

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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No. 25-401

STATE OF WEST VIRGINIA ex rel.
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,

**SUMMARY RESPONSE OF RESPONDENT
GREENBRIER WEST VIRGINIA HOLDINGS, LLC**

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TABLE OF AUTHORITIES

Cases

Syl. pt. 1, *State ex rel. State v. Cohee*, 251 W. Va. 474, 914 S.E.2d 709 (2025).....2

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Statutes

Uniform Common Interest Ownership Act, West Virginia Code § 36B-1-101 to § 36B-4-12.....1

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W. VA. CODE §§ 36B-2-105(a), -(a)(8).....1

W. VA. CODE §§ 36B-1-103(14), -(31).....1

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Respondent Greenbrier West Virginia Holdings, LLC (“Greenbrier”), in accordance with Rule 16(h) of the West Virginia Rules of Appellate Procedure, submits this summary response in support of the Petition for Writ of Prohibition filed June 20, 2025, by Justice Holdings, LLC (“Petitioner”), Greenbrier’s codefendant below. The Petition correctly maintains that the circuit court exceeded its legitimate authority in ordering the sale of Petitioner’s real property pursuant to the Uniform Common Interest Ownership Act, West Virginia Code § 36B-1-101 to § 36B-4-120 (the “Act”).

A common interest community within the scope of the Act exists solely as the byproduct of its formative “declaration,” which in turn consists of “any instruments, however denominated, that create” the community, as modified by any subsequent amendments. W. VA. CODE § 36B-1-103(13). The Act directs that a “declaration **must** contain . . . [a] description of any development rights and other special declarant rights reserved by the declarant,” along with the subject real estate’s legal description and the time within which those rights may be exercised. *Id.* §§ 36B-2-105(a), -(a)(8) (parentheticals omitted) (emphasis added).* Respondent Glade Springs Village Property Owners Association, Inc. (the “POA”) concedes that the declaration in this instance fails to comply with the Act. *See* PETITIONER’S APP’X at 0263. There also appears no dispute that Petitioner’s predecessor, from time to time, conducted itself with respect to Glade Springs Village as if it possessed the development and special declarant rights detailed in the Act. That belief was mistaken.

* *See* W. VA. CODE §§ 36B-1-103(14), -(31) (defining “development rights” as those permitting the declarant to add or withdraw real estate from the common interest community, as well as to create and subdivide units and common elements; and “special declarant rights” to include, *inter alia*, the right to complete planned improvements, to maintain sales and management offices, to use easements, and to merge or consolidate common interest communities with others under the same ownership).

The respective descriptions of specific rights afforded and reserved to the declarant are so integral to the Act that they are among its foundational requirements that cannot be omitted or changed by consent of the parties in interest; nor may the declarant purport to waive or forfeit the benefit of the protections so afforded or reserved. *See* W. VA. CODE § 36B-1-104 (“Except as expressly provided in this chapter, provisions herein may not be varied by agreement, and rights conferred may not be waived.”). Thus, the idea that violations of the description requirements can somehow be disregarded as “insubstantial,” as posited at hearing by the POA (and necessarily adopted, *sub silentio*, in the December 15, 2024 Final Order), *see* PETITIONER’S APP’X at 0268, cannot be more wrong and fittingly provides a substantial basis for this Court’s timely correction of the manifest legal error below. *See, e.g.*, syl. pt. 1, *State ex rel. State v. Cohee*, 251 W. Va. 474, 914 S.E.2d 709 (2025) (reiterating long-established maxim that third *Hoover* factor, “existence of clear error as a matter of law,” to “be given substantial weight” in determining whether to grant extraordinary writ (quoting syl. pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996))).

The Act does provide that insubstantial failures within the declaration do not adversely affect the marketability of title to discrete units of the common interest community or to the community’s common elements, *see* W. VA. CODE § 36B-2-103(d), but title is not at issue in this proceeding. Rather, the question at the threshold is the authority of the declarant ***under the declaration*** to augment the original one-acre filing with Petitioner’s units and others. Resolution of the threshold question informs that of the ultimate issue, namely, whether the POA is imbued with the derivative authority to levy assessments on Petitioner’s (or any) units and, in the event of nonpayment, to avail itself of the remedies afforded a statutory lienholder. Because the declaration

is fatally infirm as a matter of law, the answer to the threshold question is “no.” Consequently, the POA has ***no*** authority and ***no*** standing to invoke the prescribed statutory remedy.

The POA urged the court below to set aside the result demanded by the Act in deference to applying the right of assessment and subsequent attachment of lien established under the common law. *See PETITIONER’S APP’X* at 247, 254. The POA’s entreaties were given voice by the circuit court. *See id.* at 268. Although it is indisputably true that “principles of law and equity” may supplement the enactment’s statutory commands, those principles cannot control “to the extent inconsistent with” the Act. W. VA. CODE § 36B-1-108. And where proper application of the Act inexorably leads to one result while resort to the common law leads to the opposite, there can be no greater illustration of inconsistency.

The entire purpose of adopting a “uniform” Act is to avoid the perceived vagaries of the common law and promote consistency and certainty of result. Proceeding along the tack that the POA advocates would wholly frustrate the Legislature’s intent in that regard. Faithfulness to the coequal legislative branch militates against being distracted by the horribles that the POA will inevitably parade to attempt to justify the ruling below. At bottom, this Court is bound to decide the case before it and leave the next case for tomorrow. The Petition should be granted and the requested writ directed to issue.

/s/ Raymond S. Franks II

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of July, 2025, the foregoing *Summary Response of Respondent Greenbrier West Virginia Holdings, LLC* was served using the electronic File & ServeXpress system, which will send notification of such filing to all counsel of record.

/s/ Raymond S. Franks II

Raymond S. Franks II (WVSB #6523)