

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Docket No. 25-ICA-334

**ICA EFiled: Nov 19 2025
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FOUNTAIN PLACE, LLC,

Plaintiff Below, Petitioner,

v.

**CITY OF LOGAN DEVELOPMENT AUTHORITY,
FOUNTAIN PLACE REALTY, LLC,
NAMDAR DG REALTY, LLC, and
CITY OF LOGAN, WEST VIRGINIA,**

Defendants Below, Respondents.

**FOUNTAIN PLACE REALTY, LLC'S AND NAMDAR DG REALTY, LLC'S
SUMMARY RESPONSE**

**Fountain Place Realty, LLC, and
Namdar DG Realty, LLC**

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FOUNTAIN PLACE REALTY, LLC’S AND NAMDAR’S SUMMARY RESPONSE

Respondents Fountain Place Realty, LLC (“FPR”) and Namdar DG Realty, LLC (“Namdar”), by counsel, pursuant to Rule 10(e) of the West Virginia Rules of Appellate Procedure, hereby provide their Summary Response to Petitioner Fountain Place, LLC’s (“Petitioner”) appeal of the Circuit Court’s July 18, 2025 Order Granting City of Logan and City of Logan Development Authority’s Motion to Dismiss (the “Order”). The Order relates only to the Motion to Dismiss filed by Defendants City of Logan (the “City”) and City of Logan Development Authority (“LDA”) (collectively “the Logan Respondents”)—not FPR and Namdar’s separate Motion to Dismiss, which is still pending before the Circuit Court. Accordingly, FPR and Namdar take no position on Petitioner’s appeal.

I. STATEMENT OF THE CASE

Petitioner filed an Amended Complaint on September 6, 2023. On October 11, 2023, the Logan Respondents filed their Motion to Dismiss. After hearing argument on the Logan Respondents’ Motion to Dismiss on a few separate dates, the Circuit Court entered a July 18, 2025 Order Granting City of Logan and City of Logan Development Authority’s Motion to Dismiss. Petitioner appealed. FPR and Namdar filed a separate Motion to Dismiss, which is still pending before the Circuit Court and is neither addressed by the Order, nor the subject of this appeal. Thus, FPR and Namdar take no position on Petitioner’s Assignments of Error.

II. STANDARD OF REVIEW

A Circuit Court’s underlying factual findings are reviewed under a clearly erroneous standard. Syl. Pt. 1, *Harlow v. E. Elec., LLC*, 245 W. Va. 188, 858 S.E.2d 445 (2021) (citation omitted); *State v. White*, 249 W. Va. 532, 896 S.E.2d 698 (2023). Meanwhile, its conclusions of law are subject to de novo review. *See id.*

III. ARGUMENT

Petitioner asserts three assignments of error, all of which relate to the Order, which does not address or rule upon FPR and Namdar's pending Motion to Dismiss. Thus, because FPR and Namdar's Motion to Dismiss is still pending before the Circuit Court, and because the Order and this appeal concern only the Logan Respondents' Motion to Dismiss, FPR and Namdar take no position on any of Petitioner's three assignments of error.

IV. CONCLUSION

FPR and Namdar take no position on Petitioner's assignments of error.

Respectfully submitted,

**FOUNTAIN PLACE REALTY, LLC, and
NAMDAR DG REALTY, LLC**

By: Spilman Thomas & Battle, PLLC

/s/ Joseph A. Ford

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Defendants Below, Respondents.

CERTIFICATE OF SERVICE

I, Joseph A. Ford, do hereby certify that service of the foregoing *Fountain Place Realty, LLC's and Namdar DG Realty, LLC's Summary Response* has been made upon counsel of record via the File & ServeXpress system, on this 19th day of November, 2025, which will send notification to:

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