

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA

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State of West Virginia ex rel.
JUSTICE HOLDINGS, LLC,

Petitioner,

v.

Docket No.: _____

THE HONORABLE TODD A. KIRBY, Judge
of the Circuit Court of Raleigh County;
GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.;
UNITED BANK; and GREENBRIER WEST
VIRGINIA HOLDINGS, LLC,

Respondents.

PETITION FOR WRIT OF PROHIBITION

Fourteenth Judicial Circuit
Honorable Todd A. Kirby
Civil Action No. 22-C-57

Respectfully Submitted By:

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QUESTION PRESENTED

1. Did the Circuit Court exceed its legitimate powers by ordering the Special Commissioner to sell the real property of Petitioner Justice Holdings, LLC to satisfy assessment liens claimed by Respondent Glade Springs Village Property Owners Association, Inc., when the liens and enforcement thereof arise pursuant to the provisions of the Uniform Common Interest Ownership Act, West Virginia Code Section 36B-1-101 *et seq.*, but the Declaration creating the common interest community does not contain essential language necessary to make assessments on the subject real estate, in violation of West Virginia Code Section 36B-2-105?

STATEMENT OF THE CASE

In this original jurisdiction proceeding, Petitioner Justice Holdings, LLC seeks a writ of prohibition to prevent the Circuit Court from exceeding its legitimate powers and to rectify “substantial, clear-cut, legal errors plainly in contravention of a clear statutory . . . mandate” that will damage Justice Holdings “in a way that is not correctable on appeal.” *State ex rel. Morgantown Operating Co. v. Gaujot*, 859 S.E.2d 358, 361-362 (W.Va. 2021). The dispositive issues already have been authoritatively decided by this Court and the West Virginia Legislature.

The real estate at issue consists of several hundred lots owned by Petitioner Justice Holdings, LLC (“Justice Holdings”), which are located in Glade Springs Village in Raleigh County, West Virginia. In its initial filing in this matter, Glade Springs Village Property Owners Association, Inc. (“GSVPOA”) requested a judicial sale to enforce a judgment against Justice Holdings, arising from the matter *Justice Holdings, LLC v. Glade Springs Village Property Owners Association, Inc.*, Civil Action No. 19-C-481-P (Circuit Court of Raleigh County, West Virginia). By Order entered November 3, 2021, the Circuit Court of Raleigh County had entered judgment in favor of GSVPOA against Justice Holdings in the aggregate amount of \$6,073,692.18

for unpaid homeowners' association assessments ("Judgment Order"). GSVPOA recorded the judgment, and on March 4, 2022, initiated the present action to enforce the judgment lien. On January 13, 2023, GSVPOA moved to file an Amended Complaint to enforce separate liens based on delinquent assessments under the Uniform Common Interest Ownership Act ("UCIOA"), codified at West Virginia Code §36B-3-116, for the fiscal years 2019-2020, 2020-2021, 2021-2022, and 2022-2023. The liens claimed under the judgment are referred to as the "Judgment Liens" and the liens claimed under UCIOA are referred to as "Assessment Liens."

In the interim, Justice Holdings appealed the Judgment Order to the West Virginia Supreme Court of Appeals. On June 15, 2023, the Supreme Court issued a decision that affirmed in part, reversed in part, vacated in part, and remanded the matter to the Circuit Court. *See Justice Holdings, LLC, v. Glade Springs Village Property Owners Association, Inc.*, (No. 22-0002) (W.Va. 2023). (App'x. at 0008-0064). Insofar as the Judgment Order relates to the Judgment Liens, the Supreme Court remanded the matter for further findings on the following issues: (1) whether a budget was ratified by owners; (2) whether expenses were assessed against all units in accordance with allocations set forth in the Declaration; (3) whether surplus funds existed and if so were credited to future assessments; and (4) whether the Justice Board's acquiescence in non-payment has any impact. *Id.* at 50-51. Importantly, this decision made clear that Glade Springs Village is a common interest community subject to the entirety of UCIOA. (App'x. at 0032-0037, 0062).

Following this decision, on October 31, 2023, GSVPOA filed a Motion for Approval of Substituted Amended Complaint. The current Substituted Amended Complaint removes the count based on the Judgment Lien and seeks to enforce the claimed Assessment Liens for the fiscal years 2019-2020, 2020-2021, 2021-2022, and 2022-2023. (App'x. at 0065-0074). Subsequently,

GSVPOA filed a Motion for Judgment on Substituted Amended Complaint, Appointment of a Special Commissioner and Decree of Real Estate Sale. On February 7, 2024, following submission of briefs by all parties, the Circuit Court conducted a hearing on GSVPOA's motion. On March 28, 2024, the Court entered an Order granting the motion, noting the dispute between GSVPOA and Justice Holdings regarding the validity of the Assessment Liens. (App'x. at 0113-0117).

On April 11, 2024, the Circuit Court entered an Order Appointing Special Commissioner to Oversee Statutory Foreclosure of Real Estate Sale directing the Special Commissioner to report to the Court "upon his assessment of the validity, scope and priority of all of the liens and interests in the lots subject to judicial foreclosure." (App'x. at 0117-0123). The Special Commissioner submitted his report on June 6, 2024, summarily finding that the Assessment Liens are valid, and requesting an Order to sell the Justice Holdings lots "to satisfy, in full or in part, the [assessment] liens of Glade Springs Village Property Owners Association, Inc." (App'x. at 0124-0129). The defendants thereafter filed timely objections, specifically raising the issue addressed herein. (App'x. at 0148-0155).

On October 11, 2024, the Circuit Court conducted a hearing concerning the defendants' objections. (App'x. at 0234-0294). The hearing focused primarily on the validity of the Assessment Liens under UCIOA (App'x. at 0239-0267), with GSVPOA admitting that the Declaration is deficient under UCIOA concerning the authority to make assessments on the Justice Holdings lots (App'x. at 263). Nevertheless, the Circuit Court erroneously determined that such deficiencies were insubstantial, and upheld GSVPOA's authority to levy assessments on the Justice Holdings lots and enforce the Assessment Liens. (App'x. at 0268).

GSVPOA thereafter submitted a proposed Final Order and Decree of Judicial Foreclosure and Sale of Real Estate, which was improperly and erroneously adopted and entered by the Circuit

Court on December 5, 2024 (App’x. at 0001-0007), noting and preserving the objections of Justice Holdings as stated in the written filings and oral argument, as well as its letter to the Court from that same day. (App’x. at 0295). Pursuant to the December 5, 2024 Order, the Special Commissioner has been directed to sell the Justice Holdings lots, distribute the proceeds accordingly, and make such deeds and other instruments necessary to extinguish all of the right, title, interest, estate, and claim of Justice Holdings to the subject real property. (App’x. at 0003-0006). In doing so, the Circuit Court has ignored the express language of UCIOA and prior directives of this Court, thereby exceeding its legitimate powers. Specifically, the Circuit Court has no authority to order the sale of Petitioner’s real estate to satisfy the claimed assessment liens because the subject real estate was never lawfully added to the common interest community, in accordance with the express provisions of UCIOA, and therefore the Petitioner’s property is not subject to assessment by GSVPOA.

SUMMARY OF ARGUMENT

The Circuit Court has no authority to order the sale of Petitioner’s real estate because the purported assessment liens are invalid based upon the Declaration’s failure to preserve development rights and special declarant rights in and to the properties on which the GSVPOA seeks the liens for unpaid assessments. The original Declarant’s initial filing that established Glade Springs Village in May 2001 included a plat of only one (1) acre. The failure to properly reserve development rights as required under UCIOA renders invalid the subsequent addition of 2,800 lots, including those now owned by Justice Holdings, that occurred and was completed long before Justice Holdings acquired its interests in 2010. As such, none of these lots was ever added properly to Glade Springs Village and therefore, none was properly subject to assessment.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Petitioner believes that oral argument should not be necessary pursuant to the criteria in Rule 18(a), because the dispositive issues have been authoritatively decided by this Court and the West Virginia Legislature.

ARGUMENT

I. Standard of Review

West Virginia Code § 53-1-1 outlines the parameters of original jurisdiction in matters of prohibition: “The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.” This Court has explained the relevant considerations in issuing a discretionary writ of prohibition:

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal’s order is clearly erroneous as a matter of law; (4) whether the lower tribunal’s order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal’s order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Gaujot, 859 S.E.2d at 361-362 (quoting *State ex rel. Hoover v. Berger*, 483 S.E.2d 12 (W.Va. 1996)).

Here, Justice Holdings has no other adequate means to obtain the desired relief because the Order is interlocutory, and the Petitioner will be damaged in a way that cannot be corrected on

appeal because proceeding to finality under the Order will require the unlawful sale and transfer of hundreds of parcels of real estate owned by the Petitioner. Further, the Circuit Court's Order is clearly erroneous as a matter of law because it ignores the express requirements of UCIOA that must be present in a Declaration to provide GSVPOA with authority to make assessments on the Petitioner's lots.

II. The Circuit Court committed clear error by unlawfully ordering the Special Commissioner to sell the real property of Petitioner Justice Holdings, LLC, because the Declaration creating the common interest community does not contain essential language necessary to make assessments on the Petitioner's real estate, in violation of West Virginia Code Section 36B-2-105.

As Justice Holdings has stated repeatedly, the purported assessment liens are invalid based upon the Declaration's failure to preserve development rights and special declarant rights in and to the properties on which the GSVPOA seeks the liens for unpaid assessments. "Development rights" is a defined term in UCIOA, meaning

any right or combination of rights reserved by a declarant in the declaration to: (i) Add real estate to a common interest community; (ii) create units, common elements or limited common elements within a common interest community; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a common interest community.

W.Va. Code § 36B-1-103(14). "Development rights" is among 14 enumerated items that **must** be included in a declaration. UCIOA also requires a legal description of the real estate subject to development rights and a time limit within which the rights must be exercised. West Virginia Code §36B-2-105(a) provides:

The declaration **must contain**: ... (8) A description of any development rights ... reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised.

(emphasis added). Here, the Declaration gives the Developer a broad right to subject additional

properties to the Declaration by filing a Supplemental Declaration, *see Declaration, Art. II, § 2, (p. 7) (App’x. at 0302)*, but it does not contain any legal description of the real estate subject to development rights and no time limit within which the rights must be exercised. The effect of these infirmities is real, substantial, and fatal to the assessment claim.

The original Declarant’s initial filing that established Glade Springs Village (“GSV”) in May 2001 included a plat of only one (1) acre. *See Declaration Art. II, §1 (App’x. at 0302)*. The failure to properly reserve development rights as required under UCIOA renders invalid the subsequent addition of 2,800 lots at GSV that occurred and was completed long before Justice Holdings acquired the GSV assets in 2010. As such, none of these lots was ever added properly to GSV and therefore, none was properly subject to assessment. Moreover, the Petitioner’s lots located in areas known as Phase 1 and The Farms are not part of GSV, nor were either ever merged into the GSVPOA. Each has its own POA. The “special declarant right” to merge or consolidate with another common interest community must be reserved in the declaration. W.Va. Code§ 36B-2-105(8); 36B-2-121; 36B-1-103(14), (31). The GSV Declaration does not reserve this right and therefore GSV has no right under UCIOA to merge or consolidate with other communities. The addition of units in The Farms and Phase I to the property subject to the GSV Declaration did not comply with the requirements of either 36B-2-117(a) (amending the declaration) or 36B-2-105(a)(8) (exercise of a “special declarant right”) and therefore neither is properly subject to GSVPOA assessments. The Declaration’s failure to meet the requirements under UCIOA to reserve development rights permits no other conclusion than the Developer did not effectively reserve any “property subject to development rights,” and there is no property to which West Virginia Code §36B-3-115 applies (authorizing assessments for common expenses).

GSVPOA and the Circuit Court recognize this deficiency in the Declaration, but maintain

that the deficiency is insubstantial and has no effect on the claimed Assessment Liens. (App’x. at 0263, 0268). This erroneous belief apparently arises from misapplication of West Virginia Code § 36B-2-103(d), concerning marketability of title, which is unrelated and offers no guidance on the present issue. Furthermore, such a finding is clearly erroneous as there can be nothing more substantial than the absence of provisions required by UCIOA that would create the authority to add and make assessments on the lots owned by Justice Holdings. *See* W.Va. Code § 36B-1-103(14); W.Va. Code § 36B-2-105(a)(8). Facing this glaring omission, GSVPOA next asserts that the express requirements of UCIOA can be ignored and the authority to add lots and make assessments can be presumed under common law contract principles, and the Circuit Court erroneously agreed. (App’x. at 0246-0251, 0259, 0268). However, both UCIOA and this Court already have spoken on this issue.

UCIOA provides that “[t]he 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. Therefore, as recognized by this Court, “the plain language of West Virginia Code §36B-1-108 precludes the use of the ‘principles of law and equity’ when they are inconsistent with the Act.” (App’x. at 0050-0051). Here, the only power to assess the lots owned by Justice Holdings comes from the Declaration, which clearly is subject to the entirety of UCIOA. This Court has instructed that the parties cannot avoid UCIOA simply to apply common law remedies. (App’x. at 0048-0049). Indeed, UCIOA has been used as a sword by GSVPOA to eliminate a multi-million dollar loan to the detriment of Justice Holdings, and to strike from the Declaration unlawful provisions making the Petitioner’s lots exempt from assessments, giving rise to this very dispute. (App’x. at 0039-0046, 0057-0060).

Now, however, GSVPOA and the Circuit Court find it appropriate to ignore the express

language of UCIOA concerning reservations that **must** be present in the Declaration to provide authority to add real estate to a common interest community and make assessments thereon. *See* W.Va. Code §36B-2-105(a)(8). Indeed, “courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” (App’x. at 0036). This Court has determined that GSV is a common interest community subject to the entirety of UCIOA, and the West Virginia Legislature has said in UCIOA that a Declaration **must** contain a “description of any development rights … reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised.” W.Va. Code §36B-2-105(a)(8). The Legislature said “must” so it means “must” and this language is not optional. Consequently, allowing GSVPOA to supplement the Declaration with common law contract principles to supply its authority to make assessments on unlawfully added real estate is inconsistent with UCIOA and prior rulings of this Court, and the Circuit Court’s Order is clearly erroneous as a matter of law.

Finally, GSVPOA raises concern over the effect that proper application of UCIOA may have outside of the current dispute between the parties, anticipating “monumental” litigation concerning improper assessments paid by owners of lots at Glade Springs Village over the past two decades. (App’x. at 0252). However, “these are not matters within the purview of this Court. Courts are not concerned with questions relating to legislative policy. The general powers of the Legislature, within Constitutional limits, are almost plenary.” (App’x. at 0051, n.36 (quoting Syl. Pt. 1, *State ex rel. Appalachian Power Co. v. Gainer*, 143 S.E.2d 351 (W.Va. 1965)). We must not forget that GSVPOA has obtained what it sought—i.e. a declaration that Glade Springs Village is a common interest community subject to the entirety of UCIOA—and now all affected parties must accept any rights, responsibilities, obligations and consequences that flow therefrom.

CONCLUSION

WHEREFORE, for all the foregoing reasons and those apparent to the Court, the Petitioner respectfully requests that this Honorable Court will issue an order prohibiting the Circuit Court from enforcing its December 5, 2024 order to sell the Petitioner's real estate at issue in this litigation, and remand this matter to the Circuit Court of Raleigh County, West Virginia, for further proceedings consistent with the provisions of the Uniform Common Interest Ownership Act, West Virginia Code §36B-1-101 *et seq.* and the directives of this Court concerning application of the Act to the common interest community at issue in this litigation; and the Petitioner prays for such other relief as the Court deems just and proper.

Respectfully Submitted,

JUSTICE HOLDINGS, LLC,
By Counsel,

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VERIFICATION

I, Stephen W. Ball, on behalf of Petitioner Justice Holdings, LLC, hereby certify that I have read the foregoing **“Petition for Writ of Prohibition”** and that the information contained therein is true and accurate to the best of my knowledge and belief.



June 20, 2025
DATE

STEPHEN W. BALL

CERTIFICATE OF SERVICE

The undersigned, counsel for Defendant Justice Holdings, LLC, hereby certifies that a copy of the foregoing “**Petition for Writ of Prohibition**” was served on **June 20, 2025** via the WV E-file electronic filing system, upon the following:

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