

IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2026-CA-001478-XXA-MB
DIV.: AG

JONATHAN GARBERG, FRED SILVERMAN,
SUSAN FELDMAN and KEVIN SCHEINER,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

KINGS POINT RECREATION CORP., a Florida
Not-for-Profit Corporation; VESTA PROPERTY
SERVICES, INC., et al.,

Defendants.

_____ /

**ORDER DENYING THE MOTION TO DISMISS THE SECOND AMENDED
COMPLAINT WITH PREJUDICE**

THIS CAUSE came before the Court for specially set hearing on August 24, 2026, via Zoom, upon Defendant Kings Point Recreation Corp.'s ("KPRC") Motion to Dismiss the Second Amended Complaint With Prejudice (D.E. 258) (the "Motion"), joined by Defendant Capri D Association, Inc. (D.E. 256), twenty Defendant Associations represented by Cole, Scott & Kissane, P.A. (D.E. 257), certain Defendants represented by Sachs Sax Caplan Kaskel & Schner, PLLC (D.E. 260), four Defendant Associations represented by Boyd Richards Parker & Colonnelli, P.L. (D.E. 261), Defendant Saxony K Condominium Association, Inc. (D.E. 277), Defendant Flanders Condominium Association, Inc. (D.E. 278), and Defendant Tuscany E Condominium Association, Inc. (D.E. 311). The Court has considered the Motion, Plaintiffs' Response in Opposition (D.E. 271), the Second Amended Complaint (D.E. 240) (the "SAC") and its incorporated exhibits, the

argument of counsel, and the applicable authority, and the record, and is otherwise fully advised in the premises. The Court makes the following findings and rulings.

I. FACTUAL BACKGROUND

1. The SAC is a putative class action brought by four Kings Point unit owners on behalf of themselves and others similarly situated. Plaintiffs allege that KPRC and its management company, Vesta Property Services, Inc. (“Vesta”), acting as agents of the 91 Kings Point condominium associations, suspended unit owners’ access to recreational property the associations own as tenants in common and withheld records, without following the procedures of the Florida Condominium Act, Chapter 718, Florida Statutes. The SAC pleads six counts: Count I, violation of section 718.111(12), Count II, violation of section 718.303, Count III, declaratory judgment, Count IV, injunctive relief, Count V, breach of fiduciary duty; and Count VI, unjust enrichment.
2. KPRC moves to dismiss the SAC in its entirety, with prejudice based upon the contention that neither KPRC nor Vesta is a “condominium association,” and that sections 718.111(12) and 718.303(3) apply only to condominium associations.
3. KPRC relies on *Dimitri v. Commercial Center of Miami Master Ass’n, Inc.* and on a 2013 Declaratory Statement of the Division of Florida Condominiums, Timeshares, and Mobile Homes finding that KPRC is not a condominium association, and on the argument that it performs no function that Chapter 718 assigns to condominium associations.
4. Plaintiffs respond that they do not allege KPRC is itself a condominium association, but that KPRC and Vesta act as agents of the associations and may not, by that arrangement, escape the statutory duties that attach to the functions they perform. Plaintiffs contend that KPRC’s own Bylaws acknowledge enforcement of section 718.303 suspensions on the associations’

behalf, conflicting governing documents are void and the statutory protections cannot be waived, that *Dimitri v. Com. Ctr. of Miami Master Ass'n, Inc.*, 253 So. 3d 715 (Fla. Dist. Ct. App. 2018) addressed only whether an entity is itself an association and did not reach the agency and function theory pled here, and that KPRC's factual assertions are not a proper basis for dismissal.

II. LEGAL AUTHORITY AND FINDINGS

1. A motion to dismiss "tests the legal sufficiency of a complaint; it does not determine issues of ultimate fact" and is "limited to the four corners of the complaint. The motion must assume all well pleaded facts in the complaint, and all exhibits attached to the complaint, are true... all reasonable inferences should be drawn in favor of the complainant." *Morali v. Mayan*, 377 So. 3d 1182, 1184 (Fla. 4th DCA 2024).
2. Pursuant to Rule 1.110(b) of the Florida Rules of Civil Procedure, a complaint must state a cause of action and shall consist of: "a short and plain statement of the grounds upon which the court's jurisdiction depends" and the "ultimate facts showing that the pleader is entitled to relief," and a "demand for judgment for the relief to which the pleader deems himself or herself entitled." *Id.*
3. As recognized by the Fourth District Court of Appeal, "[t]he complaint must set out the elements and facts that support them so that the court and the defendant can clearly determine what is being alleged." *Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999).
4. All allegations of the complaint must be taken as true and all reasonable inferences drawn therefrom must be construed in favor the non moving party. *Chodorow v. Porto Vita, Ltd.*, 954 So. 2d 1240, 1242 (Fla. 3d DCA 2007).

5. The law is well settled that a motion to dismiss a complaint is not a motion for summary judgment in which the court may rely on facts adduced in depositions, affidavits, or other proofs. *RC Aluminum Indus., Inc. v. Regions Bank*, 127 So. 3d 881, 882 (Fla. 3d DCA 2013).
6. Section 718.111(12) requires that the association “maintain ...the official records of the association.”
7. Section 718.303(3)(a) provides that an association “may suspend” a unit owner’s right to use the common elements, common facilities, or any other association property for failure to comply with the declaration, the bylaws, or reasonable rules.
8. Before a fine or suspension may be imposed, section 718.303(3)(b) requires at least fourteen days’ written notice and an opportunity for a hearing before a committee of at least three members who are not officers, directors, or employees of the association, or their relatives, and approval by majority vote of that committee.
9. A provision of Chapter 718 may not be waived where the waiver would adversely affect the rights of a unit owner or the purpose of the provision. The definition of “association” includes any entity that “operates or maintains other real property in which unit owners have use rights, where membership ...is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.” Section 718.303.
10. The crux of the Motion to Dismiss is over the reach of these provisions, which is framed by three decisions.
 - i. In *Dimitri*, the court held that a master association was not itself a condominium “association” under the statutory definition in place when it was formed, and that the later amendment to the definition did not apply retroactively; the entity was therefore not subject to the Chapter 718 disclosure requirement. *Dimitri v. Com. Ctr. of Miami Master*

Ass'n, Inc., 253 So. 3d 715 (Fla. Dist. Ct. App. 2018). Dimitri resolved the status of the entity itself. It did not address whether an entity that performs functions assigned by Chapter 718, as the agent of condominium associations must observe the statutory procedures that govern those functions. *Id.*

- ii. In *Heron at Destin W. Beach & Bay Resort Condo. Ass'n, Inc. v. Osprey at Destin W. Beach*, 94 So. 3d 623 (Fla. Dist. Ct. App. 2012) the court held that, given the structure of the master association before it, “the definition of ‘association’ is met and chapter 718 applies,” by statutory definition rather than on the entity’s label. *Id.*
- iii. In ***Downey v. Jungle Den Villas Recreation Ass’n, Inc.*, 525 So. 2d 438 (Fla. Dist. Ct. App. 1988)** the court held that a separately incorporated recreation association was, “in substance and function, acting as a condominium association” and was therefore subject to the same statutory limitations, cautioning that protections afforded under Chapter 718 should not be circumvented by independent corporation to perform association functions without the corresponding unit owner protections. *Id.*

11. Hence, the Court finds that there are questions of facts as to agency and function, which may be more appropriately addressed at Summary Judgment.

12. Therefore, on Counts I and II (sections 718.111(12) and 718.303) are not subject to dismissal at the pleading stage. The SAC alleges that KPRC and Vesta act as agents of the condominium associations in operating, enforcing rules on, suspending access to, and maintaining records concerning property the associations own and that they imposed suspensions without the notice, hearing, and independent committee that section 718.303(3)(b) requires. In addition, questions of fact include whether Vesta serves as a community association manager, whether

the recreational property is “association property,” and the composition of KPRC’s membership.

13. On Counts III and IV (declaratory and injunctive relief) are premised on the same statutory theory as Counts I and II. Because the underlying statutory claims survive the Motion, the derivative claims for declaratory and injunctive relief survive to the same extent, and dismissal is not warranted at this stage.
14. On Counts V and VI (breach of fiduciary duty and unjust enrichment) the Motion seeks dismissal of the SAC in its entirety but directs its argument to the applicability of sections 718.111(12) and 718.303 and does not present an independent ground addressed to the distinct elements of fiduciary duty or unjust enrichment. Because the Motion advances no separate basis directed to Counts V and VI, hence are not dismissed.

For the reasons stated, it is **ORDERED and ADJUDGED:**

1. Defendant Kings Point Recreation Corp.’s Motion to Dismiss the Second Amended Complaint is **DENIED**.
2. Defendant Kings Point Recreation Corp. shall serve its answer and any affirmative defenses to the Second Amended Complaint within ten days of the date of this Order.
3. The Court reserves jurisdiction to enforce this Order and to enter such further orders as are just and proper.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida.

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Caryn Siperstein
Caryn Siperstein Judge
ADMINISTRATIVE OFFICE OF THE COURT

502026CA001478XXXAMB 08/21/2026
Caryn Siperstein
Judge

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