

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR CHARLOTTE COUNTY, FLORIDA
CIVIL DIVISION**

**JOHN W. SPRADLIN, JR., JANICE L.
THOMPSON, FRANK G. BEDNAZ,
and CHERYL A. O'DONNELL,**
individually and on behalf of all similarly
situated persons,

Case No.: 25000728CA

Plaintiffs,

v.

**VICTORIA ESTATES, LTD.;
BENDERSON-VICTORIA, L.C.;
and KINGS GATE HOMEOWNERS
ASSOCIATION, INC.**

Defendants.

**PLAINTIFFS' REPLY TO DEFENDANTS' ANSWER AND AFFIRMATIVE
DEFENSES TO SECOND AMENDED CLASS ACTION COMPLAINT**

Plaintiffs, John W. Spradlin, Jr., Janice L. Thompson, Frank G. Bednaz, and Cheryl A. O'Donnell, individually, and on behalf of all those similarly situated, pursuant to Rule 1.100(a) of the Florida Rules of Civil Procedure, deny each affirmative defense raised by Defendants, Victoria Estates, Ltd. and Benderson-Victoria, L.C., in their Answer and Affirmative Defenses dated December 5, 2025, and state in response to each affirmative defense as follows:

RESPONSE TO FIRST AFFIRMATIVE DEFENSE
(Failure to state a cause of action against Benderson-Victoria, L.C.)

1. Defendants' First Affirmative Defense, alleging a failure to state a cause of action against Benderson Victoria is without merit. Under Florida law, a general partner,

like Benderson Victoria, L.C here, in a limited partnership is jointly and severally liable for the obligations of the partnership (here, in this case, Victoria Estates, Ltd.), unless a specific statutory exception applies. Section 620.1404(1), Fla. Stat., provides that “all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.” This includes obligations incurred in contract, tort, or otherwise. *See* Fla. Stat. § 620.1405(1) (“To the extent not inconsistent with s. 620.1404, a general partner may be joined in an action against the limited partnership or named in a separate action.”); and § 620.1405(2) (“A judgment against a limited partnership may not be satisfied from a general partner’s assets unless there is also a judgment against the general partner.”). Otherwise, denied.

RESPONSE TO SECOND AFFIRMATIVE DEFENSE
(Statute of Limitations)

2. Denied, as Plaintiffs’ claims for damages and the proposed class period begins four years from the date of filing this action (beginning June 9, 2021).

RESPONSE TO THIRD AFFIRMATIVE DEFENSE
(Setoff/Recoupment)

3. Defendants’ Third Affirmative Defense, alleging that “Defendants are entitled to setoff/recoupment of all expenses related to the ownership and operation of the Club as set forth in the Declaration and as provided for under the HOA Act,” is without merit. Defendants have not identified the specific provision of the Declaration that allegedly entitles Defendants to assert a “setoff/recoupment” defense in response to Plaintiffs’ claims for violation of section 720.308, Fla. Stat. Indeed, there is no provision in the Declaration that entitles Defendants to assert such a defense. Likewise, Defendant

has not identified the specific provision of Florida’s Homeowners’ Association Act, Fla. Stat. 720.301 et seq. (“Act”) that allegedly entitles Defendants to assert a “setoff/recoupment” defense in response to Plaintiffs’ claims for violation of Section 720.308. Indeed, there is no provision in the Act that entitles Defendants to assert such a defense. Thus, there is no legal basis—under the Declaration, the Act, or otherwise—for Defendants to assert a “setoff/recoupment” defense. Furthermore, Defendants have not alleged that there is any equitable basis for Defendants to assert a “setoff/recoupment” defense. Even if Defendants had a legal or equitable basis to assert a “setoff/recoupment” defense—which they do not have—the doctrines of in pari delicto and unclean hands bar Defendants from asserting such a defense, based up on Defendants’ own conduct, including, but not limited to, the conduct alleged in the Complaint; Defendants’ failure to comply with section 720.3086, Fla. Stat.; Defendants’ failure to disclose their financial statements, and other information to the homeowners; and potential other misconduct of Defendants that has yet to be discovered. Otherwise denied.

RESPONSE TO FOURTH AFFIRMATIVE DEFENSE
(Doctrine of Waiver or Estoppel Under the HOA Act)

4. Defendants’ Fourth Affirmative Defense, alleging “Plaintiffs’ claims are barred in whole or in part by the doctrine of waiver or estoppel.” Defendants fail to cite the controlling provisions of the Act, like section 720.301(1), Fla. Stat. (defining “assessments”) and section 720.301(8), Fla. Stat. (defining “governing documents”), among others. The defense of estoppel and/or waiver is not a valid defense to a cause of action for violation of section 720.308, Fla. Stat. *See Avatar Properties, Inc. v. Gundel*,

372 So. 3d 715, 722–23 (Fla. 6th DCA 2023) (rejecting the same defenses asserted by the club owner in that case based on provisions that are almost identical to the Declaration in this case), *review denied*, No. SC2023-0946, 2023 WL 7220822 (Fla. Nov. 2, 2023). In any event, based upon Defendants’ conduct—including, but not limited to, the conduct alleged in the complaint and potential other misconduct of Defendants that has yet to be discovered—the doctrines of in pari delicto and unclean hands bar Defendants from asserting this defense. Also, Defendants fail to identify any affirmative actions on the part of Plaintiffs that would demonstrate a willful waiver of a known right or any affirmative representation or act upon which Defendants reasonably relied. As such, the Fourth Affirmative Defense fails to allege the required elements to establish the respective alleged defenses. Otherwise denied.

RESPONSE TO FIFTH AFFIRMATIVE DEFENSE
(Waiver, Ratification, and Estoppel)

5. Defendants’ Fifth Affirmative Defense is without merit for the same reasons as its Fourth Affirmative Defense. *See Avatar Properties, Inc. v. Gundel*, 372 So. 3d 715, 722–23 (Fla. 6th DCA 2023) (rejecting the same defense asserted by the club owner in that case based on provisions that are almost identical to the Declaration in this case), *review denied*, No. SC2023-0946, 2023 WL 7220822 (Fla. Nov. 2, 2023). Further, the provision of the Declaration quoted by Defendants, and therefore subject to the HOA Act, is unconscionable, illegal, against public policy, and unenforceable. Florida’s Homeowners’ Association Act provides that “[i]t is declared that the public policy of this state prohibits the inclusion or enforcement of certain types of clauses in homeowners’

association documents, including declaration of covenants, articles of incorporation, bylaws, or any other document of the association which binds members of the association, which either have the effect of or provide that . . . [a] homeowners' association is prohibited or restricted from filing a lawsuit against the developer, or the homeowners' association is otherwise effectively prohibited or restricted from bringing a lawsuit against the developer." Fla. Stat. § 720.3075. Moreover, a release that attempts to prospectively insulate a party from liability for violation of a statute or ordinance enacted to protect public policy is unenforceable. *See JM Family Enterprises, Inc. v. Winter Park Imports, Inc.*, 10 So. 3d 1133 (Fla. 5th DCA 2009) (and cases cited therein); *Hall v. O'Brien Imports of Ft. Myers*, 862 So. 2d 87, 89 (Fla. 2d DCA 2003). The Declaration, implemented by Defendants, must be read in conjunction with the protections afforded to Plaintiffs, as consumers and residents of Florida, under state law. Further, Defendants have violated and continue to violate Chapter 720, Florida Statutes, and their unclean hands, through the use of unconscionable, unfair, and deceptive business practices, as well as their illegal collection of Club Membership Fees, bars them from asserting this equitable defense. Otherwise denied.

RESPONSE TO SIXTH AFFIRMATIVE DEFENSE
(Foreclosures)

6. Defendants' Sixth Affirmative Defense, alleging (again) estoppel based on prior illegal foreclosure or other court action, is without merit and is insufficient as plead. Defendants cannot assert this affirmative defense based on illegal foreclosure actions brought against homeowners based on the collection of illegal Club Membership Fees

from them. Such unclean hands bars such an equitable defense. Otherwise denied.

RESPONSE TO SEVENTH AFFIRMATIVE DEFENSE
(Defendants and Club Plan Are Not Subject to the HOA Act)

7. Defendants’ Seventh Affirmative Defense, alleging that the Defendants and the Club Plan are not subject to the provisions of the HOA Act based section 720.302(3)(b), Fla. Stat., does not constitute an affirmative defense to Plaintiffs’ claims, but instead amounts to a mere denial of the allegations in the complaint. This alleged defense directly conflicts with controlling law in Florida under *Avatar Properties, Inc. v. Gundel*, 372 So. 3d 715, 722–23 (Fla. 6th DCA 2023), *review denied*, No. SC2023-0946, 2023 WL 7220822 (Fla. Nov. 2, 2023). Rightfully, Defendants “acknowledge” the *Gundel* decision in a footnote to this defense and state that they are raising the defense “for preservation purposes.” Otherwise denied.

[Attorney’s signature appears on the following page.]

CERTIFICATE OF SERVICE

HERBY CERTIFY that a true and correct copy of the foregoing has been Electronically served through Florida Courts E-filing portal and/or E-Service on this 17th day of December 2025.



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