

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Albert R. LaFleur and)
 Eileen LaFleur,)
)
 Plaintiffs,)
)
 v.)
)
 Coral Resorts, LLC,)
 Hilton Head Hospitality, LLC d/b/a)
 Hilton Head Guest Services,)
 Sunrise Vacation Properties, Ltd.,)
 Sherri J. Smith, Patrick Budnik,)
 Steven Deutsch, Katherine Swisher, and)
 Reba Management, Inc.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2012-CP-07-3746

SECOND AMENDED COMPLAINT
 (Jury Trial Requested)

RECEIVED

MAY 27 2014

SC Court of Appeals

COME NOW THE PLAINTIFFS, Albert R. LaFleur and Eileen M. LaFleur ("Plaintiffs"), complaining of the Defendants Coral Resorts, LLC ("Coral Resorts"), Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services ("Hilton Head Hospitality"), Sunrise Vacation Properties, Ltd. ("Sunrise Vacation"), Sherri J. Smith ("Smith"), Patrick Budnik ("Budnik"), Steven Deutsch ("Deutsch"), Katherine Swisher ("Swisher"), and Reba Management, Inc. ("Reba Management"), and would respectfully show unto the Court and allege as follows:

PARTIES AND JURISDICTION

1. The Plaintiffs are citizens and residents of the County of Bristol, Massachusetts.
2. During all times complained of herein, each and every agent and/or employee of each and every Defendant was working as an agent and/or employee of one or more or all of the other Defendants, and, as such, each Defendant is responsible for the acts and/or omissions of the

other Defendants, their agents and employees at all times set forth herein.

3. During all times complained of herein, each and every agent and/or employee of each and every Defendant was working as an alter ego of one another, and were acting in the capacity of a joint enterprise and as such each is responsible for the acts and/or omissions of the other Defendants, their agents and employees at all times set forth herein.

4. Upon information and belief, Defendant Coral Resorts is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

5. Upon information and belief, Defendant Hilton Head Hospitality is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

6. Upon information and belief, Defendant Sunrise Vacation is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

7. Upon information and belief, Defendant Smith is a citizen and resident of Beaufort County, South Carolina.

8. Upon information and belief, Defendant Budnik is a citizen and resident of Beaufort County, South Carolina.

9. Upon information and belief, Defendant Deutsch is a citizen and resident of Beaufort County, South Carolina.

10. Upon information and belief, Defendant Swisher is a citizen and resident of Beaufort County, South Carolina.

11. Upon information and belief, Defendant Reba Management is a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

12. This Court has jurisdiction over the parties and the subject matter set forth herein, and venue is proper in Beaufort County.

GENERAL ALLEGATIONS

13. On or about March 12, 2010 the Plaintiffs were approached by an agent of Hilton Head Guest Services and encouraged and enticed to attend a time share sales presentation with Defendants.

14. Upon information and belief, Hilton Head Guest Services contracted with the Defendants to provide prospective customers, such as the Plaintiffs, to Defendants for attendance at time shares sales presentations in exchange for monetary compensation and/or other things of value.

15. Upon information and belief, Hilton Head Guest Services, by and through its agents, had actual and/or constructive knowledge, by virtue of a multitude of prior and repeated customer complaints, that the sales techniques, representations, and other information provided to the Plaintiffs during the sales presentation by Defendants were false, misleading, and/or otherwise in violation of the South Carolina Time Share Act.

16. On or about March 12 - 13, 2010, Plaintiffs attended a time share sales presentation at Defendants' Hilton Head Island, South Carolina offices, and thereafter dealt with Defendants' salespersons, including Defendants Budnik, Deutsch, Swisher, and Smith.

17. Upon information and belief, Budnik, Deutsch, Swisher and Smith contracted with the Defendants to conduct time shares sales presentations to prospective customers and to sell time share properties of Defendants to prospective customers in exchange for monetary

compensation and/or other things of value.

18. Upon information and belief, Budnik, Deutsch, and Swisher were, pursuant to South Carolina laws and regulations, acting under the supervision of Smith, Broker-in-Charge, at the time of the subject sales presentation.

19. Upon information and belief, Sunrise Vacations, Budnik, Deutsch, Swisher, and Smith had had actual and/or constructive knowledge, by virtue of a multitude of prior and repeated customer complaints, that the sales techniques, representations, and other information provided to the Plaintiffs during the sales presentation by Defendants were false, misleading, and/or otherwise in violation of the S.C. Code 27-32-10 et seq. (the "South Carolina Time Share Act").

20. Upon information and belief, Defendants contracted with each other in furtherance of its plan to facilitate the sale of time share properties within the Island Links resort, located on Hilton Head Island, South Carolina.

21. During the sales presentation Defendants Budnik, Deutsch, Swisher, and Smith, as well as other agents of Defendants, made certain representations, including:

22. That the subject time share property was for annual usage;

23. That the subject time share property was a fixed week and not part of a "floating" vacation ownership plan;

24. That the subject time share property was worth a greater number of RCI points than it actually was;

25. That the subject time share property was worth sufficient RCI points to allow the Plaintiffs to vacation on Hilton Head Island on an annual basis;

26. That ownership of the subject time share property being offered allowed the

Plaintiffs the option to annually use and rent out a developer time share week for profit;

27. That use of and renting out the developer time share week would earn the Plaintiffs profit; and

28. That the Plaintiffs would only be required to pay maintenance fees on the subject time share property every third year.

29. Following such representations and based upon same, Plaintiffs signed a contract and related documents describing the sale and purchase of an Island Links timeshare property from Defendants for approximately \$6,000.00. A copy of the purchase contract, no. IL 71757, and associated documents are attached hereto as Exhibit "A" and incorporated by reference herein.

30. Upon information and belief the Defendants, including Defendant Deutsch, did act to conceal the terms contained within the purchase contract and related documents, including through physically obstructing the purchase contract and related documents, through the use of distractions, and through the exertion of time-pressures on Plaintiffs.

31. Upon information and belief the Defendants, including Defendant Deutsch, did act to conceal the terms as set forth above because the Defendants had actual or constructive knowledge that the verbal representations made by Defendants to Plaintiffs were fraudulent and/or misleading.

32. Upon information and belief, Defendants failed to provide Plaintiffs with a complete, fully-executed copy of the purchase contract and related documents as required by the South Carolina Time Share Act, but rather Defendants mailed the Plaintiffs a copy of same to their home in Massachusetts, which the Plaintiffs received approximately ten days later, after the expiration of the five-day rescission period required under the South Carolina Time Share Act.

33. Plaintiffs, only after purchasing the time share property from Defendants and investigating the representations made to them during the subject sales presentation, realized that such representations and assurances were false.

34. As part of the sales transaction, Defendants required Plaintiffs to "deed back" the timeshare property that they owned in the Cape Cod, Massachusetts area at a resort known as "The Cove", which was valued at \$10,380.00, such "deeding back" being the transferring back of such timeshare property to the resort developer for a nominal amount of consideration. A copy of documents related to such "deeding back" is attached hereto as Exhibit "B" and incorporated by reference herein.

35. Following the conclusion of attendance at the above described sales presentation, payment by Plaintiffs of all amounts due, and the deeding over of the Plaintiffs' time share property at The Cove as required by the Defendants, the Defendants, by and through its agents, did then fail to properly transfer ownership of the Plaintiffs' time share property to Plaintiffs.

36. Insofar as the grantor specified in the Limited Warranty Deed transferring the subject property is not the proper Trustee according to the Trust Agreements referenced therein, which refer to both a previous Trustee, William Foiles, Esquire, and not the referenced Trustee/Grantor, Michael Barfield, Esquire, as well as referencing another time share development, Coral Sands Horizontal Property Regime, as set forth more fully in the Limited Warranty Deed attached hereto as Exhibit "C" and incorporated by reference herein, the Defendants did fail to properly transfer ownership of the Plaintiffs' time share property to Plaintiffs.

37. Upon information and belief, the Defendants did fail to meet all legal and regulatory requirements to engage in the sale of time share properties to the public, including the

specific sale of the subject time share property to the Plaintiffs, insofar as the Defendants did fail to pay all annual fees and to the South Carolina Department of Labor Licensing and Regulation's Real Estate Commission and to perform other requirements for the period of time encompassing the sales transaction with the Plaintiffs.

38. Upon information and belief, due to the Defendants' failure to meet all legal and regulatory requirements to engage in the sale of time share properties to the public, the Defendants did violate the South Carolina Time Share Act by engaging in the sale of a time share property to the Plaintiffs with an unregistered time share plan.

39. Upon information and belief, Defendant Reba Management contracted with the Defendants to provide customer service to time share customers such as Plaintiffs in exchange for monetary compensation and/or other things of value.

40. Upon realizing that the representations made to them during the subject sales presentation were false, the Plaintiffs contacted agents of Defendants to present them with such information in an attempt to resolve their claims as to same, yet Defendants, by and through its agents, did thereafter obfuscate such fraud and/or misrepresentations even further, and further concealing same, to the detriment of Plaintiffs.

41. Upon information and belief, the agents of Reba Management, as well as Reba Management, had actual and/or constructive knowledge, by virtue of a multitude of prior and repeated customer complaints, that the sales techniques, representations, and other information provided to the Plaintiffs during the sales presentation by Defendants was false, misleading, and/or otherwise in violation of the South Carolina Time Share Act.

42. As a result thereof, Plaintiffs have suffered and continue to suffer damages, specifically including but not limited to the amount paid for the purchase of the Island Links time

share property, the value of the time share property at "The Cove" which was required by Defendants to be deeded back to that resort, attorneys' fees, costs, and expenses, and other incidental and consequential damages as may be shown at trial.

43. Plaintiffs are informed and believe that they are entitled to actual, incidental, and consequential damages in an amount to be determined at trial, as well as their attorneys' fees, costs, and expenses.

FOR A FIRST CAUSE OF ACTION
(Fraud/Intentional Misrepresentation)

44. Plaintiffs repeat and reiterate the foregoing paragraphs as though fully restated herein.

45. As set forth above, during the course of the subject sales presentation Defendants made certain fraudulent and/or material misrepresentations to the Plaintiffs.

46. As to same:

- i. The representations were false;
- ii. The representations were material to the transaction;
- iii. The representations were known to Defendants to be false, or, alternatively, Defendants were reckless in disregarding the truth or falsity of the representations;
- iv. Defendants intended that the Plaintiffs act upon the representations;
- v. Plaintiffs were ignorant of the falsity of the representations;
- vi. Plaintiffs relied upon the truthfulness of the representations, and had a right to do so; and
- vii. As a consequent of same Plaintiffs have suffered and continue to suffer

damages as a proximate result thereof.

47. Plaintiffs are informed and believe that they are entitled to judgment against Defendants for fraud and/or intentional misrepresentation for actual, incidental, consequential, and punitive damages in an amount to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Violation of the South Carolina Timeshare Act)

48. Plaintiffs repeat and reiterate the foregoing paragraphs as though fully restated herein.

49. Defendants are a seller of a vacation time sharing plan or is in the business of selling interests in a vacation time sharing plan within the definition set forth in the South Carolina Time Share Act.

50. The time share property purchased by Plaintiffs, as set forth above, was intended to be part of a vacation time sharing plan as defined in the South Carolina Time Share Act.

51. Upon information and belief, the Defendants did fail to meet all legal and regulatory requirements to engage in the sale of time share properties to the public, including the specific sale of the subject time share property to the Plaintiffs, insofar as the Defendants did fail to pay all annual fees and to the South Carolina Department of Labor Licensing and Regulation's Real Estate Commission and to perform other requirements for the period of time encompassing the sales transaction with the Plaintiffs.

52. Upon information and belief, due to the Defendants' failure to meet all legal and regulatory requirements to engage in the sale of time share properties to the public, the Defendants did violate the South Carolina Time Share Act by engaging in the sale of a time share property to the Plaintiffs with an unregistered time share plan.

53. As set forth above, Defendants, by and through its agents, made certain representations to Plaintiffs concerning the sale of a time share property within the state of South Carolina.

54. Such representations made by Defendants, by and through its agents, constitute prohibited practices as set forth in S.C. Code 27-32-110, including but not limited to:

(a) use a promotional device including, but not limited to, sweepstakes, lodging certificates, gift awards, premiums, or discounts, without disclosing fully that the promotional device is used for the purpose of soliciting the sale of vacation time sharing plans;

(b) use a promotional device as described in item (1) to obtain the names and addresses of prospective purchasers without fully and prominently disclosing that names and addresses are acquired for the purpose of soliciting the sale of the vacation time sharing plans;

(c) misrepresent the amount of time or period of time the accommodations and facilities are available to a purchaser;

(d) misrepresent or deceptively represent the location of the offered accommodations and facilities;

(e) misrepresent the size, nature, extent, qualities, or characteristics of the offered accommodations and facilities;

(f) misrepresent the nature or extent of services incident to the accommodations and facilities;

(g) make misleading or deceptive representations with respect to the contents of the contract or the purchaser's rights, privileges, or benefits under it;

(h) fail to honor and comply with all provisions of the contract with the purchaser;

(i) misrepresent the conditions under which a purchaser may exchange his rights to

an accommodation in one location for rights to an accommodation in another location;

(j) include in a contract a provision purporting to waive a right or benefit provided for purchasers pursuant to this chapter, or seek or solicit such a waiver during the effective period of these rules; and

(k) do any other act of fraud, misrepresentation, or failure to make a disclosure of a material fact.

55. Plaintiffs are informed and believe that they are entitled to judgment against Defendants for violation of the South Carolina Timeshare Act in an amount to be determined at trial.

FOR A THIRD CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

56. Plaintiffs repeat and reiterate the foregoing paragraphs as though fully restated herein.

57. As set forth above, Defendants made certain representations to Plaintiffs during the subject sales transaction which were false, misleading, and/or fraudulent.

58. The committing of such false, misleading, and/or fraudulent representations by Defendants constituted an act or practice that is unfair or deceptive, impacts the public, and capable of repetition, within the meaning of the South Carolina Unfair Trade Practices Act.

59. Upon information and belief, one or more of the Defendants herein have previously been named as Defendants in other lawsuits for fraud, violation of the South Carolina Unfair Trade Practices Act, breach of contract, breach of contract with fraudulent intent, and breach of fiduciary duty.

60. Upon information and belief, one or more of the Defendants herein have

previously had claims and demands for restitution brought directly against them by time share customers for false, misleading, and/or fraudulent representations, fraudulent acts, misrepresentations, violations of the South Carolina Unfair Trade Practices Act, breaches of contract, breaches of contract with fraudulent intent, breaches of fiduciary duty, and other matters similar to those allegations contained herein.

61. As a result of same, Plaintiffs have suffered losses, including the amount paid for the purchase of the Coral Resorts time share property, as well as the value of the time share property at "The Cove" which as part of the deal was required to be deeded back to that resort.

62. Plaintiffs are informed and believe that they are entitled to judgment against Defendants for unfair trade practices in an amount to be determined at trial, such amount to be trebled in accordance with the South Carolina Unfair Trade Practices Act, as well as the costs, expenses, and attorneys' fees of this action.

FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment)

63. Plaintiffs repeat and reiterate the foregoing paragraphs as though fully restated herein.

64. Plaintiffs are informed and believe that they are entitled to a declaratory judgment that no valid and binding contract exists between the parties due to there being no meeting of the minds as to the contract.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract)

65. Plaintiffs repeat and reiterate the foregoing paragraphs as though fully restated

herein.

66. As set forth above, Defendants and Plaintiffs entered into a contract.

67. Pursuant to such contract Defendants obligated itself to certain duties.

68. Defendants breached such duties.

69. As a result of such breach Plaintiffs have been damaged in an amount as shall be set forth at trial.

70. Plaintiffs are informed and believe that they are entitled to judgment against Defendants for actual, incidental, and consequential damages for breach of contract in an amount to be determined at trial.

FOR A SIXTH CAUSE OF ACTION
(Breach of Duty of Good Faith and Fair Dealing)

71. Plaintiffs repeat and reiterate the foregoing paragraphs as though fully restated herein.

72. As set forth above, Plaintiffs and Defendants entered into a contract.

73. Pursuant to such contract, Defendants had an implied duty of good faith and fair dealing with Plaintiffs.

74. As set forth previously, Defendants breached such duty in its dealing with Plaintiffs.

75. As a result of such breach Plaintiffs have been damaged in an amount as shall be set forth at trial.

76. Plaintiffs are informed and believe that they are entitled to judgment against the Defendants for actual, incidental, consequential, and punitive damages for breach of duty of good faith and fair dealing in an amount to be determined at trial.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Misrepresentation)

77. Plaintiffs repeat and reiterate the foregoing paragraphs as though fully restated herein.

78. As set forth above, Defendants, by and through its agents, made one or more false representations to the Plaintiffs.

79. Defendants, by and through its agents, had a pecuniary interest in making such representations.

80. Defendants owed a duty of care to Plaintiffs to see that truthful information was communicated to Plaintiffs.

81. Defendants breached the duty to Plaintiffs by failing to exercise due care.

82. Plaintiffs justifiably relied upon the representations.

83. Plaintiffs suffered a pecuniary loss as a direct and proximate result of reliance on the representation.

84. Plaintiffs are informed and believe that they are entitled to judgment against Defendants for actual, incidental, consequential, and punitive damages for negligent misrepresentation in an amount to be determined at trial.

FOR AN EIGHTH CAUSE OF ACTION
(Civil Conspiracy)

85. Plaintiffs repeat and reiterate the foregoing paragraphs as though fully restated herein.

86. As set forth above, Defendants, including through its agents did combine for the purpose of injuring Plaintiffs and did cause Plaintiffs to suffer special damages.

87. Plaintiffs are informed and believe that they are entitled to judgment against Defendants for civil conspiracy in an amount to be determined at trial.

FOR AN EIGHTH CAUSE OF ACTION
(Rescission of Contract)

88. Plaintiffs repeat and reiterate the foregoing paragraphs as though fully restated herein.

89. Based upon the actions of Defendants, described above, Plaintiffs respectfully request a rescission of the subject contract, should the Court find one to exist.

WHEREFORE, having fully set forth their Complaint against Defendants, Plaintiffs pray that the Court inquire into the matters set forth herein and issues its Order as follows:

A. Granting Plaintiffs judgment against Defendants for Fraud/Intentional Misrepresentation for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;

B. Granting Plaintiffs judgment against Defendants for Violation of the South Carolina Timeshare Act for actual damages in an amount to be set forth at trial

C. Granting Plaintiffs judgment against Defendants for Violation of the South Carolina Unfair Trade Practices Act in an amount to be set forth at trial, trebled, as well as the costs, expenses, and attorneys' fees of this action;

D. Declaring that no valid and binding contract exists between the parties due to there being no meeting of the minds as to the contract;

E. Granting Plaintiffs judgment against Defendants for Breach of Contract for actual,

incidental, consequential, and punitive damages in an amount to be set forth at trial;

F. Granting Plaintiffs judgment against Defendants for Breach of Implied Duty of Good Faith and Fair Dealing for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;

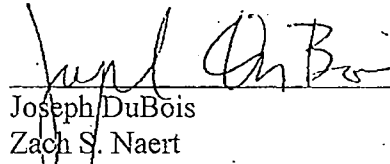
G. Granting Plaintiffs judgment against Defendants for Negligent Misrepresentation for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;

H. Granting Plaintiffs judgment against Defendants for Civil Conspiracy for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;

I. Rescinding the subject contract, should the Court find one to exist; and

J. Granting such other and further relief as the Court deems just and proper.

NAERT AND DUBOIS, LLC



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Attorneys for Plaintiffs

August 9, 2013
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May 19, 2014

Ms. Jenny Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211


Re: Albert R. LaFleur and Eileen LaFleur v. Coral Resorts, LLC et al
2014-000-827

Dear Ms. Kitchings:

Please find enclosed a filed-copy of the Second Amended Summons and Complaint in the above referenced matter, such being filed with the Beaufort County Clerk of Court on August 8, 2013 pursuant to an oral bench order of the Honorable Marvin H. Dukes, III, on August 7, 2013. As set forth previously, the Lower Court Orders on appeal both pre-date and post-date such August 8, 2013 filing date.

With kindest regards, I am,

Sincerely yours,


Joseph DuBois

Enclosures

Cc: Nekki Shutt, Esquire and Kathleen McDaniel, Esquire
Thornwell F. Sowell, III, Esquire

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MAY 27 2014

SC Court of Appeals

Naert and DuBois, LLC
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SC Court of Appeals

Ms. Jenny Kitchings
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