

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 IN PART PLAINTIFF'S MOTION TO COMPEL FINANCIAL
INFORMATION FROM DEFENDANTS**

This matter came before the Court this 21st day of February 2024, upon Plaintiff Glade Springs Village Property Owners Association, Inc.'s Motion to Compel Financial Disclosure From Individual Defendants. The Plaintiff, Glade Springs Village Property Owners Association, Inc. (hereinafter "the POA" or "Plaintiff"), by counsel, Ramonda C. Marling, Esq., and Defendants, Elmer Coppoolse, James Terry Miller, and R. Elaine Butler (hereinafter "Defendants" or "Individual Defendants"), by counsel, Arie M. Spitz, Esq., 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. On October 31, 2023, Plaintiff filed its Third Amended Complaint in this civil action, alleging various causes of action against the Individual Defendants as well

as against Defendants EMCO Glade Springs Hospitality, LLC and GSR, LLC. Relevant to the instant motion is that Plaintiff has pled a claim for punitive damages against the Individual Defendants. See Third Am. Compl.

2. During discovery, the POA sent its *Second Set of Interrogatories and Requests for Production of Documents to Defendants Elmer Coppoolse, James Terry Miller, and R. Elaine Butler* (the “Second Discovery Requests”), wherein it requested financial information from the Individual Defendants in support of its claim for punitive damages. Particularly, the POA sought from Individual Defendants, from January 1, 2015 to present, identification of all real and personal property owned by Individual Defendants, the estimated current value of such property, identification of the Individual Defendants’ checking, savings, and investment accounts by name of institution, routing and account numbers, and production of documents relating to such real and personal property and checking, savings, and investment accounts, tax returns, and other documents evidencing the Individual Defendants’ net worth.

3. In *Defendants Elmer Coppoolse, James Terry Miller, and R. Elaine Butler’s Responses to Plaintiff’s Second Set of Interrogatories and Requests for Production of Documents* (“Second Discovery Responses”), the Individual Defendants objected to financial discovery on the grounds that the POA was only entitled to financial information of Individual Defendants’ net worth. Further, the Individual Defendants objected to these requests as (1) irrelevant, (2) overly broad, (3) unduly burdensome, (4) not reasonably calculated to lead to the discovery of admissible evidence, (5) was served with the improper motive to embarrass and/or pressure Defendants, and (6) premature.

4. The parties represented they met and conferred prior to the filing of the instant motion.

5. On July 30, 2021, Plaintiff filed the instant Glade Springs Village Property Owners Association, Inc.'s Motion to Compel Financial Disclosure From Individual Defendants, seeking this Court compel the production of financial discovery from the Individual Defendants relevant to its claim for punitive damages under the Uniform Common Interest Ownership Act (hereinafter "UCIOA"). See Pl's Mot., p. 2.

6. On August 9, 2021, this Court entered a Briefing Order on the instant motion. On August 18, 2021, this Court entered an Order Granting Joint Motion to Stay Proceedings and Order Setting Hearing, staying this case due to medical reasons involving of one of the parties upon the agreement of the parties.

7. On February 7, 2022, after this stay was lifted, another Briefing Order was entered on this motion.

8. On February 18, 2022, Individual Defendants filed Elmer Coppoolse, James Terry Miller, and R. Elaine Butler's Response in Opposition to "Glade Springs Village Property Owners Association, Inc.'s Motion to Compel Financial Disclosure From Individual Defendants".

9. On March 2, 2022, this Court entered an Order Granting Motion to Stay GSVPOA Motion to Compel, granting Individual Defendants' request to stay, and noting the POA did not object, until such time as the appeal in the related matter Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc., Civil Action No. 19-C-481, Circuit Court of Raleigh County, West Virginia was concluded.

10. On January 2, 2024, this Court entered another Briefing Order on this motion. On January 17, 2024, the Individual Defendants filed their Supplement to Elmer Coppoolse, James Terry Miller, and B. Elaine Butler's Response in Opposition to Glade Springs Village Property Owners Association, Inc.'s Motion to Compel Financial Disclosure from Individual Defendants.

11. On January 31, 2024, the POA filed GSVPOA's Reply to Individual Defendants' Response and Supplement Response in Opposition to GSVPOA's Motion to Compel Financial Disclosures From Individual Defendants.

12. The Court finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

This matter comes before the Court on a motion to compel. The motion seeks the production of: real and personal property owned by the Individual Defendants, along with an estimate of their market value, federal and state tax returns from the past five years, and bank accounts (checking, savings, and investments), including name of financial institution, routing number, and account number, owned solely or jointly by Individual Defendants since 2015 (see below for full text of subject discovery requests).

W. Va. R. Civ. P. 26(b)(1) permits discovery of any non-privileged matter that is relevant to the subject matter of the action. "The scope of discovery in civil cases is broad." *State ex rel Shroades v. Henry*, 187 W. Va. 723, 725, 421 S.E.2d 264, 266 (1992). Broad discovery is necessary to eliminate surprise and trial by ambush. *McDougal v. McCammon*, 193 W. Va. 229, 237, 455 S.E.2d 788, 796 (1995); *Graham v. Wallace*, 214 W. Va. 178, 184-85, 588 S.E.2d 167, 173-174 (2003). When determining whether a party is entitled to obtain discovery, the trial court must "weigh the requesting party's need to obtain the information against the burden that producing the information places on the opposing party." *State ex rel. Allstate Ins. Co. v. Gaughan*, 220 W. Va. 113, 119, 640 S.E.2d 176, 182 (2006). Additionally, discovery is not limited "only to admissible evidence, but applies to information reasonably calculated to lead to the discovery of admissible evidence." *State ex rel. Arrow Concrete Co. v. Hill*, 194 W. Va. 239, 246, 460 S.E.2d 54, 61 (1995).

Pursuant to W. Va. R. Civ. P. 37(a)(2) if a party fails to respond to written

discovery

requests, “the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.” W. Va. R. Civ. P. 37(a)(2).

UCIOA provides that “[i]f a declarant or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief[,]” and “[p]unitive damages may be awarded for a willful failure to comply with this chapter.” W. Va. Code § 36B-4-117.

The West Virginia Supreme Court of Appeals has stated that the financial position of a defendant is a relevant factor when determining a punitive damages award. *Quicken Loans, Inc. v. Brown*, 236 W. Va. 12, 33, 777 S.E. 2d 581, 602 (2014) (quoting Syl pt. 3, *Garnes v. Fleming Landfill, Inc.*, 186 W. Va. 656 (1991); *Wheeler v. Murphy*, 192 W. Va. 325, 333, 452 S.E.2d 416, 424 (W. Va. 1994) (evidence of a defendant’s net worth is relevant to the issue of punitive damages); *State ex rel. Arrow Concrete Co. v. Hill*, 194 W. Va. 239, 248, 460 S.E.2d 54, 63 (1995) (court found that trial court had not erred in allowing discovery of tax returns in a tortious interference case alleging punitive damages because such information could lead to the discovery of admissible evidence).

The disputed discovery requests and Individual Defendants’ Responses are as follows:

SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

“INTERROGATORY NO. 1: Identify any and all real and personal property You have owned (solely or jointly) since January 1, 2015. For each item of property, set forth Your estimate of the current market value.

RESPONSE: Defendants object to this Interrogatory on the basis that it is irrelevant, overly broad, unduly burdensome, and not reasonably

calculated to lead to the discovery of admissible evidence. Defendants further assert that the real purpose of this request is to embarrass or improperly pressure the individual Defendants, with a threat that their personal financial information will be disclosed to others. This is especially so because Plaintiff knows that all of the individual defendants are insured.

Whether or not Defendants own any real or personal property is not relevant to Plaintiff's claims in this matter. In addition, all or some of the information requested is a matter of public record and equally available to Plaintiff. Further, Defendants past and/or current financial viability is not an element Plaintiff must prove to prevail on any of its theories of liability in this case.

Defendants further object to responding to this request at this time because the sole possible relevance of such information would be for use in assessing punitive damages. Punitive damages may only be awarded if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others. W. Va. Code §55-7-29(a). Further, the punitive damages may only be awarded during the second phase of a bifurcated trial, if Defendants are found liable. W Va. Code §55-7-29(b)(2). Finally, punitive damages may only be assessed by the jury if the court finds that sufficient evidence exists to permit the jury to consider such an award. *Id.*

Defendants, therefore, object to responding to this request at this time. Subject to the further objection discussed below, and the entry of a suitable protective order (as such financial information is confidential personal information), Defendants will disclose financial information should the jury find it liable in the first phase of trial and the Court then finds that there is sufficient evidence for the plaintiff to ask the jury to award punitive damages.

Moreover, only Defendants' financial position is pertinent to the jury's consideration of punitive damages. See *Garnes v. Fleming Landfill*, 413 S.E.2d 897, at Syl. Pt. 3 (WV 1991). This means that only Defendants' net worth is subject to discovery for purposes of punitive damages evidence. As such, Defendants object to providing any financial information beyond their net worth.

PRODUCTION REQUEST NO. 1: Produce copies of any documents you reviewed in order to answer Interrogatory No. 1.

RESPONSE: None. See Defendants' Objection to Interrogatory No. 1, which are incorporated into this response.

PRODUCTION REQUEST NO. 3: Produce Your federal and state tax returns from the past five (5) years.

PRODUCTION REQUEST NO. 4: Produce any and all documents evidencing or relating to Your net worth over the past five (5) years including, but not limited to financial statements, banking account statements, brokerage statements and loan applications.

RESPONSE TO REQUESTS 3 AND 4: See Defendants' Objections to Interrogatory No. 1, which are incorporated into this response.

INTERROGATORY NO. 2: Identify by institution, routing and account number any and all checking, savings and investment accounts You have owned (solely or jointly) since January 1, 2015.

RESPONSE: Defendants object to this Interrogatory on the basis that it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further assert that the real purpose of this request is to embarrass or improperly pressure the individual Defendants, with a threat that their personal financial information will be disclosed to others. This is especially so because Plaintiff knows that all of the individual defendants are insured.

Whether or not Defendants own any real or personal property is not relevant to Plaintiff's claims in this matter. In addition, all or some of the information requested is a matter of public record and equally available to Plaintiff. Further, Defendants past and/or current financial viability is not an element Plaintiff must prove to prevail on any of its theories of liability in this case.

Defendants further object to responding to this request at this time because the sole possible relevance of such information would be for use in assessing punitive damages. Punitive damages may only be awarded if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others. W. Va. Code §55-7-29(a). Further, the punitive damages may only be awarded during the second phase of a bifurcated trial, if Defendants are found liable. W Va. Code §55-7-29(b)(2). Finally, punitive damages may only be assessed by the jury if the court finds that sufficient evidence exists to permit the jury to consider such an award. *Id.*

Defendants, therefore, object to responding to this request at this time. Subject to the further objection discussed below, and the entry of a suitable protective order (as such financial information is confidential personal information), Defendants will disclose financial information should the jury find it liable in the first phase of trial and the Court then finds that there is sufficient evidence for the plaintiff to ask the jury to award punitive damages.

Moreover, only Defendants' financial position is pertinent to the jury's consideration of punitive damages. See *Garnes v. Fleming Landfill*, 413 S.E.2d 897, at Syl. Pt. 3 (WV 1991). This means that only Defendants' net worth is subject to discovery for purposes of punitive damages evidence. As such, Defendants object to providing any financial information beyond their net worth."

The POA alleges that its discovery requests are proper pursuant to the West Virginia Rules of Civil Procedure, West Virginia Rules of Evidence, and applicable case law when a claim, such as the claims in the instant case pled under UCIOA, provides for punitive damages as a measure of relief. Additionally, the POA argues that West Virginia does not impose a *prima facie* standard for discovering financial information relevant to punitive damages claim and that Judge Burnside granted similar relief to the POA in an order entered on December 18, 2020 in Raleigh County Civil Action No. 19-C-481. Defendants, on the other hand, argue the discovery requests are improper at this juncture as Plaintiff has not made a *prima facie* showing of punitive damages, noting a trial court in Cabell County^[1] denied similar relief in an order entered in November 2020. Defendants further contend that when the POA does make out a *prima facie* case for punitive damages, its discovery into the financial positions of Individual Defendants should be limited to net worth.

Here, the Court concludes that the law in West Virginia does not require a plaintiff to make out a *prima facie* case for punitive damages before discovery into financial information is permissible. The Court has considered Defendants' position and

briefing on this point, including the federal cases they cite and their discussion of West Virginia Code § 55-7-29 and bifurcation of trial pursuant to that statute. However, the Court does not find Defendants' argument persuasive on this point.

This Court concludes that Defendants did not present any evidence, holdings, or argument from the West Virginia Supreme Court of Appeals establishing that a *prima facie* case for punitive damages must first be established by the POA before it is entitled to request Defendants' financial information. This Court further concludes that while the West Virginia Supreme Court of Appeals has given weight to federal cases in determining the meaning and scope of the West Virginia Rules of Civil Procedure, it has also noted this does not mean that our "legal analysis in this area should amount to . . . Pavlovian responses to federal decisional law." *Stone v. St. Joseph's Hosp. of Parkersburg*, 208 W. Va. 91, 112, 538 S.E.2d 389, 410 (2000) (McGraw, J., concurring, in part, and dissenting, in part) (holding that West Virginia disability discrimination law "is not mechanically tied to federal disability discrimination jurisprudence.") Rather, "[a] federal case interpreting a federal counterpart to a West Virginia rule of procedure may be persuasive, but it is not binding or controlling." Syl. Pt 3, *Brooks v. Isinghood*, 213 W. Va. 675, 682, 584 S.E.2d 531, 538 (2003).

Accordingly, while this Court considered these proffered points of law, this Court concludes that the cases that the Individual Defendants presented from federal courts, foreign jurisdictions, and the Circuit Court of Cabell County, West Virginia are not binding and controlling upon this Court when ruling on the instant motion to compel.

The Court also considered the black letter law in West Virginia (cited above) establishing that financial condition is relevant to a punitive damages claim, as well Judge Burnside's Order, which granted similar relief in Raleigh County Civil Action No. 19-C-481 (noting Judge Burnside's Order is not binding).

Therefore, the Court concludes that, generally, financial information from the Individual Defendants is reasonably calculated to lead to the discovery of admissible evidence. *State ex rel. Arrow Concrete Co. v. Hill*, 194 W. Va. 239, 246, 460 S.E.2d 54, 61 (1995); and W. Va. R. Civ. P. 26 (b)(1). Accordingly, the Court concludes that financial information, generally, should be discovered.

The Court next examines each of the categories of financial information sought. As detailed above, the subject discovery requests seek: real and personal property owned by the Individual Defendants, along with an estimate of their market value, the Individual Defendants' federal and state tax returns from the past five years, and bank accounts (checking, savings, and investments), including name of financial institution, routing number, and account number, owned solely or jointly by Individual Defendants since 2015.

Related to financial condition, which is a factor to be considered by the jury in a potential punitive damages award, the Court finds the federal and state tax returns, as well as the list of properties owned (and estimate of their market value) to be narrowly tailored and clearly discoverable.

When determining whether a party is entitled to obtain discovery, the trial court must "weigh the requesting party's need to obtain the information against the burden that producing the information places on the opposing party." *State ex rel. Allstate Ins. Co. v. Gaughan*, 220 W. Va. 113, 119, 640 S.E.2d 176, 182 (2006).

However, as to the request for the bank accounts (checking, savings, and investments), including name of financial institution, routing number, and account number, owned solely or jointly by Individual Defendants since 2015, the Court finds that this information is overly broad and unduly burdensome and thus, not discoverable here. Instead, the Individual Defendants shall prepare verified current financial worth

statements. The Court concludes this is the appropriate balance to allow Plaintiff inquiry into the Individual Defendants' financial condition, while restricting said inquiry to only the extent necessary to prevent unreasonable intrusion into the Individual Defendants' privacy.

Accordingly, Plaintiff Glade Springs Village Property Owners Association, Inc.'s Motion to Compel Financial Disclosure From Individual Defendants is hereby GRANTED IN PART, as described herein. The Court further orders that full responses to Interrogatory No. 1, Production Request No. 1, and Production Request No. 3 shall be produced within twenty (20) days of the entry of this Order. Likewise, the Court orders that the aforementioned verified current financial worth statements shall be produced within twenty (20) days of the entry of this Order.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Plaintiff Glade Springs Village Property Owners Association, Inc.'s Motion to Compel Financial Disclosure From Individual Defendants is hereby GRANTED IN PART. It is hereby ADJUDGED and ORDERED that full responses to Interrogatory No. 1, Production Request No. 1, and Production Request No. 3, as well as the aforementioned verified current financial worth statements, shall be produced within twenty (20) days of the entry of this Order.

The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

[\[1\]](#) See Cabell County Civil Action No. 19-C-280.

/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.courtsww.gov/e-file/ for more details.