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,

Plaintiffs,

Case No.: 25000728CA

v.

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

Defendants.
_______________________________________/

VICTORIA DEFENDANTS' MEMORANDUM IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY AND CROSS-MOTION FOR SUMMARY JUDGMENT

Defendants, Victoria Estates, Ltd. ("Victoria Estates") and Benderson-Victoria, L.C. ("Benderson-Victoria") (collectively, the "Victoria Defendants"), oppose Plaintiffs' Motion for Partial Summary Judgment on Liability ("Motion"). The Victoria Defendants also cross-move for summary judgment on the legal standard and burden of proof for demonstrating liability and damages.

INTRODUCTION

Plaintiffs move for summary judgment on liability on Count III of their Second Amended Complaint. Count III seeks damages against the Victoria Defendants for imposing and mandating payment of Club Fees, as an "assessment" under the Homeowners' Association Act ("HOA Act"), which, according to Plaintiffs, "are not in each homeowner's proportional share of expenses."

Second Am. Compl. ¶ 56. Plaintiffs contend that because the Club Fees were originally set at a time before the class period, "[b]y definition," the Club Fees "are amounts that *exceed* each homeowner's proportional share of the King[s] Gate Club's expenses." *Id.*[1]

Plaintiffs' argument is wrong as a matter of fact and law. Plaintiffs' theory of how to interpret the relevant provisions of the HOA Act contravenes the plain language of the Act as a matter of law. Because the statute on its face requires a showing that the amounts levied exceed the proportional amount of expenses budgeted, liability can only be established by reviewing the expenses. Moreover, Plaintiffs bear the burden of proof. Thus, they must (1) introduce evidence that establishes the amount of expenses for the Club; and (2) prove that any surplus exceeding the Club's expenses was distributed for the personal benefit of the Victoria Defendants and not retained for the continued operation of the Club. In other words, the standard for liability is whether the Victoria Defendants earned an illegal profit on Club Fees charged to Club members. Because Plaintiffs premise their motion on a different standard, the Victoria Defendants cross-move for summary judgment on the legal standard and burden of proof for determining liability and damages.

Once the correct standard is applied, the financial statements, deposition testimony from the Victoria Defendants' corporate representative, and declaration testimony from the Victoria Defendants' expert accountant, all show that the Club Fees, in fact, did ***not*** exceed each homeowner's proportional share of expenses. For all the reasons set forth below and in the record evidence submitted with this Opposition and Cross-Motion, Plaintiffs' Motion for Partial Summary Judgment on Count III should be denied and the Victoria Defendants' Cross-Motion for Summary Judgment on the standard for liability and damages should be granted.

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[1] All emphasis in quotations is supplied unless otherwise indicated.

FACTUAL BACKGROUND

Plaintiffs' Motion ignores all the critical evidence about how the Kings Gate Club actually operates. The Victoria Defendants provide a more complete perspective on the facts here.

On January 2, 1998, Victoria Estates recorded the Declaration of Restrictive Covenants Kings Gate Subdivision (the "Declaration"), creating the "Kings Gate" residential community located in Charlotte County, Florida. *Second Am. Compl.* ¶ 7. The community includes the Kings Gate Club ("Club"), which consists of a clubhouse, pool, golf course, restaurant, and other amenities. *Id.*, Ex. A, Art. 1, § 9 (definition of "Club"); *id.*, Ex. A, Art. 6, § 2; *see Defs.' Aug. 7, 2026 Notice of Filing Dep. Tr. of Gerardo Iannace* at 55:2-56:15. Although Victoria Estates is the record owner of the Club, it assigned to the Kings Gate Homeowners' Association, Inc. (the "HOA") the tasks of (1) collecting fees from Club members, (2) budgeting some of the operating expenses of the Club, and (3) operating many—but not all—of the Club's facilities. Iannace Dep. 144:23-25; 145:1. Victoria Estates, on the other hand, through its agents, manages the day-to-day operations of the golf course and restaurant facilities and directly funds additional expenses to own and operate the Club. *See Pls.' July 14, 2026 Notice of Filing Dep. Tr. of Stephen Scalione* at 132:19-20; 136:20-23.

The parties agree that, in exchange for access and use of the Club, all owners in Kings Gate must "bear all expenses associated with the Club . . . ." *Second Am. Compl.*, Ex. A, Art. VI, § 5(v). Specifically, under the Declaration, all owners agree to pay "Club Charges," which in part includes a "Club Fee." *Id.*, Ex. A, Art. 6, § 5; Iannace Dep. 125:3-23 (expenses relative to the golf course are to be borne by Club members). As noted, the HOA collects the Club Charges. It is required to remit the Club Fee portion to Victoria Estates each month. *Second Am. Compl.*, Ex. A, Art. 6, § 6.

Plaintiffs allege that the Club Fee is not "levied in the residential parcel owner's proportional share of expenses" in violation of Florida's HOA Act. *Second Am. Compl.* ¶ 26. In Count III, they seek damages "in the amount of Club Fees paid by the Plaintiffs and other class members." *Id.* at pp. 14-15; ¶¶ 54-58. But Plaintiffs' Motion focuses only on the formal structure of the Club as described in the Declaration. *See* Motion at 3-7. Plaintiffs ignore all the fact testimony about the way the Club actually operated during the Class Period:

1. Stephen Scalione, corporate representative of the Victoria Defendants, testified that the Club consists of three parts: (a) the pool, portions of the clubhouse, and other features, operated by the HOA;[2] (b) the golf course and portions of the clubhouse, such as the pro shop and restaurant, operated by Hampton Golf; and (c) other components operated by Victoria Estates. Scalione Dep. 30:14-25; 62:5-8; 69:25-70:4; 97:13-19; 98:10-19. The Lion's Den restaurant, for example, is a place "many of the residents go … to get some meals and drinks." Iannace Dep. 18:7-12. Karaoke night and other no-cover-charge events are hosted there. *Id.* at 18:13-19:17. Gerardo Iannace, corporate representative of the HOA, agreed that the restaurant and golf course are part of the Club. Iannace Dep. 55:2-56:15. Plaintiffs' Motion ignores the fact that the Club consists of amenities outside the control of the HOA—including the restaurant and golf course.

2. Plaintiffs also fail to inform the Court that the expenses associated with each component of the Club are separately calculated. Thus, the HOA "does not have any involvement with the operation of other portions of the club, including the restaurant and golf course." Scalione Dep. 45:11-22. The expenses associated with those portions of the Club "are accounted for and paid for outside of the homeowners association." *Id.* at 46:7-16; *see also* Iannace Dep. 31:1-16

[2] The HOA was turned over to the residents of Kings Gate in 2018. Scalione Dep. 33:3-8.

(describing division of responsibility for operating restaurant and rest of main clubhouse); 56:7-15 (HOA does not oversee operation and maintenance of the restaurant).

3. Accordingly, the Declaration's framework for "how club operating costs could be treated" is "not consistent with how it has been treated" during the entire class period. Scalione Dep. 29:14-19; 31:18-21. As Mr. Scalione testified, "I don't believe that [the club fees] are illegal because they are being utilized to pay for club operating costs that … we're paying, utilizing that money." *Id.* 37:18-38:3. As a "matter of operation," Victoria Estates "collected the club fee and utilized those collections to pay for club operating costs." *Id.* at 38:15-21; *see also id.* at 48:9-18 ("we've allowed offsets against the fees to cover expenses").

4. For example, even though the golf course undisputably is a part of the Club, the residents of Kings Gate "haven't been paying the expenses associated with the golf course." *Id.* at 63:24-64:4. Rather, Victoria Estates "utilized that club fee to pay for the operating expenses in the normal course of operating the course, without charging them back." *Id.* at 64:9-16. As Mr. Scalione testified: "We have paid for operating expenses associated with the club and not charged back the homeowners directly for those expenses, but in fact offset … any income collected by the club fee using any income collected by the club fee to pay those operating expenses." *Id.* at 64:18-65:4. And the Victoria Defendants have never "issued an assessment to the HOA for collection of additional expenses related to operation of the golf course and restaurant[.]" Iannace Dep. 57:4-7. Plaintiffs know this. Plaintiffs Spradlin, O'Donnell, and Bednaz all served on the HOA board as either a Director, President, Vice President, or Secretary. Iannace Dep. 15:9-19; 16:12-18, 22-24; 17:12-16; 21:15-17; *see also Defs.' Aug. 18, 2026 Notice of Filing Exhibits* ("*Defs.' NOF*"), Ex. 1 (Kings Gate HOA's Response to First Set of Interrogatories). In 2023, Mr. Spradlin exchanged emails with Mr. Scalione regarding which entity was paying certain tax bills, and Mr. Scalione

confirmed that "[a]nything that only includes golf course Benderson is paying directly." *Defs' NOF,* Ex. 2 (Nov. 2023 emails between Mr. Spradlin and Mr. Scalione); *see also id.*, Ex. 3 (March 11, 2024 email from Mr. Scalione to Mr. Spradlin and Mr. Bednaz discussing allocation of property taxes in light of "golf course improvements vs the clubhouse").

5. The same is true with respect to the restaurant and "other activities, expenses … that the declarant has done directly[,] not through the HOA." Scalione Dep. 30:17-25. One such direct expense incurred by the Victoria Defendants is "we took the lead and directly replaced and paid for the master pumping station that irrigates all the common areas, including the club" and even "all the villa homes." *Id.* at 31:1-10. Victoria Estates renovated the restaurant and pro shop and repaired and replaced the golf bridges during the class period. *Id.* at 99:3-11. The HOA and the Victoria Defendants "partnered" to "get the membrane portion of the roof repaired over the restaurant and over a portion of the ballroom." Iannace Dep. 66:5-13.

6. The Victoria Defendants also cover certain liability and other forms of insurance, which are expenses of the Club. Scalione Dep. 96:7-12. Plaintiffs know this. On February 7, 2023, Plaintiff Spradlin, when he was on the HOA board, inquired of Mr. Scalione whether the HOA and Benderson (for Victoria Estates) were "splitting the cost" of insurance "as in previous years?" *Defs.' NOF*, Ex. 4. He suggested "34.7% for Benderson, 65.3% for HOA." *Id.* The next day, Mr. Scalione confirmed "we are OK with the split as previous years." He noted, however, that "[w]e are still showing considerable past due club fees owed by the HOA." *Id.* Later that day, Mr. Spradlin expressly confirmed what Mr. Scalione described as "the split we have historically done" with respect to the insurance expenses, under which "our share is credited against the outstanding club fee amounts." *Defs.' NOF*, Ex. 5; *see also id.*, Ex. 6 (November 14, 2023 email from Mr.

Scalione to Mr. Spradlin that included a file allocating insurance expense and proceeds to Benderson for restaurant and golf shop).

7. In sum, the Victoria Defendants offset against the Club Fees "all operating expenses associated with the restaurant, certain capital repairs or replacements such as the irrigation pump …, renovation of certain parts of the club, including the restaurant, and then over the year real estate taxes we paid, insurance expenses we paid, and other general kind of expenses and costs." Scalione Dep. 49:4-16.

8. Plaintiffs repeatedly assert throughout their Motion that "no such expenses were ever budgeted" or that "Club Fees are not expenses based [on] any budget." Motion at 7 n.5 & 9. But Hampton Golf, Inc. ("Hampton Golf"), the third-party manager of the golf course and restaurant, prepares an annual budget that incorporates the portion of expenses it is in charge of paying. Scalione Dep. 51:25-52:6.

9. In addition, the Victoria Defendants have provided deficit funding for shortfalls in revenue by various components of the Club. For example, an affiliate, Benderson Development, on behalf of Victoria Estates, invoices the HOA for the monthly amount of Club Fee income, which is used to offset the expenses paid for by Victoria Estates, as described above. *Id.* at 153:6-16. However, the HOA "has at times had cash flow concerns that we allowed for … payments to be made over time, as opposed to when they were originally due." *Id.* at 48:9-18. Also, Victoria Estates often provides deficit funding to "fund shortfalls associated with the restaurant … and golf course operations." *Id.* at 65:17-24; *see also Defs.' NOF*, Ex. 7 (June 11, 2025 wire transfer from Benderson Development Company, LLC to Hampton Golf for $62,000 for "deficit funding").

10. Mr. Iannace testified as to his understanding of the Club Fee: "I must use that assessment for the benefit of the community to make enhancements… So any assessment that is

collected that is not reinvested into the community is considered a profit, which is illegal…" Iannace Dep. 122:10-123:5. At the time of his deposition, Mr. Scalione did not know whether a profit was earned relative to the Club Fee: "I think that the math is still needed to be done in terms of … our expert accountant to look at all of the expenses that we've paid over the year and determine which of those are valid club operating costs for offset." Scalione Dep. 92:4-14.

11. Since the time of Mr. Scalione's deposition, the Victoria Defendants' expert accountant, James Stewart, completed his analysis and concluded that ***no profit*** was earned on Club Fees charges to Kings Gate Club members. *See Defs.' NOF*, Ex. 8. In other words, contrary to Plaintiffs' allegation in paragraph 56 of the Second Amended Complaint, Club Fees do not exceed each homeowner's proportional share of the Kings Gate Club's expenses.

In sum, the central assertion of Plaintiffs' Motion—that the Club Fee "paid no expenses of the Kings Gate Club," Motion at 5—wholly ignores the uncontroverted evidence to the contrary. Because the evidence refutes the essential presupposition of Plaintiffs' Motion—that the Victoria Defendants did not apply any expenses to Club Fees, the material facts are disputed, and Plaintiffs are not entitled to summary judgment on Count III as a matter of law. Plaintiffs' Motion must be denied.

STANDARD OF REVIEW

Summary judgment is appropriate only when the pleadings and evidence show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Fla. R. Civ. P. 1.510(c). "Under the new summary judgment standard, a movant who bears the burden of persuasion at trial has the initial burden of demonstrating the absence of a genuine issue of material fact and must produce evidence sufficient to result in a directed verdict at trial." *Gervas v. Gazul Producciones SL Unipersonal*, 358 So. 3d 1257, 1259 n.3 (Fla. 3d DCA 2023);

Nadar v. AIM Recovery Servs., Inc., 415 So. 3d 277, 278 (Fla. 3d DCA 2025). "Once this initial burden is met, the party opposing summary judgment must then provide evidence showing that there exists a genuine issue of material fact." *Gervas*, 358 So. 3d at 1259 n.3; *Nadar*, 415 So. 3d at 278. "A genuine issue of material fact exists if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Perez v. Citizens Prop. Ins. Corp.*, 345 So. 3d 893, 895 (Fla. 4th DCA 2022) (citation omitted). Moreover, the Court must view the evidence and draw all factual inferences therefrom in a light most favorable to the non-moving party and must resolve any doubts in that party's favor. *AC & JL Holdings, Inc. v. Levy*, 420 So. 3d 564, 565 (Fla. 6th DCA 2025) (citations omitted).

In addition, questions of statutory construction may be resolved by way of motions for summary judgment. *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 131 (Fla. 2000); *City of Treasure Island v. Tahitian Treasure Island, LLC*, 253 So. 3d 649, 656 n.2 (Fla. 2d DCA 2017).

SUMMARY JUDGMENT EVIDENCE

The Victoria Defendants rely on the Kings Gate governing documents, the deposition of Stephen Scalione as corporate representative of the Victoria Defendants, the deposition of Gerardo Iannace as corporate representative of the HOA, the HOA's responses to Victoria Estates' first set of interrogatories, the declaration of James Stewart, the exhibits in the Victoria Defendants' August 18, 2026 Notice of Filing, and the other citations to evidence in the record set forth herein.

ARGUMENT

I. LIABILITY UNDER SECTION 720.308 REQUIRES THE VICTORIA DEFENDANTS TO HAVE EARNED AN ILLEGAL PROFIT ON CLUB FEES.

Plaintiffs argue in their Motion that the Club Fee is illegal because it is a "fixed monthly charge, set in advance for every year in perpetuity (forever) that bears no relation to any homeowners' proportional share of expenses—while Section 720.308 … limits assessments to each Kings Gate homeowner's 'proportional share of expenses' pursuant to the annual budget." Motion at 2-3. Plaintiffs seek a determination that the entire Club Fee is illegal and must be disgorged. In essence, Plaintiffs seek a disgorgement of the Victoria Defendants' gross revenues from the Club Fees, irrespective of whether those gross revenues were applied to expenses of the Club or even retained by the Club for the future benefit of Club members, as opposed to removed from the Club for the personal use by the Victoria Defendants.

Plaintiffs' Motion is based on the wrong standard for liability. As shown below, Plaintiffs must prove the Victoria Defendants improperly earned a profit on the Club Fee before a finding can be made that the Club Fee violates Section 720.308. Plaintiffs indisputably have not met that burden. Accordingly, Plaintiffs' motion for summary judgment on liability should be denied, and Defendants' cross-motion for summary judgment on the standard for determining liability and damages should be granted.

A. Liability Under § 720.308 Cannot Attach By the Mere Filing of a Proposed Fee Schedule Because the Plain Language of the Statute Requires Proof of Profit.

The text of the HOA Act requires the recovery of profit for liability (and damages) to ensue. "When interpreting a statute, we follow the supremacy-of-the-text principle." *Pradaxy v. Kendrick*, 387 So. 3d 437, 439 (Fla. 6th DCA 2024) (citation omitted). This principle dictates that the "words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Id.* at 438-40 (citation omitted). Here, the plain text of the governing statute prohibits only the earning of profit on club assessments.

Section 720.308(3), Fla. Stat., states that "assessments charged to a member shall not exceed the maximum obligation of the member based on the total amount of the adopted budget and the member's proportionate share of the *expenses* as described in the governing documents." (emphasis supplied). Section 720.308(1)(a) similarly provides that assessments "must be in the member's proportionate share of *expenses* as described in the governing documents." (emphasis supplied). By their plain terms, these provisions require an evaluation of the extent to which an assessment, which constitutes revenues for the Club owner, exceeded the Club's expenses.

As applied to this case, assuming *arguendo* that the HOA Act applies, the Victoria Defendants concede that the Club Fees, as collected by the HOA, are assessments within the meaning of Section 720.301(1). It further is undisputed that the Club Fees are divided equally among the homeowners, satisfying the statute's proportionality requirement. The question, for liability purposes, is whether those Club Fees equal or exceed the expenses of the Club. As Avatar's accounting expert testified, when revenues exceed expenses, this is one accounting definition of profit. *See Defs.' NOF*, Ex. 9 (Stewart Decl.) at ¶ 11 n.1. It is also the definition of profit under Florida case law. *See Del Monte Fresh Produce Co. v. Net Results, Inc.*, 77 So. 3d 667, 673 n.11 (Fla. 3d DCA 2011) (profit is "income less expense"); *HCA Health Servs. of Fla., Inc. v. CyberKnife Ctr. of Treasure Coast, LLC*, 204 So. 3d 469, 472 (Fla. 4th DCA 2016) (same); *RKR Motors, Inc. v. Associated Unif. Rental & Linen Supply, Inc.*, 995 So. 2d 588, 594 (Fla. 3d DCA 2008) (lost profit determined by subtracting expenses, including fixed costs, from contract price). *See also Profit*, Black's Law Dictionary (12th ed. 2024) (providing one definition of "profit" as "[t]he excess of revenues over expenditures in a business transaction"). In their motion, Plaintiffs fail to address this critical question of whether Club Fee revenues exceeded Club expenses—that is, whether the Victoria Defendants earned a profit on Club Fee revenues—let alone present evidence on it. For this reason alone, the Motion must be denied.

But, Plaintiffs argue, because the amount of the Club Fee was originally established at a time before the assessment was actually made, the Club Fee is automatically illegal. Because the Club Fee was established at a time before the expenses were known, the argument goes, the Club Fee must be illegal "by definition" since it is divorced from the expenses the statute requires Victoria Estates and the HOA to take into account. *Second Am. Compl.* ¶ 56. Although Plaintiffs' analysis may have a superficial appeal, on closer inspection, it ignores the statute's specific language and must be rejected.

Sections 720.308(1)(a) and (3) require that assessments be in the members' proportional share of expenses at the time the assessment is "levied" or "charged" to "a member." *See* § 720.308(1)(a), Fla. Sta. (assessments "***levied***" pursuant to the annual budget must be in the member's "proportional share of expenses"); § 720.308(3), Fla. Stat. (assessments "***charged***" to a member shall not exceed the maximum obligation of the member based on the total amount of the adopted budget "and the member's proportionate share of the expenses"); *see also* § 720.308(6), Fla. Stat. (referencing "[e]xpenses incurred"). An advance instruction from Victoria Estates to the HOA to assess members the amount of the Club Fee, a specific amount in a given year, does not answer the question whether the Club Fee, when actually assessed, exceeds the members' proportional share of budgeted or actual expenses. Under the plain words of the statute, that question must be asked and answered for each year the assessment is "levied" or "charged" and at the time of levying or charging, not before. Moreover, the time of levying and charging is when the assessment is actually sent to members for collection, not the earlier date of preparing a club fee schedule. As discussed below, during the years the Club Fees were assessed to members, the amount of Club Fee revenues did not exceed the Club's budgeted expenses. *See infra* at 8. Thus, the Club Fees did not exceed the Club members' proportional share of expenses.

Plaintiffs' theory is infirm for another reason. Section 720.308(1)(a) and (3) incorporate a reference to "the governing documents" as describing "which expenses are shared." In this case, as Plaintiffs admit, under the Declaration, Club members are obligated to bear ***all*** the Club's operating expenses. *See Second Am. Compl.* ¶ 20; *id.,* Ex. A, Art. 6, § 5(ii); Motion at 3. Yet as discussed above, Plaintiffs artificially confine their analysis of expenses to only those Club operating expenses budgeted and incurred by the HOA. They wholly ignore all the expenses incurred by Victoria Estates and Hampton Golf, including for the golf course and restaurant, which indisputably are part of the Club. By failing to account for all expense of the Club, Plaintiffs' theory of liability contradicts the statutory instruction to refer to the Declaration for the definition of "expenses."

Plaintiffs' failure to consider all (or any of) the Club's expenses means Plaintiffs have failed to meet their summary judgment burden, and for this reason alone, their motion must be denied and the Victoria Defendants' motion must be granted.

B. The *Gundel* Decision Requires Profit.

Even apart from the plain language of the statute, the only appellate decision to construe the governing statutory language in a related situation, *Gundel v. Avatar Properties Inc.*, 372 So. 3d 715 (Fla. 6th DCA 2023), establishes that the measure of liability (and damages) is profit. Judge Cohen's majority opinion repeatedly recognized that the Polk County Solivita community developer's Club Membership Fee violated section 720.308 because it was pure profit to the developer. *See id.* at 717 ("perpetual membership fee that constituted pure profit"); *id.* at 718 ("membership fee … represented an annual profit charged to each landowner and payable to [club owner]"); *id.* at 719 ("[club owner]'s membership fee represent[ed] profit from the Club"); *id.* ("Gundel brought the present action, seeking to declare the assessments for [club owner]'s Club profit illegal under section 720.308 and payments for those assessments to be returned"); *id.* ("Gundel argued below that section 720.308 does not permit an assessment for profit, only expenses"); *id.* at 720 ("Section 720.308 mandates that assessments are limited to the member's proportionate share of the 'expenses,' and [club owner]'s fees representing profits, by definition, are not expenses"); *id.* at 722 ("The Club Plan's definition of an expense, while broad, does not include profit"); *id.* ("The trial court held that section 720.308(3) prohibits the homeowners of Solivita from being assessed a membership fee (the profit component of the Club's operation.) We agree.").

Judge Stargel's concurring opinion is to the same effect. *See id.* at 726 (club membership fee is "a perpetual profit stream generating over $4 million dollars annually above the expenses"); *id.* ("The dictionary definitions of the word 'expense,' do not include profits."). Indeed, Judge Stargel's analysis included a citation to Webster's Dictionary's definition of "expenses" as "an item of business outlay chargeable against revenue for a specific period." The definition recognizes that expenses and revenues must be viewed together in "a specific period," *id.* at 725, which supports Avatar's reading of the statute, not Plaintiffs'.

Thus, the Court in *Gundel* held that the club membership fee at issue in that case was illegal because, in that case, the developer earned a profit when it charged that fee as an assessment. Nowhere did the Court hold, as Plaintiffs now contend, that the fee was illegal because it was set (as opposed to levied or charged) at a time before the assessments were actually made.[3]

Although Plaintiffs' motion studiously avoids the *Gundel* court's clear description of "profit" as the measure of liability and damages under Section 720.308(1) and (3), they nonetheless

[3] In a footnote, Plaintiffs cite but do not materially discuss Ninth Judicial Circuit Judge Chad Alvaro's summary judgment order in *Chelbian v. Avatar Properties Inc.*, Case No. 2020-CA-002033 (Fla. 9th Jud. Cir.). For the reasons discussed herein, Judge Alvaro's decision is not binding on this Court, is devoid of reasoning, and its result should not be followed.

insist that the Club Fee charged to Kings Gate Club members here is "near identical" to the fee charged in *Gundel*. Motion at 2. Not so. Although the Club's governing documents are similar to those at issue in *Gundel*, the way the Kings Gate Club operated in practice is very different from the Sixth District's description of the way the Solivita Club was operated in that case. In *Gundel*, the "assessment imposed by Avatar for Club membership had two components, and a separate invoice was generated for each." 372 So. 3d at 718. One component was "the amount required for Club expenses," and the second component "was for a membership fee, which represented an annual profit charged to each landowner and payable to Avatar." *Id.* Thus, as noted by the Sixth District Court of Appeals in its opinion, there was no evidence presented that the expenses were deducted from the Club Membership Fee, and therefore, the fee in that case "represent[ed] profit from the Club." *Id.* at 719.

The record here is very different. As discussed above, the Kings Gate Club was operated in three separate components, and the expenses for the Club were divided among these components and offset against the Club Fee. Indeed, the undisputed record shows that the "assessment" (that is, the Club Fees revenue) was insufficient to cover all the expenses of the Club. *See supra* at 8. Thus, unlike the case in *Gundel*, the Club Fee was not "pure profit" to Victoria Estates. Although it is a "fundamental principle" that "like cases should be treated alike," *Pagan v. Sarasota County Public Hospital Board*, 884 So. 2d 257, 266 (Fla. 2d DCA 2004), the record evidence submitted by the Victoria Defendants, which Plaintiffs do not address in their Motion and, therefore, do not materially contest, makes the facts of *Gundel* distinguishable. Accordingly, although *Gundel* is controlling in determining the standard for liability (and the measure of damages) under section 720.308, the Sixth District's application of the law to the facts of that case does not dictate the result here, given the different records. *See U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871, 883

(Fla. 2007) (where the "underlying facts are different, then a previous decision should not be binding"). As Justice Gorsuch has commented: "When it comes to the factual record, litigants normally start the case on a clean slate. While a previous case's legal rules can create precedent binding in the current dispute, earlier fact-bound decisions typically provide only minimal help when other courts consider later cases with different factual circumstances. We've long recognized that this arrangement is required by due process—because while the law binds everyone equally, parties are normally entitled to the chance to present evidence about their own unique factual circumstances." *June Med. Servs., LLC v. Russo*, 591 U.S. 299, 422 (2020) (Gorsuch, J., dissenting) (cleaned up).

C. Plaintiffs' Request for Recovery of Gross Revenue Is Meritless.

Plaintiffs assert they do not need to prove profit but instead seek the disgorgement of gross revenues received from the Club Fees. As set forth above, this is the wrong measure of liability and damages because it violates the plain meaning of the statutory text. And because Plaintiffs seek disgorgement of revenues rather than profits, Plaintiffs' theory equally violates the longstanding legal principle that courts should refrain from imposing penalties for statutory violations. *Gov't Employees Ins. Co. v. Glassco Inc.*, 394 So. 3d 1115, 1119 (Fla. 2024). Compensatory damages "are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246, 1262 (Fla. 2006) (citation omitted).

D. Plaintiffs Bear the Burden of Proof.

"It is axiomatic that a plaintiff must prove damages resulting from the defendant's wrongdoing to be entitled to recover." *Regions Bank v. Maroone Chevrolet, L.L.C.*, 118 So. 3d 251, 257 (Fla. 3d DCA 2013). The Florida courts repeatedly have held that "[t]he burden of proving damages rest[s] solely with the plaintiff entities." *Asset Mgmt. Holdings, LLC v. Assets Recovery Ctr. Invs., LLC*, 238 So. 3d 908, 912 (Fla. 2d DCA 2018) (citing many cases). Thus, Plaintiffs bear the burden of proving the amount of profit from Club Fees as damages (assuming they can show its existence). And to prove profit, Plaintiffs must satisfy two separate prongs.

First, because profit is in part "income less expense," *Del Monte*, 77 So. 3d at 673 n.11, Plaintiffs must introduce evidence establishing the total expenses for the Club. It is well settled that a "profit award, which does not take . . . expenses into account, constitute[s] an *unmerited windfall*." *RKR Motors, Inc. v. Associated Unif. Rental & Linen Supply, Inc.*, 995 So. 2d 588, 594 (Fla. 3d DCA 2008) (internal citation omitted). Multiple Florida appellate courts have reversed judgments in favor of plaintiffs that made the mistake of equating revenues with profits and failing to introduce evidence of expenses.

In *Bass Venture v. Devom, LLC*, for example, the court reversed the plaintiff's damages award, reasoning that the "trial evidence was insufficient as a matter of law to support the award of lost profits because it addressed only *revenues* from the relevant period of time, not *expenses*—or, consequently, profits." 342 So. 3d 821, 824 (Fla. 2d DCA 2022) (emphasis in original). There, the plaintiff sought lost profits after the defendant removed the plaintiff's hotel sign. *Id.* at 823. The plaintiff offered various financial documents, including statistical reports that set forth occupancy data and revenues "but not expenses or profits." *Id.* The court concluded that the plaintiff "failed to satisfy the settled requirement of providing evidence of expenses to support the lost profit award." *Id.* at 824.

Similarly, in *Asset Management*, 238 So. 3d at 910, the plaintiffs and the defendant disagreed as to whether certain distress mortgages were included in an agreement between them. Following the trial court's determination that the plaintiffs owned the disputed loans, the plaintiffs requested damages in the amount of all monies the defendant had collected on the loans. *Id.* The defendant responded that the gross collection damages should be "setoff" by the costs the defendant incurred in collecting and servicing the disputed loans. *Id.* at 910–11. The trial court agreed with the plaintiffs that the defendant "was not entitled to a setoff" based on the defendant's "wrongdoing." *Id.* at 911. The Second District reversed. *Id.* at 913. It determined that the trial court's conclusion that the defendant's "wrongful conduct precluded a 'setoff' misapprehended the purpose of a damages award." *Id.* at 912. The trial court "incorrectly focused on punishing [the defendant] for its breach rather than putting the plaintiff entities in the same position that they would have been but for the breach." *Id.* By awarding gross collections, the court impermissibly put the plaintiffs in a better position. *Id.* Consequently, the court reversed because the plaintiffs "failed to introduce evidence essential to their burden of proving lost profits . . . ." *Id.* at 913. Specifically, "[b]ecause they introduced no evidence of the costs they would have incurred in servicing and collecting the disputed loans, they failed to carry that burden, and the trial court should have granted [the defendant's] motion for involuntary dismissal." *Id.* at 912.

Thus, as instructed in *Asset Management* and *Bass Venture*, Plaintiffs carry the "settled requirement of providing evidence of expenses to support" their damages award of profit. Without first establishing the amount of expenses, Plaintiffs cannot prove the Club Fees were "not assessments levied in the residential parcel owner's proportional share of expenses." *Second Am. Compl.* ¶ 26.

Second, to establish a profit, Plaintiffs must prove that any excess revenue from Club Fees over the Club's expenses was distributed to Victoria Estates' owners or related entities for their personal benefit and not retained for the continued operation of the Club. Indeed, "an operating surplus does not necessarily constitute a profit." *City of New Haven v. Town of East Haven*, 822

A.2d 376, 383 (Conn. Super. Ct. 2001). "[T]he difference between a for-profit and non-profit corporation is not whether the entity earns income (or even whether it earns income at a profit)," but a non-profit organization "must utilize its earnings to finance the continued provisions of the goods or services it furnishes and may not distribute any surplus to the owners." *Nat'l Sec. Couns. v. C.I.A.*, 960 F. Supp. 2d 101, 240 (D.D.C. 2013) (cleaned up).

To illustrate, in *Nolen v. Fairshare Vacation Owners Ass'n*, 591 F. Supp. 3d 1191 (M.D. Fla. 2022), *aff'd*, 2023 WL 5622595 (11th Cir. Aug. 31, 2023), members of a timeshare club filed a lawsuit asserting that the club trustee, a nonprofit entity, violated its fiduciary duties by failing to return any surplus trust balance to the beneficiaries. Plaintiffs alleged that the club trustee instead placed the financial interests of affiliated companies ahead of the interests of the club members. They cited as support "several raw end-of-year surplus Trust fund balances… as well as the fact that a vote to return the Trust's surplus funds has never been held." Middle District of Florida Judge Byron granted summary judgment to the trustee, holding that these facts were "insufficient as a matter of law to support Plaintiffs' claims" because (1) a "positive fund balance" by itself "does not amount to profit," (2) the allegation that the trustee "retains this balance for its own use" or the use of affiliates was "fact free," and (3) the plaintiffs provided no analysis "showing when the retention of the Trust's surplus would become excessive" or that the trustee in fact "used the Trust balance for its own or its related entities' benefits." *Id.* at 1202-03; *see also Matter of Mandalay Shores Co-op Hous. Ass'n*, 22 B.R. 202, 206 (Bankr. M.D. Fla. 1982) (concluding the cooperative apartment house was a non-profit corporation and thus not amenable to a chapter 7 liquidation case in part because "there is no proof that [it] distributed any of its income . . . paid any dividends or bonus to the members, directors, or officers"); *Premier Cruise Lines, Ltd., Inc. v. Picaut*, 746 So. 2d 1132, 1133 (Fla. 5th DCA 1999) (reversing summary judgment on claim that cruise line falsely billed for "port charges" with the excess "being kept" as profit as premature, instructing plaintiff on remand that to survive a renewed motion for summary judgment, plaintiff must "show that [cruise line] used 'port charges' as a vehicle to hide additional profits from its cruise operation").

Accordingly, the measure of damages is not merely the amount of revenue exceeding expenses. The profit is any net operating surplus that was distributed to Victoria Estates' owners or related entities rather than utilized to operate the Club. This showing is critical. As noted above, owners are statutorily and contractually obligated to pay all expenses of the Club. Even the Association agrees that "any assessment that is collected that is not reinvested into the community is considered a profit, which is illegal…" Iannace Dep. 122:10-123:5. Hence, if the net operating surplus is reinvested or retained by Victoria Estates to cover the Club's expenses, Plaintiffs are not entitled to that surplus as damages.

E. Profit Is Required for Liability, Not Just a Setoff Defense.

Plaintiffs seek to slough off the expenses applied to the Club Fee as "the basis for Defendant's Third Affirmative Defense seeking 'setoff-recoupment.'" Motion at 7 n.5. While the Victoria Defendants did raise the Third Affirmative Defense in an abundance of caution, for the reasons discussed in Sections A and B above, the existence of profit is required for the Club Fee to violate Section 720.308 and therefore be illegal in some fashion. Simply put, the plain text of Section 720.308 and *Gundel* require it. If, as the evidence shows, the expenses incurred exceed Club Fee revenues, there can be no violation of Section 720.308 and no illegal fee. The Victoria Defendants' Third Affirmative Defense has no bearing on this question, and therefore, no bearing on these cross-motions for summary judgment.

II. THE UNDISPUTED EVIDENCE SHOWS THE VICTORIA DEFENDANTS DID NOT EARN PROFIT ON CLUB FEES.

When the correct standard for determining liability is applied, Plaintiffs' motion for partial summary judgment must be denied. The record contains substantial, material—indeed, undisputed—evidence that the Victoria Defendants did not earn any profit on Club Fees during the class period. As the evidence discussed at pp. 4-7 above shows, the Club consists of three parts: (a) the pool, portions of the clubhouse, and other features operated by the HOA; (b) the golf course and portions of the clubhouse such as the pro shop and restaurant, operated by Hampton Golf; and (c) other components operated by Victoria Estates. *See supra* at 4 (citing Scalione Dep. 30:14-25; 62:5-8; 69:25-70:4; 97:13-19; 98:10-19). In their Motion, Plaintiffs ignore the two components of the Club not operated by the HOA.

The expenses associated with each component of the Club are separately calculated. Thus, the HOA "does not have any involvement with the operation of other portions of the club, including the restaurant and golf course." The expenses associated with those portions of the Club "are accounted for and paid for outside of the homeowners association." *See supra* at 4 (citing Scalione Dep. 45:11-22; 46:7-16). Plaintiffs ignore all non-HOA-incurred expenses in their Motion.

Moreover, the Declaration's framework for "how club operating costs could be treated" is "not consistent with how it has been treated" during the entire class period. As a "matter of operation," Victoria Estates "collected the club fee and utilized those collections to pay for club operating costs." *See supra* at 5 (citing Scalione Dep. 29:14-19; 31:18-21; 37:18-38:3; 38:15-21; 48:9-18). Plaintiffs ignore these record facts in their analysis of the Club.

The residents of Kings Gate "haven't been paying the expenses associated with the golf course." Scalione Dep. 64:3-4. Rather, Victoria Estates "utilized that club fee to pay for the operating expenses in the normal course of operating the course, without charging them back." *Id.*

at 64:14-16. As the Victoria Defendants' corporate representative Stephen Scalione testified: "We have paid for operating expenses associated with the club and not charged back the homeowners directly for those expenses, but in fact offset … any income collected by the club fee using any incomes collected by the club fee to pay those operating expenses." *See supra* at 5 (citing Scalione Dep. 63:24-64:4; 64:18-65:4). The same is true with respect to the restaurant and "other activities, expenses … that the declarant has done directly[,] not through the HOA." Scalione Dep. 30:17-25). And the Victoria Defendants have never "issued an assessment to the HOA for collection of additional expenses related to operation of the golf course or restaurant[.]" Iannace Dep. 57:4-7. Even though Plaintiffs Spradlin, Bednaz, and O'Donnell were on the HOA board and knew all this, Plaintiffs again ignore all these expenses in their superficial analysis.

In sum, as Mr. Scalione explained, Victoria Estates offset against the club fees "all operating expenses associated with the restaurant, certain capital repairs or replacements such as the irrigation pump … , renovation of certain parts of the club, including the restaurant, and then over the year real estate taxes we paid, insurance expenses we paid, and other general kind of expenses and costs." *See supra* at 7 (citing Scalione Dep. 49:4-16).

In addition, Victoria Estates has provided deficit funding for shortfalls in revenue by various components of the Club. *See supra* at 7 (citing Scalione Dep. 153:6-16; 48:9-18).

The Victoria Defendants' accounting expert, Mr. Stewart, evaluated the finances of the Club and concluded that no profit was earned on Club Fee charges to Kings Gate Club members. *See Defs.' NOF*, Ex. 8 (Stewart Decl.) at ¶ 27. Rather, the Club's financial statements show the Club suffered a $6.5 million deficit for the class period. *Id.* ¶ 12 & Table 1. Moreover, even when the reported deficit is adjusted to isolate the effect of non-assessment revenue-generating activities, a deficit remains for the class period. *Id.* ¶ 19 & Table 3. His expert testimony is unrebutted.

Plaintiffs' only argument for ignoring these expenses is that they weren't included in the HOA's budgets for its portion of the Club's operating expenses and weren't disclosed to the homeowners. Motion at 7 n.5 & 9. This argument is meritless for two reasons.

First, it confuses the obligations of an HOA and a private club owner. Victoria Estates is a private club owner, not an HOA. *See* 720.301(9) (defining "homeowners' association" as a "Florida corporation responsible for the operation of a community … in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel"); 720.301(1) (defining "assessment" as sum payable to "the ***association***" ***or*** to "the ***developer*** or other owner of common areas, or to recreational facilities and other properties serving the parcels by the owners of one or more parcels as authorized in the governing documents, which if not paid by the owner of a parcel, can result in a lien against the parcel").

Nothing in the HOA Act requires a private club owner like Victoria Estates to budget expenses through the HOA or disclose those budgeted expenses to Club members. An HOA, but not a private club owner like Victoria Estates, is subject to greater regulation. *Compare* Section 720.308(1)(a) & (3) (requiring private club owners to tie assessments to an "annual budget" or "adopted budget" without specifying who must create or adopt the budget) *with* Section 720.303(4)(b)(1)(f) (requiring an "association" to post on a website "the annual budget") *and* 720.303(5)(a) (official records of association must be available for inspection) *and* 720.303(6)(a) (association budgets must be made available to members). By seeking to impose on Victoria Estates, as a private club owner, an extra burden not contemplated by the Legislature, Plaintiffs contravene the recognized statutory purpose of not "unduly impairing the ability of associations [and by inference, club owners] to perform their functions." Motion at 8 (citing Section 720.302(1), Fla. Stat.).

Second, the unrefuted testimony of Mr. Scalione is that the expenses incurred by Hampton Golf (and Pope Golf, before it) were budgeted and approved by Victoria Estates. Scalione Dep. 51:25-52:6; 71:22-72:5. This alone is sufficient to satisfy the minimal budget adoption and approval requirements for a private club established by Section 720.308(1)(a) and (3). At bottom, this testimony fatally undermines Plaintiffs' repeated assertion that the expenses incurred by Victoria Estates were never budgeted.

For purposes of Plaintiffs' motion for summary judgment, the Court is required to view all the evidence cited in this Opposition in a light most favorable to the Victoria Defendants, the non-moving parties. *Baum v. Becker & Poliakoff, P.A.*, 351 So. 3d 185, 189 (Fla. 5th DCA 2022). In addition, for purposes of Plaintiffs' Motion, the Court must construe all factual inferences in a light most favorable to the Victoria Defendants. *Bensen v. Privilege Underwriters Reciprocal Exch.*, 401 So. 3d 390, 394 (Fla. 6th DCA 2024). When viewed from that perspective, the Victoria Defendants introduced material fact witness testimony, expert witness testimony, and exhibit evidence, all of which create disputed issues of material fact refuting Plaintiffs' central allegation that the Club Fee violated Section 720.308.

CONCLUSION

Because Plaintiffs use the wrong standard for determining liability and damages, Plaintiffs' motion for partial summary judgment on liability should be denied. Because the existence of an illegal profit is the correct standard for determining liability and damages, the Court should enter partial summary judgment in favor of the Victoria Defendants, ruling that the standard for liability is whether the Victoria Defendants earned any profit from Club Fees, an issue on which Plaintiffs bear the burden of proof, and the standard for damages, assuming liability, is the amount of any such profit earned.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 18, 2026, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Filing Portal, which will send an electronic notice to all counsel and parties of record.

/s/ D. Matthew Allen
Attorney