

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' Joint Motion to Modify Scheduling Order

This matter came before the Court upon Defendants' Joint Motion to Modify Scheduling Order (the "Motion to Modify"). 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.

Defendants EMCO Glade Springs Hospitality, LLC; GSR, LLC; Elmer Coppoolse, James Terry Miller, and R. Elaine Butler (collectively "Defendants") move this Court to amend the October 20, 2023, Scheduling Order to afford Defendants time to address new claims raised in the Third Amended Complaint filed by Glade Springs Village Property Owners Association, Inc. ("GSVPOA") and to identify and disclose substitute expert witnesses. GSVPOA objected to any amendment to the Scheduling Order. Notwithstanding GSVPOA's objection, this Court finds that good cause has been demonstrated to GRANT Defendants' Joint Motion to Modify.

FINDINGS OF FACT

1. The Scheduling Order was entered October 20, 2023. The Scheduling Order

includes a December 2, 2024, trial date and June 14, 2024, discovery completion date.

2. At the time the Scheduling Order was entered, Plaintiff/Counterclaim Defendant's Motion to File Third Amended Complaint was pending before the Court. Glade Springs Village Property Owners Association, Inc. ("GSVPOA") had moved to file its Third Amended Complaint arguing that "[t]he purpose of the Third Amended Complaint is to add claims related to the parties ongoing relationship under the Deed of Easements and licenses ("DOE")[]" and "[i]n addition, the proposed Third Amended Complaint addresses claims that have arisen since the Second Amended Complaint was filed on April 30, 2021." Notably, GSVPOA's Third Amended Complaint added seven additional causes of action over its Second Amended Complaint and comprised of two hundred forty-nine (249) numbered paragraphs.
3. By Order entered October 30, 2023, GSVPOA's motion to file a Third Amended Complaint was granted over Defendants' objections.
4. In response to GSVPOA's Third Amended Complaint, Defendants each filed motions to dismiss. Orders denying Defendants' respective motions to dismiss were entered on May 8, 2024. Defendants' respective answers to GSVPOA's Third Amended Complaint were thus due on or before May 20, 2024.
5. Less than thirty (30) days exists between Defendants' answer deadline and the June 14, 2024, discovery deadline.
6. Defendants argued that there is not sufficient opportunity to address GSVPOA's new claims raised in the Third Amended Complaint stating that a significant number of depositions still need to be scheduled, including 30(b)(7) depositions of all corporate parties, GSVPOA's five expert witnesses, Defendants' substitute

expert witnesses if permitted, and at least seven fact witnesses, at least one of which is believed to be a non-resident of West Virginia that will require an out of state miscellaneous action, subpoena, and service. Given the number of parties and legal counsel, Defendants assert that there is limited availability to schedule these depositions prior to the current discovery deadline.

7. Additionally, fact and expert witness disclosure deadlines have expired under the current Scheduling Order. Defendants advise that two experts they jointly disclosed are no longer available to serve as experts in this case, one having retired and one having taken new employment that prohibits outside employment engagements such as serving as an expert witness for Defendants. Defendants assert that the experts were expected to offer opinions responsive to expert opinions offered on behalf of GSVPOA and other critical issues in this case.
8. Also, mediation is scheduled with Judge Wilkes on June 13, 2024. Defendants acknowledge that if mediation proves successful, the mediation will obviate the need for any of the expensive discovery that still needs to take place. Defendants state that extending the current discovery deadline and postponing discovery until after mediation would promote judicial economy and efficiency. The Court notes that according to Defendants, under a portion of the insurance coverage that could be available to resolve this action, defense costs erode the policy limit available. Every dollar spent on discovery, or otherwise in defense of GSVPOA's claims, is a dollar not available for any other purpose – including potential settlement.
9. This Court agrees with Defendants.

CONCLUSIONS OF LAW

“A motion for continuance is addressed to the sound discretion of the trial court,

and its ruling will not be disturbed unless there is a showing that there has been an abuse of discretion.” Syl. Pt. 3, *Hamilton v. Ravasio*, 192 W. Va. 183, 451 S.E.2d 749 (1994) (quoting Syl. Pt. 2, *State v. Bush*, 163 W. Va. 168, 255 S.E.2d 539 (1979)).

Whether to grant or deny a motion for continuance “must be decided on a case-by-case basis in light of the factual circumstances presented[.]” *Hamilton*, 192 W. Va. at 187, 451 S.E.2d at 753 (quoting Syl. Pt. 2, *Bush*).

West Virginia law specifically provides that a motion for continuance is well founded where its refusal would “work[] injury and prejudice to the rights of the party in whose behalf the motion was made.” Syl. Pt. 7 in part, *Boyd v. Goffoli*, 216 W. VA. 552, 557, 608 S.E.2d 169, 174 (2004) (quoting Syl. Pt. 1, *State v. Jones*, 84 W. Va. 85, 99 S.E.271 (1919)). Defendants submit that denial of their Motion to Modify would result in irreparable injury and substantially prejudice their rights to a fair trial.

Defendants seek to disclose new experts to substitute in place and stead of two previously identified experts. Even where late disclosure of a critical witness is made the morning of trial, the Supreme Court of Appeals of West Virginia has acknowledged that continuing trial preserves the rights of all parties, both plaintiff and defendant. See *Hamilton v. Ravasio*, 192 W. Va. 183, 451 S.E.2d 749 (1994).

In *State ex rel. Tallman v. Tucker*, 234 W. Va. 713, 769 S.E.2d 502 (2015), the Supreme Court of Appeals of West Virginia held that:

Factors that may assist a court in deciding whether to permit late supplemental expert witness disclosure include: (1) explanation for making the supplemental disclosure at the time it was made; (2) the importance of the supplemental information to the proposed testimony of the expert, and the expert’s importance to the litigation; (3) potential prejudice to an opposing party; and (4) the availability of a continuance to mitigate any prejudice.

Tallman, Syl. Pt. 2.

The guiding principles of *Tallman*, considered with the circumstances, justify the

remedy which Defendants seek. Under the circumstances presented, amending the current Scheduling Order to afford Defendants sufficient opportunity to meet the new issues raised in GSVPOA's Third Amended Complaint, retain and disclose alternate experts to offer opinion testimony on critical case issues, and allow discovery to occur after the June 13, 2024 mediation date promotes a fair trial, serves the interests of justice, promotes judicial economy and efficiency, and does not prejudice any party. Accordingly, under this Court's discretion, for good cause shown, Defendants' Motion to Modify is hereby GRANTED and the Scheduling Order is modified as follows:

Trial Date:	December 4, 2024
Pre-Trial Conference Date:	November 15, 2024
Amended Experts Disclosed:	
Plaintiff:	June 14, 2024
Defendant:	July 15, 2024
Expert Evidentiary Inspections:	July 15, 2024
Dispositive Motions:	September 16, 2024
Responses:	October 15, 2024
Replies:	October 30, 2024

A hearing on dispositive motions will be held in person in Putnam County on November 15, 2024 at 10:00 a.m.

Final Witness List Exchanged:	November 15, 2024
Discovery Completion Date:	August 20, 2024

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.

/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.