IN THE THIRD DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA

2399 COLLINS AVENUE
CONDOMINIUM ASSOCIATION, INC, CASE NO.: 24-0358

Appellant, LT CASE NO.: 20-9618

v.

SB HOTEL OWNER, L.P,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

APPELLANT'S INITIAL BRIEF

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RULES AND STATUES:

I. INTRODUCTION

For the purposes of this appeal, Appellant, 2399 Collins Avenue Condominium Association, Inc., will be referred to as the "Association" or "Appellant". Appellee, SB Hotel Owner, L.P., will be referred to as the "Hotel" or "Appellee". The Declaration of Covenants, Restrictions and Easements (R. 56-97) shall be referred to as the "Resort Declaration."

II. STATEMENT OF THE CASE AND OF THE FACTS

A. Statement of the Case:

On May 1, 2020, the Association brought suit against the Hotel, alleging claims for breach of contract and declaratory relief. In the Second Amended Complaint (R. 2395-2410), Count I alleged that the Hotel breached section 12.9 of the Resort Declaration by failing to provide financial records to the Association and sought relief in the form of an injunction and an award of attorney's fees. Count II also asserted a claim for breach of contract and was premised on the Hotel's overcharging Association members for Shared Facility Cost assessments. *Id.* The Association, on behalf of its members, sought monetary damages from the Hotel in the amount of the overcharges.

Count III sought declaratory relief as the Association alleged that it had a right to inspect the Shared Facilities Records and that an actual bona fide dispute existed between the parties as to what documents comprised the Shared Facilities Records. Along with a declaration as to what documents constitute the Shared Facilities Records, the Association sought injunctive relief requiring the Hotel to provide access to those records in all years moving forward. *Id.*

After this action was brought, the Hotel finally provided the records the Association had been seeking as "Shared Facilities Records" and contended that the records turned over satisfied the relief sought in Count I. Count I was thus dismissed by the Trial Court as moot because the Hotel turned over the requested Shared Facilities Records. R. 3814-3815. However, the Hotel has not conceded that the provided documents comprise Shared Facilities Records that would be available to the Association or its members in the future.

In Count II, the Association alleged that the Hotel's use of outdated allocation methodologies had led to overcharges for assessments to unit owners. The overcharges by the Hotel operator

to the Association would constitute a breach of the Condominium and Resort Declarations. R. 2403-2404. The Association's expert witness determined the amount of the overcharges since 2018 to be approximately $150,000. A. 260.

The Hotel filed a Motion to exclude the testimony of Mark Gerstle, which the lower court granted on December 28, 2023. A. 5-16. The Hotel subsequently moved for summary judgment on the damages count following the exclusion of Gerstle's testimony on damages, which was granted on January 24, 2024. A. 17-28.

On Count III, the Trial Court also granted summary judgment in favor of the Hotel finding that the Association had no evidence that the disputed documents constitute Shared Facilities Records. A. 17-28. This appeal of the Final Summary Judgment pursuant to Fla. R. App. R. 9.110 followed.

B. Statement of the Facts:

1 Hotel & Homes South Beach is a mixed-use residential, hotel and commercial facility developed in or around 2014 and located at 2301-2399 Collins Ave, Miami Beach, FL 33139 ("the Project"). The Project is comprised of a hotel (the "Hotel Element"), recreational

facilities (the "Facilities Element"), retail/commercial space (the "Commercial Element") and a 239-unit residential condominium (the "Condominium Element"). The Sandy Lane Master Association is composed of the elements listed above as well as a second condominium, the Roney Palace Condominium. *See* A. 90-91.

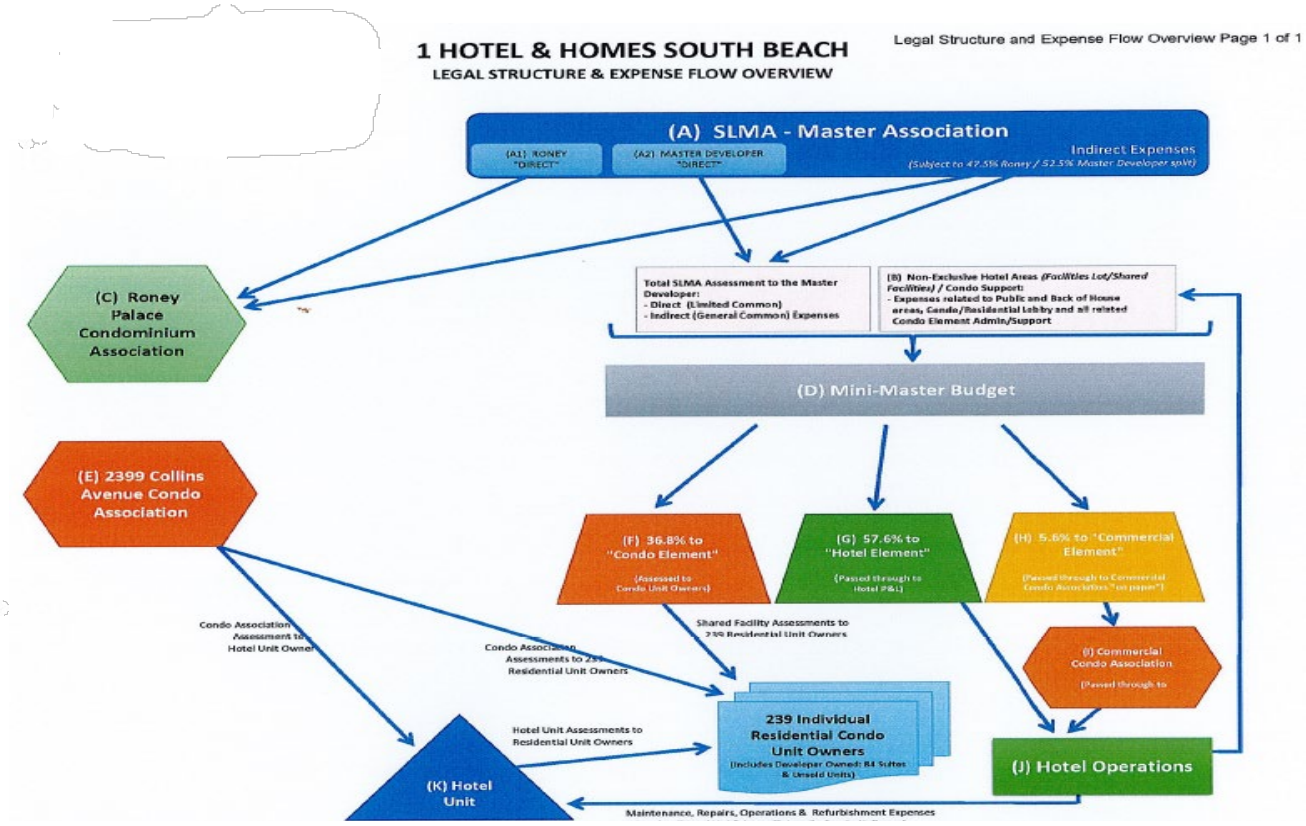
The "Shared Facilities" is composed of the property and recreational facilities shared between the various entities, and is governed by the Declaration of Covenants, Restrictions and Easements, recorded on December 31, 2014, in Official Records Book 29449, Page 1802, of the Public Records of Miami-Dade County, Florida, (the "Resort Declaration," R. 56-97). Pursuant to the Resort Declaration, the owner of the Hotel Element and the Facilities Element, Appellee SB Hotel, is permitted to charge assessments for a portion of the costs associated with operating the Project to the residential unit owners of 2399 Collins Avenue Condominium.

Specifically, Section 12.4 of the Resort Declaration provides that each Unit Owner is deemed to covenant and agree (R. 82):

> to pay to the Facilities Element Owner annual assessments and charges for the operation and insurance of, and for payment of expenses (and real estate and personal property taxes) allocated to or through the Facilities Element

> Owner, of an/or for the maintenance, management, operation and insurance of the Shared Facilities, the establishment of reasonable reserves for the replacement of same, capital improvement assessments, special assessments and all other charges and assessment imposed by the Facilities Owner in connection with the repair, replacement, improvement, maintenance, management, operation and insurance of, and taxes on, the Shared Facilities (collectively, the "Shared Facilities Costs")…
>
> The Facilities Element Owner shall budget and adopt assessments for the Facilities Element Owner's general expenses for the Shared Facilities Costs based, in part, upon Facilities Element Owner's reasonable projections of the intensity of use of the Shared Facilities for the period subject to the budget.

Section 12.4 provides that 36.8% of the Shared Facilities Costs shall be allocated to the Condominium. The total amount of the entire Project budget is allocated to the Shared Facilities budget according to a complicated set of flowthroughs and sub-allocations (A. 93):



SB Hotel assesses all Unit Owners an annual assessment for payment of expenses determined by SB Hotel to be the Shared Facilities Costs, labeled as the "Mini-Master Budget" on the flow chart above. Prior to the institution of this Action, the Association members were paying approximately $5,000,000 annually for expenses that they could not verify. A. 161-165. The Board was unable to determine what expenses were actual Shared Facilities Costs and whether the Hotel was appropriately allocating costs between the different elements of the Project. It was in the Hotel's economic interest to avoid transparency as to the Shared Facilities

Costs and it is estimated that Association members have paid tens of millions of dollars in unverified assessments.

Section 12.9 of the Resort Declaration requires: "Facilities Element Owner shall maintain financial books and records showing its actual receipts and expenditures with respect to the maintenance, operation, repair, replacement, alteration and relocation of the Shared Facilities, including the then current budget and any then proposed budget (collectively the 'Shared Facilities Records')." R. 85.

The methodology utilized by the Hotel owner to allocate the total budget amount of the Project to the "Shared Facilities Costs" has not been materially modified from that devised by the predecessor owner circa 2015. A. 170. The Hotel creates "estimates made particularly in the administrative areas, about the roles and responsibilities of individuals that oversee various facilities and estimates of amounts of their various costs, including payroll, that might be allocated to the various constituents based on those roles and responsibilities." *Id.*

The method by which the Hotel creates these estimates and determines "reasonable projections of the intensity of use" is

completely opaque to the condominium owners, as is the total amount of "actual receipts and expenditures" that are allocated to the Shared Facilities Costs.

Prior to the institution of this action, the Association made various requests to inspect the Shared Facilities Records. A. 70-75, 102-123, 161-165. Due to the nature of this Project, complicated financial structure, and impenetrable methods of allocations of costs, the Association requested the financials of the Master Association, worksheets, payroll records, supporting documents, calculation methods, and the final product of the allocation methods, as they are key components of the Shared Facilities Records. *Id.*

Despite the requests for *all* of the Shared Facilities Records, the Hotel maintained that the master financials, payroll records, methods of determining the percentages of the allocation of expenses to the Shared Facilities were not "Shared Facilities Records." R. 3015-3017, A. 70-75, 102-123.

III. STANDARD OF REVIEW

"We review a trial court's ruling on a motion for summary judgment de novo." *Quintero v. Diaz*, 300 So. 3d 288, 290 (Fla. 3d

DCA 2020) (citing *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000)).

For the underlying Order granting the Daubert Motion, courts "employ two standards of review. We review a trial court's decision to admit or exclude expert testimony for an abuse of discretion. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999); *State Farm Mut. Auto. Ins. Co. v. Nob Hill Family Chiropractic*, 328 So. 3d 1, 6 (Fla. 4th DCA 2021) (requiring '[f]or proper appellate review purposes' of a decision to exclude expert testimony under Daubert, that the trial court create a sufficient record and make specific findings of fact on the record 'whether the testimony was scientifically reliable and factually relevant.'" *Peng v. Citizens Prop. Ins. Corp.*, 337 So. 3d 488, 492 (Fla. 3d DCA 2022) (cleaned up). After consideration of the evidentiary issues, the Court then applies a de novo review of whether the summary judgment record presents a genuine issue of material fact.

If a court has issued a declaratory judgment, "The standard of review is whether the trial court abused its discretion." *Jackson v. State*, 893 So. 2d 706, 707 (Fla. 2d DCA 2005). "However, a trial court

abuses its discretion where it fails to address the merits of a petition or complaint for declaratory judgment." *Mulvey v. Forman*, 207 So. 3d 894, 896 (Fla. 4th DCA 2017).

IV. SUMMARY OF THE ARGUMENT

The Order Granting Defendant's Motion for Final Summary Judgment should be reversed because genuine issues of material fact remained regarding the determination of what documents constitute a Shared Facilities Record. Further the Trial Court abused its discretion in excluding the Association's expert's testimony, and material issues of fact as to damages made the entry of summary judgment inappropriate.

Granting summary judgment in favor of the Defendant on Count III for declaratory relief was improper as the record and Defendant's position demonstrates that a justiciable dispute exists as to what documents constitute Shared Facilities Records. The complex nature of how expenses are distributed between the Hotel Element, the Condominium Element, the Commercial Element, and the Facilities Element highlights the importance of the Association receiving transparent and useable information. Reviewing the

"Expense Flow Overview" diagram above, it becomes apparent that an undetailed budget and expense report will not clarify the allocation methods utilized to calculate the Shared Facilities Costs.

Here, the term "Shared Facilities Records," as defined in the Declaration, is ambiguous and the Hotel denies that the documents it provided after the filing of the lawsuit fall within the category of Shared Facilities Records. The Association alleges, and the Hotel refuses to concede, that the documents provided both before and after the lawsuit constitute Shared Facilities Records. There thus exists a live justiciable controversy that will require the institution of yearly lawsuits by the Association to obtain the necessary records from the Hotel. Accordingly, summary judgment should not have been entered and a trial should have proceeded to determine the scope of what documents and records constitute Shared Facilities Records.

The Trial Court also erred in granting the Defendant's Daubert Motion and excluding the testimony of Plaintiff's expert. Mark Gerstle, Plaintiff's expert and a Certified Public Accountant for over 35 years, was expected to testify regarding the overcharges to the

Association's members under the subject Declaration of Condominium. Mr. Gerstle's testimony and opinion were founded upon a review of initial records, and the subsequent disclosure of additional records, that supported damages in the amount of the stated opinion. The Trial Court's Order excluding the testimony of Mr. Gerstle is flawed because the specific findings of fact on the record regarding "whether the testimony was scientifically reliable and factually relevant" are not properly supported and rely on piecemeal and irrelevant testimony.

Therefore, the final summary judgment should be reversed, and the matter remanded for further proceedings.

V. ARGUMENT

A. Genuine Issues of Fact and a Live Controversy Exist as to What Documents Constitute the "Shared Facilities Records" and Preclude Entry of Summary Judgment

At the heart of Plaintiff's Complaint was a dispute between the members of the Association and the Hotel concerning the scope of the documents encompassed within the term "Shared Facilities Records," and its obligations to provide the records for inspection. It is not disputed that Shared Facilities Records is an ambiguous term

within the Resort Declaration. Count I and Count III are closely related; Count I alleges a breach of Section 12.9 of the Resort Declaration for failure to provide Shared Facilities Records for the year at issue and in the past. Count III sought a declaratory judgment that the records the Association sought in Count I were, in fact, "Shared Facilities Records" as defined in the Declaration. If the documents constitute Shared Facilities Records, the Hotel would have an ongoing duty to maintain those records and make them available to the unit owners and Association.

The Trial Court applied an improper burden in entering summary judgment for the Hotel on the declaratory count, requiring the Association to prove at the summary judgment phase that it was entitled to the records sought instead of simply demonstrating the existence of a genuine issue of material fact. The Trial Court concluded that the Plaintiff lacked evidence without considering any of the evidence in the record, affording the Association any further opportunity to present evidence, or reviewing the disputed books and records themselves. *See* A. 23-26.

It also determined, without basis, that there was no live, justiciable controversy despite years of dispute and litigation over the Shared Facilities Records. A. 24 ¶11. If the Court believed there was no justiciable controversy, it lacked jurisdiction to consider the evidence and hold that the Association failed to "carry its burden to establish that the documents and/or information… constitute Shared Facilities Records." A. 25 ¶12.

Finally, despite holding both that there was no justiciable controversy and that the Plaintiff had failed to meet its evidentiary burden, the court went on to hold that the documents attached as Exhibits D and E to the initial Complaint satisfied the requirements of Section 12.9 of the Resort Declaration without any findings of fact to support an otherwise very complex determination, as set forth below. A. 26, ¶14. As this is both internally inconsistent with its other findings and unsupported by any evidence, the summary judgment entered on Count III must be reversed.

1. <u>There are genuine issues of material fact regarding whether the records sought by the Association are "Shared Facilities Records."</u>

There is record evidence of the documents the Association seeks to have declared "Shared Facilities Records," the reasons the records

provided by the Hotel prior to this litigation were inadequate under the terms of the Resort Declaration, and the fact that the Hotel to this day denies that the financials the Association believes constitute Shared Facilities Records are, in fact, Shared Facilities Records. Summary judgment was therefore inappropriate, and the Association is entitled to an evidentiary hearing and determination as to which documents constitute Shared Facilities Records.

The Hotel's own motions and correspondence demonstrate that the specific records requested by the Association exist, which they turned over to satisfy Count I. The Association simply asks the court to determine the continuing requirement for the hotel to maintain the same records referenced in Count I and make them available for inspection pursuant to Section 12.9 of the Resort Declaration.

Section 12.9 of the Resort Declaration requires the hotel to maintain records "showing its actual receipts and expenditures with respect to the maintenance, operation, repair, replacement, alteration and relocation of the Shared Components." R. 85. This is a much more complicated and ambiguous requirement than it seems

on its face due to the byzantine financial structure of the Project. First there is the Sandy Lane Master Association:

SANDY LANE MASTER ASSOCIATION

At the "top" of the legal structure sits the Sandy Lane Master Association, ("SLMA") which encompasses the entire property from 2301-2399 Collins Avenue (1 Hotel & Homes (the "Master Developer") and the Roney Palace Condominium (the "Roney"), collectively the "Property"). The SLMA is responsible for the operations, maintenance, repair and refurbishment of all the Common Elements of the Property, including the building structures, supporting infrastructure & equipment and recreational facilities. SLMA assessments are comprised of (i) INDIRECT (General Common) expenses that are allocated to the Roney (47.5%) and to Non-Roney (everything owned by 2377 Collins Resort, LP (aka the Master Developer)) (52.5%) as defined in the Master Declaration, and (ii) DIRECT expenses that are paid for/controlled by the SLMA but are directly allocable to the Roney or Master Developer. Essentially the DIRECT SLMA expenses are for those items that would typically be referred to as "Limited Common Elements". Roughly one-third of expenses in the SLMA are directly allocated, including insurance, security, and valet parking. With the recent splitting of the utilities systems, the utilities expense (a material portion of the SLMA budget) is now also largely directly allocated. These direct allocations help avoid future conflict in the SLMA.

A. 90. There are direct expenses and indirect expenses that are allocated in different ways amongst the different components of the Project. Then some of those expenses flow to the "Mini-Master/Shared Facilities," which is then reallocated and split up between the Hotel, condominium, and commercial elements.

MINI MASTER / SHARED FACILITIES

The SLMA expenses charged to the Master Developer flow through into the Mini-Master / Shared Facilities Budget which is comprised of the following constituents/elements: The 1 Hotel ("Hotel"), The 1 Residences ("Condos") and the Commercial units ("Retail"). The Mini-Master legal structure provides the Master Developer with the necessary control over the Hotel, Condos and Retail and through which shared expenses will be allocated. This is the typical/norm setup for a luxury mixed-use project in the US as well as other jurisdictions. In addition to the costs charged from the SLMA into the Mini-Master Association (the Master Developer Assessments), the Hotel will also allocate expenses for areas defined as "Shared Facilities" in the Mini-Master Declaration, such as the employee break room, staff locker rooms, cafeteria, corridors and circulation areas, the 24th street receiving dock, certain staff office spaces and related administrative expenses that serve both the Hotel and Condo Associations, as well as the dedicated Condo/Residential Lobby & residential support staff. The Mini Master Budget also includes the Security expenses for the areas controlled by the Hotel Owner/Operator – separate from the "General Common" security expense charged through and controlled by the SLMA. The Mini-Master budget (as well as the Hotel Unit Budget discussed below) was created utilizing the wage and expense details from the then existing (2013) Hotel pro forma (as prepared by Starwood Capital Group) as well as a number of zero-based schedules created by the then (2013) Hotel Managing Director with additional input from Coral Hospitality. As noted above in the SLMA narrative, to more effectively manage the entire Property, certain services will be provided/controlled by the Hotel Operator, such as Pool Service and Security services. Portions of these expenses will be funded by (i) the Hotel directly, (ii) the Mini-Master budget (and therefore funded by the Hotel, Condo and Retail constituents), and (iii) the SLMA, as a portion of the expense will be charged "back up" the chain so Roney can contribute its pro-rata share. The estimated splits for these items that are utilized in the initial draft budgets are based on discussions

Id. But it's even more complicated than all that. For example, the Hotel incurs expenses for staffing and administration. It then adds a three percent upcharge on those costs and charges them to the SMLA. And then some of that expense flows back down to the Mini-Master and then to the condominium owners. A. 98-99; Deposition of Bill Lloyd, 38:4-40:18.

The condominium is charged assessments by the Hotel for "Shared Facilities Costs" that are some portion of a portion of total costs which may have been incurred and charged back to the SMLA, or incurred directly or indirectly by the SMLA, or attributed as indirect expenses to the Mini-Master, and then everything is allocated and re-allocated again by the Hotel. And the end result is that the documents provided by the Hotel to the unit owners summarizing the assessments do not reflect "actual receipts and expenditures" for the Shared Facilities. A. 161-165.

In order to get any sense of the actual receipts and expenditures, one needs a much broader range of documents than the ones provided by the Hotel. These documents include the different worksheets and allocation methods for distributing all the

different expenses amongst the entities and elements of the Project. One of the documents the Association seeks to have deemed a "Shared Facilities Record" is the SMLA budgets and financials, since those expenses are passed down to the Mini-Master and then to the Shared Facilities. A. 93, 98-99. These worksheets, or backups, are needed to understand what expenses are being charged to the Shared Facilities and are the type of documents the Association believes fall under the definition of "Shared Facilities Records."

While the court excluded the expert testimony of Mr. Gerstle, it did not preclude him from testifying as a fact witness about the disputed documents and why they are necessary to ascertain "actual receipts and expenditures" for the Shared Facilities Costs. Mr. Gerstle would have testified that the Hotel failed to provide Shared Facilities year-end reconciliations and sufficiently detailed SMLA financials which identified the "direct" and "indirect" costs that were being charged to the Shared Facilities. A. 155-157. He could also testify about the specific records turned over in response to Count I, the information they contained, and the necessity of those documents to show actual receipts and expenditures underlying the

Shared Facilities Costs. And the Defendant acknowledges that it wasn't until after this lawsuit was filed that it turned over "600 pages of backup detail for the Shared Facilities Costs for 2018 and 2019, including contracts, payroll summaries, and invoices." A. 35. Those facts would have raised the genuine issue for the court to consider in deciding whether they constituted "Shared Facilities Records" under the Resort Declaration.

The necessity of the disputed documents is highlighted by the Hotel's expert witness's reliance on documents that exceeded the scope of Exhibits D & E of the initial Complaint. Defendant's expert, Francis Nardozza, testified that in order to familiarize himself with the allocations and the assessments, he had to review documents that the Association contends are Shared Facilities Records and that the Hotel refuses to concede on their inclusion within the definition of Shared Facilities Records. Overall, Nardozza's Report made clear that verification of actual receipts and expenditures could only be accomplished through a comparison of the various schedules and allocation methods with other the financial statements and ledger

accounts, none of which are available to Association members. R. 4698-4702; A. 265-266.

Nardozza's expert Report further highlights some of the documents at issue, most of which were not provided prior to litigation and, more importantly, are still disputed as Shared Facilities Records. For example, Nardozza reviewed Shared Facilities Records the Association members do not currently have access to for his analysis of the Shared Facilities Costs, such as:

> Shared Facility Budget-Residential Direct FTE Guide
> Surplus Reporting
> Budget- Hotel Wage Allocations & Weighting Report
> Residential Wage Allocation
> Residential Direct Ledger
> Mini-Master Source View Financials
> Sandy Lane Budgets
> Sandy Lane Master Financials
> Payroll details

A. 265-266.

Although the court apparently decided that Exhibits D and E to the initial Complaint were all that is needed to satisfy Section 12.9, the Hotel didn't initially turn over those documents and only did so after the lawyers got involved, *all while still maintaining that it was not required to do so under the Resort Declaration.* A. 70-75.

There is ample evidence of a clear and present controversy that requires a ruling by the court. The Association's position is that the documents turned over in response to Count I are "Shared Facilities Records" as defined in Section 12.9. At no time has the Hotel conceded that the records turned over in response to Count I are "Shared Facilities Records" as defined in Section 12.9. There is record evidence of what documents were previously provided by the Hotel, the reasons they were inadequate, and the specific documents sought (and eventually received) by the Association that it contends are Shared Facilities Records. When, as here, an action for declaratory judgment involves an issue of fact, "the issue may be tried as issues of fact are tried in other civil actions in the court in which the proceeding is pending." § 86.071, Fla. Stat.

The Association is entitled to a trial on its declaratory judgment count. The court's finding that the "Plaintiff has failed to carry its burden to establish that the documents and/or information enumerated in Count III of its Complaint constitute Shared Facilities Records" is both an inappropriate burden to apply at the summary judgment stage and contradicted by evidence on the record.

2. There exists a live, justiciable controversy between the parties regarding the definition of "Shared Facilities Records" and the resulting right to inspect those records

As explained above, this lawsuit arose out of a longstanding dispute between the parties regarding what information and documents the Hotel was required to make available for inspection as "Shared Facilities Records," and the Plaintiff was obligated to file this lawsuit in order to secure the documents that it is entitled to pursuant to the Resort Declaration. Specifically, Plaintiff sought the financials of the Master Association and master payroll records, as well as documents reflecting the allocation and methodologies of calculating the Shared Facilities Costs, amongst others. Ultimately, documents were produced but the Hotel has never admitted that they are "Shared Facilities Records."

In Count III, the Association alleged that certain categories of documents fell within the scope of records the Hotel must make available for inspection under Section 12.9 of the Resort Declaration. R. 2405-2409. The Defendant generally denies that any of the identified documents are Shared Facilities Records. R. 3013-3014. Moreover, the Defendant affirmatively alleges that "the Association's

demand for 'methods of determining the percentages and other amounts of the allocation of the Assessments imposed on Unit Owners' is not proper, as it is not a Shared Facilities Record." R. 3015-3017. The general denial of the Plaintiff's assertions regarding the Shared Facilities Records and the Defendant's diametrically opposed position exemplify the need for a judicial declaration.

Before this suit was filed, the Association's counsel sent the Hotel a letter stating that in September 2018 the Association requested "worksheets, spreadsheets, memos, communications used… to arrive at the % that is charged to 2399 in the Shared Budget," which the Hotel refused to provide A. 70-71. The letter went on to request "the documents which support the operational expense categories set forth in the Shared Facilities Budget," the Sandy Lane Master Association budget, and worksheets that explain the "weighting analysis" and "cost allocation model." *Id.*

On May 23, 2019, the Hotel responded that it provided the documents which would later be attached as Exhibits D and E to the initial Complaint, and that already "the Board was provided with far more documents and information than required by the Declaration."

A. 73 (*emphasis added)*. So presumably the Hotel believes it has to provide *less* information than that contained in the Exhibits, although it's unclear what exactly that would be. What is concerning about this is the Hotel's identification of these documents as "detailed financial information relating to the 2018 Shared Facilities Budget," yet refusing to acknowledge their classification as Shared Facilities Records.

Many more letters were exchanged between counsel for the parties, with the Association continuing to request additional financial information (stating that Section 12.9 "includes a much broader scope of records than those provided thus far." A. 109) and the Hotel steadfastly maintaining that "2399 Condo is seeking additional records that SB Hotel is not obligated to provide," A. 107, and that "SB Hotel has more than complied with its obligations." A. 112. This lawsuit followed, with the Association alleging a breach of contract for failing to provide the Shared Facilities Records in the past, and the declaratory Count III for a determination of specifically which documents and information should be deemed "Shared

Facilities Records," as it is clear the parties have *much* different interpretations of Section 12.9.

It is instructive to look at Count I of the Complaint in order to understand the controversy at stake in Count III, as each count requested the same documents and alleged that they fell under the definition of "Shared Facilities Records" under Section 12.9 and were therefore subject to inspection by the Association. The only difference is that Count I was retrospective and Count III was prospective. R. 2395-2409.

After several years of litigation, the Hotel finally provided most of the documents the Association sought in Count I. According to SB Hotel, on or about January 14, 2022 it provided the Association with "2015 – 2020 Profit and Loss Statements, Balance Sheets, and Shared Facilities Budgets with accompanying managements notes." A. 36. After further meetings between counsel and the Association's accountant, the Hotel provided the Master payroll budget, insurance policies, SMLA budgets, and documents "showing the Hotel's labor that flows through to the Shared Facilities Budget, as well as a more detailed breakdown of 'residential direct' costs for 2018 – 2020, which

are also allocated to the Shared Facilities Budget." A. 37-40. Yet the Association responded that the Hotel *still* hadn't provided all the needed Shared Facilities Records. A. 142-146, 155-157.

The trial court erred by overlooking the voluminous record evidence of the actual, present controversy and relying solely on a misreading of a single line from the deposition of the Association's corporate representative to find that "Based on Plaintiff's admission that there is not a dispute, this Court rules Defendant is entitled to summary judgment on Count III." A. 24, ¶11. But neither the Plaintiff nor its corporate representative *ever* admitted there was no dispute, and, when properly pled, "a trial court abuses its discretion where it fails to address the merits of a petition or complaint for declaratory judgment." *Mulvey v. Forman*, 207 So. 3d 894, 896 (Fla. 4th DCA 2017).

In the line quoted by the court ("I don't think there is a dispute on what's a shared facility record necessarily more than the disclosure of those records to the association"), Mr. Maranges was emphasizing the *effect* of the relief sought by the Association: it does not harbor an idle curiosity about the abstract definition of "Shared

Facilities Records;" it seeks a declaration that certain information and documents fall within that definition *so that the Hotel is required to disclose them* to the unit owners pursuant to the Resort Declaration. *See* R. 2406, ¶66 ("The purpose of this cause of action is to ascertain whether Defendant must provide the full access and disclosure of Defendant, SB Hotel's Shared Facilities Records").

It would be extraordinary if the parties had spent the past four years litigating an issue on which there was no dispute. Because the trial court's finding to the contrary is unsupported by the record, the summary judgment on Count III must be reversed.

3. The Court *did* issue a declaratory judgment in its order after seemingly declining to rule.

Despite ruling that 1) there was no justiciable controversy, and 2) that the Plaintiff had failed to carry its burden of proof that it was entitled to the relief it sought, the court went on, confusingly, to seem to issue a declaratory judgment on Count III. It wrote: "Defendant provided Plaintiff with the Shared Facilities Records prior to the commencement of this action" and ruled that Exhibits D and E to the initial Complaint satisfied Section 12.9 of the Resort Declaration. A. 26, ¶14. A court may not rule that there is no justiciable controversy,

thus depriving itself of jurisdiction, and then go on to issue a declaratory judgment. *Martinez v. Scanlan*, 582 So. 2d 1167, 1171 (Fla. 1991) ("there still must exist some justiciable controversy between adverse parties that needs to be resolved for a court to exercise its jurisdiction"). Additionally, there was insufficient evidentiary basis for the court's ruling, and it was improper to enter a substantive judgment where *neither* party had moved for the court to actually rule on the merits and enter a declaratory judgment. *Express Damage Restoration, LLC v. First Cmty. Ins. Co.*, 314 So. 3d 532, 534 (Fla. 3d DCA 2020) ("In granting the insurer's motion to dismiss, to the extent that the trial court decided the very question of construction that was the subject of the declaratory action, the assignee is correct that the court procedurally erred"); s*ee also Touchton v. Woodside Credit, LLC*, 46 Fla. L. Weekly D768 (Fla. 2d DCA Apr. 7, 2021); *Faussner v. Wever*, 432 So. 2d 100, 102 (Fla. 2d DCA 1983) (noting the need for "scrupulous observance of the notice requirements prior to entry of summary judgment.").

Due to its lack of basis, internal contradictions, and lack of due process and the opportunity to be heard, the summary judgment in favor of the Hotel on Count III must be reversed.

B. The Trial Court Abused Its Discretion by Excluding the Opinion of the Association's Expert, Mark Gerstle

1. The Trial Court's findings as to whether the testimony was sufficiently reliable and factually relevant are flawed.

The court abused its discretion in excluding Mark Gerstle's expert opinion because it was based upon sufficient facts, was the product of reliable accounting principles, was applied in a reliable manner, and is therefore relevant and admissible. The Daubert Order itself misapplies the Daubert standards and substitutes the Trial Court's assessment of the expert's conclusion in place of the fact finder's conclusion. *See* A. 5-16.

Much of the Trial Court's analysis and the Defendant's arguments rested on attacking an initial, withdrawn expert report, which did not factor in Defendant's "weighted average methodology" and resultant "true-ups" due to the opaque and complex nature of the Hotel's accounting methods. Once Mr. Gerstle became aware of

additional facts, his opinion changed, as would be expected of a truthful and fact-based expert analysis. A. 260-263.

First, the Daubert Order states that Mr. Gerstle's opinion is excluded because he failed to conduct the analysis for which Plaintiff proffers him and, in conclusory fashion, states that Gerstle's testimony is not based on sufficient facts or data, a product of reliable principles and methods, or applied reliably to the evidence in this case. A. 8, ¶8. His current, revised opinion was outlined in his Response to the rebuttal expert's report and in his deposition testimony. R. 4426-4590; A. 260-263. It is admissible under § 90.702 and the Daubert standard, as it is based on ascertainable, hard data, the methodology is reliable and based on sound principals, and the result is a matter of simple math. All of the court's criticisms of the expert testimony go its weight, not its admissibility, and are properly dealt with on cross examination. Further, the facts upon which Gerstle relied and how he applied his methodology was detailed in the deposition and further argued in subsection 3, *infra*.

Second, the Trial Court's findings, although an adoption of the Hotel's submitted proposed order without modification, go on to state

that Gerstle did not understand the allocated Shared Facilities Expenses and he did not perform an analysis of the reasonableness of how the Hotel actually allocated expenses to the unit owners are red herrings in the Daubert analysis. Due to the piecemeal production of Shared Facilities Records by the Hotel, Mr. Gerstle was unable to conduct his study at one time and had to revisit his opinion following the receipt of additional documents and the Hotel's expert report. Although Mr. Gerstle revised his opinion, the scope of that opinion and his testimony (although reduced in amount claimed) remained the same – the Hotel had overcharged the unit owners by misallocating the expenses based on an intensity of use standard.

2. The standard for exclusion is high and was not met here.

Expert opinion testimony is admissible if "(1) The testimony is based upon sufficient facts or data; (2) The testimony is the product of reliable principles and methods; and (3) The witness has applied the principles and methods reliably to the facts of the case." § 90.702, Fla. Stat.; *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). Under this standard, "the trial court not only evaluates a putative expert's

credentials, but also serves as a gatekeeper in 'ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand.'" *Baan v. Columbia County*, 180 So. 3d 1127, 1133 (Fla. 1st DCA 2015) (quoting *Daubert*, 509 U.S. at 597). The court determines whether: (1) the expert is qualified to testify; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable; and (3) the testimony assists the trier of fact to understand the evidence or to determine a fact in issue. *City of Tuscaloosa v. Harcros Chemicals, Inc.*, 158 F.3d 548, 562 (11th Cir. 1998).

However, rejection of expert testimony under Daubert "is the exception rather than the rule." Fed. R. Evid. 702 advisory committee's note to 2000 amendment. "The trial court's gatekeeper function is not intended 'to serve as a replacement for the adversary system.' Instead, the Daubert Court stressed that '[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.' These tools remain the 'appropriate safeguards,' and not 'wholesale exclusion,'

where the basis for expert testimony meets the standards set forth by the rules of evidence." *Vitiello v. State*, 281 So. 3d 554, 560 (Fla. 5th DCA 2019) (quoting *Daubert*, 509 U.S. at 596.) All factual inferences should be construed in favor of the non-movant. *Baan v. Columbia Cnty.*, 180 So. 3d 1127, 1132 (Fla. 1st DCA 2015).

3. Gerstle's opinion would assist the jury in understanding the evidence and determining a fact at issue.

To be admissible, expert testimony "must assist the trier of fact in understanding the evidence or in determining a fact in issue." Fla. Stat. § 90.702. At issue is whether or not the Hotel breached the Declarations by improperly or unreasonably allocating expenses to the Shared Facilities, which are then assessed to Association members. Mr. Gerstle's analysis and expert opinion regarding the reasonable allocation of administrative salary expenses goes directly to this point and is necessary for a trier of fact to understand the evidence.

In its Order, the court appears to focus on the analysis Mr. Gerstle performed before he was provided with additional financial information by the Defendant. Although several of the conclusions in the initial expert report were withdrawn, Mr. Gerstle accounted for

newly discovered information and issued a revised opinion on the amount that the Association has been overcharged for administrative expenses. If anything, his revision of the damages calculation in light of additional information is proof that the methodology is reliable, fact-based, and non-speculative.

If given the opportunity, he would have explained the basis for his opinion that:

- The "reasonable projections of the intensity of use" of administrative payroll expenses by the Shared Facilities is 10% or less, and that administrative costs above 10% are not based on a reasonable projection of the intensity of use.
- The 10% figure is based on the percentage of employees allocated to the Shared Facilities and the ratio of Shared Facilities expenses to the total amount of Hotel expenses.
- By allocating 10% of administrative expenses to the Shared Facilities, and then billing 36.8% of those expenses to the Condominium Association (as per the Declaration and its Amendments), one can determine the amount that should have been billed to the Association, and the amount assessed in excess of that number.

See A. 212-213.

Based on the above, he testified that the Hotel overcharged the Association as follows:

Q. And so is it your opinion, that for the 2018 budget year, there was an overcharge for payroll for administrative in general of $37,273?
A. Yes.

…
Q. And so is it your opinion that for 2019, there was an overcharge of these administrative and general payroll expenses of $39,304?
A. Yes.
…
Q. $22,651, that's the amount of your overcharge opinion for 2020?
A. Yes.
…
Q. And it is your opinion that there was an overcharge of administrative general payroll charges for 2021 in the amount of $24,007?
A. Yes.

R. 4080-4084.

Therefore, Gerstle determined that the Association suffered damages of $157,788 in overcharges between 2018-2021. A. 260-263. This testimony is necessary and helpful to the jury in deciding whether there has been a breach of the Resort Declaration.

The Court below appeared to take a brief exchange in Mr. Gerstle's deposition out of context for the proposition that he "admitted" that the allocations were "reasonable." A. 9, ¶ 6. This is not in fact Mr. Gerstle's testimony, as supported by every other part of his deposition testimony and Response Report, and the exchange quoted from his deposition seems to have been an incidental awkward phrasing on his part. Notwithstanding the use of the term "reasonable" by Mr. Gerstle in his deposition, the characterization of

expenses as such has little bearing on whether there were actual overcharges of the Shared Facilities Costs as included in the assessments. Any form of "reasonableness" does not rectify a breach for an overassessment or the inclusion of expenses that do not constitute actual Shared Facilities Costs. Had the court held an evidentiary hearing, Mr. Gerstle could have clarified his statements to the court. And if he testified at trial, he could clearly explain his actual position to the jury. His off-hand use of the word "reasonable" would properly be a point for cross examination, but mischaracterizing his true expert opinion and excluding his testimony on the basis of one mis-phrased answer in a deposition is an abuse of discretion.

4. Mr. Gerstle's opinion was based on sufficient facts and data

Under the Declaration, expenses should be allocated to the Shared Facilities based on the "intensity of use" of those facilities. To determine the "intensity of use" for the portion of management and executive salaries which should be allocated to the Shared Facilities, Mr. Gerstle explained that he analyzed the Hotel's financial documents. In his report, he explains:

To analyze the intensity of use, I compared the total annual expenses and the number of employees in each entity.

Comparison of Shared Facilities Expenses vs. Hotel's Total Expenses[12]

	2018	2019	2020	2021
Shared Expenses	$ 5,915,592	$ 5,947,586	$ 5,9457,586	$ 5,729,801
Hotel Expenses	$ 87,948,519	$ 83,233,733	$ 65,532,965	$ 111,934,471
% of Shared Exp.	6.72%	7.15%	9.07%	5.12%

As seen above, the annual expenses of the Hotel are more than ten times that of the Shared Facilities.

A. 212.

He also reviewed and compared the number of "FTEs," which represents the number of full-time employees, between the Shared Facilities and the Hotel:

Comparison of Shared Facilities FTE vs. Hotel's Total Expenses[3]

	2018	2019	2020	2021
Shared FTEs Allocated	50	57	55	49
Total Hotel FTEs	515	540	727	599
% of Shared FTEs	10%	11%	8%	8%

As shown above, the Shared Facilities utilize roughly 10% of total Hotel FTEs.

Id. These numbers come from the Hotel's profit and loss statements, the Shared Facilities financial statements, and the Hotel Wage Allocation Summary. Unless the court believed the Hotel's own financials are unreliable, it should be evident that the opinion was based on sufficient, ascertainable data.

After conducting his analyses of the financials and employee data as reported by the Hotel, Mr. Gerstle determined that "based on the relative size of the Shared Facilities' annual expenses and its usage of Hotel FTEs, a 10% expense allocation would be an appropriate estimate." A. 213. He further explained that his method was "a representative way of indicating how much time is spent based on the number of people you supervise -- or that report to you, as well as the number of dollars that are expended in each area," and was therefore a good model of "intensity of use" for administrative and managerial salaries. R. 4465. From there, it is a simple matter of arithmetic to compare the amount the Hotel actually charged to the Association with the amount that would have been charged using the 10% methodology.

In its Order, the court ruled that Mr. Gerstle's opinion was not based on sufficient facts or data because he did not "review documents showing the amounts of Shared Facilities assessments that were *actually paid* by the unit owners." A. 9-10, ¶8 (emphasis in original). The amount actually paid by the unit owners is irrelevant for the damage calculations, as the assessments were actually

charged to the unit owners, and assessments levied by the Hotel to the unit owners become a lien on each owner's unit and the Hotel can foreclose on its lien to collect any unpaid assessments. R. 82-84. If any unit owner failed to pay the assessments to the Hotel, the Hotel still has a lien on their property and against all successor titleholders for the full amount of the assessments. If an owner hadn't yet paid, any damages awarded to the Association would go to reduce the amount still owed by that unit owner. In short, the obligation to pay amounts to the Hotel in excess of what the Hotel is entitled to, under penalty of foreclosure, comprises the damages to each owner. The issue of how much each owner actually paid would only matter to the *application* of any judgment for damages.

The court goes on to hold that because Mr. Gerstle could not recite the Plaintiff's causes of action, he could not "'reliably' apply any methodology 'to the facts of the case' if he does not understand what is being claimed." A. 10-11, ¶10. There is nowhere in any of the multitude of cases interpreting the Daubert or Frye standards that requires an expert to understand the facts of the case outside of those that are relevant to or the basis of the expert opinion, and nothing

requires an accounting expert to have an understanding of all the causes of action or the legal issues in the case. He analyzed the financial and employment information that was relevant to his determination regarding administrative expense allocations, which is all that is required for his opinion to be admissible on that very narrow issue. His testimony is admissible because he "knows of the facts which enable him to express a reasonably accurate conclusion." *Morrow v. Brenntag Mid-S., Inc.*, 505 F. Supp. 3d 1287, 1291 (M.D. Fla. 2020).

Similarly, the court found that Mr. Gerstle's opinion was not based on sufficient facts because he "failed to review and understand the contract terms." A. 11, ¶11. Again, there is no requirement that an accounting expert also be a lawyer or an expert in construction of contractual language. Mr. Gerstle analyzed financial documents to determine whether the allocation of administrative payroll expenses was based on a reasonable projection of intensity of use. It is unclear why the court would require him to understand contract terms. He is not giving any opinion on the terms of the Resort Declaration, and thus does not need to have read it.

The court wrote that Mr. Gerstle's testimony should be excluded because he did not evaluate whether the financial information contained in the wage allocation sheets was accurate. A. 11, ¶12. However, Mr. Gerstle testified that Hamilton Goff, a staff accountant from his office, did in fact verify the accuracy of that information against other financial statements provided by the Hotel. R. 4477-4478. As an expert witness in accounting matters, Mr. Gerstle is entitled to rely on his staff accountants to verify the financials produced by the Hotel. *See Vega v. State Farm Mut. Auto.*, 45 So.3d 43, 45 (Fla. 5th DCA 2010) (Expert witnesses may rely upon hearsay so long as "the hearsay is of the type reasonably relied upon by experts in the field."). Further, the Plaintiff should be entitled to rely on the financial information provided by the Hotel to justify its own assessments.

At the stage of determining admissibility, it is clear that the expert opinion of Mr. Gerstle--that 10% is the reasonable projection of intensity of use--is grounded in the facts of the case and not mere speculation. Each of the court's findings in support of the exclusion of Mr. Gerstle are based on a misunderstanding of the testimony, a

misunderstanding of the damages claimed, or a misapplication of the Daubert standards. The resulting conclusion, that the opinion was not based on sufficient facts, was an abuse of discretion.

5. Mr. Gerstle's opinion was the product of reliable principles and methods.

The Daubert standard requires the court to focus on the methodology used by the expert, not the expert's conclusions. It is the process used by the expert to reach his conclusions, and not the conclusion itself, which is the aim of the Daubert standard. *See Daubert*, 509 U.S. at 595 ("The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate."). Further, "In forming opinions, an expert is entitled to rely on any view of disputed facts the evidence will support." *Baan v. Columbia Cnty.*, 180 So. 3d 1127, 1132 (Fla. 1st DCA 2015); Fed. R. Evid. 702 advisory committee's note ("When facts are in dispute, experts sometimes reach different conclusions based on competing versions of the facts. The emphasis in the amendment on 'sufficient facts or data' is not intended to authorize a trial court to exclude an expert's testimony on the ground that the court believes one version of the facts and not the other.").

As explained above, Mr. Gerstle formulated a methodology for allocating administrative salaries after analyzing the financial and employee data reported by the Hotel, and determined that "based on the relative size of the Shared Facilities' annual expenses and its usage of Hotel FTEs, a 10% expense allocation would be an appropriate estimate." A. 213. From there, it is a simple matter of arithmetic to compare the amount actually charged to the Association with the amount that would have been charged using the 10% methodology.

The opinion is based on reliable principals, applied reliably to the facts, and is therefore admissible. The Defendant's own rebuttal expert admitted: "in this industry and common industry practice, I wouldn't say there is an absolute best way or best item or best means… It's what's fair and reasonable, and consistent." R. 4084. Similarly, "there could be multiple methodologies that are fair and reasonable." *Id*. It should be up the jury to decide.

The court's skepticism of Mr. Gerstle's methodology and its opinion that the methodology was not industry standard (contrary to the Hotel's own expert opinion) seem to be based on the court's

assessment of the merits of his conclusions. It may believe that the Hotel's allocation method is superior, but that is not the standard that should be applied when considering the admissibility of evidence. *See Daubert*, 509 U.S. at 595 ("The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate."). Mr. Gerstle's opinion has a factual basis, is not a subjective belief or speculation, and can be reliably applied and mathematically calculated. The methodology is sufficiently reliable and should therefore be admitted.

6. Mr. Gerstle's opinion should not have been excluded without an evidentiary hearing.

On a Daubert hearing, "[a] proponent of expert testimony must show by a preponderance of the evidence" that the opinion is admissible. *Mitchell v. Genocorp, Inc.*, 165 F. 3d 778 (10th Cir. 1999). Excluding Mr. Gerstle's testimony without an evidentiary hearing was an abuse of discretion because it precluded the Plaintiff from presenting the evidence necessary to satisfy its burden.

In *David v. National Railroad Passenger Corporation*, 801 So. 2d. 223 (Fla. 2d DCA 2001), the Court noted that an evidentiary hearing should be held before determining whether an expert's testimony is

based on reliable principles. *Id.* at 225. The case was remanded, as without the evidentiary hearing, the trial court had an insufficient basis to permit a reasoned assessment of the expert opinion and therefore abused its discretion. *Id.* at 226. *See also Holy Cross Hosp., Inc. v. Marrone*, 816 So. 2d 1113, 1120 (Fla. 4th DCA 2001).

Similarly, the court in this case lacked a sufficient basis for its ruling and thus abused its discretion in excluding the testimony without an evidentiary hearing.

7. Without the exclusion of Gerstle's testimony, genuine issues of material fact as to the damages preclude summary judgment.

The trial court's exclusion of Mr. Gerstle's testimony was also the basis for the summary judgment entered on Count II. Because the ruling on the Daubert motion lacked sufficient basis, especially without an evidentiary hearing on the matter, the error was not harmless and issues of material facts preclude the entry of summary judgement on the damages issue.

The reversal of an order excluding expert testimony also requires remand for a reappraisal of the factual issues. *See Peng v. Citizens Prop. Ins. Corp.*, 337 So. 3d 488, 492–93 (Fla. 3d DCA 2022) ("Based on our de novo review of the summary judgment evidence, if

the trial court had not stricken Salleh as a witness, a genuine issue of material fact would have existed."); *See also Echevarria v. Lennar Homes, LLC*, 306 So. 3d 327, 329-30 (Fla. 3d DCA 2020) (reversing summary judgment where there was a clear conflict between experts, giving rise to a disputed issue of material fact).

While the Hotel Operator computes its allocations based on a proprietary analysis of 'intensity of use' that is years old, Mr. Gerstle utilized a mathematical model based on full time employees (FTE) and proportionate expenses of the Shared Facilities and created a damages model that compares his intensity of use model with that of Defendant's methodology dating back to 2015. In doing so, Mr. Gerstle arrives at a justifiable claim exceeding $150,000 that raises a genuine issue of material fact regarding the reasonableness of the allocations and the corresponding breach of the Resort Declaration.

The testimony and discovery taken in this matter establish support that the Hotel breached the Resort Declaration by charging the Unit Owners unreasonable and excessive assessments. Plaintiff contends that the shared admin payroll expenses, shared payroll burden, and shared payroll processing fees are excessive and

unreasonable and will offer Mr. Gerstle's testimony on those issues. Defendant's own expert testified to the various methodologies that would be appropriate for the Project and even acknowledged that the Plaintiff's expert was reasonable in his approach and methodology.

A battle of the experts before the trier of fact is required here and the summary judgment on Count II must therefore be reversed.

VI. CONCLUSION

The Order granting Defendant's Motion for Final Summary Judgment should be reversed because genuine issues of material fact exist regarding what documents constitute Shared Facilities Records. The Trial Court's finding that Plaintiff admitted the produced documents were Shared Facilities Records is in direct contradiction to the Hotel's position that the documents were not Shared Facilities Records and were only being turned over in response to the litigation. Accordingly, a justiciable controversy existed that required the Trial Court's determination as well as a determination as to whether injunctive relief was appropriate to resolve the Hotel's obligations to provide the records in subsequent years.

Further, the Trial Court abused its discretion in excluding the testimony of Mark Gerstle, the Association's expert, as his opinion was reliable and relevant, being founded upon a review of the Shared Facilities Records. As such, Mr. Gerstle's opinion would have been helpful to a jury and should not have been excluded. Accordingly, the Order granting Defendant's Daubert Motion should be reversed as well as the corresponding Order granting Defendant's Motion for Summary Judgment.

VII. CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing Brief is in conformity with all requirements set forth in Florida Rules of Appellate Procedure 9.045 and 9.210.

Dated: May 31, 2024

Respectfully submitted,

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VIII. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May 2024, a true and correct copy of the foregoing was filed with the Clerk of Courts using the Florida E-Filing Portal, which will send a notice of electronic filing to all counsel of record, including:

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