

**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,

CLASS REPRESENTATION

v.

Case No.: 2020-CA-002033

**TAYLOR MORRISON HOME
CORPORATION and AVATAR
PROPERTIES, INC.,**

Defendants.

_____ /

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

The plaintiff, Slade R. Chelbian, individually and on behalf of all those similarly situated, sues the defendants, Taylor Morrison Home Corporation (“**Taylor Morrison**”) and Avatar Properties, Inc. (“**Avatar**”), and alleges:

Introduction

1. AV Homes, Inc. (“AV Homes”) through its subsidiary Avatar, developed a residential community in which it subjected home purchasers, through declarations recorded against all of the community’s residential parcels, to perpetual assessments for club membership fees.

2. These recorded declarations, which are the governing documents of the community’s homeowners’ association, allow Avatar to collect the club membership fees as pure profit, while separately collecting from homeowners all of the expenses of owning, operating, and maintaining the club’s facilities.

3. Florida's Homeowners' Association Act governs declarations of covenants recorded against residential parcels and protects homeowners from the inherent risk of developers abusing their power to record such declarations. Among other things, the Act only authorizes declarations that impose assessments for community expenses; the Act prohibits imposing assessments for profit.

4. The defendants in this case, then, have violated the Homeowners' Association Act by recording and enforcing declarations that impose on the residential parcels in Bellalago, assessments for club membership fees that exceed the community's expenses and generate profit. AV Homes took the illegal profits from this club fee scheme until Taylor Morrison acquired AV Homes. After acquiring AV Homes, Taylor Morrison took over the community and began taking the illegal profits from the club fee scheme.

5. This is a class action lawsuit on behalf of the community's homeowners to recover damages and for declaratory, injunctive, and equitable relief from this unlawful club fee scheme.

Parties, Jurisdiction, and Venue

6. The plaintiff is a resident of the Bellalago community in Osceola County, Florida.

7. Taylor Morrison has conducted business in Florida and is a Delaware corporation with its principal place of business in Arizona.

8. Avatar is a Florida corporation with its principal place of business in Arizona.

9. The damages in this action exceed \$50,000, exclusive of interest, attorney fees, and costs.

10. Venue is proper under chapter 47, Florida Statutes, because the defendants have agents or other representatives in Osceola County, the causes of action accrued in Osceola County, and property in litigation is located in Osceola County.

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

Development of Bellalago

12. In 1999 and 2001, AV Homes, through its subsidiary Avatar, acquired more than 1,300 acres of undeveloped land in Osceola County.

13. In 2002, Avatar applied for and obtained a development order that allowed Avatar to commence development of the community Bellalago, which it later expanded to include the Isles of Bellalago.

14. In 2003, Avatar recorded a declaration of covenants that applied to all of the residential parcels in Bellalago. A copy of the declaration recorded at OR 2350/386 has been separately filed as **Exhibit A** (Notice of Filing, 8/13/20).

15. In 2006, Avatar recorded an amended declaration of covenants that expanded Bellalago to include the Isles of Bellalago. A copy of the amended declaration recorded at OR 3235/2695 has been separately filed as **Exhibit B** (Notice of Filing, 8/13/20).

16. Avatar recorded subsequent amendments to the amended declaration, copies of which have been separately filed as **Composite Exhibit C** (Notice of Filing, 8/13/20).

Club Fee Scheme

17. Avatar recorded the Bellalago Declaration under the Homeowners' Association Act, chapter 720, Florida Statutes.

18. The Bellalago Declaration includes articles of incorporation for Bellalago Community Association, Inc. (hereinafter the "**Bellalago Association**"), an "association" under the Homeowners' Association Act, more specifically section 720.301(9), Florida Statutes.

19. The Bellalago Declaration includes a “**Club Plan**,” which requires that every purchaser of a residential parcel in Bellalago agree to purchase monthly membership in a for-profit club known as “**Bellalago Club**.”

20. The Bellalago Declaration’s Club Plan requires payment of monthly “**Club Dues**” for membership in the Bellalago Club and access to the “**Club Facilities**.” The Club Dues include the “**Club Membership Fee**,” which is paid “without setoff or deduction” to the Club Owner (defined as Avatar) and “**Club Expenses**,” which are paid pro rata by the residential parcel owners who thereby “collectively bear all expenses associated with the Club so that the Club Owner shall receive the Club Membership Fees without deduction of expenses or charges in respect of the Club.” In other words, the Club Membership Fees are pure profit.

21. Section 21 of the Bellalago Declaration authorizes the Bellalago Association to levy “assessments” and to record liens and foreclose on residential parcels whose owners fail to pay those assessments. Subsection 21.4 allows the Club Owner to require the Bellalago Association to collect and enforce Club Dues as assessments by foreclosing on residential parcels whose owners fail to pay Club Dues.

22. The amended Bellalago Declaration expanded Bellalago to include the Isles of Bellalago (and renamed Bellalago Association accordingly), but continued to incorporate the Club Plan and continued the same illegal club fee scheme.

23. The defendants took advantage of the Homeowners’ Association Act and the Bellalago Association to:

- (a) enforce the Bellalago Declaration and incorporated Club Plan;
- (b) impose assessments for club membership fees on Bellalago’s residential parcels;

- (c) collect assessments for club membership fees from residential parcel owners; and
- (d) record liens and file foreclosure actions against residential parcels to collect unpaid assessments for club membership fees.

24. However, the defendants have disregarded the provisions of the Homeowners' Association Act that protect residential parcel owners by prohibiting for-profit assessments.

Homeowners' Association Act

25. The Florida Legislature enacted the "Homeowners' Association Act," now codified in chapter 720, Florida Statutes, to address concerns over developers "retaining control of homeowners' associations, or misusing funds entrusted to the association." Fla. S. Comm. on Govt'l. Ops., CS/SB 1058 (1992) Staff Analysis 1 (March 5, 1992). The Act's stated purposes are to "give statutory recognition" to "not for profit" entities to operate residential communities; to provide operating procedures for homeowners' associations; and "to protect the rights of association members." § 720.302(1), Fla. Stat.

26. Under section 720.301(1), Florida Statutes, "assessment" means "a sum or sums of money payable to the association, 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."

27. Under section 720.308(1)(a), Florida Statutes, assessments "must be in the member's proportional share of expenses as described in the governing document." *See also* § 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 as described in the governing documents").

28. Under section 720.301(2), Florida Statutes, "homeowners' association" or "association" means a "Florida corporation responsible for the operation of a community or a mobile home subdivision 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."

29. Under section 720.305, Florida Statutes, the prevailing party is entitled to recover reasonable attorney fees and costs in an action to redress alleged failure or refusal to comply with the provisions of the Homeowners' Association Act or the community's governing documents.

Liability Allegations

30. AV Homes sold homes in Bellalago through its website avhomesinc.com.

31. AV Homes controlled Avatar in its ownership and operation of the club.

32. AV Homes caused Avatar to do business as AV Homes.

33. Even though the Club Property is titled in Avatar's name and the Club Plan identifies Avatar as the Club Owner, AV Homes controlled, actively managed, made all decisions regarding, and took all profits from, the Club.

34. AV Homes caused Avatar to distribute funds to AV Homes from an account to which Avatar deposited the club membership fees paid by the plaintiff and the class.

35. In October 2018, Taylor Morrison acquired AV Homes and its subsidiary Avatar and now controls AV Homes and Avatar. Taylor Morrison controlled, actively managed, made all decisions regarding, and took all profits from, the Club. By way of example and without limitation,

after acquiring AV Homes, Taylor Morrison sent the emails to association members through the Bellalago Association's email system, copies of which have been filed as **Composite Exhibit D** (Notice of Filing, 8/13/20).

36. Taylor Morrison sells homes in Bellalago through its website taylormorrison.com.

37. Taylor Morrison did not stop the illegal club fee scheme. Instead, Taylor Morrison is now taking the profits from the club fee scheme.

38. Taylor Morrison has caused Avatar to distribute funds to Taylor Morrison from an account to which Avatar deposited the club membership fees paid by the plaintiff and the class.

39. Taylor Morrison is liable for all conduct of AV Homes and Avatar.

Class Representation Allegations

40. The proposed class is defined as follows:

All persons who currently own or previously owned a home in Bellalago and have paid or been obligated to pay a Club Membership Fee under the Club Plan.

41. While the exact number of class members is unknown to the plaintiff at this time, there are more than 1,800 homes in Bellalago, and the identities of the current and former homeowners are within the knowledge of and can be easily ascertained from the records of the defendants.

42. The class is so numerous that joinder of all its members is impractical.

43. The plaintiff's claims are typical of the claims of the members of the class because the plaintiff, like all class members, purchased a home in Bellalago and has paid and been obligated to pay a Club Membership Fee under the Club Plan.

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

45. The plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in handling class actions involving, among other things, community associations, and consumer rights. As a result, the plaintiff is an adequate representative of the class and will fairly and adequately protect the interests of the class.

46. The plaintiff brings this class action under Florida Rule of Civil Procedure 1.220(b)(2) because the defendants have 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.

47. The plaintiff also brings 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 defendants, 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.

Declaratory Relief Allegations

48. The plaintiff, individually, and on behalf of all those similarly situated, makes the following allegations supporting entitlement to the declaratory relief requested in the following

counts, which request, among other remedies, declaratory relief under chapter 86, Florida Statutes, brought by the plaintiff and the class against the defendants under Florida Rule of Civil Procedure 1.220(b)(2).

49. The plaintiff is in doubt concerning the parties' rights and obligations under the Bellalago Declaration and its incorporated Club Plan, the Homeowners' Association Act.

50. There are justiciable, bona fide, and present controversies between the class members and the defendants concerning the proper interpretation of the Bellalago Declaration and its incorporated Club Plan, the Homeowners' Association Act, and the parties' attendant rights and obligations thereunder. The plaintiff and other class members are entitled to have these uncertainties removed and, more specifically, to the determinations requested in the counts set forth below.

51. The parties have an actual, present, or adverse and antagonistic interest upon the interpretation of their respective rights and obligations under the Bellalago Declaration and its incorporated Club Plan and the Homeowners' Association Act.

52. All interested parties and potential adverse interests are before this Court.

53. The relief sought in this action is not merely to seek legal advice or to obtain answers to questions propounded out of curiosity.

54. The rights, status, or other equitable or legal relations of the parties are affected by the interpretation of the Bellalago Declaration and its incorporated Club Plan and the Homeowners' Association Act.

55. Therefore, under section 86.021, Florida Statutes, the plaintiff and other class members may obtain a declaration of the rights, status, or other equitable or legal relations, as set forth below.

Count I
Declaratory Relief—Invalidity of Perpetual Covenant

56. The plaintiff, individually and on behalf of all those similarly situated, re-alleges and incorporates the allegations in paragraphs 1 to 55.

57. The defendants have taken the position that the Bellalago Association's governing documents perpetually obligate the plaintiff and other class members to pay monthly Club Membership Fees under the Club Plan and that this perpetual obligation to pay monthly Club Membership Fees may not be altered, amended, or terminated.

58. The obligation to pay monthly Club Membership Fees does not touch and concern land and is therefore not a valid perpetual covenant.

59. Furthermore, the obligation to pay monthly Club Membership Fees does not depend on continued access to or the continued existence or operation of any of the club facilities. Even if the club facilities are not open for use to the plaintiff and the other class members, the obligation to pay monthly Club Membership Fees nevertheless continues, according to the Bellalago Association's governing documents recorded by the defendants. Thus, there is no continuing consideration or continuing advantage that would allow for the obligation to pay monthly Club Membership Fees to be a valid perpetual covenant.

60. Therefore, the obligation to pay monthly Club Membership Fees is terminable at will. The defendants, however, disagree and have taken the position that the obligation is perpetual and not terminable at will.

61. Under section 86.021, Florida Statutes, the plaintiff and the class are entitled to have this uncertainty removed and, more specifically to a judgment declaring that the obligation to pay Club Membership Fees is terminable at will.

62. Under section 720.305, Florida Statutes, and sections 9.1, 12, and 14.7 of the Club Plan and section 57.105(7), Florida Statutes, the plaintiff and the class are entitled to recover reasonable attorney fees and costs for prevailing in a dispute regarding the validity of the covenants included in the Bellalago Association's governing documents.

Count II
Injunctive Relief—Prohibiting Future Profit
from Club Membership Fee

63. The plaintiff, individually and on behalf of all those similarly situated, re-alleges and incorporates the allegations in paragraphs 1 to 55.

64. The Homeowners' Association Act prohibits for-profit assessments and provides that an assessment must be in the amount of the homeowner's proportional share of expenses. *See* § 720.308, Fla. Stat.

65. The defendants are imposing and collecting the Club Membership Fee as an "assessment" under the Homeowners' Association Act.

66. Thus, under the Homeowners' Association Act, the plaintiff and other members of the class have a clear legal right to prohibit the defendants from profiting by collecting the Club Membership Fee, which by definition under the Club Plan is an amount that exceeds each homeowner's proportional share of the Club's expenses.

67. Without the requested injunctive relief, the plaintiff and other members of the class will suffer irreparable harm by the defendants (a) continuing to profit from collecting the Club Membership Fee by including it as a component of the monthly Club Dues, which, if unpaid, result in a lien that the defendants may foreclose, or (b) selling the Club to a third party that will do the same.

68. Under section 720.305, Florida Statutes, and sections 9.1, 12, and 14.7 of the Club Plan and section 57.105(7), Florida Statutes, the plaintiff and the class are entitled to recover reasonable attorney fees and costs for prevailing in a dispute regarding the Homeowners' Association Act's prohibition of for-profit assessments and the violation of this prohibition by the Club Plan incorporated in the Bellalago Association's governing documents.

Count III
Equitable Relief and Damages—
for Violation of § 720.308, Fla. Stat.

69. The plaintiff, individually and on behalf of all those similarly situated, re-alleges and incorporates the allegations in paragraphs 1 to 55.

70. The Homeowners' Association Act prohibits for-profit assessments and provides that an assessment must be in the amount of the homeowner's proportional share of expenses. *See* § 720.308, Fla. Stat.

71. The defendants have imposed and collected the Club Membership Fee as an "assessment" under the Homeowners' Association Act.

72. The defendants have profited from collection of the Club Membership Fee, which by definition under the Club Plan is an amount that exceeds each homeowner's proportional share of the Club's expenses.

73. Thus, all Club Membership Fees collected to date have been collected in violation of the Homeowners' Association Act.

74. The defendants should be required to provide the plaintiff and the class with an accounting for its receipt and expenditure of all Club Dues (including the Club Membership Fee and the other components of Club Dues) that defendants collected under the Club Plan. And each

of the defendants should be disgorged of the illegal profits that each has taken from the collection of Club Membership Fees.

75. The collection of Club Membership Fees in violation of the Homeowners' Association Act has caused the plaintiff and the class to suffer damages.

76. Under section 720.305, Florida Statutes, and sections 9.1, 12, and 14.7 of the Club Plan and section 57.105(7), Florida Statutes, the plaintiff and the class are entitled to recover reasonable attorney fees and costs for prevailing in a dispute regarding the Homeowners' Association Act's prohibition of for-profit assessments and the violation of this prohibition by the Club Plan incorporated in the Bellalago Association's governing documents.

Request for Relief

WHEREFORE, the plaintiff, individually and on behalf of all those similarly situated, requests 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 (b)(3), appointing the 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, a judgment declaring that the obligation to pay Club Membership Fees is terminable at will;
- (c) under Count II, a judgment enjoining defendants from profiting by collecting the Club Membership Fee in violation of section 720.308, Florida Statutes;
- (d) under Count III, a judgment disgorging each of the defendants of the profits received from collection of Club Membership Fees and awarding to the plaintiff

and the class the damages caused by the illegal collection of Club Membership Fees in violation of section 720.308, Florida Statutes;

- (e) a judgment against the defendants for attorney fees under the Homeowners' Association Act, section 720.305, Florida Statutes, and sections 9.1, 12, and 14.7 of the Club Plan 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 the plaintiff and the class.

Demand for Jury Trial

The plaintiff, individually and on behalf of the class, demands a trial by jury on all issues so triable against the 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 to all counsel of record on this 18th day of October 2024.



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