

**BUSINESS COURT DIVISION – WEST VIRGINIA SUPREME COURT OF APPEALS  
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

2017 JUN 14 AM 11:16

**SOARING EAGLE LODGE MASTER ASSOCIATION, INC.,**  
a West Virginia Non-[profit Corporation; and  
**SOARING EAGLE LODGE ASSOCIATION, INC.,** a West  
Virginia Non-profit Corporation,  
*Plaintiff,*

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

vs.)

**Civil Action No. 15-C-2202**

**Presiding Judge: Tabit**

**Resolution Judge: Matish**

**SOARING EAGLE DEVELOPMENT COMPANY, LLC,**  
a West Virginia Limited Liability Company;  
**GBBN ARCHITECTS, INC.,** an Ohio Corporation;  
and **BRANCH & ASSOCIATES, INC.,** a Virginia Corporation,  
*Defendants*

and

**BRANCH & ASSOCIATES, INC.,** a Virginia Corporation  
*Third Party Plaintiff*

vs.)

**APPLIED MECHANICAL SYSTEMS, INC.,** a West Virginia  
Corporation; **EASTCOAST SIDING, INC.,** a Maryland  
Corporation; **RICHARDSON AND MARCH CARPENTRY, LLC,** a  
West Virginia Limited Liability Company; and **TRI-STATE  
ROOFING & SHEET METAL COMPANY OF WEST VIRGINIA,** a  
West Virginia Corporation,  
*Third Party Defendants*

and

**SOARING EAGLE DEVELOPMENT COMPANY, LLC,**  
a West Virginia Limited Liability Company;  
*Third Party Plaintiff*

vs.)

**TRI-STATE ROOFING & SHEET METAL COMPANY OF  
WEST VIRGINIA,** a/k/a, **TRI-STATE ROOFING & SHEET  
METAL CO.,** a West Virginia Corporation; **APPLIED  
MECHANICAL SYSTEMS, INC.,** an Ohio Corporation;  
**RICHARDSON AND MARCH CARPENTRY, LLC,** a West

**Virginia Limited Liability Company; RICHARDSON  
CARPENTRY, LLC, a West Virginia Limited Company;  
and EASTCOAST SIDING, INC., a Maryland Corporation,  
*Third Party Defendants***

**ORDER DENYING DEFENDANT BRANCH & ASSOCIATES, INC.'S  
MOTION TO PRELIMINARILY ENJOIN**

Defendant Branch & Associates, Inc. has requested that this Court enjoin the Plaintiffs from repairing the property that is the subject of this litigation, arguing that such action will spoliage evidence and will irreparably harm Defendants and defendants not yet named in this action by precluding inspection of the Lodge. For the reasons set forth below, the Court denies the Defendant's Motion.

In weighing this motion for preliminary injunction, the Court must balance the Plaintiffs' duty to mitigate ongoing damage with the *possibility* of future litigants and the current Defendant's desire to inspect the property a fifth time. Here, construction to repair the property creates little risk of irreparable harm to the movant and high risk of irreparable harm to the Plaintiff. The Plaintiffs' claims are meritorious and public interest leans in favor of allowing property owners to repair property and mitigate damages before disrepair and leaks further harm the property.

Pleadings and discovery have clearly alleged since 2015 that Soaring Eagle Lodge is suffering from active major water intrusion problems involving the roof structures, deck membrane, and drainage systems. Parties, corporate representatives, expert witnesses, and legal counsel have had access to the Lodge for four site visits to inspect, photograph, measure, and examine the construction problems identified by Plaintiffs. Parties have known for months that Plaintiffs intended to begin roof replacement and deck membrane and drainage repair work following the fourth site inspection. The remediation work should not come as a surprise as this

is a 2015 case, the parties have had adequate time for inspections, and the Plaintiffs have a duty to mitigate the ongoing damage. Parties have not proposed any reasonable procedures to alleviate their concerns caused by the necessary construction work which likely must begin immediately due to construction work availability on Snowshoe Mountain's location and environment.

Accordingly, the Court finds that it would be inappropriate to enjoin the Plaintiffs from proceeding on their planned remediation efforts. THEREFORE, the Court hereby DENIES the Defendant, Branch & Associates, Inc.'s Motion to Preliminarily Enjoin.

The Clerk of the Circuit Court of Kanawha County, West Virginia, is directed to forward an attested copy of this Order to the Business Court Division Central Office at the Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia, 25401; the Resolution Judge, the Honorable James Matish at the Harrison County County Courthouse, 301 West Main Street Clarksburg, WV 26301-2967; all counsel of record; and any *pro se* parties.

ENTER this 14<sup>th</sup> day of June, 2017.

6/14/17  
 Date: \_\_\_\_\_  
 Certified copies sent to:  
 counsel of record  
 parties  
 other (please indicate)  
 By: \_\_\_\_\_  
 certified/1st class mail  
 fax  
 hand delivery  
 interdepartmental  
 Order completed by: \_\_\_\_\_  
 Deputy Circuit Clerk

*Bus Ct*  
*Judge Matish*  
 SG  
 JM  
 SG  
 EP  
 RH  
 RS  
 MM  
 RT  
 MM  
 JB

*Joanna I. Tabit*  
 HONORABLE JOANNA I. TABIT

STATE OF WEST VIRGINIA,  
 COUNTY OF KANAWHA,  
 I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
 AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
 IS A TRUE COPY FROM THE RECORDS OF SAID COURT  
 GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 14  
 DAY OF June 2017  
*Cathy S. Gatson*  
 CLERK  
 CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA