

**IN THE CIRCUIT COURT  
OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA**

**NORMAN GUNDEL, WILLIAM MANN,  
and BRENDA N. TAYLOR**, individually and  
on behalf of all similarly situated persons,  
Plaintiffs,

v.

Case No.: 2017-CA-001446

Section: 11

**AVATAR PROPERTIES, INC.**,  
Defendants.

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**FINAL JUDGMENT**

**THIS MATTER** was before the Court for a pretrial conference on October 28, 2021, pursuant to Florida Rules of Civil Procedure 1.200(a)(2) and 1.440(c), and the Order Setting Pretrial Conference and Jury Trial and Directing Mediation entered on June 17, 2021. The Court, having reviewed the pleadings, court file, applicable case law, and having heard and considered the arguments of the parties during the pretrial conference, and otherwise being informed in the matter, rules that there are no remaining issues to be decided in the jury trial scheduled for November 8, 2021. Accordingly, it is ORDERED and ADJUDGED as follows:

This is a class action lawsuit involving Club Membership Fees collected by Defendant Avatar Properties, Inc. ("Avatar"). The certified class consists of all persons who currently or previously owned a home in Solivita and who have paid a Club Membership Fee under the Club Plan on or after April 26, 2013 (the "Class"). The Class Representatives are the Plaintiffs, Norman Gundel, William Mann, and Brenda N. Taylor.

On June 28, 2018, the Court entered the Order Granting in Part Plaintiffs' Amended Motion for Class Certification, which certified a class of "all persons who currently own a home in Solivita and who have paid a Club Membership Fee under the Club Plan on or after April 26, 2013," for the claims against Avatar in Counts 2, 5, part of 6, and 8 of the Second Amended Class Action Complaint (the "Certified Claims"). The Second District Court of Appeal affirmed class certification but reversed in part to expand certification of Count 8 to include not only current homeowners but also former homeowners. See Gundel v. AV Homes, Inc., 290 So. 3d 1080, 1087-88 (Fla. 2d DCA 2020).

On April 3, 2020, the Court entered the Order Appointing Class Administrator, Class Counsel, and Approving Class Notice, in which the Court appointed Plaintiffs' counsel of record as Class Counsel and A.B. Data, Ltd. as Class Administrator. The Class Administrator received 67 requests for exclusion from the Class, as set forth in the Declaration of Eric J. Miller filed by the Plaintiffs on January 13, 2021. Accordingly, those persons are not included in the Class.

On October 26, 2020, the Court entered the Order Granting Motion to Bifurcate and Stay Individual Claims Pending Class Action Trial, in which the Court bifurcated and stayed the individual claims not certified for class representation (the “Individual Claims”).

On June 16, 2021, the Court entered the Order on Pretrial Matters, in which the Court reserved ruling on the equitable relief sought in the certified Counts 2, 5, and 6 until after the jury reached a verdict on Count 8.

On June 17, 2021, the Court entered the Order Setting Pretrial Conference and Jury Trial and Directing Mediation, scheduling a jury trial for November 8, 2021 and various pretrial deadlines including a pretrial conference on October 28, 2021. Thereafter, Plaintiffs and Defendants filed motions for summary judgment under the new Florida Rule of Civil Procedure 1.510, effective May 1, 2021. The Court heard argument on July 19, August 18, and September 10, 2021.

The Court entered the following Orders on October 12, 2021: Order Granting Plaintiff’s Motion for Partial Summary Judgment on Avatar’s Third Affirmative Defense based on Section 720.302(3)(b), Florida Statutes; Order Granting Plaintiff’s Motion for Partial Summary Judgment as to Liability for Violation of Section 720.308, Florida Statutes; Order Denying Defendants’ Renewed Motion for Final Summary Judgment and Incorporated Memorandum of Law; Order Denying Defendant’s Motion for Reconsideration of Court’s Oral Ruling on Section 720.3086, Florida Statutes on April 22, 2021; Order Granting Plaintiff’s Motion for Reconsideration and/or Clarification Regarding Ruling on Affirmative Defenses 7, 8, and 9 dated July 15, 2021, and Striking Same.

The only remaining dispositive motion regarding the Certified Claims is Plaintiffs’ Motion for Partial Summary Judgment as to Amount of Damages, filed on July 8, 2021. This motion was noticed for hearing on August 18, 2021, and for the continued hearing on September 10, 2021. Defendants do not dispute the amount of Club Membership Fees that Avatar received according to the financial records produced in discovery. Furthermore, Defendants have not filed any response in opposition to the motion. Thus, the Court may consider the Plaintiffs’ assertions of fact as undisputed and grant summary judgment as to the amount of damages. See Fla. R. Civ. P. 1.510(c) (“At least 20 days before the time fixed for the hearing, the nonmovant must serve a response that includes the nonmovant’s supporting factual position.”); Fla. R. Civ. P. 1.510(e)(2), (3) (providing that if a party “fails to properly address another party’s assertion of fact as required by rule 1.510(c),” then the Court may “consider the fact undisputed for purposes of the motion” and “grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it”).

It is undisputed that Avatar collected Club Membership Fees in the amount of \$34,786,034.48 during May 2013 through February 2021. The Court has already ruled that the Club Membership Fees are an illegal assessment that violates section 720.308, Fla. Stat., and that the seventh, eighth, and ninth affirmative defenses which deal with waiver, release, and estoppel are stricken. Accordingly, the Court now rules as a matter of law that

the amount of damages to the Class from Avatar's illegal collection of Club Membership Fees during May 2013 through February 2021 is \$34,786,034.48.

There are no remaining issues to be tried as to the Certified Claims. The Court may now enter a final judgment on Counts 6 and 8 in favor of Plaintiffs and the Class and against Avatar. Count 6 seeks injunctive relief regarding illegal profit from Club Membership Fees, and Count 8 seeks damages for past profit from Club Membership Fees. Financial records produced in discovery include documentation of Avatar's receipt of Club Membership Fees during May 2013 through February 2021. With respect to the Club Membership Fees that Avatar received during May 2013 through February 2021, the Court will enter a final judgment for damages on Count 8. With respect to the Club Membership Fees that Avatar has received or will receive on or after March 1, 2021, the Court will grant injunctive relief on Count 6, requiring Avatar to account for and refund all Club Membership Fees received. The Court will also enter a permanent injunction prohibiting Avatar from collecting Club Membership Fees or any other assessments that exceed a proportionate share of expenses in violation of section 720.308 on or after the date of this Final Judgment.

Accordingly, **FINAL JUDGMENT** is hereby entered on Counts 6 and 8 in favor of Plaintiffs and the Class and against Avatar, as follows:

1. Avatar is permanently enjoined from collecting Club Membership Fees from the Class under the Amended and Restated Master Declaration for Solivita, which Avatar recorded in the Polk County Official Records at Book 9142, Page 1843. Furthermore, Avatar is permanently enjoined from collecting from the Class any assessment that exceeds a proportionate share of expenses in violation of section 720.308, Florida Statutes. This not only applies to Avatar's collection of Club Membership Fees or assessments on its own behalf but also applies to Avatar's collection of Club Membership Fees or assessments under fictitious names, (including doing business as "Solivita Club" or as an "Association"), through management companies (including Evergreen Lifestyles Management LLC), through community associations (including Solivita Community Association, Inc.), or through any other agent, representative, employee, attorney, or other person.
2. The Plaintiffs and the Class are hereby awarded and shall recover damages from Avatar in the amount of **Thirty-Four Million, Seven Hundred and Eighty-Six Thousand, Thirty-Four Dollars, and Forty Eight Cents (\$34,786,034.48)**, plus prejudgment interest in an amount to be determined in a separate order awarding prejudgment interest, from the date of each payment of Club Membership Fees through the date of this judgment. The combined sum of the damages and prejudgment interest shall accrue post-judgment interest from the date of this judgment at the interest rates established pursuant to section 55.03(1), Florida Statutes. **For all of which, let execution issue.**

3. Avatar's payment shall be tendered to the Class Administrator, who shall be responsible for apportioning and distributing the proceeds to each member of the Class. Every 90 days hereafter, the Class Administrator shall file status reports to this Court until the proceeds of this judgment have been fully disbursed to the Class Members, or until this Court orders otherwise.
4. Avatar shall account for and refund to the Class all Club Membership Fees received on or after March 1, 2021, through the date of this Final Judgment. The refund of Club Membership Fees shall be tendered to the Class Administrator, who shall be responsible for distributing refunds to the Class. Every 90 days hereafter, Avatar shall file status reports to this Court, identifying all Club Membership Fees received on or after March 1, 2021, and indicating whether the amounts received have been tendered to the Class Administrator. This not only applies to Club Membership Fees that Avatar receives directly but also applies to Club Membership Fees that Avatar receives under fictitious names, (including doing business as "Solivita Club" or as an "Association"), through management companies (including Evergreen Lifestyles Management LLC), through community associations (including Solivita Community Association, Inc.), or through any other agent, representative, employee, attorney, or other person. The Court expressly reserves jurisdiction to enforce the accounting and refunds ordered by this paragraph.

The only remaining Certified Claims are Counts 2 and 5. Count 2 pertains to voting rights related to the Club's operation when the community reaches turnover, a threshold percentage of home sales that has not yet been reached. There are no remaining factual issues to resolve regarding Count 2. Count 5 is in the alternative to Count 6 and is therefore moot. Accordingly, this Court has formally severed and abated Counts 2 and 5 and the Individual Claims by Order dated November 2, 2021, which Order is incorporated by reference herein.

The Court has already entered summary judgment in favor of the Plaintiffs and against Avatar on Avatar's counterclaims against Plaintiffs. See Order Granting Plaintiffs' Motion for Summary Judgment on Counterclaim and for Award of Attorneys' Fees and Costs under Florida's Anti-SLAPP Statutes, entered on June 4, 2019. In that Order, the Court determined that Plaintiffs were prevailing parties entitled to attorneys' fees and costs and reserved jurisdiction as to the amount of attorneys' fees and costs. Before the Court entered that Order, the Second District Court of Appeal provisionally granted the Plaintiffs' motion for appellate attorney fees incurred in connection with the certiorari proceeding regarding the counterclaims, ruling that "the trial court shall award appellate attorneys' fees" if the Plaintiffs prevail on the counterclaims. See Order entered on February 1, 2019 in Gundel v. AV Homes, Inc., Case No. 2D18-0899.

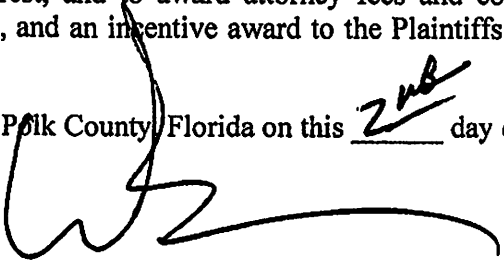
The Court has already determined that section 720.305, Fla. Stat., authorizes Plaintiffs to bring the Certified Claims against Avatar to redress Avatar's failure or refusal to comply with the Homeowners' Association Act. See Order Denying Defendants' Renewed Motion for Final Summary Judgment and Incorporated Memorandum of Law,

entered on October 12, 2021, at page 2. Section 720.305(1) provides that “[t]he prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs.” Accordingly, with respect to the Certified Claims, the Court determines that Plaintiffs are prevailing parties entitled to attorney fees and costs under section 720.305.

Furthermore, the Second District Court of Appeal remanded Plaintiffs’ motion for appellate attorney fees in the class certification appeal for this Court to determine entitlement under the prevailing party fees provision of the Homeowners’ Association Act, if the Plaintiffs “ultimately prevail below.” See Order entered on February 21, 2020, in Gundel v. AV Homes, Inc., Case No. 2D18-3199. The Plaintiffs have now prevailed on the Certified Claims, and the Court has determined that the Plaintiffs are prevailing parties entitled to attorney fees under section 720.305. Accordingly, the Plaintiffs are entitled to appellate attorney fees incurred in connection with the class certification appeal.

The Court reserves jurisdiction to enforce and administer the requirements of this Final Judgment, to award prejudgment interest, and to award attorney fees and costs including class administration fees, expenses, and an incentive award to the Plaintiffs as the appointed Class Representatives.

**DONE AND ORDERED** in Bartow, Polk County, Florida on this 2<sup>nd</sup> day of November, 2021.

  
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WAYNE DURDEN, Circuit Court Judge

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