

**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 IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT THAT THE INDIVIDUAL DEFENDANTS WERE
FIDUCIARIES OF GSVPOA'S MEMBERS**

This matter came before the Court this _____ day of May, 2024, upon Plaintiff Glade Springs Village Property Owners Association, Inc.’s Motion For Partial Summary Judgment That the Individual Defendants Were Fiduciaries of GSVPOA’s Members. The Plaintiff, Glade Springs Village Property Owners Association, Inc. (hereinafter “the POA” or “Plaintiff”), by counsel, Mark A. Sadd, 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. 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 May 30, 2001, Cooper Land, as the Declarant, created GSV by recording the Declaration in the Raleigh County, West Virginia Clerk’s Office. *See* Declaration, Ex. 1; *see also*

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.

Def's Resp., p. 2. Cooper Land, the original Declarant of GSV, "held the right to appoint members of GSVPOA's executive board." *See* Pl's Mot, p. 6.

3. In July 2010, Cooper Land entered into a purchase agreement with James C. Justice Companies, Inc. *Id.* at 6-7. Under the terms of the purchase agreement, James C. Justice Companies "shall become the 'Declarant' for any and all purposes relating to the Cooper Properties and the Property Owners' Association." *Id.* at 7.

4. After this, James C. Justice Companies, Inc. then assigned its rights under the purchase agreement to Justice Holdings. *Id.* In 2010, Cooper Land and Justice Holdings entered into an agreement wherein Cooper Land transferred certain rights to Justice Holdings, and in turn made Justice Holdings Cooper Land's successor Declarant. *Id.* at 8.

5. The Court finds that following the transaction in 2010, Justice Holdings became the successor Declarant to Cooper Land. This fact is not disputed.

6. Thereafter, Justice Holdings, as the successor Declarant, appointed the members of GSVPOA's board of directors. Among the persons Justice Holdings appointed to GSVPOA's board of directors, were the Individual Defendants – Mr. Coppoolse, Mr. Miller, and Mrs. Butler. *See* Def's Resp., p. 2.

7. On or about January 28, 2022, Plaintiff filed the instant Motion For Partial Summary Judgment That the Individual Defendants Were Fiduciaries of GSVPOA's Members, requesting summary judgment in its favor that the Individual Defendants, in the performance of their duties as GSVPOA directors or officers, were required to exercise the care required of fiduciaries of GSVPOA's members under West Virginia Code § 36B-3-103(a)(i) or at common law or both. *See* Pl's Mot., p. 11.

8. By Order entered March 2, 2022, this motion was stayed 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. The Court notes this appeal involved whether or not UCIOA applied to GSV.

9. On January 2, 2024, after this appeal was concluded, this Court entered another Briefing Order on this motion.

10. On January 17, 2024, Defendants filed Defendants' Response in Opposition to Glade Springs Village Property Owners Association, Inc.'s Motion For Partial Summary Judgment That the Individual Defendants Were Fiduciaries of GSVPOA's Members, arguing the Individual Defendants are not fiduciaries of the "members" of GSVPOA, but conceding that they are fiduciaries of the "unit owners" of GSVPOA. *See* Def's Resp., p. 1-2.

11. On January 31, 2024, Plaintiff filed its Reply, pointing out that Defendants acknowledge and concede that under UCIOA, if appointed by the declarant, officers and members of the executive board, when in performance of their duties, are required to exercise the care required of fiduciaries to unit owners. *See* Reply, p. 3.

12. The Court finds the issue ripe for adjudication.

STANDARD OF LAW

This matter comes before the Court upon a motion for partial summary judgment. Motions for summary judgment are governed by Rule 56, which states that "judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." W. Va. R. Civ. P. 56(c). West Virginia courts do "not favor the use of summary judgment, especially in

complex cases, where issues involving motive and intent are present, or where factual development is necessary to clarify application of the law.” *Alpine Property Owners Ass’n, Inc. v. Mountaintop Dev. Co.*, 179 W.Va. 12, 17 (1987).

Therefore, “[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” Syl. Pt. 3, *Aetna Cas. and Surety Co. v. Fed. Ins. Co. of New York*, 148 W.Va. 160, 171 (1963); Syl. Pt. 1, *Andrick v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992); Syl. Pt. 1, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52 (1995). A motion for summary judgment should be denied “even where there is no dispute to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom.” *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 59 (internal quotations and citations omitted).

However, if the moving party has properly supported their motion for summary judgment with affirmative evidence that there is no genuine issue of material fact, then “the burden of production shifts to the nonmoving party ‘who must either (1) rehabilitate the evidence attacked by the movant, (2) produce additional evidence showing the existence of a genuine issue for trial or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f).’” *Id.* at 60.

CONCLUSIONS OF LAW

Plaintiff argues partial summary judgment should be granted in its favor that the Individual Defendants, in the performance of their duties as GSVPOA directors or officers, were required to exercise the care required of fiduciaries of GSVPOA’s members under West Virginia Code § 36B-3-103(a)(i) or at common law or both. *See* Pl’s Mot., p. 11.

The Court first notes that, as determined by the Supreme Court of Appeals 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), 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. *See* Def’s Prop. Ord.

One such section of UCIOA, West Virginia Code § 36B-3-103(a), pertains to the actions of a board of directors on behalf of a property owners association. The section states as in relevant part:

the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise (i) if appointed by the declarant, the care required of fiduciaries of the unit owners and (ii) if elected by the **unit owners**, ordinary and reasonable care.

W. Va. Code § 36B-3-103(a)(emphasis added).

The Court finds that under this section, members of a board of directors appointed by a declarant must act as fiduciaries of the unit owners. W. Va. Code § 36B-3-103(a). The Court notes this is not disputed. However, the Court must clarify that Plaintiff seeks an order granting partial summary judgment finding that the individual Defendants were required to act as fiduciaries for all *members* of GSVPOA. *See* Def’s Resp., p. 3. This Court must address these terms. The Court cannot conflate the term “member” with “unit owner”, because a review of the relevant statutes and the GSV Declaration reveal there are differing types of memberships under the Declaration, not of all of which are mentioned in W. Va. Code § 36B-3-103(a).

First, UCIOA defines a unit owner as:

a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of

which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated ([W. Va. Code § 36B-2-107]) until that unit has been conveyed to another person.

W. Va. Code § 36B-1-103(34).

Also, UCIOA defines a “unit” as:

a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to subdivision (5), subsection (a), section one hundred five [§ 36B-2-105], article two of this chapter. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

W. Va. Code § 36B-1-103(33).

What comprises a unit and a unit owner is clearly defined under UCIOA. However, the Court notes again that Plaintiff’s motion seeks summary judgment as to the fiduciary duties owed to GSVPOA’s “members”.

GSV’s Declaration defines the term “member” and provides for differing types of memberships. *See* Declaration at Art. I, ¶ 16; Art. III, § 1. Member is defined in the Declaration as “any person who is a member of the [GSVPOA] as hereinafter provided.” Declaration at Art. I, ¶ 16. The Declaration continues by providing for five different types of GSVPOA memberships. The Court notes that the Declaration does not create, establish, or reference a fiduciary duty or relationship of any GSVPOA board representative to any member in GSVPOA – regardless of the classification thereof. First, a “general membership,” is provided to “[e]very person or entity,

other than the Developer, who is the record Owner of a fee or undivided fee in a Lot or a Living Unit which is subject by covenants of record to assessment by the Association” An “associate membership” is reserved for “[e]very person or entity who has entered into a contract of purchase with the Developer covering a Lot or Living unit . . . whose purchase money security therefor, if any, has not been paid in full” Next, “certificate memberships” may be sold by the Developer “[t]o provide operating revenue to the Association and enhance utilization of recreational facilities during the early development of [GSV]” “Certificate memberships” “shall not require ownership of a Lot or Living Unit.” “Timeshare memberships” are given to “[e]very person or entity, other than the Developer, who is a record owner of a Timeshare Interest in a Timeshare Living Unit, which is subject to assessment by the Association” Finally, “developer memberships” are provided to “[t]he Developer, its successors and assigns.” *See* Declaration at Art. III, § 1 (A)-(E).

The Court finds the GSV Declaration provides for multiple types of membership in GSV, not all of which require that the member be an owner or lessee a physical portion of GSV designated for spate ownership or occupancy (i.e. a “Lot” or “Living Unit” subject to the GSV Declaration). For example, a certificate membership specifically shall not require ownership of a lot or living unit. The Declaration allows multiple avenues for persons or entities to become “members” of the GSVPOA without necessarily being “unit owners” as defined by W. Va. Code § 36B-1-103(34).

UCIOA’s clear and unambiguous language states that appointed board members act as fiduciaries of the unit owners. Therefore, the Court finds Plaintiff’s motion can be granted in part. Here, it has been established, and there is no genuine of material fact remaining, that the Individual Defendants act as fiduciaries of the unit owners. However, the court cannot conclude that the

Individual Defendants owe a fiduciary duty to all the other types of members set forth in the Declaration, if any exist and if they are not unit owners. Plaintiff's motion must be denied in part to the extent it seeks summary judgment in its favor regarding fiduciary duties owed to members who are not also unit owners. To find otherwise would be to improperly expand the duty of the board of directors.

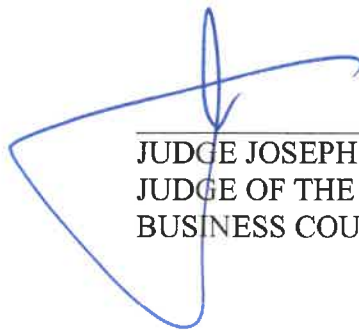
Accordingly, the instant motion must be granted in part and denied in part.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Plaintiff Glade Springs Village Property Owners Association, Inc.'s Motion For Partial Summary Judgment That the Individual Defendants Were Fiduciaries of GSVPOA's Members is hereby GRANTED IN PART and DENIED 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.

5/4/24
date of entry

A large, stylized handwritten signature in blue ink, consisting of a large loop and a trailing line, positioned over the judge's name.

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