

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

**JUSTICE HOLDINGS LLC,**

**Plaintiff/Counterclaim Defendant,**

**v.**

**Civil Action No. 19-C-481-P  
Honorable Robert A. Burnside, Jr.**

**GLADE SPRINGS VILLAGE PROPERTY  
OWNERS ASSOCIATION, INC.**

**Defendant/Counterclaim Plaintiff.**

**MOTION TO REFER TO THE BUSINESS COURT DIVISION**

Pursuant to W. Va. Code § 51-2-15 and Rule 29.06 of the West Virginia Trial Court Rules, Glade Springs Village Property Owners Association, Inc. (“GSVPOA”), by and through its undersigned counsel, Mark A. Sadd and Ramonda C. Marling of Lewis Glasser PLLC, moves the Chief Justice of the West Virginia Supreme Court of Appeals to refer the above-captioned matter to the Business Court Division (“BCD”). In support thereof, GSVPOA states as follows:

**Prefatory Statement**

The principal claims and counterclaims in this matter are premised upon a purported 2001 Loan Agreement, its alleged amendments (collectively the “Loan Agreement”), and a purported Revolving Note, with amendments (collectively the “Note”). Due to the unique nature of the underlying transaction, this matter is well-suited for adjudication by the BCD. As discussed in more detail below and in the attached pleadings, Justice Holdings, LLC (“Justice Holdings”) is the Declarant<sup>1</sup> of Glade Springs Village (“GSV”), a common interest community<sup>2</sup>

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<sup>1</sup> “Declarant” is defined as “any person or group of persons acting in concern who: (i) as part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of; or (ii) reserves or succeeds to any special declarant right.” W. Va. Code § 36B-1-103(7).

created under the Uniform Common Interest Ownership Act, W. Va. Code §§ 36B-1-101 *et seq.* (“UCIOA”). Until May 2019, GSVPOA was controlled by the Declarant-appointed executive board (“Declarant Board”). The Loan Agreement and Note at issue in this matter were *not* executed at arm’s length, but rather were entered into by the Declarant of GSV<sup>3</sup> and the Declarant Board. As such, the claims, counterclaims and defenses asserted in this matter present complex issues of first impression that must be decided under or in conjunction with the provisions of UCIOA. In fact, UCIOA specifically provides that:

[t]he principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to 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 provision of this chapter, except to the extent inconsistent with this chapter.

W. Va. Code § 36B-1-108. Thus, the provisions of UCIOA trump general principles of West Virginia law to the extent those principles are inconsistent therewith.

As set forth below, GSVPOA initially answered the Complaint and asserted multiple counterclaims against Plaintiff arising under the West Virginia Consumer Credit Protection Act, W. Va. Code §§ 46A-1-101, *et seq.*, (“WVCCPA”), the Declaratory Judgment Act, W. Va. Code §§ 55-13-1 *et seq.*, UCIOA and the common law of West Virginia. GSVPOA asserted the WVCCPA counterclaims in its representative capacity for unit owners under W. Va. Code §

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<sup>2</sup> A common interest community that is not a condominium or a cooperative is defined by the Uniform Common Interest Ownership Act, W. Va. Code §§ 36B-1-101 *et seq.* (“UCIOA”), as a “planned community.” W. Va. Code § 36B-1-103(23).

<sup>3</sup> The original Loan Agreement and Note were executed while Cooper Land Development, Inc. (“CLD”) was the declarant and were later assigned to Justice Holdings. Complaint, attached as Exhibit A, ¶¶ 5 and 14.

36B-3-102(a)(4)<sup>4</sup> under the unique provisions of UCIOA regarding the unit owners' ultimate liability for the purported \$11.4 million debt at issue in this matter.

Plaintiff moved to dismiss GSVPOA's counterclaims in their entirety. With regard to the WVCCPA counterclaims, Plaintiff argued that GSVPOA is an incorporated entity, not a consumer as that term is defined by the WVCCPA. GSVPOA argued that its members, the majority of which are natural persons, were the true parties in interest with regard to Justice Holdings' debt collection effort under the Loan Agreement and Note. The Circuit Court granted the motion to dismiss with regard to the WVCCPA counterclaims, but denied the motion with regard to the remaining counterclaims. As such, based on that ruling and the procedural posture of the case, GSVPOA understands that this matter will proceed to trial solely as a commercial matter between two business entities. Accordingly, while GSVPOA reserves all appellate rights regarding dismissal of the WVCCPA claims, the principal claims and counterclaims to be adjudicated in this matter on a going forward basis fall squarely within the purview of the BCD.

#### **Procedural History and Nature of Claims Asserted**

1. Justice Holdings filed its initial Complaint on or about November 6, 2019. A copy of that Complaint is attached hereto as Exhibit A. The Complaint asserted breach of contract and specific performance claims under the Loan Agreement and Note. *See generally* Complaint.

2. On or about December 13, 2019, GSVPOA filed its Answer, Affirmative Defenses and Counterclaims, attached hereto as Exhibit B.

3. As set forth more fully in its counterclaims, GSVPOA asserted counterclaims arising under the WVCCPA, UCIOA and common law against Justice Holdings. It also set forth

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<sup>4</sup> W. Va. Code § 36B-3-102(a)(4) provides that "the association . . . may . . . [i]nstitute, defend, or intervene in litigation . . . in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community".

a claim for declaratory judgment with regard to its termination<sup>5</sup> of the alleged Loan Agreement and Note under UCIOA.

4. In lieu of answering any count of the counterclaim, Plaintiff filed a *Motion to Dismiss Counterclaims* (“Justice Motion”). Justice Holdings argued that GSVPOA was not a consumer as that term is defined under the WVCCPA and that the underlying transaction did not constitute a consumer transaction. The Justice Motion was fully briefed and heard by the Court on February 10, 2020. A copy of the Docket Sheet is attached as Exhibit C.

5. At the February 10, 2020 hearing, the Court ruled from the bench that the WVCCPA claims would be dismissed and, at this time, no consumer claims remain at issue in this case. A written order has not been entered at this time, but will be forthcoming.

6. Based upon the Court’s February 10, 2020 ruling, the principal claims remaining to be adjudicated in this civil action involve transactions between the parties as business entities

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<sup>5</sup> W. Va. Code § 36B-3-105 provides that:

If entered into before the executive board elected by the unit owners pursuant to section 3-103(f) [§ 36B-3-103] takes office, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other *contract or lease between the association and a declarant* or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, *may be terminated without penalty by the association at any time after the executive board elected by the unit owners* pursuant to section 3-103(f) takes office upon not less than ninety days' notice to the other party. This section does not apply to: (i) Any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section, or (ii) a proprietary lease.

W. Va. Code § 36B-3-105 (emphasis added).

as contemplated in West Virginia Code § 51-2-15(a) and West Virginia Trial Court Rule 29.04(a).<sup>6</sup>

7. Specialized treatment of the remaining issues presented in this matter is likely to improve the expectation of a fair and reasonable resolution. Further, specialized knowledge or expertise in the subject matter or familiarity with some specific law (*i.e.*, UCIOA) or legal principles is applicable. W.Va. Trial Ct. R. 29.04(a)(2).

8. The remaining principal claims do not involve consumer litigation, consumer class actions, or actions arising under the WVCCPA. Further, the principal claims do not involve claims such as products liability, personal injury, wrongful death, and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; or administrative disputes with government organizations and regulatory agencies. *Id.* at (a)(3).

9. As set forth above, there is a demonstrable basis for GSVPOA's request. W. Va. Trial Ct. R. 29.06(a)(1).

10. The filing of this Motion is timely because GSVPOA has answered the Complaint and, based on the Court's February 10, 2020 verbal ruling with regard to the WVCCPA counterclaims, no consumer claims are at issue at this time. W. Va. Trial Ct. R. 29.06(a)(2).

11. With regard to additional related actions, *Glade Springs Village Property Owners Association, Inc. v. EMCO Glade Springs Hospitality, LLC, et al.*, Circuit Court of Raleigh

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<sup>6</sup> By filing this *Motion*, GSVPOA is not waiving, but rather expressly reserves its appellate rights with regard to dismissal of the WVCCPA claims.

County, Civil Action No., 19-C-357<sup>7</sup> (the “EMCO Matter”), is currently pending in the BCD before the Honorable Jennifer P. Dent. While GSVPOA does not seek consolidation<sup>8</sup> of the case *sub judice* with the EMCO Matter, if this motion is granted and the matter is referred to BCD, GSVPOA respectfully submits that judicial economy would be served by assigning this matter to Judge Dent.

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<sup>7</sup> In the *EMCO Matter*, GSVPOA has alleged breach of fiduciary duty claims against certain members of the Declarant Board (Elmer Coppoolse, James Miller and R. Elaine Butler) appointed by Justice Holdings based, in part, upon the their actions and/or inactions with regard to the Loan Agreement and Note. Under UCIOA, board members appointed by the declarant have a fiduciary duty to the unit owners and are required to act in good faith in the performance of their duties. See W. Va. Code § 36B-3-103(a); *Id.* at § 36B-1-112. Generally speaking, “[a] person, who occupies any fiduciary relation to another, is bound not to exercise for his own benefit and to the prejudice of the party, to whom he stands in such relation, any of the powers or rights, or any knowledge or advantage of any description, which he derives from such confidential relation.” Syl. Pt. 1, *Newcomb v. Brooks*, 16 W. Va. 32 (1879). This is a different standard, involving different facts, elements, and burdens of proof than adjudicating the validity of the Loan Agreement and Note at issue in this matter.

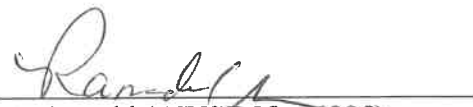
<sup>8</sup> The majority of the claims and defenses raised in the *EMCO Matter* do not involve the Loan Agreement or Note, but rather are premised upon a myriad of other contracts between GSVPOA, GSR or EMCO. Thus, the two matters, while related, do not involve common questions of law or facts. See W. Va. R. Civ. P. 42(a). Judge Dent recently entered an order the *EMCO Matter* denying certain defendants’ *Motion to Dismiss or Join Parties* seeking to add Justice Holdings as an indispensable party under Rule 19 of the West Virginia Rules of Civil Procedure.

WHEREFORE, pursuant to West Virginia Code § 51-2-15 and Rule 29.06 of the West Virginia Trial Court Rules and for all of the reasons stated herein, GSVPOA respectfully requests that the Chief Justice of the West Virginia Supreme Court of Appeals, refer the underlying case to the BCD.

GLADE SPRINGS VILLAGE PROPERTY  
OWNERS ASSOCIATION, INC.

*By Counsel*

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February 19, 2020

Edythe Nash Gaiser, Clerk of the Court  
Capitol Complex  
1900 Kanawha Boulevard East  
Building One, Room E-317  
Charleston, WV 25305

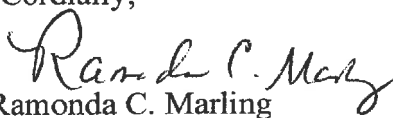
**Re: Justice Holdings LLC v. Glade Springs Village  
Property Owners Association, Inc.  
Raleigh County Civil Action No. 19-C-481**

Dear Ms. Nash:

Enclosed for filing in the above-styled civil action is an original and one copy (1) of a  
**MOTION TO REFER TO THE BUSINESS COURT DIVISION.**

Thank you for your attention to this matter. Should you have any questions or concerns, please do hesitate to contact me.

Cordially,

  
Ramonda C. Marling

RCM/dc

Enclosures

cc: Honorable Robert A. Burnside, Jr. (w/enclosures)  
Lorri Stotler, West Virginia Business Court Division (w/enclosures)  
Shawn P. George, Esq. (w/enclosures)  
Jennie Ovrom Ferretti, Esq. (w/enclosures)

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