

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON, WEST VIRGINIA

no. 25-401

SCA EFiled: Jul 21 2025
10:39AM EDT
Transaction ID 76692405

State of West Virginia *ex relator*
Justice Holdings, LLC,

Petitioner,

v.

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.

RESPONSE OF GLADE SPRINGS VILLAGE PROPERTY OWNERS ASSOCIATION, INC.
IN OPPOSITION TO JUSTICE HOLDINGS LLC'S
PETITION FOR WRIT OF PROHIBITION

From the Fourteenth Judicial Circuit
The Honorable Todd A. Kirby
Civil action no. 22-C-57

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. INTRODUCTION.....	1
II. ARGUMENT.....	2
A. WRIT OF PROHIBITION IS UNAVAILABLE TO PETITIONER.....	2
B. <i>RES JUDICATA</i>	3
III. CONCLUSION AND PRAYER FOR RELIEF	10

TABLE OF AUTHORITIES

Cases

<i>Blake v. Charleston Area Medical Center, Inc.</i> , 201 W. Va. 469, 498 S.E.2d 41 (1997)	8
<i>Dan Ryan Builders, Inc. v. Crystal Ridge Dev., Inc.</i> , 239 W. Va. 549 (2017)	7
<i>Justice Holdings, LLC v. Glade Springs Vill. Property Owners Ass'n</i> , 250 W. Va. 563, 578 (2023).....	7, 13
<i>State ex re. Kees v Sanders</i> , 192 W. Va. 602, 606, (1994)	6
<i>State ex rel. Division of Human Resources by Mary C. M. v. Benjamin P.B.</i> , 183 W. Va. 220, 395 S.E.2d 220 (1990)	8
<i>State ex rel. Shepard v. Holland</i> , 219 W. Va. 310, 314 (2006)	7

Statutes

W. Va. Code § 36B-1-101	9
W. Va. Code § 36B-1-103(23).....	12
W. Va. Code § 36B-1-103(7).....	12
W. Va. Code § 53-1-1	6

I. INTRODUCTION

Petitioner, Justice Holdings LLC¹, presents in its *Petition for Writ of Prohibition* a single factual and legal issue that the Raleigh County Circuit Court and the Supreme Court of Appeals of West Virginia in proceedings already have squarely resolved adversely to Petitioner. The issue that Petitioner presents in this proceeding has been adjudicated in a final, non-appealable orders in favor of Respondent in a civil action, now closed, in the Raleigh County Circuit Court. Petitioner wants to re-litigate the same issue. By operation of the doctrine of *res judicata*, Petitioner is foreclosed from seeking, much less obtaining, the remedy of a writ of prohibition against the Raleigh County Circuit Court and the respondents named in the *Petition*.

Petitioner has failed to allege or show a legal basis for this Court to issue a writ of prohibition against the Raleigh County Circuit Court. The Petition has no merit. Its purpose is to thwart Respondent's legal remedy to foreclose its statutory assessment liens perfected against hundreds of Petitioner's lots in Glade Springs Village. Respondent is poised to proceed on one or more foreclosure sales because Petitioner has no money, or, if it has money, it refuses to pay what it owes to Respondent². Foreclosing on its assessment liens is the only evident and ready means to obtain funds from Petitioner.

This Court must deny the Petition so that Respondent may proceed to foreclose on Petitioner's lots in Glade Springs Village without doubt or further delay.

¹ Petitioner's legal name is "Justice Holdings LLC".

² To date, Petitioner has paid not a single penny of its assessment obligations to Respondent while thousands of other Lot owners within the community are held to their liabilities. The aggregate money obligations of Petitioner to Respondent secured by the assessment liens was fiscal years of 2019-2020, 2020-2021, 2021-2022, and 2022-2023. See **R-APP-001-007 Order Appointing Special Commissioner to Oversee Statutory Foreclosure of Real Estate Sale and Petitioner's Appx. 0001-0007, Final Order and Decree of Judicial Foreclosure and Sale of real Estate Sale.**

II. ARGUMENT

A. WRIT OF PROHIBITION IS UNAVAILABLE TO PETITIONER

The *Petition for Writ of Prohibition* is a futility. The remedy of a writ of prohibition that Petitioner seeks against the Raleigh County Circuit Court simply is unavailable to Petitioner because the issue Petitioner identifies as the basis for relief long ago was resolved in favor of Respondent. Thus, Petitioner fails to allege or show factual or legal grounds for this Court to issue a writ of prohibition in accordance with West Virginia law. “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 no jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.” W. Va. Code § 53-1-1. “The petitioner’s right to the extraordinary remedy of prohibition must clearly appear before he is entitled to such remedy.” *State ex re. Kees v Sanders*, 192 W. Va. 602, 606, (1994).

At the outset, Petitioner does not allege that the Raleigh County Circuit Court lacks jurisdiction over Respondent’s proceeding below to enforce its lien rights against Petitioner’s real property to satisfy obligations to Respondent. Petitioner, then, is left to show that the Raleigh County Circuit Court “exceeds its legitimate powers” to give effect to Respondent’s fully and finally adjudicated right to foreclose Respondent’s assessment liens against Petitioner’s real property for the assessment years of 2019-2020, 2020-2021, 2021-2022 and 2022-2023.

This Court examines five factors to determine “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”:

- (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.

State ex rel. Shepard v. Holland, 219 W. Va. 310, 314 (2006).

Petitioner satisfies none of these five factors. Foremost, Petitioner identifies no clear error as a matter of law, that is, no legal issue in the proceeding below. Put another way, Petitioner makes no claim that the Raleigh County Circuit Court exceeds its legitimate power to authorize the foreclosure sale so that Respondent may enforce its assessment lien rights. Rather, Petitioner claims, yet again, only that Respondent has no assessment lien rights, an issue that has been well litigated and fully and finally adjudicated elsewhere in the concluded civil action in the Raleigh County Circuit Court styled *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.* and identified as Civil Action no. 19-C-481 (“Civil Action 19-C-481”) and reviewed and largely affirmed by this Court in its 2023 decision in *Justice Holdings, LLC v. Glade Springs Vill. Property Owners Ass’n*, 250 W. Va. 563 (2023)(the “2023 Decision”).

B. *RES JUDICATA*

This Court should deny the Petition because Petitioner’s only claim in it is barred by the preclusion doctrine of *res judicata*. Barred as such, Petitioner cannot satisfy *any* of the five factors set forth in *State ex rel. Shepard v. Holland*. 219 W. Va. at 314 (2006). In *Dan Ryan Builders, Inc. v. Crystal Ridge Dev., Inc.*, 239 W. Va. 549 (2017), this Court stated the standard for the application of the doctrine of *res judicata*:

When considering *res judicata* or claim preclusion, West Virginia applies a narrow “same evidence” test which examines whether “the

same evidence would support both actions or issues.” Syllabus Point 4, *Slider v. State Farm Mut. Auto. Ins. Co.*, 210 W. Va. 476, 557 S.E.2d 883 (2001). Federal courts apply a broader “same transaction” test which examines whether “the new litigation arises out of the same transaction or series of transactions as the claim resolved by the prior judgment.” *Pittston Co. v. United States*, 199 F.3d 694, 704 (4th Cir. 1999).

Dan Ryan Builders, Inc. v. Crystal Ridge Dev., Inc., 239 W. Va. 549, fn. 26 (2017). In *Blake v. Charleston Area Medical Center, Inc.*, 201 W. Va. 469, 498 S.E.2d 41 (1997), this Court stated:

Before the prosecution of a lawsuit may be barred on the basis of *res judicata*, three elements must be satisfied. First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings. Second, the two actions must involve either the same parties or persons in privity with those same parties. Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action.

Syl. Pt. 4, *Blake v. Charleston Area Medical Center, Inc.*, 201 W. Va. 469, 498 S.E.2d 41 (1997).

This Court further recognized in *State ex rel. Division of Human Resources by Mary C. M. v. Benjamin P.B.*, 183 W. Va. 220, 395 S.E.2d 220 (1990) that:

‘An adjudication by a court having jurisdiction of the subject-matter and the parties is final and conclusive, not only as to the matters actually determined, but as to every other matter which the parties might have litigated as incident thereto and coming within the legitimate purview of the subject-matter of the action. It is not essential that the matter should have been formally put in issue in a former suit, but it is sufficient that the status of the suit was such that the parties might have had the matter disposed of on its merits. An erroneous ruling of the court will not prevent the matter from being *res judicata*.’ Point 1, Syllabus, *Sayre’s Adm’r v. Harpold et al.*, 33 W. Va. 553 [11 S.E. 16 (1890)].” Syl. pt. 1, *In Re Estate of McIntosh*, 144 W. Va. 583, 109 S.E.2d 153 (1959) (emphasis in original).

Syl. Pt. 1, *State ex rel. Division of Human Resources by Mary C. M. v. Benjamin P.B.*, 183 W. Va. 220, 395 S.E.2d 220 (1990).

It is the doctrine of *res judicata* that precludes Petitioner from re-litigating its claim in its *Petition for Writ of Prohibition*. Petitioner received full redress, although unfavorable to Petition, of the same claim in Civil Action 19-C-481 and the 2023 Decision. The findings, conclusions and holdings in the orders of the Raleigh County Circuit Court in Civil Action 19-C-481 and the 2023 Decision constitute the law of the case and by extension, Respondent asserts, the perduring law of Glade Springs Village itself. To apply the doctrine of *res judicata* here, this Court begins with the Petitioner's own description of the claim in issue, lifted *verbatim* from its *Petition for Writ of Prohibition*:

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.

Petition for Writ of Prohibition at p. 4.³

In a nutshell, Petitioner claims, yet again, that Glade Springs Village, which this Court affirmed to be a "planned community" under the *Uniform Common Interest Ownership Act*⁴ ("UCIOA"), does not exist as a "planned community" because Petitioner claims, yet again, that Petitioner did not have the right to create and add new lots to the "planned community".

³ Petitioner devotes pages 6 through 9 of its *Petition* to its argument.

⁴ Codified in W. Va. Code § 36B-1-101 *et seq.*

Petitioner's claim patently false. Petitioner, defendant of judicial determinations, is arguing nothing new here. The question has been asked and answered.

All three elements for the application of the doctrine of *res judicata* exist in the *Petition for Writ of Prohibition*; Petitioner's claim that the "failure to properly reserve development rights" invalidates its creation of 2,800 lots" is fully precluded in this proceeding by operation of the doctrine of *res judicata*. First, the issue was litigated and adjudicated to finality in Civil Action 19-C-481 and the 2023 Decision. Second, Civil Action 19-C-481 and the 2023 Decision were between Petitioner and Respondent as adversaries. Third, the issue claimed in this proceeding is the exact same issue in Civil Action 19-C-481 and the 2023 Decision.

On November 6, 2019, Justice Holdings began Civil Action 19-C-481 in the Raleigh County Circuit Court seeking to enforce certain agreements against Glade Springs Village Property Owners Association, Inc.⁵ GSVPOA ultimately responded with its *Defendant Glade Springs Village Property Owners Association, Inc.'s Amended Answer, Affirmative Defenses and Counterclaim*. See R-APP-008-044. In its Counterclaim, Respondent, among other things, sought declaratory judgment that Glade Springs Village, Petitioner and Respondent were fully subject to UCIOA.

On October 5, 2020, the Raleigh County Circuit Court, among other things, concluded in Civil Action 19-C-481 that

Beginning in 2010, Justice Holdings acquired certain real property assets of Cooper Land by a sale and purchase agreement. Under Section 4 of Article II of the GSV Declaration, *Assignment of Developer Rights*, Justice Holdings became the Developer: "Any or all of Developer's rights and obligations set forth in the Declaration may be transferred . . . Justice Holdings does not dispute that it is the successor to Cooper Land as the Developer and all of the rights and obligations of the Development under the GSV Declaration".

⁵ The civil action was styled *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.* and identified as Civil Action no. 19-C-481-P.

See R-APP-045-077, October 5, 2020, Order at ¶ 14.

Petitioner's claim that Petitioner as the declarant did not have the reserved development right to create and add Lots to Glade Springs Village is patently false. Moreover, the Raleigh County Circuit Court in its same October 5, 2020, Order at ¶ 26 (R-APP-053) found and concluded that Petitioner has the reserved development right to create and add Lots:

Section 2 of Article II of the GSV Declaration, *Additions to Existing Property*, in part provides:

Additional properties of the Developer situated in Raleigh County, West Virginia, as well as any other lands within Raleigh or an adjoining county, whether or not owned by the Developer, may be subjected to this Declaration or any part thereof in the following manner:

(A) **The Developer, its successors and assigns, shall have the right, but not the obligation, to subject additional properties to the provisions of this Declaration in future stages of development** regardless of whether said properties are owned by the Developer. Any additional properties shall be compatible with the existing development. Such additional properties shall be subject to assessments as hereinafter provided. Under no circumstances shall this Declaration or any Supplemental Declaration or the plan of the Declaration bind the Developer, its successors and assigns, to make additions to the existing properties or in anywise preclude the Developer, its successors and assigns, from conveying lands it may own but which have not been made subject to this Declaration, free and clear of this Declaration or any Supplemental Declaration.

(B) The additions authorized hereunder shall be made by filing of record a Supplemental Declaration with respect to the additional property which shall extend the plan of this Declaration or any part thereof to such property, and the owners, including the Developer, in such additions shall immediately be entitled to all privileges herein provided.

R-APP-053 (emphasis supplied).

On October 6, 2020, the Raleigh County Circuit Court in Civil Action 19-C-481 entered an order declaring that "Glade Springs Village is a 'common interest community' as W. Va. Code

§ 36B-1-103(7) defines that term” and that it “is a ‘planned community’ as W. Va. Code § 36B-1-103(23) defines that term.” *See R-APP-078-097.*

On October 23, 2020, the Raleigh County Circuit Court in Civil Action 19-C-481 entered an order declaring what Justice Holdings had already acknowledged, “that if the court enters an Order which finds that Glade Springs Village is subject to UCIOA, then, unless reversed, withdrawn, or revised, [Justice Holdings] concedes it is, unintendedly, the Declarant.” *See R-APP-098-100, October 23, 2020, Order at p. 2.*

Petitioner specified its objections on this issue in *Plaintiff’s Objections to GSVPOA’s Proposed Order Granting Glade Springs Village Property Owners Association, Inc.’s Motion for Summary Judgment on Counts V, VII, VIII and IX of Its Counterclaims with Regard to Unpaid Assessments*, filed with the Raleigh County Circuit Court on May 6, 2021. *See R-APP—101-115.* In its November 3, 2021, Order, the Raleigh County Circuit Court addressed Petitioner’s claim that it did not have the right and power to create thousands of Lots within Glade Springs Village:

Also at this Court’s invitation, GSVPOA on August 21, 2021 tendered its revised *Glade Springs Village Property Owners Association, Inc.’s Supplemental Disclosure in Response to Justice Holdings, LLC’s May 6, 2021 Objections*, together with a large number of documents related to Glade Springs Village, The Farms and Phase I (the “*GSVPOA Supplemental Disclosure*”). With the *GSVPOA Supplemental Disclosure*, GSVPOA tendered Justice Holdings’ written responses to certain of GSVPOA’s requests for admission made in the course of discovery in this case, related to the creation, existence and ownership of lots within Glade Springs Village, The Farms and Phase I. Also, GSVPOA tendered with the *GSVPOA Supplemental Discovery* substantial documentary evidence in the form of PDF copies of instruments and other records found in the offices of the Assessor and of the Clerk of the County Commission of Raleigh County, West Virginia.

See R-APP-116-175, November 3, 2021, Order at pp. 5-6.

Petitioner appealed the Raleigh County Circuit Court’s numerous and substantive orders in Civil Action 19-C-481, including the November 21, 2021, Order, to this Court. *See Petitioner Justice Holdings LLC’s Brief* in Case no. 22-0002. R-APP-178-224. In its briefs filed with this Court, Petitioner failed to assign error to the Raleigh County Circuit Court’s factual and legal conclusions that Petitioner failed “to properly reserve development rights” to add Lots to Glade Springs Village. This Court issued the 2023 Decision, reported as *Justice Holdings, LLC v. Glade Springs Vill. Property Owners Ass’n*, 250 W. Va. 563, 578 (2023). Had Petitioner done so, its claim would have been quickly slapped down for its patent falsity.

In the 2023 Decision, Respondent prevailed on all issues, including the instant claim, that Glade Springs Village was a “planned community” comprising hundreds of Lots titled in Petitioner’s name. In the 2023 Decision, this Court recounts that “[o]n October 5, 2020, the circuit court granted the Association’s motion, finding that: (1) Justice Holdings was the developer and declarant of GSV as the successor to Cooper Land; (2) that GSV^[6] was ‘subject to the whole of the [Uniform Act] and all of its provisions;’ and (3) that, as of July 1, 2018, **Justice Holdings held 334 unsold Inventory Lots and that it never paid assessments on those lots** based on the Declaration’s Exemption Provisions.” *Justice Holdings, LLC v. Glade Springs Vill. Property Owners Ass’n*, 250 W. Va. 563, 571-572 (2023)(emphasis supplied) (affirmed in part, reversed in part, vacated in part, and remanded).

Based on the 2023 Decision, Respondent took up the Civil Action below to seek judicial authorization to proceed with an enforcement action against Justice Holdings’ Lots because of Petitioner’s failure to pay assessments against them.

⁶ Surprisingly, Petitioner acknowledges that this Court in its decision in that case “made clear that Glade Springs Village is a common interest community subject of the entirety of UCIOA.” *See Petition for Writ of Prohibition* at p. 2.

On March 28, 2024, in Civil Action No. 22-C-57, the Circuit Court entered its *Order Granting Plaintiff's Motion to Appoint Special Commissioner* directing Respondent to “present an order which adopts” the Raleigh County Circuit Court’s decision to appoint a special commissioner and to describe the duties of the special commissioner to ‘[a]scertain and determine the liens encumbering the Lots, the names and holders of such liens, the amounts secured by such liens, and the relative priorities of such liens and report the same to the Court... , to engage an appraiser of the lots, to publish notice of sale, and ultimately to dispose of the lots by sale.” *See* Petitioner’s App’x. 0116, March 28, 2024 Order at p. 4.

Therefore, first, there has plainly been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings, that is, the Raleigh County Circuit Court.

Second, Civil Action 19-C-481 and the instant *Petition for Writ of Prohibition* are two actions that involve the same parties, Justice Holdings and GSVPOA.

Third, the cause of action identified for resolution in this instant proceeding, that is, the issue that Petitioner has isolated in this case, is identical to the issue determined in Civil Action 19-C-481.

By operation of the doctrine of *res judicata*, Petitioner’s claim that Petitioner did not have the reserved development right to create and add new Lots to Glade Springs Village did not have the right to create new lots to the community was presented, litigated, and resolved against Petitioner and in favor of Respondent.

III.

CONCLUSION AND PRAYER FOR RELIEF

Petitioner's seeking a writ of prohibition against the Raleigh County Circuit Court is barred by the doctrine of *res judicata*. It is also abusing the resources of the courts and Respondent. Based on the foregoing, Respondent, Glade Springs Village Property Owners Association, Inc., prays that this Court deny the *Petition for Writ of Prohibition* and such other relief that this Court deems proper, reasonable or necessary.

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.

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CERTIFICATE OF SERVICE

I, Mark A. Sadd, counsel for Respondent, Glade Springs Village Property Owners Association, Inc. do hereby certify that on this 21st day of July, 2025, I filed the foregoing *Response of Glade Springs Village Property Owners Association, Inc. in Opposition to Justice Holdings LLC's Petition for Writ of Prohibition, via File & ServeXpress* which will serve the following counsel of record.

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