment on that point may be granted.

12. For the reasons set forth above, it is ADJUDGED and ORDERED that GSVPOA's *Motion for and Memorandum of Law in Support of Partial Summary Judgment that Glade Springs Village is a Planned Community Subject to the Whole of UCIOA* is GRANTED. It is further ADJUDGED and ORDERED that the Court grants partial summary judgment in Plaintiff's favor that Glade Springs Village is a planned community subject to the Whole of the Uniform Common Interest Ownership Act. 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 21st day of February 2024.

/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.