

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 DEFENDANTS' EMERGENCY MOTION FOR STAY

This matter came before the Court this 6th day of March, 2024, upon Defendants Elmer Coppoolse, James Terry Miller, and R. Elaine Butler's Emergency Motion for Stay Pending Writ of Prohibition. 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. Thereafter, on July 30, 2021, Plaintiff filed 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. to Compel, p. 2.

5. Subsequently, the matter was briefed and stayed for reasons stated more fully in the Order Granting in Part Glade Springs Village Property Owners Association, Inc.’s Motion to Compel Financial Disclosure From Individual Defendants.

6. On February 21, 2024, after the motion was fully briefed, this Court entered an Order Granting in Part Glade Springs Village Property Owners Association, Inc.’s Motion to Compel Financial Disclosure From Individual Defendants, ordering the tax returns and list of property and estimated value to be produced, but denying the motion as to the bank and investment account numbers and routing numbers. The Court ordered the aforementioned productions to occur within twenty days of the entry of the order.

7. On February 22, 2024, Defendants filed for a Writ of Prohibition with the West Virginia Supreme Court of Appeals. See Defs’ Mot., p. 1.

8. On February 29, 2024, Defendants Elmer Coppoolse, James Terry Miller, and R. Elaine Butler filed the instant Defendants Elmer Coppoolse, James Terry Miller, and R. Elaine Butler’s Emergency Motion for Stay Pending Writ of Prohibition, seeking a stay of the aforementioned financial discovery production pending the consideration of the West Virginia Supreme Court of Appeals of Defendants’ writ of prohibition, citing West Virginia Code § 56-6-10 and discussing factors used in the federal courts. *Id.* at 2.

9. On March 1, 2024, Plaintiff filed Glade Springs Village Property Owners Association, Inc.’s Response in Opposition to Defendants Elmer Coppoolse, James Terry Miller, and R. Elaine Butler’s Emergency Motion for Stay Pending Writ of

Prohibition, arguing Defendants failed to mention they are seeking expedited consideration of their Writ of Prohibition with the Supreme Court of Appeals, and that for this reason alone, the instant motion should be denied and the issue should be left to the Supreme Court of Appeals to decide. See Pl's Resp., p. 2. Further, Plaintiff cites a West Virginia case discussing discretion of the Court rather than the federal factors. *Id.*

10. Subsequently, the Supreme Court of Appeals denied the motion to expedite filed in its Court.

11. The Court finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

This matter comes before the Court on a motion for stay. Pursuant to West Virginia Code § 56-6-10:

Whenever it shall be made to appear to any court, or to the judge thereof in vacation, that a stay of proceedings in a case therein pending should be had until the decision of some other action, suit or proceeding in the same or another court, such court or judge shall make an order staying proceedings therein, upon such terms as may be prescribed in the order. But no application for such stay shall be entertained in vacation until reasonable notice thereof has been served upon the opposite party.

W. Va. Code § 56-6-10.

The West Virginia Supreme Court of Appeals has held:

It has long been the law of this Court with regard to W. Va. Code § 56-6-10, that a stay of proceedings in a suit provided by [W. Va. Code § 56-6-10 (1923)], rests in the sound discretion of the court. To warrant a stay it must be essential to justice, and it must be that the judgment of decree by the other court will have legal operation and effect in the suit in which the stay is asked, and settle the matter of controversy in it.

State ex rel. Piper, 228 W. Va. 792, 796, 724 S.E.2d 763, 767 (2012)(quoting Syl. Pt. 4, *Dunfee v. Childs*, 59 W. Va. 225, 53 S.E. 209 (1906)).

Here, Defendants argue a brief stay would support juridical economy as a

decision from the Supreme Court in their favor would obviate a need for the depositions and financial discovery productions. See Defs' Mot., p. 3. Further, Defendants argue they would be harmed if a stay is not issued and the Supreme Court were to rule in their favor because once the production occurs, the cat would be out of the bag[1], due to the nature of the discovery at issue. *Id.* at 3-4. Further, Defendants allege Plaintiff would not be prejudiced by a brief stay of the enforcement of the Court's production order due to the current posture of this civil action. *Id.* at 4.

Plaintiff, on the other hand, argues a stay of the Order is not "essential to justice" nor will it "settle the matter of controversy" in this suit. See Pl's Resp., p. 2. Further, Plaintiff avers that a protective order (which was entered by agreement of all parties) has been entered in this matter under which documents designated as confidential can be disclosed to current and former members of the GSVPOA board of directors. *Id.*; see *a/so* Pl's Resp., Ex. 2.

Here, the Court considers that the subject Writ of Prohibition will squarely answer the question of whether the financial production can be produced. Therefore, the decree by the Supreme Court of Appeals will settle the matter of controversy. Furthermore, the financial production will therefore disclose the sensitive financial information at the heart of the discovery dispute. Although this Court has found that such information is discoverable, the Court recognizes that this type of "cat out of the bag" discovery cannot be undone once it is disclosed. See *Allen v. State Farm Fla. Ins. Co.*, 198 So.3d 871 (Fla. 2d DCA 2016); *ESJ JI Leasehold, LLC v. PJGWI, Inc.*, 337 So. 3d 115 (Fla. 3d DCA 2021). For this reason, the Court finds the stay of the production to be essential to justice.

Moreover, the Court considers the procedural posture of this case. The Court recognizes the motion to compel was pending for quite some time due to stays related

to medical issues and the pendency of an in the related matter of *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.*, Civil Action No. 19-C-481, Circuit Court of Raleigh County, West Virginia (the “Justice Holdings Appeal”). However, the Court considers that the trial of this matter is not set until December 2, 2024, and Plaintiff would have a sufficient amount of time to consider the documents between the time the stay is lifted and the start of trial. The Court concludes judicial economy would not suffer as this limited financial production can be made at such time that the writ of prohibition is ruled upon, and Plaintiff will have ample time before the trial in this matter.

For all of these reasons, the Court finds Defendants’ request for a stay shall be granted. The Court finds the production of the full responses to Interrogatory No. 1, Production Request No. 1, and Production Request No. 3, as well as the verified current financial worth statements, shall be stayed until such time as the West Virginia Supreme Court of Appeals has concluded its review of the writ of prohibition. For that reason, 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, are stayed until further order from this Court.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Defendants Elmer Coppoolse, James Terry Miller, and R. Elaine Butler’s Emergency Motion for Stay Pending Writ of Prohibition is hereby GRANTED. It is further hereby ADJUDGED and ORDERED the production of the full responses to Interrogatory No. 1, Production Request No. 1, and Production Request No. 3, as well as the verified current financial worth statements, are STAYED until further order from this Court.

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] Citing case law which refers to this sort of financial discovery as “cat out of the bag” financial documents and information. See *Allen v. State Farm Fla. Ins. Co.*, 198 So.3d 871 (Fla. 2d DCA 2016); *ESJ JI Leasehold, LLC v. PJGWI, Inc.*, 337 So. 3d 115 (Fla. 3d DCA 2021).

/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.