

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 DEFENDANTS' MOTION TO RECONSIDER

This matter came before the Court this 26th day of April, 2024, upon Defendants, Elmer Coppoolse, James Terry Miller and R. Elaine Butler's Motion to Reconsider Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Financial Information From 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, Bryan N. Price, 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. This matter surrounds the claims in the Second Amended Complaint[1], 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. The Court notes the case includes a claim for punitive damages.

2. On February 21, 2024, this Court entered an Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Financial Information From Defendants, ordering the Individual Defendants to produce certain financial discovery. Specifically, the Court ordered Individual Defendants' (1) federal and state tax returns for the previous five years, (2) a list of properties owned, and (3) a verified current financial worth statement be produced. See *Order Granting in Part Plaintiff's Motion to Compel Financial Information from Defendants*, entered on February 21, 2024, at pp. 11-12.

3. It is this Order that Defendants ask the Court to reconsider. On March 5, 2024, Defendants filed the instant motion, requesting the Court reconsider its Order concerning the tax returns. See Def's Mot., p. 2. Specifically, Defendants request the Court reconsider its order with regard to production of tax returns because the returns were jointly filed with spouses. *Id.* In the alternative, Defendants ask that they be permitted to redact their tax returns to prevent disclosure of any spousal information. *Id.* at 3. Defendants also argue that the production of information going back to 2015 is overly broad, and request this Court reconsider its decision to limit the temporal scope of such production to two years. *Id.* at 4.

4. On March 21, 2024, Plaintiff filed its Response, indicating it does not object to the proposed redaction of tax returns to prevent disclosure of the personal financial information of the Defendants' spouses, and arguing this Court should not limit

the temporal scope of the Order. See Pl's Resp., p. 1-2. Specifically, Plaintiff argues Defendants failed to object to the temporal scope of financial discovery in this matter and such an argument is now waived.

5. On April 1, 2024, Defendants filed their Reply, arguing they have repeatedly objected to the temporal scope of financial discovery and Plaintiff's waiver argument is without merit. See Reply, p. 2. Defendants attached responses to written discovery as an Exhibit to support this argument. *Id.* at 3.

6. The Court finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

"As long as a circuit court has jurisdiction over the case, then it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient." Syl. Pt. 4, *Hubbard v. State Farm Indem. Co.*, 584 S.E.2d 176 (W. Va. 2003); see Syl. Pt. 2, in part, *Taylor v. Elkins Home Show, Inc.*, 558 S.E.2d 611 (W. Va. 2001) ("[A] trial court has plenary power to reconsider, revise, alter, or amend an interlocutory order"); W. Va. R. Civ. P. 54(b). Indeed, the Supreme Court of Appeals of West Virginia has noted that "not only is a motion to reconsider an allowable method of reviewing a prior order, it is the most appropriate and advantageous method of seeking relief from an interlocutory order for a party to pursue." *Hubbard*, 584 S.E.2d 176, 185 n.19 (quoting *Fisher v. National R.R. Passenger Corp.*, 152 F.R.D. 145, 149 (S.D. Ind. 1993)).

Tax Returns

First, the Court addresses the disclosure of personal financial information from Non-Parties (*i.e.*, the Individual Defendants' spouses with whom they filed joint tax returns). The Court notes that GSVPOA does not object to redaction of the tax returns to prevent disclosure of the personal financial information of the Individual Defendants'

spouses. As such, the *Motion* will be granted in part by agreement of the Parties as to redaction of the personal financial information of the Individual Defendants' spouses.

Temporal Scope

Next, the Court addresses the temporal scope of the *Order*. Defendants discuss a Federal case out of the Southern District of California, *Kalter v. Keyfactor, Inc.*, No. 21-cv-1707-L-DDL, 2022 U.S. Dist. LEXIS 202798 (S.D. Cal. Nov. 7, 2022), to illustrate that courts find a temporal scope of two years is appropriate. See Defs' Resp., p. 6.

The Supreme Court of Appeals of West Virginia upheld a trial court's order allowing for discovery of tax returns dating back ten (10) years in a tortious interference case alleging punitive damages because such information could lead to the discovery of admissible evidence. *State ex rel. Arrow Concrete Co. v. Hill*, 194 W. Va. 239, 460 S.E.2d 54 (1995).

The Court, considering the claims in this matter, as well as relevant law, finds its *Order* need not be revised. The Court considers that this is a 2019 case, and limiting financial discovery to two years would be a time period of about three years after this case was filed. The Court finds the temporal scope was sufficiently limited in time when the Court ordered records dating back to 2015. The Court does not conclude that good cause has been shown for the Court to shorten the temporal scope of production any further than limiting it to 2015.

Accordingly, the Court finds the instant motion shall be granted in part. The Court notes that the *Order* compelling production is subject of this Court's March 6, 2024 *Order* Granting Defendants' Emergency Motion for Stay and a February 22, 2024 Petition for Writ of Prohibition filed with the West Virginia Supreme Court of Appeals. Therefore, the Court notes that any production of financial information, the parameters of which are addressed in this *Order*, will be subject to these two matters and shall be

produced at the appropriate time.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Defendants, Elmer Coppoolse, James Terry Miller and R. Elaine Butler's Motion to Reconsider Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Financial Information From Defendants is hereby GRANTED IN PART.

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] 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.

/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.