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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA
CIVIL DIVISION

SLADE R. CHELBIAN, individually and on behalf of all similarly situated persons,

Plaintiff,

Case No.: 2020-CA-002033

v.

TAYLOR MORRISON HOME CORPORATION; AV HOMES, INC.; and AVATAR PROPERTIES INC.,

Defendants,
_____/

STIPULATED AND AGREED ORDER ON CLASS CERTIFICATION

Pursuant to stipulation and agreement of the parties, the Court certifies a class under Florida Rule of Civil Procedure 1.220(b)(3).

INTRODUCTION

Plaintiff Slade R. Chelbian ("Plaintiff") alleges that Avatar Properties Inc. ("Avatar"), the developer of the Bellalago community, together with its parent company, Taylor Morrison Home Corporation ("Taylor Morrison") (collectively "Defendants"), is charging homeowners improper mandatory "Club Membership Fees." Plaintiff alleges that Avatar recorded governing documents under which failure to pay Club Membership Fees would result in a lien on the property and potential foreclosure. Avatar denies that the Club Membership Fees are improper and asserts it did nothing wrong.

On February 7, 2022, the Plaintiff and the Defendants in this case filed a *Joint Motion for Stay*, which stated that "[t]he present case contains nearly identical causes of action as those in the class action lawsuit of *Norman Gundel* [et al.]," and "[b]ecause of the similarity between the instant case and [*Gundel*], it would be a waste of time and resources to actively litigate the instant

lawsuit pending the outcome [of the *Gundel* appeal]." Thereafter, this Court entered an *Agreed Order on Joint Motion to Stay* (Feb. 24, 2022), which stayed the proceedings in this case until the resolution of the appeal in the *Gundel* case.

A panel of the Sixth District Court of Appeal invalidated a similar "Club Membership Fee" created by Avatar, under similar but not identical governing documents, holding that the fee violated the Homeowners Association Act. *Avatar Properties, Inc. v. Gundel*, 372 So. 3d 715 (Fla. 6th DCA 2023) ("*Gundel*") (holding that section 720.308, Florida Statutes, prohibits assessments that exceed a proportionate share of expenses, and affirming judgment that awarded damages and permanently enjoined developer from continuing to collect Club Membership Fees from a class of homeowners) *review denied*, SC2023-0946, 2023 WL 7220822 (Fla. Nov. 2, 2023). Thereafter, on December 1, 2023, following issuance of the Sixth District's decision in *Gundel*, Defendants voluntarily suspended collection of the Club Membership Fee from Bellalago residents, "reserv[ing] all of its rights… including the right to collect the suspended [Club] Membership Fees."

The trial court in *Gundel* also certified in relevant part a class of residents of the community who paid the fee. The Second District Court of Appeal affirmed the class certification order in *Gundel*. *Gundel v. AV Homes, Inc.*, 290 So. 3d 1080 (Fla. 2d DCA 2020) (affirming order on class certification and revising class, as to count for damages, to include all current and former homeowners who paid the Club Membership Fee).

On September 10, 2024, the parties entered into a stipulation regarding streamlining the case. That stipulation provided that all claims against AV Homes were dismissed; Counts I, V, VI, and VIII of the complaint were dismissed; Plaintiff would file an amended complaint, which Defendants would answer; and Defendants would agree to a stipulated certification of a class.

Pursuant to this stipulation, the parties agree to certification of a class on Counts II, III, and

IV of the amended complaint as follows:

THE CLASS DEFINITION

> The parties agree to certification of the following **damages** class:
>
> All persons who currently own, or previously owned, during the time period August 13, 2016 through present, a home in Bellalago and have paid, or have been obligated to pay, a Club Membership Fee under the Club Plan.

The parties agree to certification of the following class with respect to Plaintiff's claims for injunctive relief:

> All persons who, as of the date this order is entered by the Court, own a home in Bellalago and have paid, or have been obligated to pay, a Club Membership Fee under the Club Plan.

STANDING

The parties agree and the Court finds that Plaintiff has standing to represent the proposed class in this case. Plaintiff and the class members allege that they have suffered an actual injury through Defendants' collection of Club Membership Fees—a purportedly unlawful assessment prohibited by Section 720.308. Plaintiff seeks to recover damages consisting of previously-collected Club Membership Fees, and to invalidate provisions in the governing documents that would continue to obligate homeowners to pay Club Membership Fees in perpetuity. And they are redressable in this proceeding: a favorable decision would declare Defendants' conduct unlawful under the Florida Homeowners Association Act ("HOA Act") and enjoin Defendants from collecting the Club Membership Fees, and award Plaintiff and the class members the damages they seek.

THE CLASS IS ADEQUATELY DEFINED AND CLEARLY ASCERTAINABLE.

Rule 1.220(c)(2)(D)(ii) requires "a definition of the alleged class," which contains "some degree of certainty." *Harrell v. Hess Oil and Chem. Corp.,* 287 So. 2d 291, 294 (Fla. 1973); *Paradise Shores Apartments, Inc. v. Practical Maint. Co., Inc.,* 344 So. 2d 299, 302 (Fla. 2d DCA 1977). That is, the proposed class should be "adequately defined" and "clearly ascertainable." *See, e.g., Alderwoods Grp., Inc. v. Garcia,* 119 So. 3d 497, 507 n.8 (Fla. 3d DCA 2013); *Little v. T-Mobile USA, Inc.,* 691 F.3d 1302, 1304 (11th Cir. 2012). "Clearly ascertainable" means the proposed class definition "contains objective criteria that allow for class members to be identified in an administratively feasible way." *Karhu v. Vital Pharm., Inc.,* 621 Fed. Appx. 945, 946 (11th Cir. 2015).

Here, the Bellalago Club Plan uniformly requires every homeowner to pay Club Membership Fees, affecting each homeowner in the same way. The proposed class therefore consists of current and former Bellalago homeowners who paid Club Membership Fees under the Club Plan within the statute of limitations period. *See* Complaint at ¶ 57. The parties agree and the Court finds that this definition provides a sufficient degree of certainty and objective criteria which allows the identities of potential class members to be readily ascertained and otherwise satisfies the requirements of Rule 1.220(c)(2)(D)(ii). *See, e.g., Harrell,* 287 So. 2d at 294; *Paradise Shores,* 344 So. 2d at 302.

THE CLASS MEETS THE REQUIREMENTS OF RULE 1.220(A).

A. Numerosity

Numerosity is satisfied because Bellalago contains more than 1,000 homes, and each homeowner is obligated to pay the Club Membership Fee assessments. *See, e.g., Terry L. Braun, P.A. v. Campbell,* 827 So. 2d 261, 266 (Fla. 5th DCA 2002) (50 class members is sufficient to establish impracticability of joinder).

B. Commonality

Commonality means "there are common questions of law or fact among the members of the class." Fla. R. Civ. P. 1.220(a)(2). Plaintiff's claims—seeking declaratory relief, injunctive relief, and damages—are based on Defendants' collection of the Club Membership Fees. The parties agree that Plaintiff's claims raise a question of common interest and seek the same result for himself as the class members—a determination that the Club Membership Fees are unlawful under the HOA Act.

C. Typicality

"The key inquiry for a trial court when it determines whether a proposed class satisfies the typicality requirement is whether the class representative possesses the same legal interest and has endured the same legal injury as the class members." *Sosa v. Safeway Premium Fin. Co.,* 73 So. 3d 91, 114 (Fla. 2011) (citing *Morgan v. Coats,* 33 So. 3d 59, 65 (Fla. 2d DCA 2010)). Typicality is established if the class representative has based his claims on the same legal theories and suffered the same legal injury as those in the class. *Id.* at 114–15 (citations omitted).

The parties agree and the Court finds that typicality is satisfied. Plaintiff alleges that the Defendants used a Club Plan to collect Club Membership Fees from thousands of homeowners. More than 1,000 homes comprise Bellalago, with thousands of current and former owners, all subject to the same obligation. Plaintiff alleges the Club Membership Fees violate the HOA Act because they are unlawful assessments that are not based on each member's proportional share of expenses. *See, e.g.,* Fla. Stat. §§ 501.211, 720.308. Thus, Plaintiff, as a homeowner in Bellalago, suffered the same alleged injury as all other members of the class, and his claims are based on the same legal theories as the class.

D. Adequacy

"A trial court's inquiry concerning whether the adequacy requirement is satisfied contains

two prongs. The first prong concerns the qualifications, experience, and ability of class counsel to conduct the litigation. The second prong pertains to whether the class representative's interests are antagonistic to the interests of the class members." *Sosa,* 73 So. 3d at 115 (citing *City of Tampa v. Addison,* 979 So. 2d 246, 255 (Fla. 2d DCA 2007)).

The parties agree and the Court finds that Plaintiff and his counsel satisfy the adequacy requirement. Plaintiff is authorized and willing to serve as the class representative, he understands his duties and obligations, and he is willing to fulfill them. *See Sosa,* 79 So. 3d at 115 ("In this case, Sosa was willing and able to take an active role as class representative and advocate on behalf of all class members.").

The attorney competence prong evaluates whether the representative's counsel is qualified, experienced, and generally able to conduct the proposed litigation. In *Gundel*, the same counsel was deemed adequate to represent the class in challenging, and ultimately invalidating, a similar Club Membership Fee. *See also, id.* at 115 ("Sosa's legal team was competent and experienced, giving them the ability to advocate effectively on behalf of Sosa and the putative class members.").

CERTIFICATION IS APPROPRIATE UNDER RULE 1.220(B)(2) AND (B)(3).

A. The Class Meets the Criteria for (b)(2) Certification.

Certification under Rule 1.220(b)(2) is appropriate when the defendant "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fla. R. Civ. P. 1.220(b)(2). This allows "resolution of class claims that rest on the same grounds and apply equally to all members of the class." *Freedom Life Ins. Co. of Am. v. Wallant,* 891 So. 2d 1109, 1117 (Fla. 4th DCA 2004). The Rule 1.220(b)(2) requirement is met here, where the Defendants have acted in a consistent manner toward members of the class. *Id.* at 1117; *Holmes v. Cont'l Can Co.,* 706 F.2d 1144, 1155 n.8 (11th Cir. 1983).

This case involves claims that Defendants created and implemented the Club Membership Fee in the governing documents and collected the Club Membership Fees from all Bellalago residents, and that such creation, implementation, and collection was improper under the HOA Act. The parties agree that this satisfies the cohesiveness requirement because the parties' respective claims and defenses will rise and fall on the Court's ruling on whether Defendants are subject to and/or violated the HOA Act.

Plaintiff also seeks certification of his damages claim in Count IV under subparagraph (b)(3). Rule 1.220(b)(3) requires predominance (common questions of law and fact predominate over "any question of law or fact affecting only individual members of the class") and superiority ("class representation is superior to other available methods for the fair and efficient adjudication of the controversy").

B. Common questions predominate.

"[C]ommon questions of fact predominate when the defendant acts toward the class members in a similar or common way. The predominance requirement is more stringent than commonality because, to satisfy this requirement, common questions must not only exist but also predominate and pervade." *Sosa,* 73 So. 3d at 111 (citation omitted). This occurs when the plaintiff can prove the case of the other class members by proving his or her own individual case. *See id.* at 112–13; *Klay v. Humana, Inc.,* 382 F.3d 1241, 1254 (11th Cir. 2004) ("Common issues of fact and law predominate if they have a direct impact on every class member's effort to establish liability and on every class member's entitlement to injunctive and monetary relief." (internal quotations omitted)). Resolution of the legality of the Club Membership Fee is the same for each class member. This is the key remaining issue in the litigation. Therefore, common issues predominate.

C. A class action is superior to other available methods.

Superiority is based on four factors: (a) the respective interests of each member of the class

in individually controlling the prosecution of separate claims, (b) the nature and extent of any pending litigation to which any member of the class is a party and in which any question of law or fact controverted in the subject action is to be adjudicated, (c) the desirability of concentrating the litigation in one forum, and (d) any difficulties in the management of the claim on behalf of a class. Fla. R. Civ. P. l.220(b)(3)(A)–(D). The parties agree and the Court finds that the considerations for superiority are satisfied.

In addition, the parties are not aware of any other similar class actions or other litigation against Defendants involving the Bellalago Club Plan or the Bellalago Club Membership Fee by any proposed class member, so there is no threat of inconsistent adjudications. *See* Fla. R. Civ. P. l.220(b)(3)(B). Finally, litigating this action in one forum will allow the parties and the Court to conserve resources, prevent duplication of effort, provide for efficient resolution, and prevent inconsistent results.

CONCLUSION

It is therefore ordered:

1. Class certification pursuant to the terms of this stipulation is hereby granted.

2. Plaintiff Slade R. Chelbian is appointed as class representative.

3. Plaintiffs' counsel J. Daniel Clark, J. Carter Anderson, and John Marc Tamayo are designated as class counsel.

4. The parties shall submit to the Court an agreed-to form of class notice and a notice schedule for approval within 45 days of the date of this Stipulated Class Certification Order.

SO ORDERED.

eSigned by YOUNG, THOMAS W
on 11/12/2024 10:43:35 i5yXV76e

TOM YOUNG
Circuit Court Judge

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