

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

**GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,
a West Virginia non-profit corporation,**

Plaintiff,

vs.

**Civil Action No.: 19-C-357
Presiding: Judge Reeder
Resolution: Judge Lorensen**

**EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company;
ELMER COPPOOLSE, an individual; __
JAMES TERRY MILLER, an individual;
R. ELAINE BUTLER, an individual; and
GSR, LLC, a West Virginia limited liability company,**

Defendants,

and

**EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company, and
GSR, LLC, a West Virginia limited liability company,**

Counterclaim Plaintiffs,

vs.

**Civil Action No.: 19-C-357
Presiding: Judge Reeder
Resolution: Judge Lorensen**

**GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,
a West Virginia non-profit corporation**

Counterclaim Defendant.

**ORDER GRANTING GSR, LLC'S MOTION TO ENFORCE THE MEMORANDUM OF
UNDERSTANDING AND THE COURT'S PRIOR ORDERS**

This matter came before the Court this 23rd day of April, 2024, upon Defendant GSR, LLC, 's Motion to Enforce the Memorandum of Understanding and The Court's Prior Orders. The Plaintiff, Glade Springs Village Property Owners Association, Inc. (hereinafter "the POA" or "Plaintiff"), by counsel, Ramonda C. Marling, Esq., and Defendant, GSR, LLC, (hereinafter "Defendant" or "GSR" or "the Resort"), by counsel, Arie M. Spitz, Esq., have fully briefed the issues necessary. The Court heard oral argument at a hearing held on April 11, 2024. So, upon the full consideration of the issues, the record, oral argument, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. This matter surrounds the claims in the Second Amended Complaint¹, wherein Plaintiff, Glade Springs Village Property Owners Association, Inc., asserted claims against Defendants, EMCO Glade Springs Hospitality, LLC, GSR, LLC, Elmer Coppoolse, James Terry Miller, and R. Elaine Butler premised upon their alleged respective breach of various contracts with GSVPOA, as well as accounting claims and a claim of unjust enrichment. *See* Second Am. Compl. Further, On October 31, 2023, Plaintiff filed its Third Amended Complaint in this civil action.

2. On June 9, 2021, Defendant GSR, LLC filed its Answer, Counterclaims, and Third-Party Complaint of GSR, LLC and Answer of EMCO Glade Springs Hospitality, LLC. *See* Ctrclm.

3. After this matter was referred to the Business Court Division, Judge Lorensen was appointed as Resolution Judge.

¹ The Court notes that by Agreed Order Granting Plaintiff's Motion for Leave to File Second Amended Complaint, entered May 20, 2021, the Second Amended Complaint in this civil action is deemed filed as of May 20, 2021. *See* Ord., 5/20/21.

4. On May 5, 2020, Resolution Judge Lorensen presided over a judicially-led mediation in the instant civil action, and a Memorandum of Understanding (hereinafter “MOU”) was reached between GSR and the POA as a result of said mediation. *See* Pl’s Mot., p. 2.

5. Relevant to the instant motion, on May 20, 2020, this Court entered an Order denying the POA’s motion for a preliminary injunction, where it plainly found and laid out the obligation of the POA to reimburse GSR upon receipt of GSR’s invoices, and concluded this obligation is unconditional under Deed of Easements (hereinafter “DOE”). *See* Ord., 5/20/20.

6. Additionally relevant to the instant motion, on March 24, 2021, GSR filed a motion to enforce the MOU, seeking payment of the January and February 2021 invoices. *See* GSR’s Mot., 3/31/21. The circumstances were identical to what we have here, except the year was 2021 instead of 2024. On March 31, 2021, the POA paid the January and February 2021 Invoices. By Order entered May 20, 2021, the Court then dismissed this motion as moot because the January and February 2021 Invoices were paid. *See* Ord., 5/20/21.

7. Also relevant to the instant motion, on March 31, 2021, Plaintiff filed a Motion (i) to Enforce the May 8, 2020 Memorandum of Understanding That Was Reached Via the Mediation Held By Judge Lorensen, (ii) For Accounting, and (iii) For Setoff/Recoupment, arguing that Defendant GSR, LLC was in breach of Paragraphs 3 and 5 of the MOU that was reached between the POA and GSR by failing to provide a detailed outline of security and road maintenance services and failing to provide security logs, covenant logs, and a summary which highlights security’s responses to the items noted in the logs. *See* Pl’s Mot., p. 2. The POA further alleged GSR was improperly invoicing it. *Id.* This motion was fully briefed. On or about May 24, 2021, this motion was granted in part.

8. On October 4, 2023, GSR filed a motion to enforce MOU, seeking the POA's payment of Invoices for July and August 2023. On October 13, 2023, this Court entered its Order requiring Plaintiff to pay the July and August 2023 Invoices. *See* Pl's Resp., p. 2; *see also* case file.

9. On March 5, 2024, GSR filed the instant Motion to Enforce the Memorandum of Understanding and the Court's Prior Orders, requesting this Court enter an order that requires the POA to pay GSR's January 2024 Invoice and sanctions POA for repeated violations of the MOU and repeated refusal to pay GSR's invoices. *See* Def's Mot., p. 2. The Court notes that in the Reply, GSR indicated that it now sought the same relief regarding February 2024 as well as January 2024. *See* Reply, p. 2.

10. On a prior day, Plaintiff filed its Response in Opposition to GSR, LLC's Motion to Enforce Memorandum of Understanding and the Court's Prior Orders, arguing the MOU and prior orders of this Court do not require it to pay the January 2024 Invoice, that this Court has no power to grant the instant motion because it has no jurisdiction over 2024 Invoices, and that the subject MOU is not a settlement agreement. *See* Pl's Resp., p. 2-4.

11. On March 22, 2024, GSR filed its Reply in Support of GSR, LLC's Motion to Enforce Memorandum of Understanding and the Court's Prior Orders, averring the POA should be sanctioned by requiring to pay attorney's fees, and proffering that at that point, the POA has now refused to pay February 2024 as well as January. *See* Reply, p. 1-2.

12. A hearing was held on April 11, 2024.

13. The Court finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

This matter comes before the Court on a motion to enforce memorandum of understanding. Here, Defendant argues this Court should enter an order that requires the POA to pay GSR's January 2024 and February 2024 Invoices and sanctions POA for repeated violations of the MOU and repeated refusal to pay GSR's invoices. *See* Def's Mot., p. 2; *see also* Reply, p. 2.

On February 14, 2024, the parties participated in a yearly reconciliation meeting regarding the 2023 disputed charges. *See* Pl's Resp., p. 3. Plaintiff's position is and was that it overpaid GSR in the amount of \$308,256.98. *Id.* GSR disagreed. *Id.* Therefore, the POA unilaterally decided to offset its future (January 2024, February 2024, etc.) Invoices against this \$308,256.98 amount that it believes it is entitled to. *Id.*

This is not the first time this precise issue has come before the Court. As an initial matter, on May 20, 2020, this Court entered an Order denying the POA's motion for a preliminary injunction, where it plainly found and laid out the obligation of the POA to reimburse GSR upon receipt of GSR's invoices, and concluded this obligation is unconditional under Deed of Easements (hereinafter "DOE"). *See* Ord., 5/20/20. Further, the Order stated that the POA's right to review and audit GSR's records with regard to charges/disputed charges are *not* a precondition to the POA's obligation to immediately reimburse GSR each month. *Id.*

In 2021, the issue of the POA's payment of Invoices came back before the Court. On March 24, 2021, GSR filed a motion to enforce the MOU, seeking payment of the January and February 2021 invoices. *See* GSR's Mot., 3/31/21. The circumstances were identical to what we have here, except the year was 2021, instead of 2024. The POA disputed the 2020 charges, and after the February 2021 reconciliation process, unilaterally refused to pay invoices going forward until the amount it believed was correct was offset. The Court notes that at this time, GSR asked the Court

for sanctions and the Court declined to award them at that time. The Court also notes that on March 31, 2021, the POA paid the January and February 2021 Invoices, making the motion moot, and the Court ultimately disposed of this motion as moot because the invoices were paid. *See Ord.*, 5/20/21. Also on March 31, 2021, on the same day it paid the January and February 2021 Invoices, the POA filed its own motion to enforce the MOU, lodging an argument that now that the POA has paid the Invoices, GSR had unclean hands with regard to the MOU. Importantly, the Court notes that in the POA's March 31, 2021 motion to enforce the MOU², the POA cited Trial Court Rule 25.14 and Syllabus Points 2 and 3 of *Riner v. Newbraugh*, 211 W. Va. 137, 563 S.E. 2d 802 (2002) to argue this Court has jurisdiction to hear their request for enforcement of the MOU. This is the same MOU the POA is now arguing there exists no jurisdiction to enforce. This is the same rule the POA is now arguing cannot apply. On May 24, 2021, this Court entered an order granting in part and denying in part the POA's motion to enforce MOU, granting requested relief, in part, to the POA. This Order also set forth a detailed recitation of the accounting procedure. *See Ord.*, 5/24/21. Specifically, the May 24, 2021 Order laid out the following:

“With regard to an accounting, the DOE dictates that the POA gets an accounting by February 15 of each calendar year. First, Paragraph 8 of the MOU points out that the ‘POA’s payment of the Resort’s Invoices does not alter the POA’s rights under Paragraph 3(b) of the DOE, including the POA’s rights with respect to the final reconciliation process described in Paragraph 3(b) of the DOE’.

² On March 31, 2021, Plaintiff filed a Motion (i) to Enforce the May 8, 2020 Memorandum of Understanding That Was Reached Via the Mediation Held By Judge Lorensen, (ii) For Accounting, and (iii) For Setoff/Recoupment, arguing that Defendant GSR, LLC is in breach of Paragraphs 3 and 5 of the MOU that was reached between the POA and GSR by failing to provide a detailed outline of security and road maintenance services and failing to security logs, covenant logs, and a summary which highlights security’s responses to the items noted in the logs. *See Pl’s Mot.*, p. 2. The POA further alleged GSR was improperly invoicing it. *Id.*

Second, as acknowledged in the MOU, Paragraph 3(b) of the DOE lays out a reconciliation process and allows the Resort to be timely reimbursed but gives the POA the opportunity to review and contest the Resort's charges. The DOE dictates that the parties complete this process by receiving an invoice on the 15th of each month, and receiving a final reconciliation in reasonable detail for the previous calendar to be made on February 15 of each year.

Specifically, Section 3 of the DOE, in pertinent part, reads as follows:

3. Operation, Maintenance and Repair of Easement Area.

...

- (b) The POA shall pay the costs incurred by Glade pursuant to paragraph 3(a) hereunder (the 'Glade Costs'). For Glade's Share of the Glade Costs, Glade shall pay to POA by the 15th day of each month an amount equal to .75% of the gross sales from Glade's operation of the Glade Springs Resort, excluding real property sales for the previous month Glade shall invoice the POA on the 15th day of each month for the estimated entire amount of the preceding month's Glade Costs, with a final reconciliation in reasonable detail for the previous calendar year to be made on February 15 of each year. Payment shall be due upon receipt of the invoice from Glade. To the extent the POA has overpaid Glade for the Glade Costs for the preceding calendar year, any overpayment will be refunded within ten (10) days of the determination that an overpayment has been made. To the extent the POA has underpaid Glade for the Glade Costs for the preceding calendar year, the POA shall pay any additional amounts due within ten (10) days of demand for payment by Glade. The POA shall have the right to review and audit any records of Glade relating to such expenditures."

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See Ord., 5/24/21, p. 8-9.

The Court concludes that at this time, the POA's obligation to pay GSR's Invoices immediately upon receipt on the 15th of each month, and then engage in a yearly reconciliation each February, was confirmed via Court order again.

In Fall 2023, this issue came up again. GSR filed a motion to enforce the MOU on October 4, 2023, seeking payment of the July and August 2023 Invoices, which the POA refused to pay (and an order that the POA pay all future invoices upon receipt). *See* Def’s Mot., 10/4/23. The POA had refused to pay its July and August 2023 Invoices based on its contesting of estimated amounts that GSR incurs in connection with security vehicles used for patrols and response. *See* Ord., 10/16/23, p. 3. On October 16, 2023, the Court entered an Order granting said motion. At this time, the Court stated, again: “However, based on the clear, unambiguous language of both the DOE and the MOU, GSVPOA must pay any invoices in full upon receipt...”. *See* Ord., 10/16/23, p. 6; *see also* Def’s Mot., p. 1. In this Order, the Court also reiterated that the process is that “[u]nder the DOE and MOU, GSVPOA has an opportunity to review and contest GSR’s charges with a final reconciliation in February of the next year”. *See* Ord., 16/16/23, p. 4.

Despite these clear and unequivocal court Orders enforcing the MOU, and finding basis in the DOE, which is at the heart of this civil litigation, the POA has now engaged in actions that violate these Orders by not paying future invoices until the amount of disputed charges it believes it is entitled to has been offset.

The POA argues now that this MOU is not a settlement agreement and that this Court does not have jurisdiction to enforce the MOU. *See* Pl’s Resp., p. 4, 7. Specifically, the POA argues there is no jurisdiction because the Invoices the POA is refusing to pay this time involve the January 2024 timeframe, and that claims in the Counterclaim do not relate to 2024. *Id.* at 7-9. The POA argues the Counterclaim is limited to the time period of March 2019 to May 2020. *Id.* at 9.

The POA, in its Response to the instant motion, avers that the October 13, 2023 Order cited Trial Court Rule 25.14 as the applicable legal standard, but did not explicitly hold that the MOU was a settlement agreement. Additionally, the POA requests that “[i]n the event this Court is

inclined to find the MOU is a settlement agreement enforceable under [TCR 25.14], GSVPOA requests that this Court make specific findings of fact and conclusions of law to enable appellate review as GSVPOA intends to file a writ of prohibition as to any such finding.” *Id.* at 25.

However, on March 31, 2021, the POA filed its motion to enforce the same MOU. At that time, the POA urged the following:

- “[GSR] is in breach of the Memorandum of Understanding (‘MOU’) that was reached between GSR and Glade Springs Village Property Owners Association (‘GSVPOA’ as a result of the mediation presided over by Judge Lorensen on May 5, 2020.” (Mot., p. 2)
- “GSVPOA seeks enforcement of GSR’s obligations under the MOU. As set forth below, GSR has similar obligations to provide obligations under the MOU.” (Mot., p. 2)
- “The parties conducted a mediation with Judge Lorensen on May 5, 2020. The product of that mediation was the MOU.” (Mot., p. 3)
- “In this Motion, GSVPOA is attempting to enforce a contractual obligation in the MOU...” (Mot., p. 4).
- “Pursuant to Trial Court Rule 25.14, as well as Syllabus Points 2 and 3 of *Riner v. Newbraugh*, 211 W. Va. 137, 563 S.E. 2d 802 (2002), this Court has jurisdiction to hear GSVPOA’s request for enforcement of the MOU. Moreover, a ‘trial court possesses the inherent authority to enforce a settlement agreement and to enter judgment based on that agreement’. *Reilley v. Carpenter et al.*, No. 14-1260, 2015 W. Va. LEXIS 1003, at *8 (W. Va. Oct. 16, 2015).” (Mot., p. 5)
- “There is no dispute that under both the DOE and the MOU, GSVPOA is entitled to detailed information supporting all of GSR’s current and prior invoices for road maintenance and security.” (Mot., p. 6)
- “There is no dispute the MOU was reached as a result of a court-ordered mediation. See Exhibit B. As such, this Court has the authority, and the duty, to enforce the MOU. See Syl Pts. 1, 2, and 3, *Riner*, 211 W.Va. 137, 563 S.E.2d 802.” (Mot., p. 7)

- “Now GSVPOA is entitled to an entry of an order compelling GSR to provide all information required under the DOE and the MOU...” (Mot., p. 9)

Indeed, the Court’s May 24, 2021 Order granting in part the POA’s March 31, 2021 motion found as follows, under its Conclusions of Law:

“This matter comes before the court on a motion to enforce a mediation agreement. Pursuant to Trial Court Rule 25.14, as well as Syllabus Points 2 and 3 of *Riner v. Newbraugh*, 211 W. Va. 137, 563 S.E.2d 802 (2002), this Court has jurisdiction to hear GSR’s request for enforcement of the MOU. Moreover, a “trial court possesses the inherent authority to enforce a settlement agreement and to enter judgment based on that agreement.” *Reilley v. Carpenter et al.*, No. 14-1260, 2015 W. Va. LEXIS 1003, at *8 (W. Va. Oct. 16, 2015) (memorandum decision) (citing *Williams v. Prof’l Transp., Inc.*, 294 F.3d 607, 613 (4th Cir. 2002) (applying West Virginia substantive law)). The Supreme Court of Appeals of West Virginia has recognized that “[t]he law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than by litigation; and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy.” Syl. pt. 4, *Horkulic v. Galloway*, 665 S.E.2d 284 (W. Va. 2008) (citing Syl. pt. 1, *Sanders v. Roselawn Mem’l Gardens, Inc.*, 159 S.E.2d 784 (W. Va. 1968)).”

See Ord., 5/24/21, p. 3-4.

That the May 2020 MOU at issue in this motion is a settlement agreement has already been ruled upon, at the request of the POA, and is law of this case. The POA has previously acknowledged, and affirmatively argued, that the MOU should be enforced as a settlement agreement under TCR 25.14 and Syllabus Points 2 and 3 of *Riner v. Newbraugh*, 211 W. Va. 137, 563 S.E. 2d 802 (2002).

Judicial estoppel bars a party from re-litigating an issue when: (1) the party assumed a position on the issue that is clearly inconsistent with a position taken in a previous case, or with a position taken earlier in the same case; (2) the positions were taken in proceedings involving the

same adverse party; (3) the party taking the inconsistent positions received some benefit from his/her original position; and (4) the original position misled the adverse party so that allowing the estopped party to change his/her position would injuriously affect the adverse party and the integrity of the judicial process. Syllabus Point 2, *Robertson*, 217 W.Va. 497, 618 S.E.2d 506 (2005); *see also* Syllabus Point 3, *Riggs v. W. Va. Univ. Hosp., Inc.*, 221 W. Va. 646, 656 S.E.2d 91 (2007); Syllabus, *Larry V. Faircloth Realty, Inc., v. Pub. Serv. Com'n of W. Va.*, 230 W. Va. 482, 740 S.E.2d 77 (2013) (cited by *Banbury Holdings, LLC v. May*, 242 W. Va. 634, 639, 837 S.E.2d 695, 700 (2019)). As the West Virginia Supreme Court of Appeals explained in *Robertson*, judicial estoppel exists to:

[P]reclude[] a party from asserting a position in a legal proceeding inconsistent with a position taken by that party in the same or a prior litigation. *In re C.Z.B.*, 151 S.W.3d 627, 633 (Tex.Ct.App.2004). Under the doctrine, a party is ‘generally prevent[ed] ... from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.’ *Pegram v. Herdrich*, 530 U.S. 211, 227 n. 8, [120 S.Ct. 2143, 147 L.Ed.2d 164] (2000). This Court recognized long ago that ‘[t]here are limits beyond which a party may not shift his position in the course of litigation [.]’ *Watkins v. Norfolk & Western Ry. Co.*, 125 W.Va. 159, 163, 23 S.E.2d 621, 623 (1942). Thus, ‘[w]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.’ *Hubbard v. State Farm Indem. Co.*, 213 W.Va. 542, 552 n. 21, 584 S.E.2d 176, 186 n. 21 (2003).

Robertson, 217 W. Va. 497, 504, 618 S.E.2d 506, 513 (2005).

“ ‘The policies underlying the doctrine include ... precluding litigants from playing fast and loose with the courts, and prohibiting parties from deliberately changing positions according

to the exigencies of the moment.’ ” *Robertson*, 217 W. Va. at 505 n.19, 618 S.E.2d at 514 n.19 (quoting *United States v. McCaskey*, 9 F.3d 368, 378 (5th Cir. 1993)) (cited by *Bison Ints., LLC v. Antero Res. Corp.*, 244 W. Va. 391, 405, 854 S.E.2d 211, 225 (2020)).

First, the Court concludes the POA has now “assumed a position on the issue that is clearly inconsistent with a position ... taken earlier in the same case” and that the “positions were taken in proceedings involving the same adverse party”. This has been established clearly above in this Order. Further, The Court considers whether the POA “received some benefit from his/her original position”. As illustrated above, on or about May 24, 2021, this Court entered an Order Granting in Part and Denying in Part Plaintiff’s Motion to Enforce the May 8, 2020 Memorandum of Understanding That Was Reached Via the Mediation Held By Judge Lorensen and for Accounting and Setoff. By the plain language of the title, the POA benefitted from their earlier position, as their motion to enforce the same MOU under TCR 25.14 was granted in part. The motion was denied in part only as to the POA’s seeking enforcement of Invoices prior to May 2020. *See Ord.*, 5/24/21, p. 6. Ironically, now, the POA is arguing that the Court only has jurisdiction over Invoices in the timeframe of March 2019-May 2020, and that any Invoices post-May 2020 GSR seeks to enforce under the MOU should not be ruled upon. From there, the Court notes the May 24, 2021 Order found GSR’s logs (security logs, public works logs, and invoices with backup documents) were sufficiently detailed within the meaning of the MOU, and the POA’s motion to enforce was granted in part with regard to accounting, which the Order noted is set forth in the DOE and acknowledged in the MOU. *See Ord.*, 5/24/21, p. 9 (“Second, as acknowledged in the MOU, Paragraph 3(b) of the DOE lays out a reconciliation process and allows the Resort to be timely reimbursed but gives the POA the opportunity to review and contest the Resort’s charges.). The POA also benefitted by the Court’s inspection, review, consideration, and ruling regarding the logs

of GSR, under a Motion to Enforce MOU, even if the Court ultimately found that the logs were adequate within the meaning of the MOU.

Finally, *Robertson's* fourth factor is satisfied because if this Court were to allow the POA's above-noted assertions of inconsistent positions, such would greatly undermine the integrity of the judicial process. " 'The integrity of the judicial process is threatened when a litigant is permitted to gain an advantage by the manipulative assertion of inconsistent positions, factual or legal.' " *Larry V. Faircloth Realty, Inc., v. Pub. Serv. Com'n of W. Va.*, 230 W. Va. 482, 488-489, 740 S.E.2d 77, 83-84 (2013) (quoting *Helfand v. Gerson*, 105 F.3d 530, 535 (9th Cir. 1997))(cited by *Banbury Holdings, LLC v. May*, 242 W. Va. 634, 640, 837 S.E.2d 695, 701 (2019)). The POA is attempting to assume one position in this legal proceeding, maintaining that position, and then, because its interests have changed, it is attempting to take the opposite position with regard to enforcement of the MOU.

In sum, the Court finds the POA's argument, now, that the MOU is not subject to enforcement via TCR 25.14 and related case law must fail, as it has previously argued the same MOU should be enforced via the same authority. Additionally, when GSR previously sought to enforce the MOU (on multiple occasions), the POA did not raise this argument, and it was thus waived.

Likewise, the POA has previously argued the MOU should be enforced as to timeframes outside of March 2019-May 2020, and now argues the Court only has jurisdiction as to Invoices within the timeframe of March 2019-May 2020. Further, the "law of the case" doctrine bars relitigation of issues previously decided in the same case. *See State ex rel. TermNet Merch. Servs., Inc. v. Jordan*, 217 W. Va. 696, 702 n.14, 619 S.E.2d 209, 215 n.14 (2005) ("The law of the case doctrine provides that a prior decision in a case is binding upon subsequent stages of litigation

between the parties in order to promote finality.”)(*cited by Bell v. Perkins*, No. 19-0019, 2021 WL 595415, at *4 (W. Va. Feb. 16, 2021)). This Court has already applied TCR 25.14 and *Riner v. Newbraugh*, 211 W. Va. 137, 563 S.E. 2d 802 (2002) to the enforcement of the May 2020 MOU at issue here. The Court finds, in addition to judicial estoppel, the law of the case doctrine requires that this decision be binding at this subsequent time, as well. Having been faced with this issue multiple times, the Court has great interest in “promoting finality” as to the MOU, and the POA’s obligation to pay GSR’s Invoices each month. Such finality will preserve judicial resources and the resources of the parties by preventing duplicative motions practice as to the same issue, i.e. the POA’s obligation to pay the Invoices each month.

Accordingly, the Court finds that the MOU should be enforced, and under the plain terms of both the DOE and MOU, and prior Orders of this Court in this civil action, the POA must pay January 2024 and February 2024’s Invoices.

Request for Sanctions

Finally, the Court addresses GSR’s request for sanctions. GSR requests the POA be required to pay the attorneys’ fees GSR has incurred in connection with this motion. *See Reply*, p. 4. The Court GRANTS this request and the POA is hereby SANCTIONED for repeatedly violating the MOU by refusing to pay GSR’s Invoices upon receipt. The Court finds it is appropriate to grant GSR’s request for sanctions, insomuch as the Court orders GSR’s reasonable attorney’s fees and expenses in conjunction with the litigation of this Motion to Enforce MOU be sanctioned against the POA. The above analysis shows a pattern of a failure to pay the monthly invoices upon receipt, dating back to at least 2020. The Court finds that the POA’s failure to abide by prior orders of this Court is willful; therefore, sanctions are appropriate. Counsel for GSR shall submit and file a proposed order granting its request for attorney’s fees and costs associated with

the costs of litigating this Motion, along with fee affidavits and any other appropriate supporting material, setting forth the necessary legal and factual support for the amount of attorney's fees and costs to be awarded within fifteen (15) days of the entry of this Order.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Defendant GSR, LLC,'s Motion to Enforce the Memorandum of Understanding and The Court's Prior Orders is hereby GRANTED.

Additionally, it is hereby ADJUDGED and ORDERED that the Court ORDERS the following:

1. Plaintiff is hereby ORDERED to pay in full the January and February 2024 Invoices;
2. GSR's request for sanctions is GRANTED, insomuch as the Court orders the appropriate sanctions to be the attorney's fees and expenses related to the costs of this motion; and
3. Counsel for GSR shall submit and file a proposed order granting its request for attorney's fees and costs associated with the costs of litigating this Motion, along with fee affidavits and any other appropriate supporting material, setting forth the necessary legal and factual support for the amount of attorney's fees and costs to be awarded within fifteen (15) days from the date of 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.

4/24/24
date of entry



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