

**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, **CLASS REPRESENTATION**

Plaintiff,

Case No.: 25000728CA

v.

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

Defendants.

**SECOND AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR JURY TRIAL**

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, hereby file this Second Amended Complaint pursuant to this Court's November 10, 2025, ruling granting Defendants, Victoria Estates, Ltd. and Benderson-Victoria, L.C.'S, Motion to Dismiss for failure to include Kings Gate Homeowners Association, Inc. as an indispensable party as argued by the Defendants, Accordingly, Plaintiffs hereby sue Defendants, Victoria Estates, Ltd., Benderson-Victoria, L.C., and Kings Gate Homeowners Association, Inc., and allege:

Jurisdiction, Parties, and Venue

1. This is a class action lawsuit for violations of the Homeowners' Association Act, chapter 720, Florida Statutes, seeking injunctive relief and damages that exceed Fifty Thousand Dollars (\$50,000), exclusive of interest, costs, and attorney's fees.

2. Plaintiffs reside in Charlotte County, Florida.

3. Defendant, Victoria Estates, Ltd. ("**Victoria Estates**"), a Florida limited partnership, with Defendant, Benderson-Victoria, L.C. ("**Benderson-Victoria**"), a Florida limited liability company, as its general partner. Benderson-Victoria, as the general partner of Victoria Estates, is jointly and severally liable for all obligations of Victoria Estates under Florida law.

4. Defendant, Kings Gate Homeowners Association, Inc. ("**Kings Gate HOA**" or "**HOA**"), is a Florida corporation.

5. Venue is proper in Charlotte County because the property at issue and the causes of action set forth below accrued in Charlotte County.

6. All conditions precedent to the maintenance of this action have occurred, have been performed, or have been waived.

Background Information

7. Victoria Estates is the developer of a residential community known as "**Kings Gate**," which is an age 55 and older gated community located in Port Charlotte, Charlotte County, Florida.

8. Kings Gate is a “community” governed by the Homeowners’ Association Act, chapter 720, Florida Statutes and created by “Declaration of Restrictive Covenants – Kings Gate Subdivision,” which Victoria Estates recorded on January 20, 1998, in the Official Records of Charlotte County, Florida Book OR 1584, Pages 1060-1197, attached hereto as **Exhibit A** (the “**Master Declaration**”).

9. Victoria Estates included in the Kings Gate community’s Master Declaration the “**Kings Gate Club**,” which includes a clubhouse, pool, and other amenities.

10. The Kings Gate Club is owned by Victoria Estates.

11. The Master Declaration is also the “governing” document of the Kings Gate Club under the Homeowners’ Association Act, section 720.301(8), Florida Statutes, because Victoria Estates included the Kings Gate Club in that declaration for the community.

12. Under Article 6, section 5, of the Master Declaration, Kings Gate homeowners are required to pay “**Club Charges**” for the Kings Gate Club as a condition of parcel ownership in the community.

13. Failure to pay Club Charges results in a lien and foreclosure action against the parcel pursuant to Article 6, section 14 of the Master Declaration.

14. Accordingly, Club Charges are “assessments” under the Homeowners’ Association Act, section 720.301(1), Florida Statutes (“‘Assessment’ or ‘amenity fee’ means a sum or sums of money payable to the *association* [or] to the *developer*

. . . as authorized in the governing documents, *which if not paid by the owner of a parcel, can result in a lien against the parcel.*") (Emphasis added).

15. Under Article 6, section 5, Club Charges include both “**Club Operating Costs**” and the “**Club Fee.**”

16. Under the Homeowners’ Association Act, any “assessment” is subject to the requirements of section 720.308, Florida Statutes, which limits an “assessment” to “a proportional share of expenses.”

17. In the Kings Gate Community, the assessments for Club Charges violate section 720.308 because it includes a “Club Fee” that the governing documents set as a fixed amount payable to Victoria Estates, which is not in the homeowner’s proportional share of Kings Gate Club’s expenses.

18. Article 6, section 5(i), of the Master Declaration provides, in pertinent part: “Each Owner shall pay a monthly Club Fee, without setoff or deduction, to the Declarant [Victoria Estates], or its designee” That monthly Club Fee is a fixed amount that increases each year and is paid in perpetuity by all Kings Gate homeowners to Victoria Estates. *See* First Amendment to the Master Declaration, providing for a Club Fee that increases each year at a fixed amount annually and is paid in perpetuity by all Kings Gate homeowners, recorded March 16, 2006 by Victoria Estates in the Official Records of Charlotte County, Florida, Book 2926, Pages 2108-2116, attached hereto as **Exhibit B**.

19. In addition, Article 6, section 5(v), of the Master Declaration, mandates that “[t]he Owners shall collectively bear all expenses associated with

the Club so that the Declarant [Victoria Estates] shall receive the Club Fee *without deduction of expenses or charges in respect of the Club.*” (Emphasis added).

20. Separate from the Club Fees paid to Victoria Estates, Article 6, section 5(ii) of the Master Declaration, provides: “In addition to the Club Fee, each Owner agrees and covenants to pay and discharge, in a timely fashion when due, *its pro rata portion . . . of the Club Operating Costs.*” (Emphasis added).

21. Club Operating Costs are defined under the Master Declaration, Article 1, section 14, as: “All costs (as such term is used in its broadest sense) of owning (excluding Declarant’s [Victoria Estates’] debt service) operating, managing, maintaining, insured the Club, including, but not limited to trash collection, utility charges, maintenance, management fees, reserves, repairs, refurbishments, payroll and payroll costs, working capital, ad valorem or other taxes (excluding income taxes of the Declarant), assessments, costs, expenses, levies and charges of any nature which may be levied, imposed or assessed against or in connection with the Club.”

22. Victoria Estates recorded subsequent amendments to the Master Declaration in 2018 and 2024, copies of which are attached as **Exhibit C** (2018 Amendment) and **Exhibit D** (2024 Amendment), neither of which altered the Club Fee paid to Victoria Estates.

23. Further, Victoria Estates currently delegates the collection of assessments for its Kings Gate Club, both Club Operating Costs and Club Fees, to the Defendant, Kings Gate HOA, pursuant to the Master Declaration.

24. Article 6, section 6 of the Master Declaration, provides that “[u]nless designated to the contrary by Declaration [Victoria Estates], the Association shall collect the Club Charges at the same time it collects Assessments from the Owners. Upon collection, the Association shall be deemed to hold the same in trust, *for the Declarant* and for payments as required. . . . During the period when the Association is operating as the Club Operating Entity¹ pursuant to the Club Covenants, then the Association is granted the conditional license to retain those portions of the Club Charges *other than the Club Fee* for the strict purpose of paying the expenses associated with the Club.” (Emphasis added).

25. Simply put, the Master Declaration requires the Kings Gate HOA to administratively collect all Club Charges – *first* collecting and paying all Club Fees to Victoria Estates, *then* collecting all Club Operating Costs, which are paid on a pro rata basis by each homeowner for all club operation and maintenance expenses – because Victoria Estates maintains the sole right to designate who administratively collects its Club Fees pursuant to the Master Declaration. Otherwise, each homeowner faces a lien and foreclosure action for nonpayment. *See* Ex. A, Master Declaration, Article 6, section 14. Creation of the Lien and Personal Obligation (“Each Owner . . . shall be deemed to have covenanted and agreed that the Club Charges, Club Fees, and/or other charges and fees set forth

¹ The Master Declaration, Article 1, section 13, defines “Club Operating Entity” as “[t]he entity operating and managing the Club, at any time, *which may be the Declarant or an entity employed or hired by Declarant . . .*” (Emphasis added).

herein . . . shall be a charge and continuing lien in favor of the Declaration [Defendants] encumbering the Homesite Such lien may also be enforced by the Club Operating Entity, however, the claim of the Declarant [Defendants] for Club Fees is subject to the provisions of Section 15 below, paramount to all other claims. Further, the lien created by this Section is superior to the lien of the Association for Assessments.”).

26. Defendants, Victoria Estates and Benderson-Victoria, have disregarded the provisions of the Homeowners’ Association Act that protect residential parcel owners by prohibiting assessments for such Club Fees, which are not assessments levied in the residential parcel owner’s proportional share of expenses. Defendant, Kings Gate HOA, is simply the current designee being used by Victoria Estates and Benderson-Victoria and is being made a party to this lawsuit by virtue of the Court’s Order to include Kings Gate HOA in order to fully adjudicate the claims.

Class Action Allegations

27. This is a class action to permanently enjoin Victoria Estates from continuing to impose assessments for Club Fees and to recover the unlawful assessments for such Club Fees paid to Victoria Estates.

28. For Plaintiffs’ claim for injunctive relief, the proposed class is defined as follows (“**Kings Gate Injunctive Relief Class**”):

All persons who currently own a home in Kings Gate and are obligated to pay Club Fees pursuant to the Kings Gate community’s Master Declaration.

29. For Plaintiffs' claim for damages, the proposed claim is defined as follows ("**Kings Gate Damages Class**"):

All persons who currently own, or previously owned a home in Kings Gate, beginning June 9, 2021 through the present, and have paid Club Fees pursuant to the Kings Gate community's Master Declaration.

The Kings Gate Injunctive Relief Class and the Kings Gate Damages Class is referred to collectively as the "**Class.**"

30. While the exact number of class members is unknown to Plaintiffs at this time, there are more than 900 homes in Kings Gate, and the identities of the current and former homeowners are within the knowledge of and can be easily ascertained from the records of Victoria Estates and the management company for the Kings Gate community.

31. The Class is so numerous that joinder of all its members is impractical.

32. Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs, like all class members, purchased homes in Kings Gate and have paid and are obligated to pay Club Fees under the Master Declaration.

33. This action poses numerous questions of law and fact that are common to Plaintiffs and the class members, and those common questions predominate over any questions affecting only individual members of the Class.

34. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in handling class actions involving, among other things, community associations and consumer rights. As a result,

Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

35. Plaintiffs bring this class action under Florida Rule of Civil Procedure 1.220(b)(2) and/or (c)(4) because Victoria Estates has acted or refused to act on grounds generally applicable to all the members of the Class, thereby making final injunctive relief or declaratory relief concerning the Class as a whole appropriate.

36. Plaintiffs also bring this class action under Florida Rule of Civil Procedure 1.220(b)(3) because a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the amounts of the claims of each individual member of the Class are small relative to the cost and scope of this litigation, and due to the financial resources of Victoria Estates, none of the members of the Class could afford to seek legal redress individually for the misconduct alleged in this case. Absent a class action, that misconduct would go unremedied. Further, individual litigation would significantly increase the delay and cost to all parties and would burden the judicial system. There will be no manageability problems with prosecuting this case as a class action.

Court I – Injunctive Relief
(Victoria Estates and Benderson-Victoria)

37. Plaintiffs, individually, and on behalf of all those similarly situated in the Kings Gate Injunctive Relief Class, reallege and incorporate the allegations in paragraphs 1 to 36 above.

38. This is an action by Plaintiffs and the proposed Kings Gate Injunctive Relief Class for injunctive relief to prohibit Victoria Estates from continuing to violate section 720.308, Florida Statutes, by imposing and mandating payment of Club Fees by Plaintiffs and other class members pursuant to the Master Declaration, which are not in a proportional share of the Kings Gate Club's expenses.

39. Plaintiffs and other class members have a clear legal right under section 720.308, Florida Statutes, to prohibit such conduct.

40. Victoria Estates' imposition and mandating payment of Club Fees by Plaintiffs and other class members under the Master Declaration is a direct violation of section 720.308, Florida Statutes, and is a violation that is continuing in nature.

41. If Plaintiffs or other class members refuse to pay Club Fees imposed by Victoria Estates under the Master Declaration, then they risk losing not only their home in the foreclosure of a lien for unpaid assessments, but also "all personal property located thereon owned by the Owner." *See* Ex. A, Master Declaration, Article 6, § 14.

42. In addition, the Master Declaration purports to make the payment of Club Fees a "personal obligation" of the Kings Gate homeowners, as well as their "heirs, devisers [sic], personal representatives, successors or assigns." *Id.*

43. Lastly, Victoria Estates' lien for unpaid Club Fees is purportedly "superior to the lien" of the Kings Gate Homeowners' Association for assessments, contrary to section 720.3085, Florida Statutes. *Id.*

44. Without the requested injunctive relief, Plaintiffs and other members of the Class will suffer irreparable harm from such continuing conduct by Victoria Estates under the Master Declaration.

45. Plaintiffs have retained the undersigned counsel to prosecute this action and are entitled to the recovery of their reasonable attorneys' fees and costs pursuant to section 720.305, Florida Statutes, and Article 6 of the Master Declaration, including section 13, and Section 57.105(7), Florida Statutes.

Count II – Injunctive Relief
(Kings Gate HOA)

46. Plaintiffs, Individually and on behalf of those similarly situated in the King's Gate Injunctive Relief Class, reallege and incorporate the allegations in Paragraphs 1 to 36 above.

47. This is an action by Plaintiffs and the proposed Kings Gate Injunctive Relief Class for Injunctive relief to prohibit Kings Gate HOA from continuing to collect club fees as they are required to do by the Defendants, Victoria Estates, LTD and Benderson Victoria, which violates section 720.308 Florida Statutes.

48. Plaintiffs and other class members have clear legal right under section 720.308 Florida Statutes to prohibit such conduct.

49. Victoria Estates' imposition and mandating payment of club fees by Plaintiffs (no matter who is designated to collect the club fees) and other class members under the master declaration is a direct violation of section 720.308, Florida Statutes and is a violation that is continuing in nature.

50. If Plaintiffs or other class members refuse to pay Club Fees imposed by Victoria Estates under the Master Declaration, then they risk losing not only their home in the foreclosure of a lien for unpaid assessments, but also "all personal property located thereon owned by the Owner." See Ex. A, Master Declaration, Article 6, § 14.

51. In addition, the Master Declaration purports to make the payment of Club Fees a "personal obligation" of the Kings Gate homeowners, as well as their "heirs, devisers [sic], personal representatives, successors or assigns." *Id.*

52. Lastly, Victoria Estates' lien for unpaid Club Fees is purportedly "superior to the lien" of the Kings Gate Homeowners' Association for assessments, contrary to section 720.3085, Florida Statutes. *Id.*

53. Without the requested injunctive relief, Plaintiffs and other members of the Class will suffer irreparable harm from such continuing conduct by Victoria Estates which requires the Kings Gate HOA to collect the illegal fees under the Master Declaration.

**Count III – Damages Against Victoria Estates and Benderson-Victoria
(Violation of Section 720.308, Florida Statutes)**

54. Plaintiffs, individually, and on behalf of all those similarly situated in the Kings Gate Damages Class, reallege and incorporate the allegations in paragraphs 1 to 36 above.

55. This is an action by Plaintiffs and the proposed Kings Gate Damages Class for damages against Defendants, Victoria Estates and Benderson-Victoria, from violating section 720.308, Florida Statutes.

56. Victoria Estates has imposed and mandated payment of Club Fees as an “assessment” under the Homeowners’ Association Act, which are not in each homeowner’s proportional share of expenses. By definition under the Master Declaration, Club Fees are amounts that exceed each homeowner’s proportional share of the King Gate Club’s expenses.

57. Plaintiffs and other class members have suffered damages as a result of having to pay assessments for Club Fees in violation of the Homeowners’ Association Act.

58. Plaintiffs have retained the undersigned counsel to prosecute this action and are entitled to the recovery of their reasonable attorneys’ fees and costs pursuant to section 720.305, Florida Statutes, and Article 6 of the Master Declaration, including section 13, and Section 57.105(7), Florida Statutes.

Request For Relief

WHEREFORE, Plaintiffs, individually and on behalf of all those similarly situated in the Class, request the following relief:

- (a) an order certifying that this action is properly maintainable as a class action under Florida Rule of Civil Procedure 1.220(b)(2) and/or (c)(4), and (b)(3), appointing Plaintiffs and the undersigned attorneys to represent the Class, and requiring reasonable and adequate notice to be given to prospective members of the Class following certification;
- (b) under Count I, on behalf of the Plaintiffs and the proposed Kings Gate Injunctive Relief Class, a judgment enjoining Defendants, Victoria Estates and Benderson-Victoria, from imposing and mandating payment of Club Fees by Plaintiffs and other class members under the Master Declaration in violation of section 720.308, Florida Statutes;
- (c) under Count II, on behalf of the Plaintiffs and proposed Kings Gate Injunction Relief Class, a judgment enjoining the Kings Gate HOA from collection of illegal Club Fees as Kings Gate HOA is required by Victoria Estates and Benderson-Victoria to collect on its behalf and distribute to Victoria Estates and Benderson-Victoria.
- (d) under Count III, on behalf of the Plaintiffs and the proposed Kings Gate Damages Class, a judgment for damages against Defendants, Victoria Estates and Benderson-Victoria, in the amount of Club Fees

paid by the Plaintiffs and other class members pursuant to the Master Declaration in violation of section 720.308, Florida Statutes, including sales tax charged on such amounts, plus prejudgment interest;

- (e) a judgment against Defendants, Victoria Estates and Benderson-Victoria, for reasonable attorneys' fees and costs pursuant to the Homeowners' Association Act, section 720.305, Florida Statutes, and the Master Declaration, including Article 6, section 13, and Section 57.105(7), Florida Statutes; and
- (f) such additional relief as the Court deems fair and reasonable to protect the rights and interests of Plaintiffs and the Class.

Demand For Jury Trial

Plaintiffs, individually and on behalf of the Class, demand a trial by jury on all issues so triable against Defendants.

[Attorney's signature appears on the following page]

CERTIFICATE OF SERVICE

I 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 18th day of November, 2025.



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