

**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 DENYING INDIVIDUAL DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S THIRD AMENDED COMPLAINT**

This matter came before the Court this _____ day of May, 2024 upon Defendants, Elmer Coppelose, James Terry Miller and R. Elaine Butler's Motion to Dismiss Plaintiff's Third

Amended Complaint. The parties 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. In June 2023, the Supreme Court of Appeals of West Virginia determined 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), that Glade Springs Village (“GSV”) is a common interest community, governed by the whole of the Uniform Common Interest Ownership Act (“UCIOA”), W. Va. Code § 36B-1-101 *et seq.* This is not disputed by the parties.

2. On October 31, 2023, Plaintiff Glade Springs Village Property Owners Association, Inc. (hereinafter “Plaintiff” or “POA”) filed its Third Amended Complaint in this civil action, alleging various causes of action against the Defendants, Elmer Coppoolse, James Terry Miller and R. Elaine Butler (hereinafter “Defendants” or “Individual Defendants”) as well as against Defendants EMCO Glade Springs Hospitality, LLC and GSR, LLC. Specifically against the Individual Defendants, Plaintiff asserted two counts asserting breach of fiduciary duty against the Individual Defendants (Counts III and V), and one count asserting a claim of “Constructive Trust” against Defendant Coppoolse (Count XI). *See* Def’s Mot., p. 3. It is these counts that the Individual Defendants, individually and jointly, seek to dismiss in this motion. *Id.*

3. On November 20, 2023, Individual Defendants filed the instant Motion to Dismiss Plaintiff’s Third Amended Complaint, moving this Court to “dismiss the claims asserted

against them in Plaintiff's Third Amended Complaint pursuant to 12(b)(6) of the West Virginia Rules of Civil Procedure". *See* Def's Mot., p. 20. Defendants claim no duty exists, necessitating the dismissal of Counts III and V. *See* Def's Mot., p. 3. Specifically, Defendants aver GSV property owners' properties are not subject to the Declaration, so no duty is owed. *Id.* at 5. Additionally, Defendants argue because UCIOA applies to GSV, the Defendants do not owe separate duties under the Non-Profit Corporation Act. *Id.* Additionally, because it claims these causes of action fail, and these counts are the only other claims against Defendant Coppoolse, Defendants claim Count XI (Constructive Trust) must fail as well. *Id.* at 4.

4. On January 12, 2024, Plaintiff filed Glade Springs Village Property Owners Association, Inc.'s Response in Opposition to Motion to Dismiss Plaintiff's Third Amended Complaint by Elmer Coppoolse, James Terry Miller, and R. Elaine Butler, arguing Defendants falsely claim GSV is not a common interest community and that whether development rights were properly reserved has no bearing on whether GSV is a common interest community or which lots are part of GSV. *See* Pl's Resp., p. 3, 6.

5. On January 22, 2024, Defendants filed their Reply in Support of Their Motion to Dismiss Plaintiff's Third Amended Complaint, averring the "Response does nothing to deter the result to which Defendants are entitled by their Motion – the dismissal of the Third Amended Complaint." *See* Reply, p. 1-2.

6. The Court finds the issue ripe for adjudication.

STANDARD OF LAW

This matter comes before the Court upon a motion to dismiss. Motions to dismiss are governed by Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the

complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Syl. Pt. 3, *Chapman v. Kane Transfer Co., Inc.*, 160 W.Va. 530 (1977). “Since the preference is to decide cases on their merits, courts presented with a motion to dismiss for failure to state a claim construe the complaint in the light most favorable to the plaintiff, taking all allegations as true.” *Sedlock v. Moyle*, 222 W.Va. 547, 550, 668 S.E.2d 176, 179 (2008). “We recognized, however, that liberalization in the rules of pleading in civil cases does not justify a carelessly drafted or baseless pleading.” *Par Mar v. City of Parkersburg*, 183 W.Va. 706, 711 (1990).

A motion to dismiss under Rule 12(b)(6) enables a circuit court to weed out unfounded suits. *Williamson v. Harden*, 214 W.Va. 77, 79 (2003).

CONCLUSIONS OF LAW

As an initial matter, this Court addresses the documents that were attached to the instant motion.

When reviewing a motion to dismiss under Rule 12(b)(6), a trial court may consider: “(1) factual allegations in the complaint; (2) documents attached to the complaint as exhibits or incorporated in it by reference; (3) matters of which judicial notice may be taken; and (4) documents that are integral to the complaint.” Louis J. Palmer, Jr. & Robin Jean Davis, *Litigation Handbook on West Virginia Rules of Civil Procedure*, § 12(b)[8], at 407 (5th ed. 2017) (citation in footnote omitted).

This Court notes it considering documents attached to the instant motion, because they were referred to in the Second Amended Complaint and are at the heart of the allegations in this case.

Duty

The Court first addresses the issue of duty. Defendants posit arguments with regard to duty under both UCIOA and the West Virginia Nonprofit Corporations Act.

UCIOA

Defendants assert no statutory fiduciary duty is owed to the members of GSV. *See* Def's Mot., p. 7. Defendants assert that under UCIOA, Defendants do not owe a fiduciary duty to GSV. *Id.* Defendants argue this is because the "property of the GSVPOA members that Plaintiff purports to represent was not added to GSV in accordance with the requirements of Article 2. Because the property was not properly added to GSV in accordance with the requirements of UCIOA, UCIOA does not impose a fiduciary obligation upon [Defendants]." *Id.* at 8.

Defendants argue this is because in 2001, Cooper Land sought to subject certain real estate owned by it to a Declaration that created GSV, and at the time of the filing of this Declaration, that real estate consisted of one (1) acre of common property. *Id.* Defendants argue this single, initial one-acre tract of property is the only real property added to the GSV common interest community under UCIOA. *Id.* at 9. Defendants claim that after recordation of the initial declaration creating a common interest community, UCIOA contemplates only two mechanisms for real estate to be added to the common interest community, and that neither mechanisms were satisfied as it relates to GSV. *Id.* at 11.

Specifically, Defendants argue the following with regard to the two mechanisms: (1) a declarant may unilaterally, subject to certain restrictions, amend a UCIOA declaration to exercise specific UCIOA rights *IF those rights were reserved in the original declaration in a manner that complies with UCIOA (see W. Va. Code § 36B-2-117(a))*, or (2) an amendment may be made by vote of the owners of the common interest community units to which not less than 67% of common interest community voting rights are allocated. *Id.* The declaration creating GSV

included only a one-acre tract of land, and the Declaration did not reserve special declarant rights or future development rights in accordance with UCIOA. *See* Reply, p. 3. Defendants argue that there was never any property added to GSV (beyond the initial one-acre tract) via the exercise of UCIOA-compliant developer reserved rights, and there was never a vote to add property by at least 67% of the voting members of GSV. *Id.* Thus, Defendants allege any fiduciary duty imposed under UCIOA applies only to that initial one-acre parcel. *Id.* at 4.

The Court considers this argument has already been brought before it, on Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint. On September 9, 2021, this Court¹ entered an Order Denying Defendants' Motion to Dismiss Second Amended Complaint. The Court incorporates by reference the September 9, 2021 Order.

Defendants argue that at the time of the September 9, 2021 Order addressing this argument, the Court did not have the Supreme Court decision stating that UCIOA applied to GSV. *See* Def's Mot., p. 13. The Court finds whether the GSV Declaration includes a substantial or insubstantial failure to comply with UCIOA under W. Va. Code § 36B-2-103(d) or otherwise was neither an issue brought to the Supreme Court in that case nor addressed, much less held, by the Supreme Court in that case. The Court also notes the lot owners were not parties to that case. Further, the Court considered UCIOA's application in its September 9, 2021 Order. The Court laid out an analysis of the applicable UCIOA provisions and their application to GSV. The Court considered that UCIOA was found to be applicable by Judge Burnside in Raleigh County Civil Action 19-C-481, which is the civil action in which the issue went before the Supreme Court. Of course, there, the Supreme Court affirmed Judge Burnside's determination that UCIOA did, in fact, apply to GSV. This Court found that "[w]ith that in

¹ The Court notes that at that time, this action was assigned to Judge Dent.

mind”, it undertook its application of this one-acre argument. For this reason, the Court finds Defendants’ argument that it did not have the benefit of the Supreme Court decision in 2021 to be unpersuasive. The Court analyzed this one-acre argument in 2021 with the application of UCIOA to GSV. The appropriateness of that analysis was confirmed by the Supreme Court, when it issued its June 2023 opinion, *Just. Holdings, LLC v. Glade Springs Vill. Prop. Owners Ass’n, Inc.*, No. 22-0002, 2023 WL 4014141 (W. Va. June 15, 2023). The Court, for the detailed reasons set forth in its September 9, 2021 Order Denying Defendants’ Motion to Dismiss Second Amended Complaint, denies the instant motion as to this argument.

WVNPCA

Next, with regard to duty, Defendants argue that because UCIOA applies to GSV, UCIOA supplants duties under the West Virginia Non-Profit Corporation Act. *See* Def’s Mot., p. 17; *see also* Reply, p. 9. Specifically, Defendants argue “UCIOA supplants Plaintiff’s claims because Plaintiff does not allege violation of any statute that supplements UCIOA.” *See* Reply, p. 9-10. Defendants aver that because UCIOA applies to GSV, the Individual Defendants do not owe separate duties to Plaintiff under the Non-Profit Corporation Act “that are inconsistent with UCIOA”. *See* Def’s Mot., p. 5.

On the other hand, Plaintiff argues in addition to the fiduciary duty owed under UCIOA, Defendants also owed a duty of care and a duty of loyalty to GSVPOA and the property owners of GSV under the *West Virginia Non-Profit Corporations Act* (W. Va. Code § 31E-1-101 *et seq*). *Id.* at 10.

In West Virginia, the duty of loyalty is set forth in the *West Virginia Non-Profit Corporations Act* in W. Va. Code § 31E-8-830(a), which states that “[e]ach member of the board of directors, when discharging the duties of a director, shall act: (1) In good faith; and (2) in a

manner the director reasonably believes to be in the best interests of the corporation.” W. Va. Code § 31E-8-830. The duty of loyalty prevents fiduciaries “from dealing in their own behalf with respect to matters involved in the trust * * * extends to every variety of circumstances * * * and operates irrespectively of the good faith or bad faith of such dealing.” *Hopkins v. Bryant*, 121 W. Va. 748, 751, 6 S.E.2d 246, 248 (1939) (citing *Pomeroy, Eq. Juris.* (4th ed.), sec. 1077).

The duty of loyalty obliges that a corporation's directors not engage in “oppressive conduct” defined as:

[B]urdensome, harsh and wrongful conduct; a lack of probity and fair dealing in the affairs of a company to the prejudice of some of its members; or a visual departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely.

Masinter v. WEBCO Co., 164 W. Va. 241, 251-52, 262 S.E.2d 433 (1980)(quoting *Baker v. Commercial Body Builders, Inc.*, 264 Or. 614, 628-29, 507 P.2d 387, 393-94 (1973)); see also *Hopkins v. Bryant*, 121 W. Va. 748, 751, 6 S.E.2d 246, 248 (1939) (stating that “The rule forbidding fiduciaries ‘from dealing in their own behalf with respect to matters involved in the trust * * * extends to every variety of circumstances * * * and operates irrespectively of the good faith or bad faith of such dealing’”) (citations omitted).

Likewise, the duty of care is described in W. Va. Code § 31E-8-830(b)

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

W. Va. Code § 31E-8-830(a)-(b).

West Virginia case law is also informative in interpreting what constitutes the duty of care:

Directors cannot, in justice to those who deal with a bank, shut their eyes to what is going on around them. It is their duty to use ordinary diligence in ascertaining the condition of its business and to exercise reasonable control and supervision of its officers. They have something more to do than, from time to time, to elect the officers of the bank, and to make declarations of dividends. That which they ought, by proper diligence, to know as to the general course of business in the bank, they may be presumed to know in any contest between the corporation and those who are justified by the circumstances in dealing with its officers upon the basis of that course of business.

Commercial Banking & Trust Co. v. Doddridge County Bank, 119 W. Va. 449, 460, 194 S.E. 619, 624 (1937)(citations omitted); *see Elliott v. Farmers' Bank*, 61 W. Va. at 655 (stating that “[t]hey must carefully obey the law under which the bank is organized, must act with entire good faith, and, like all other agents, they contract for reasonable capacity, skill and care in the discharge of their duties”)(citations omitted).

GSVPOA is a non-profit corporation. Defendants Coppoolse, Miller, and Butler were GSVPOA directors from 2010 until the 2018-2019 time period. The question for this Court is whether Plaintiff can simultaneously lodge claims for breach of these relevant duties under both UCIOA and the Non-Profit Corporation Act.

Within UCIOA it is stated that:

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law of relative capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

See W. Va. Code § 36B-1-108 governs “supplemental general principles of law

applicable”. W. Va. Code § 36B-1-108. The Court acknowledges, as laid out above, that W. Va. Code § 36B-1-108 provides that “The principles of law and equity...supplement the provisions of this chapter, except to the extent inconsistent with this chapter.” W. Va. Code § 36B-1-108; *see also Just. Holdings, LLC v. Glade Springs Vill. Prop. Owners Ass’n, Inc.*, No. 22-0002, 2023 WL 4014141, at *15 (W. Va. June 15, 2023)(The Uniform Act provides that “the principles of law and equity,” such as estoppel, “*supplement*” the Act's provisions, “except to the extent *inconsistent* with this chapter.”³² W. Va. Code § 36B-1-108 (emphasis added)).

The Court is not convinced by Defendants’ argument that W. Va. Code § 36B-1-108 precludes a claim for breaches of duty under the Non-Profit Corporation Act. The Court finds the duty of loyalty and care prescribed by the Non-Profit Corporation Act is not inconsistent with the fiduciary duties prescribed by UCIOA. *See Just. Holdings, LLC v. Glade Springs Vill. Prop. Owners Ass’n, Inc.*, No. 22-0002, 2023 WL 4014141, at *16 (W. Va. June 15, 2023)(West Virginia Code § 36B-1-108 precludes the use of the “principles of law and equity” when they are inconsistent with the Act...). Because the provisions are not inconsistent with one another, the Court finds the motion must be denied as to this argument.

Constructive Trust

Defendants next argue that Count XI’s cause of action for Constructive Trust against Coppoolse must fail. *See* Def’s Mot., p. 18. Defendants aver Count XI asks this Court to impose a constructive trust on property that is allegedly held by Coppoolse, GSR, and/or EMCO, but rightly belongs to the POA. *Id.* Defendants argue Plaintiff failed to allege that Coppoolse personally acquired any property through actual wrongdoing or a breach of fiduciary duty and that he would be unjustly enriched if he is permitted to retain such property. *Id.* at 19. Defendants also argue Constructive Trust is not a cause of action or claim under West Virginia

law. *See* Reply, p. 10. Defendant argues it is, instead, a remedy which Plaintiff has failed to plead properly. *Id.*

At this stage in the litigation, Plaintiff's allegations must be accepted as true for purposes of adjudicating the instant Motion to Dismiss. *Newton v. Morgantown Mach. & Hydraulics of W. Va., Inc.*, 838 S.E.2d 734, 736, 2019 W. Va. LEXIS 595 (quoting *Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W. Va. 603, 605, 245 S.E.2d 157, 158 (1978)). The Third Amended Complaint contains the following allegations under which GSVPOA actually alleged that Coppoolse personally acquired GSVPOA property through wrong doing or a breach of fiduciary duty and that Coppoolse would be unjustly enriched if he is permitted to retain such property: "Coppoolse, GSR and EMCO 'hold property that rightly belongs to GSVPOA' and that the ' and that the 'Declarant Board of Directors, through undue influence, mistake, or through a breach of fiduciary duty allowed property rightfully belonging to GSVPOA to be possessed by, transferred to, or conveyed to Coppoolse, GSR and/or EMCO.'" *See* Th. Am. Compl.; *see also* Def's Mot., p. 19, Pl's Resp., p. 13-14.

The Court finds at this stage, dismissal would be premature. The motion shall be denied as to the cause of action for Constructive Trust.


CONCLUSION

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that Defendants, Elmer Coppoolse, James Terry Miller and R. Elaine Butler's Motion to Dismiss Plaintiff's Third Amended Complaint is hereby **DENIED**.

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.

8/8/24
date of entry



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