



Notice of Service of Process

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Orlando, FL 32819-7936

Electronic copy provided to: Michael Marder Esq.

Entity: Westgate Resorts, Ltd.
Entity ID Number 1909700

Entity Served: Westgate Resorts, LTD.

Title of Action: William Cantrell vs. Westgate Resorts, LTD.

Matter Name/ID: William Cantrell vs. Westgate Smoky Mountain Resort at Gatlinburg Owners Association, Inc. (12393359)

Document(s) Type: Amended Complaint/Petition

Nature of Action: Contract

Court/Agency: Sevier County Circuit Court, TN

Case/Reference No: 22-CV-241

Jurisdiction Served: Tennessee

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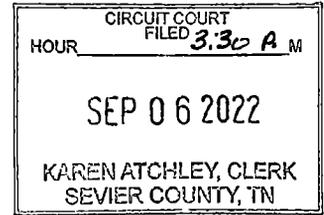
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IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

WILLIAM CANTRELL and SHENEKA
KIMBRO,

Plaintiffs,

vs.

WESTGATE RESORTS, LTD.

Defendant.

Case No.: 22-CV-241

Dept. No.: IV

AMENDED COMPLAINT

**FOR STATUTORY ENFORCEMENT AND
RELIEF; AND FOR A SECONDARY TRIER
OF FACT TO ASSESS PUNITIVE DAMAGES.**

AMENDED COMPLAINT

The Plaintiffs, William Cantrell and Sheneka Kimbro by and through their counsel of record, Ryan Price of THE TIMESHARE LAW FIRM, hereby allege and complain against the Defendant WESTGATE RESORTS, LTD. as follows:

PARTIES

1. The Plaintiffs are natural persons with very limited resources, but are forced by extraordinary circumstances to sue a billion-dollar timeshare conglomerate that would not release them in a no-money settlement, despite full disclosure from their attorney that the timeshare contract was sold by unlawful methods detailed herein showing overt and willful violations of Tennessee law, *set forth infra*.

2. The Plaintiffs in this matter are Mr. William Cantrell and Ms. Sheneka Kimbro.
3. The Plaintiffs claim violations of Tennessee law regarding timeshare sales and Real Estate licensure requirements thereunder, along with other statutory violations pertaining to these timeshare sales within Sevier County, Tennessee.
4. The Plaintiffs sue in their individual capacity, and in capacity as a spouse to the extent that any principles of Community Property law or other laws may apply to the spouse's joint assets or debts.
5. Defendant, Westgate Resorts, Ltd. ("Westgate", herein) is a billion-dollar timeshare conglomerate with corporate headquarters located at 5601 Windhover dr. Orlando, FL 32819.
6. Defendant has timeshare resort/hotel and sales facilities in Sevier County, Tennessee named the *Westgate Smoky Mountain Resort & Water Park* located at 915 Westgate Resorts Rd, Gatlinburg, TN 37738.
7. Defendant has a Tennessee Business Identification No. 000369233, and a registered agent at 2908 Poston Ave, Nashville, TN 37203.
8. Westgate Resorts, Ltd. includes all of its subsidiaries and brands which are under its control as the parent company.
9. The true names and capacities, whether individual, corporate, associate or otherwise of the Defendant are unknown to the Plaintiffs at this time, who therefore sue said Defendant by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of said Defendant when the same are ascertained.

10. The Defendant is sued as principals and/or agents, servants, attorneys, and employees of said principals, and all the acts performed by them were within the course and scope of their authority.

11. Plaintiffs are informed and believe and thereupon allege that Defendant is legally responsible for the events and happenings referred to herein and has directly and proximately caused the damages and injuries to the Plaintiffs as hereinafter alleged.

12. Unless otherwise indicated, using Defendant's name in this Complaint includes its predecessor entities, d/b/a entities, affiliates, subsidiaries, parents and agents, employees, officers, directors, principals, trustees, and representatives.

13. Westgate Resorts, Ltd. is the parent company to all such entities and persons under its control, including all those listed in the preceding paragraphs.

JURISDICTION AND VENUE

14. The Sevier County Circuit Court, Sevier County, Tennessee, has original jurisdiction over this matter pursuant to Tenn. Code Ann. § 16-10-101.

15. Plaintiffs purchased a Westgate branded timeshare from Defendant.

16. Defendant sold a timeshare using contract documents that were formed and executed with the Plaintiffs herein, by and with the Defendant, within the State of Tennessee at the Defendant's sales facilities located in Sevier County.

17. Pursuant to Tenn. Code Ann. § 66-32-118, the Plaintiffs thereby seek a determination that the contract is void for violations of the Tennessee Timeshare Act. The Plaintiffs further seek an adjudication that any of the contract's subparts (including any litigation rule or litigation

restrictions, or any contract documents' provisions) are similarly void. Tenn. Code Ann. § 66-32-114.

18. Plaintiffs avails themselves of Tennessee law, under which there exists no lawful basis for the Defendant to execute or collect money upon an unlawful, thus *defective* contract instrument that was signed within Sevier County, Tennessee, where upon signing, it was rendered *Voidable* under the Tennessee Timeshare Act of 1981.

19. Plaintiffs have complied with Tenn. Code Ann. § 66-32-119 by filing this Complaint for relief within four (4) years of the timeshare purchase.

20. Venue is proper in the Sevier County Circuit Court, located in Sevier County, Tennessee, pursuant to Tenn. Code Ann. § 20-4-104(1) because the Defendant is a non-natural person, and all of the events or actions giving rise to the cause of action occurred within Sevier County, Tennessee.

FACTS

21. The Plaintiffs allege the following facts.

22. In its Tennessee timeshare facility located in Gatlinburg, Tennessee, the Defendant sells a points-based booking system for hotel rooms that are located within, and outside of, Sevier County, Tennessee.

23. Plaintiffs purchased a timeshare from the Defendant while in Tennessee.

24. Defendant did not use Tennessee licensed real estate agents for its sales people in the Plaintiff's timeshare transactions.

Tennessee Real Estate Licensure Requirement

25. Defendant's use of a sales rep, sales managers and a contract closer—all of which did not have Tennessee real estate licenses—violated Tennessee law (Tenn. Code Ann. §66-32-102(17)) involving Real Estate licensure requirements by the Tennessee Real Estate Commission ("TREC" herein) for all Timeshare "Sales Agents". *Statutory Definitions*, Tenn. Code Ann. §66-32-102(17); *a person who sells or offers to sell "timeshare intervals" in a "time-share program."*

26. This violation is punishable under Tenn. Code Ann. §66-32-118.

27. Defendant did not use Tennessee licensed real estate agents for at least one of the timeshare transaction roles of sales rep, sales management, and closing rep (i.e. Defendant's statutory Sales Agents working directly [*directly* means in person] with the Plaintiffs) in the Plaintiffs' purchase of a timeshare at Defendant's facility in Tennessee.

28. In Fact, Defendant did not use any, not one, Tennessee licensed real estate agent directly working with [*directly* means in person] the Plaintiffs herein for the sales transaction to purchase a timeshare at Defendant's timeshare facility in Tennessee.

29. Defendant's actions described in either or both of the preceding paragraphs, constituted willful noncompliance with Tennessee law cited in the Plaintiffs' First Claim.

Public Offering Statement Noncompliance

30. Additionally, the Tennessee Public Offering Statement ("TNPOS" or "POS" herein) requirements under Tennessee law have been willfully violated by the Defendant as shown by the Plaintiffs Affidavits.

31. The POS requirements under Tennessee law mandates that a timeshare entity selling a timeshare on Tennessee soil:

(1) Provide a TNPOS before the transfer of a timeshare; and,

(2) No later than the date of any sales contract.

32. The TNPOS contains advisories, warnings and disclosures that are all mandated by Tennessee law to be given to prospective timeshare purchasers.

33. Defendant failed to provide the Plaintiffs with TNPOS that complies with the requirements of statute. Defendant's POS was hidden from the Plaintiffs and was not provided until after all the sales transaction documents to be signed were executed (where the contracting documents indicated monies paid at the purchase, as well as future monies to be paid to the Defendant under the buyer's [Plaintiffs'] future obligations).

34. Defendant hid the public offering statement on a flash drive containing hundreds of pages of documents. Defendant's surreptitious behavior prevented the Plaintiffs from ever finding the public offering statement.

35. Defendant conducted this business within Sevier County, Tennessee directly with the Plaintiffs herein.

36. Defendant is subject to real estate regulations and statutory claims of the State of Tennessee ("Tennessee law" herein) that apply to all timeshare sales conducted within the State of Tennessee.

37. Westgate sold the Plaintiffs a timeshare through its Sales Agents (all references to Sales Agents herein, shall automatically incorporate all persons under the Defendant company that had direct contact with the Plaintiffs in the offering and sales transaction, including any subsidiary or parent of Defendant.)

38. Defendant used a sales rep, a manager, and closer as Sales Agents, as defined by Tenn. Code Ann. §66-32-102 (17), in the Plaintiffs' case.

39. All of the Sales Agents pressured the Plaintiffs to sign the contract documents (*See*, Plaintiffs' Affidavits at ¶ 9).
40. Defendant sold these timeshares to the Plaintiffs by means of *oral representations* made by its Sales Agents.
41. Whether or not such oral representations were true, and/or were later discovered to be false, is irrelevant to proving the primary case (Plaintiffs' First Claim), which is: ***Willful Failure to use Licensed Real Estate Agents [as required by law] to conduct the sale of timeshare within the State of Tennessee.*** *See*, FIRST CLAIM FOR RELIEF.
42. The Defendant was also noncompliant with Tennessee law, in the failure to comply with the Tennessee public offering statement requirements (in particular the POS provision *before* the transfer of the timeshare) as set forth in Tenn. Code Ann. §66-32-114. *See*, SECOND CLAIM FOR RELIEF.
43. The TNPOS consumer advisories, warnings and disclosures, required by Tennessee law, would have also alerted the Plaintiffs to a ***Right to Cancel*** a signed timeshare sales contract within 10 calendar days pursuant to §66-32-114.
44. Pursuant to Tenn. Code Ann. §66-32-112(9), the Right to Cancel is required to be disclosed in the TNPOS.
45. Furthermore, TREC rules requires that the 10-day cancellation provision be shown in bold and conspicuous type directly above where the buyer is to sign. TREC Rules 1260-06-.04.
46. These violations are all designed by the Defendant so that the consumer does not receive the consumer advisories, warnings, and disclosures of the TNPOS before the timeshare transfer. *See*, SECOND CLAIM FOR RELIEF.

47. *This TNPOS claim, however recalcitrantly violative and dismissive of known Tennessee law, is not necessary to prove upon a finding that Westgate was ALREADY in violation at the sales stage per Tennessee law, where at least one, if not all, of the statutorily defined Sales Agents (Reps, Managers, and Closers) were not licensed Real Estate Agents in the State of Tennessee.* Tenn. Code Ann. §66-32-118 *See, FIRST CLAIM FOR RELIEF.*

48. Defendant did not use Real Estate licensees to provide the TNPOS, or to answer any questions of the Plaintiffs about the contents of the TNPOS, *before* all the transaction documents were signed, and money was paid and obligations were made for future monies to be paid (i.e. the transfer of the timeshare interest).

49. It is irrelevant to the TNPOS violations of law, as to whether or not the Defendant made *deceptive inducements* or used *bait & switch tactics*, the substance of which may have directly correlated to the TNPOS consumer advisories, warnings and disclosures, because the law applied makes noncompliance with the mandates of law: (1) Licensure Requirements; and, (2) TNPOS lawful provision, where either cause of action alone can be determinative for seeking redress. *See, FIRST AND SECOND CLAIMS FOR RELIEF.*

50. It is, however, necessary for claims of further relief, to bring open light the breadth of consumer protections afforded by the TNPOS, and conversely, the huge financial incentives for Defendant to systematically defy the lawful protections of consumer disclosure laws.

51. The TNPOS would have exposed certain *oral statements* during the sales process that were directly contrary to the consumer warnings mandated in Tenn. Code Ann. §66-32-112. *See, Plaintiffs' Affidavits at ¶ 17.*

52. Specifically, Tenn. Code Ann. §66-32-112 requires the timeshare seller disclose: (9) that there is a 10-day cancellation period; (11) any restraints on alienation; and, (13) any fee or

expected fee associated with use of the timeshare facility.

53. Defendant's willful and consistent noncompliance with the TNPOS requirement is driven by the knowledge that compliance with the statute will undoubtedly result in a massive reduction in sales.

Multi-Hour Physical/Mental Wear-Down

54. The Plaintiffs' Affidavits shows at ¶ 3 that the sales process lasted **4 Hours**.

55. Plaintiffs anticipated a short presentation but were met with a multi-hour procedure that is designed to physically *wear down* and mentally *stress out* the consumer-attendees before signing. *See*, Plaintiffs' Affidavits at ¶ 9.

56. The end result is a multi-hour prolonged sales presentation with multiple Sales Agents [here, a Sales Rep and a Manager with aggressive tag-teaming] telling the Plaintiffs to complete the purchase, that day. *See*, Plaintiffs' Affidavits at ¶ 7, 9.

57. At the end of the presentation, a *seemingly* friendly contract closer met with the Plaintiffs. The closer used phrases such as, "I know you were here for many hours" and, "Let's get you out of here fast." *See*, Plaintiffs' Affidavits at ¶ 10.

58. This is the crescendo moment, when the Plaintiffs were physically worn down and mentally stressed-out *See*, Plaintiffs' Affidavits at ¶ 9.

The 15-Minute Closing

59. The signing of documents lasted no longer than 15 minutes. During that time, a very rapid contract signing occurred with Defendant's closing rep. *See*, Plaintiffs' Affidavits at ¶ 11-13.

60. The Plaintiffs had to sign a huge volume of documents with Defendant's contract closer. *See*, Plaintiffs' Affidavits at ¶ 17.

61. The contract closer controlled all the documents. *See*, Plaintiffs’ Affidavits at ¶¶ 12-14, 17.
62. Plaintiffs did not freely view or read the contract documents’ content, other than “brief” “glimpses” afforded to them by the contract closer. *See*, Plaintiffs’ Affidavits at ¶¶ 12, 13.
63. The closer controlled the portion of the contract that was visible, the angle the Plaintiffs could view the document, and the amount of time the Plaintiffs could see the document. *See*, Plaintiffs’ Affidavits at ¶ 13.
64. The closer ensured that the Plaintiffs did not see the entirety of the contract, or even any one section of the contract for longer than a few brief seconds. *See*, Plaintiffs’ Affidavits at ¶ 13.
65. Westgate’s contract closer stated to the Plaintiffs, “*this means...*” and/or “*this is what they said [or told you] about...*” followed by a rapid statement (several words or a short sentence rapidly interpreting the contents being signed). *See*, Plaintiffs’ Affidavits at ¶ 14.
66. Rapid interpretations were used to prevent the Plaintiffs from reading the contract and forming their own opinions on whether the terms were favorable to them.
67. These rapid interpretations may or may not have been accurate, but that is unnecessary to prove for this cause of action.
68. And, the Plaintiffs did not have access to the voluminous contract pages containing a plethora of terms, conditions, limitations & restrictions, obligations (both present and future) which were actually contained in the Defendant’s contract documents that the Plaintiffs were signing. *See*, Plaintiffs’ Affidavits at ¶¶ 11-15.
69. Some pleasantries (without any reviewing of documents) aside, the *actual* time the Plaintiffs spent signing and initialing the large volume of contract documents involved in the transfer of the timeshare was **at most 15 minutes**. *See*, Plaintiffs’ Affidavits at ¶ 11.

Summation

70. Plaintiffs allege that the Defendant's Sales Agents were not Tennessee licensed Real Estate Agents. *See*, Plaintiffs' Affidavits at ¶ 4-6.

71. Documentary proof (the absence of which is itself violative of law), was that the Sales Agents failed to make mandatory Real Estate Agency Disclosures in writing as required by Tenn. Code Ann. §62-13-405. *See*, Plaintiffs' Affidavits at ¶ 6.

72. Plaintiffs have facts which show that the Defendant did not Provide the TNPOS before transferring the timeshare to the Plaintiffs.

73. The timeshare interest (a points-based *use contract*) was transferred from the Defendant to the Plaintiffs by having the Plaintiffs sign all the contract documents, pay monies, and obligate themselves to pay future monies, thus transferring the timeshare.

74. During the entire sales presentation, the Defendant never mentioned they were selling a timeshare. Plaintiffs believed they were buying a two bedroom condo.

Licensure Requirement

75. Under Tennessee Law, Defendant's *Reps and Managers and Contract Closers* could not do any of the following functions without a real estate license. *See*, FIRST CLAIM.

- (1) perform *any* timeshare sales presentation functions;
- (2) review or assist in signing of *any* timeshare sales contracts; and,
- (3) provide, review or assist in signing *any* POS-related documents [including the POS Receipt pursuant to Tennessee law].

Specified Disclosures Under Tennessee Law

76. Provision and Review of the POS would have given substantial disclosure information.

77. The Tennessee statute requires the POS be given before closing so that buyers like the Plaintiffs have more to rely on than mere oral representations.

78. However, the Plaintiffs were denied these consumer advisories, warnings, and disclosures. Had the Defendant's Sales Agents been properly licensed, they would have had *professional duties of conduct* as real estate licensees, and thus would be subject to:

Regulation by the Tenn. Real Estate Commission for Deceptive Sales Practices, and thus the Defendant would have been subject to regulatory enforcement for its sales practices.

79. Here, the Plaintiffs have endured at least five misrepresentations, using just those listed on their Affidavits at ¶ 7.

80. Even if the real estate agent represented the Seller (the Defendant), that would still constitute regulatable conduct for all the real estate licensees involved with the sale of a timeshare in Tennessee, and thus the Defendant's conduct [cited as unlawful herein] would be subject to scrutiny by Tennessee real estate regulatory enforcement.

81. If the Plaintiffs had received the TNPOS prior, they could have discovered such TNPOS consumer advisories, warnings, and disclosures, *before* signing the sales contract documents, paying a down payment and obligating themselves to future high-interest lien payments and perpetual annual fees.

82. And even after signing, the Plaintiffs could have availed themselves of a statutory Right to Cancel, had they known it existed within the documents.

83. *If the Tennessee Real Estate Commission had told the Plaintiffs through the TNPOS's written documents, different information and disclosures concerning their purchase than what the Plaintiffs were told in the oral sales presentation, that would have given the Plaintiffs herein a strong reason to not sign. See, Plaintiffs' Affidavits at ¶ 19.*

84. Plaintiffs never received, let alone reviewed, the POS prior to signing, and thus were denied the protection of the TNPOS statutes.

85. Defendant Westgate has deliberately, consistently, and systematically withheld:

- (1) use of licensed real estate agents in timeshare sales as required by Tennessee law; and,
- (2) provision of the TNPOS. *See*, Tenn. Code Ann. § 66-32-114.

86. Westgate's refusal to lawfully provide the Plaintiffs the Tennessee public offering statement did thereby violate the unequivocal mandates of Tenn. Code Ann. § 66-32-112, 114.

87. Defendant further abused real estate agency laws, either in practice (i.e. violation of substantive real estate agency duties/disclosures), or by using unlicensed Westgate staff to unlawfully perform Sales Agent functions in the offering of timeshares and sales functions. *See*, FIRST CLAIM FOR RELIEF.

88. These actions are punishable under Tenn. Code Ann. §66-32-118.

89. Westgate has been defiant and openly hostile to Tennessee law. *Thus appropriate for Punitive Damages. See*, FOURTH CLAIM FOR RELIEF.

90. Because of the Defendant's violations of Tennessee law cited in this Complaint, Defendant has harmed the Plaintiffs **by failure to:**

- a. **Use Tennessee licensed Real Estate Agents as their timeshare Sales Agents; and,**
- b. **Provide the TNPOS prior to the Plaintiff's contract signing, including payment and making future obligations, or have a licensee to discuss TNPOS questions.**

Failures of Compliance with Tennessee Law

91. The presence of a TNPOS, would cause many consumers to not buy and not sign, or to at least seek legal advisement before signing.

92. Every reasonable lawyer, when presented with the contract documents, would inevitably advise clients against such a timeshare purchase with terms such as those imposed by the Defendant upon the Plaintiffs.

93. Such contract terms include substantial limitations imposed on hotel room bookings and substantially higher costs as compared to simply booking online.

94. Here, the Plaintiff's costs were estimate at eleven times the online cost or an estimate of **1,168%** higher cost.

95. The Plaintiffs received six nights for a week's vacation annually. But after paying the monthly amount of loans and fees, Plaintiffs' costs are estimated at over eleven times the amount of an online booking. Plaintiffs' nightly cost is readily reached by calculating the monthly payment amount and then dividing that by the actual use-nights.

96. A quick comparison of that mathematical figure of the timeshare's cost to book, versus booking online, would reveal that Westgate timeshare "owners" (as the Sales Agents refer to them) end up paying far more money to book than the public (and the public does not have the same imposed booking restrictions).

97. In most cases in the past litigation with this Defendant this costs 5 to 10 times the amount it cost to book online.

98. Here, the Plaintiffs paid, as a Westgate "owner," an estimate of:

1,168% higher costs than the cost to book online.

99. As a result, this timeshare purchase cost the Plaintiffs about eleven times more money than what the same accommodations would cost a member of the public to book online.

100. And the online booking consumer, unlike the Plaintiffs who are Westgate "owners", would have been booking without obtuse booking restrictions.

101. Timeshare owners like the Plaintiffs must book eleven (11) months in advance by using a resort-industry created booking company. There is no alternative booking method.

102. There is highly limited availability for the bookings, contradictory to what was promised at the point-of-sale.

103. Discrepancies such as costs, use rights, false or deceptive promises, and other inducements could have been uncovered after reading the TNPOS at the point-of-sale or anytime within the 10-day window for Cancellation under Tennessee law, *if* the TNPOS and its Cancellation law disclosures had been presented to the Plaintiffs.

104. Consumers reading the TNPOS would logically question whether they were told the truth about a range of subjects in the sales meeting, including the promised *Use Rights*, the potential *Investment Value* and/or the claimed *Resale Value*. See, Plaintiffs' Affidavits at ¶ 7, 15, 19.

105. Potential purchasers reading the TNPOS would be alerted to inconsistencies with what they were told verbally in the sales room and closing process, and then could easily do an Internet search for subjects online compared to oral statements, such as the five misrepresentations in the Plaintiffs' Affidavits (at ¶ 7) made during the sales presentation. Many consumer reporting sites contain such information, including: *Various consumer ratings and BBB sites, ComplaintsBoard.com, RippOffReport.com, PissedConsumer.com*, and social media websites, such as Westgate owner/victim groups posting on *Facebook*.

106. These consumer posting resources contain huge volumes (numbering in the tens of thousands) of dissatisfied owners of Defendant Westgate's timeshares that have alleged they were victims of misrepresentations.

107. An inquisitive purchaser researching *eBay.com* and archives of its webpages for Westgate sales offerings would have discovered a long history of undeniable data: Defendant Westgate's timeshares are not selling for even \$1.00.

108. This is significant, because the Plaintiffs were told by Defendant's Sales Agents that the timeshare was a "good investment" and "easy to sell". *See*, Plaintiffs' Affidavits at ¶ 7.

109. Tenn. Code Ann. § 66-32-102(2) includes in the definition of "advertise" any verbal offer or general solicitation made pursuant to a timeshare sale.

110. Many of the statements made by Defendant's Sales Agents are advertisements under the statutory definition in Tenn. Code Ann. § 66-32-102(2).

111. Tenn. Code Ann. § 66-32-132 prevents timeshare sellers from making certain statements as advertisements.

112. Defendant's statements, in the Plaintiffs' Affidavits at ¶ 7, violated Tenn. Code Ann. § 66-32-132.

113. Tenn. Code Ann. § 66-32-132 prohibits a timeshare seller from making advertisements that are based on: (1) the availability of a resale program; (2) limited availability based on quantity or time restriction; (3) the investment merit or profit potential; (4) anticipated immediate increase in price or value of the timeshare unit; and/or, (11) misleading or deceptive representations with respect to the contents of the timeshare program.

114. The Defendant violated each of the above cited sections during the 4-hour presentation to the Plaintiffs by claiming that the timeshare would be (Plaintiffs' Affidavits at ¶ 7):

- (1) easy to sell;
- (2) was available at that price on that day only;
- (3) was a good investment;
- (4) would immediately increase in value; and,
- (5) would save the Plaintiffs money.

Real Estate Licensure Compliance

115. There is a bright-line statutory rule regarding the requirement of Real Estate Licensees performing timeshare sales in the State of Tennessee, which applies to the Defendant.

116. This bright-line rule permits relief for the Plaintiffs from Defendant's contract under Tenn. Code Ann. § 66-32-118.

TNPOS Provision Compliance

117. Had the Defendant provided the TNPOS, it would have directly contradicted many of the *oral representations* that the Plaintiffs were told in the multi-hour sales presentation. *See*, Plaintiffs' Affidavits at ¶ 7.

118. If the TNPOS advisories, warnings, and disclosures had been disclosed in an open light, the Plaintiffs would not have signed Defendant's contracts, as set forth below in the Plaintiffs' Affidavits. *See*, Plaintiffs' Affidavits at ¶ 19.

119. The salient facts raised herein are seen in the following Plaintiffs' Affidavits.

PLAINTIFFS' AFFIDAVITS

William Cantrell Affidavit

1. My name is William Cantrell and I declare under penalty of perjury that the foregoing is true and correct.
2. On or about November 15th, 2020, I had a timeshare presentation for the sale of a Westgate Smoky Mountain Resort in Sevier County, Tennessee.
3. Westgate's timeshare sales presentation lasted about 4 Hours.
4. No one at the presentation said that they were licensed real estate agents.
5. At the Westgate timeshare presentation, I had direct contact with a sales rep, a manager, and a contract closer, but none of them disclosed a Tennessee Real Estate Agency Status.
6. And, the sales rep, manager, and contract closer did not give me any written information regarding any of their Real Estate Agency Statuses.
7. I was told that the Westgate timeshare purchase would:
 - be a good investment; and/or,
 - save money on booking rooms; and/or,
 - be easy to sell; and/or,
 - be available that day only (never again at the price/terms); and/or,
 - immediately increase in value (you can sell it right away for a profit).
8. During the sales presentation I was not provided or allowed to read:
 - Westgate's timeshare purchase transaction documents; and/or,
 - Westgate's disclosure documents for the Tennessee Public Offering Statement.
9. Because of sales pressure from 1 Westgate sales rep(s) and 1 Westgate Manager(s), by the time I signed the contract I was:
 - physically worn down, and/or,
 - mentally stressed out.
10. In the contract closing rep's introduction:
 - she or he: seemed friendly, wanting to help me finish up; and/or
 - she or he: said sympathetically, that I had been here a long time [hours]; and/or,

she or he: said they would get me out of there fast to get back to my vacation

11. After about 4 hours of Westgate's timeshare sales presentation, the actual time spent signing [signatures and initials] all of the many sales transaction documents was only about 15 minutes.

12. During the 15 minutes of signing many timeshare transaction documents, I didn't review the contract contents because the documents were all controlled by Westgate's closer.

13. During the closing rep's review and signing procedures:

I recall that I was only shown a glimpse of some contract pages; and/or,

the pages I was shown a glimpse of were selected by the closing rep; and/or,

I was only shown a portion of selected pages in a position/angle the rep chose; and/or,

the pages I was shown (checked above) were only viewable for brief seconds.

14. When referring to contract pages to be signed, Westgate's closing rep:

Did not say very rapid explanations of what the contract terms were, or

Did say very rapid explanations of what the contract terms were, that were:

a word, to a few words, and/or a very short sentence intended to explain the contents of the documents about to be signed;

The closing rep said, "This means..." followed by a very rapid explanation of supposed contract terms; and/or,

"This is what they [the sales rep and manager] said [or told you about] ..."

followed by a very rapid explanation of the supposed contract terms.

15. The closing rep at the signing did say that that some of the Contract terms were different from what I was told in the sales presentation.

The closing rep at the signing did not say that anything in the Contract to be signed was different from what I was told in the sales presentation.

16. The day of the Westgate timeshare purchase described herein:

I was provided, or

I was not, provided a Tennessee Public Offering Statement at any time *before* the contract signing.

17. If, in the huge amount of transaction paperwork I had to sign, there was a Public Offering Statement "Receipt" stating that I was provided a Public Offering Statement:

I was not aware of signing such a statement at the time; and/or,

I did sign many documents very rapidly that I wasn't able to read, and I relied on the contract closer's explanations and instructions to sign.

18. I am certain that I was given (see below):

I am certain that I was not given (see below):

A Tennessee Public Offering Statement containing disclosure information for prospective timeshare purchasers, *before* I signed the contract documents, paid money, and obligated myself to loans and/or fees.

19. Comparing the *oral representations* that were made to me during the hours of the sales presentation process (see some examples in ¶ 7 above), if I had received the Tennessee Public Offering Statement with its disclosure requirements for this Westgate timeshare, *before* the signing process:

I would likely have still signed the purchase contract.

I would likely have not signed the purchase contract.

20. Westgate refused to let me out, and I had to seek representation from a law firm to assert our claims for deceit in the sale of this Westgate timeshare. The law firm also made requests for no-money relief, however, Westgate has consistently rejected my attempts to free my family from this contract built on false promises, even though I was willing to give up all of our losses to just get good faith relief for my family.

Signature: William D Cantrell Date: 4 / 15 / 2022

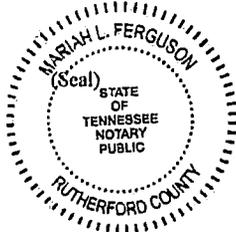
Notarization:

State of Tennessee
County of Rutherford
William Cantrell makes his statement and affidavit upon oath and affirmation of belief and personal knowledge that the matters, facts, and statements aforementioned are true and correct to the best of his knowledge:

Dated this 15th day of April, 2022.

William D Cantrell
(Affiant's Signature)

Sworn to and subscribed before me this 15th day of April, 2022.



My Commission Expires
March 17, 2024

M Ferguson
(Notary's Signature)

Sheneka Kimbro Affidavit

1. My name is Sheneka Kimbro and I declare under penalty of perjury that the foregoing is true and correct.
 2. On or about November 15th, 2020, I had a timeshare presentation for the sale of a Westgate Smoky Mountain Resort in Sevier County, Tennessee.
 3. Westgate's timeshare sales presentation lasted about 4 Hours.
 4. No one at the presentation said that they were licensed real estate agents.
 5. At the Westgate timeshare presentation, I had direct contact with a sales rep, a manager, and a contract closer, but none of them disclosed a Tennessee Real Estate Agency Status.
 6. And, the sales rep, manager, and contract closer did not give me any written information regarding any of their Real Estate Agency Statuses.
 7. I was told that the Westgate timeshare purchase would:
 - be a good investment; and/or,
 - save money on booking rooms; and/or,
 - be easy to sell; and/or,
 - be available that day only (never again at the price/terms); and/or,
 - immediately increase in value (you can sell it right away for a profit).
 8. During the sales presentation I was not provided or allowed to read:
 - Westgate's timeshare purchase transaction documents, and/or,
 - Westgate's disclosure documents for the Tennessee Public Offering Statement.
 9. Because of sales pressure from 1 Westgate sales rep(s) and 1 Westgate Manger(s), by the time I signed the contract I was:
 - physically worn down, and/or,
 - mentally stressed out.
 10. In the contract closing rep's introduction:
 - she or he: seemed friendly, wanting to help me finish up; and/or
 - she or he: said sympathetically, that I had been here a long time [hours]; and/or,
-

she or he: said they would get me out of there fast to get back to my vacation

11. After about 4 hours of Westgate's timeshare sales presentation, the actual time spent signing [signatures and initials] all of the many sales transaction documents was only about 15 minutes.

12. During the 15 minutes of signing many timeshare transaction documents, I didn't review the contract contents because the documents were all controlled by Westgate's closer.

13. During the closing rep's review and signing procedures:

- I recall that I was only shown a glimpse of some contract pages; and/or,
- the pages I was shown a glimpse of were selected by the closing rep; and/or,
- I was only shown a portion of selected pages in a position/angle the rep chose; and/or,
- the pages I was shown (checked above) were only viewable for brief seconds.

14. When referring to contract pages to be signed, Westgate's closing rep:

- Did not say very rapid explanations of what the contract terms were, or
- Did say very rapid explanations of what the contract terms were, that were:
 - a word, to a few words, and/or a very short sentence intended to explain the contents of the documents about to be signed:
 - The closing rep said, "This means..." followed by a very rapid explanation of supposed contract terms; and/or,
 - "This is what they [the sales rep and manager] said [or told you about] ..."
followed by a very rapid explanation of the supposed contract terms.

15. The closing rep at the signing did say that that some of the Contract terms were different from what I was told in the sales presentation.

The closing rep at the signing did not say that anything in the Contract to be signed was different from what I was told in the sales presentation.

16. The day of the Westgate timeshare purchase described herein:

I was provided, or

I was not, provided a Tennessee Public Offering Statement at any time *before* the contract signing.

17. If, in the huge amount of transaction paperwork I had to sign, there was a Public Offering Statement "Receipt" stating that I was provided a Public Offering Statement:

I was not aware of signing such a statement at the time; and/or.

I did sign many documents very rapidly that I wasn't able to read, and I relied on the contract closer's explanations and instructions to sign.

18. I am certain that I was given (see below):

I am certain that I was not given (see below):

A Tennessee Public Offering Statement containing disclosure information for prospective timeshare purchasers, before I signed the contract documents, paid money, and obligated myself to loans and/or fees.

19. Comparing the oral representations that were made to me during the hours of the sales presentation process (see some examples in ¶ 7 above), if I had received the Tennessee Public Offering Statement with its disclosure requirements for this Westgate timeshare, before the signing process:

I would likely have still signed the purchase contract.

I would likely have not signed the purchase contract.

20. Westgate refused to let me out, and I had to seek representation from a law firm to assert our claims for deceit in the sale of this Westgate timeshare. The law firm also made requests for no-money relief, however, Westgate has consistently rejected my attempts to free my family from this contract built on false promises, even though I was willing to give up all of our losses to just get good faith relief for my family.

Signature: Sheneka Kuhl Date: 4, 15 /2022

Notarization:

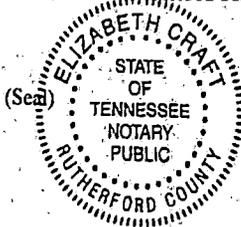
State of Tennessee
County of Rutherford

Sheneka Kuhl makes her statement and affidavit upon oath and affirmation of belief and personal knowledge that the matters, facts, and statements aforementioned are true and correct to the best of her knowledge:

Dated this 15 day of April, 2022

Sheneka Kuhl
(Affiant's Signature)

Sworn to and subscribed before me this 15th day of April, 2022.



Elizabeth Craft

Expected Fabricated Defense

120. The Defendant has fabricated a facade in an attempt to outmaneuver POS requirements.

121. Defendant relies upon a TNPOS Receipt document signed by Timeshare Purchasers stating that they were provided the Tennessee Public Offering Statement documents before the contract signing and transaction consummation. *See*, Plaintiffs' Affidavits at ¶ 17.

122. However, the Plaintiffs did not receive a TNPOS before signing the Defendant's contract documents and obligating himself to future high-interest liens and rising annual fees. *See*, Plaintiffs' Affidavits at ¶ 16, 18.

123. Defendant attempts to use the TNPOS "Receipt" requirement of TREC Rule 1260-06-.02 to circumvent the requirements of Tenn. Code Ann. § 66-32-114, making a buyer sign the POS receipt without ever showing the buyer the POS as required under Tenn. Code Ann. § 66-32-114.

FIRST CLAIM FOR RELIEF (Real Estate Licensee Requirement)

124. Plaintiffs incorporate by reference all the preceding paragraphs, as though fully set forth herein.

125. Defendant violated Tenn. Code Ann. § 66-32-102(17) by failing to use licensed real estate agents for all of its sales reps, managers and closers

126. Tenn. Code Ann. § 66-32-102(17) requires timeshare sellers to use licensed real estate agents as their Sales Agents.

127. The Sales Rep, Manager, and Closer herein at the point-of-sale (i.e. Westgate Sales Agents) involved with the Plaintiffs' timeshare transaction, are all believed to be unlicensed.

128. It cannot reasonably be assumed that Defendant's sales rep and manager directly involved with the Plaintiffs' sales transaction were all Tennessee licensed real estate Sales Agents.

129. Similarly, it cannot reasonably be assumed that Defendant's closing rep responsible for signing all the contract documents and taking money and note obligations from the Plaintiffs was a licensed real estate agent.

130. Assuming, arguendo, that even if all such [statutory] Sales Agents were duly licensed, Defendant's Real Estate Licensees failed to properly uphold licensee professional conduct duties under Tenn. Code Ann. § 62-13-405.

131. Plaintiffs did not receive the TNPOS consumer advisories, warnings, and disclosures, as directed to by TREC. *See*, SECOND CLAIM FOR RELIEF.

132. Even if Defendant's Sales Agents had been *Tennessee licensed Real Estate Sales Agents*, they failed to disclose their Agency status to the Plaintiffs and comply with provision requirements of the Tennessee Public Offering Statement, *before* the Plaintiffs signed and were obligated under Westgate contract documents.

133. And even if such Westgate Sales Agent individuals had been duly licensed real estate agents, they still had to comply with all the applicable standards for conducting business that apply to real estate licensees pursuant Tennessee law.

134. As a consequence of Defendant's: (1) deliberate defiance in the use licensed real estate agents as proscribed by Tennessee law; (2) deliberate avoidance of Tennessee consumer disclosures [the failure of TNPOS provision, *before* transferring the timeshare]; along with, (3) untruthful statements concerning material facts made to prospective buyers (Plaintiffs herein), the Plaintiffs are entitled to relief under the claims set forth herein.

Real Estate License Requirement

135. Tenn. Code Ann. § 66-32-102(17) explicitly requires all Sales Agents to be licensed real estate agents.
136. Failure to use licensed real estate agents is punishable under Tenn. Code Ann. § 66-32-118.
137. The purchase was made within the last four years.
138. Plaintiffs have brought their case within the 4-year statute of limitations as required under Tenn. Code Ann. § 66-32-119.
139. Tenn. Code Ann. § 66-32-118 permits relief for the Plaintiffs.
140. Defendant deliberately did not use licensed real estate agents as timeshare Sales Agents because licensees would be subject to the requirements of Tenn. Code Ann. § 62-13-101, et seq.
141. Defendant avoids using licensees because those licensees would be required to make certain transactional disclosures that would negatively impact the Defendant's profit margins.
142. If the Defendant had licensees, they would be required to disclose the agent's agency status in writing under Tenn. Code Ann. § 62-13-405.
143. Those licensees would also have the duty to disclose any known adverse facts to each party under Tenn. Code Ann. § 62-13-403.
144. If Defendant's Sales Agents were licensed and they failed to make such disclosures, they would be subject to regulatory investigations and sanctions, including losing their license. Tenn. Code Ann. § 62-13-312.
145. Such an investigation would expose the actions Defendant took against the Plaintiffs, including those actions laid out in the Plaintiffs' Affidavits.

146. Furthermore, Tenn. Code Ann. § 66-32-121(f)(2)(F) permits TREC to revoke or suspend licenses for real estate agents that make misrepresentations during a timeshare sale.

147. Defendant avoids hiring real estate agents as Sales Agents because Defendant's policies will cause any licensee to lose their license.

148. If Defendant's Sales Agents were licensed in compliance with Tennessee law, the licensees would have *professional duties of conduct*, and thus the Defendant would be subject to regulatory enforcement by the Tennessee Real Estate Commission for Deceptive Sales Practices.

149. Tenn. Code Ann. § 62-13-312(b)(1) expressly prohibits a licensee from making any substantial or willful misrepresentation. The statute provides that when a licensee makes such a representation TREC has the authority to revoke or suspend their license.

Licensee Conduct Regulated

150. If the closer had been a Real Estate Licensee, she would have owed duties of professional conduct which are regulated by the Tennessee Real Estate Commission (TREC).

151. The TNPOS consumer advisories, warnings, and disclosures are intended by law to be given by a licensed, competent, and regulated real estate agent.

152. Had Defendant's agents been properly licensed, the Plaintiffs could have asked questions concerning the TNPOS contents to a person with inherent duties of professional conduct subject to consequences and penalties for the Licensee's noncompliance with such rules of conduct, which are Rules designed by TREC to prevent the very activity set out in this Complaint.

153. And significantly, under Tennessee Real Estate Agency law, the Licensee must disclose their Agency status to the Buyers (the Plaintiffs herein). Tenn. Code Ann. § 62-13-405.

154. Here, the Sales Agents failed to make any real estate agency disclosures to the Plaintiffs because they are thought to be unlicensed. *See*, Plaintiffs' Affidavits at ¶¶ 4-6.

Relief

155. Plaintiffs seek the return of all monies collected upon the voidable contract.

156. After such *primary relief*, further remedies can be ordered for credit disparagement (trade line removal) for a void, nonexistent contract, and for Punitive Damages. *See*, FOURTH CLAIM.

SECOND CLAIM FOR RELIEF (Public Offering Statement Mandate)

157. Plaintiffs incorporate by reference all the preceding paragraphs, as though fully set forth herein.

158. Defendant failed to provide the Plaintiffs with a POS that complies with statute.

159. Tenn. Code Ann. § 66-32-114 requires timeshare sellers to provide a POS on the day of the sale.

160. However, the Defendant hid the POS given to the Plaintiffs to prevent them from ever discovering it. Defendant was successful as the Plaintiffs never found their POS.

The Contracting Process

161. During the 4-hour sales presentation, the sales rep and manager assured the Plaintiffs about various features and benefits. However, it is not necessary to prove whether or not any of these *oral representations* were later proved to be untruthful, or that TNPOS warnings would have caused the Plaintiffs to not purchase, or to later cancel under Tennessee law.

162. The entire contract signing process was artfully controlled by the *closer*. The closer prevented the Plaintiffs from reading the contract by limiting what sections of the contract the Plaintiffs could see, and for how long they could see them. Of the substantial amount of

timeshare contract documents, the Plaintiffs were only permitted to see selected sections [by the closer], and only for short periods of time. *See*, Plaintiffs' Affidavits at ¶ 13.

163. The closer filtered the contract contents and provided her own interpretations of the contents. Plaintiffs, worn down by the hours of the sales process, believed that information to be true, so they signed, paid a down payment, and obligated themselves to tens of thousands of dollars in the form of a lien. *See*, Plaintiffs' Affidavits at ¶ 14.

164. However, the TNPOS would have directly contradicted many of the *oral representations* that the couple was told in the 4 hours of sales-related activity.

REMEDIES

165. Plaintiffs' prior two claims for relief would seek an ending to the contract obtained by unlawful means, and for monetary relief to reimburse monies paid on a contract adjudged to be unlawful, and further for punitive relief, as justice so requires:

Rescission and Restitution

- (a) to put the parties in their pre-contract position as if the contract never occurred;
- (b) rescission ends the contract, and thereby the subparts, including its venue clause, any limitations or waivers to a jury trial or punitive damages, and any TNPOS Receipt;

Termination and Unjust Enrichment

- (a) under the Unjust Enrichment standard, the Plaintiffs are entitled to all monies paid on a defective contract, upon which the Plaintiffs did justifiably rely to their detriment;
- (b) return of monies paid is easy to calculate by simply adding all of the monies paid by the Plaintiffs: down payment(s), lien payments and fees paid;

Further Relief

- (a) component to these matters, the Court may have a second trier of fact phase for assessing Punitive Damages applicable under Tennessee law. *See*, FOURTH CLAIM;
- (b) The second trier of fact shall assess the amount of damages needed in order to deter Defendant's future actions in violation of Tennessee law. *See*, FOURTH CLAIM.

**THIRD CLAIM FOR RELIEF
(FRAUD)**

166. Plaintiffs incorporate by reference all the preceding paragraphs, as though fully set forth herein.

Fraudulent Misrepresentation

167. All elements of fraud are met, and the Plaintiffs are entitled to relief as a result.

168. Fraudulent misrepresentation has six elements. Those elements are: 1) the Defendant made a representation of an existing or past fact; 2) the representation was false when made; 3) the representation was in regard to a material fact; 4) the false representation was made either knowingly or without belief in its truth or recklessly; 5) Plaintiffs reasonably relied on the misrepresented material fact; 6) Plaintiffs suffered damage as a result of the misrepresentation.

Five Misrepresentations

169. Here, the Defendant made at least five representations that were false when made. Those five statements are listed in the Plaintiffs' Affidavits at paragraph 7.

170. The first representation, that the timeshare would be a good investment is false because this timeshare, and timeshares in general are not good investments.

171. Generally, a good investment is something that provides a return on upfront cost. Either by reducing the amount of money spent over a longer period, or by turning a profit

172. Timeshares, and this timeshare specifically, do neither. This timeshare costs more money than booking online or in person, and it comes with restrictions that booking online or in person do not have. Similarly, it will never turn a profit due to the high interest loans and ever-increasing maintenance fees charged by the resort.

173. The increased cost, extra restrictions, and inflating fees render the timeshare a drain on resources with no investment merit.

174. The second representation, that the timeshare would save money is false because timeshares in no way save the purchaser money on booking vacations.

175. Here, the timeshare costs the Plaintiffs 1,168% more than booking online or in person.

176. Because this timeshare increases the amount of money required to book rooms (which is already eleven times the online or in person cost) by yearly raising points requirement, this timeshare does the opposite of save money.

177. The third representation, that the timeshare is easy to sell is false because timeshares are not easy to sell; they are nearly impossible to sell.

178. Timeshares are less than worthless, especially in resale. The Defendant's timeshares are not selling at any price because there they are a liability rather than an asset.

179. As previously stated in paragraph 107 herein, Defendant's timeshares are not selling for \$1 on eBay.

180. Further, Plaintiffs paid Defendant over \$2,000 to resell their timeshare and Defendant was unable to resell their timeshare. Even the Defendant, a professional timeshare sales company, cannot resell their own timeshare.

181. As such, this timeshare will not be easy to resell.

182. The fourth representation, that the timeshare was available that day only, is false because the timeshare was not available at the price and terms on that day only.

183. The timeshare sales rep and manager here made misrepresentations in order to make a sale. They stated that they have limited quantities, and offering a lower price, when there was no limit to the quantity they could sell, and they did not offer a lower price.

184. Their statements that the Plaintiffs must buy today because the price would never be available again was false.

185. The fifth representation, that the timeshare would immediately increase in value, is false because the timeshare cannot immediately increase in value.

186. Timeshares are drains on resources. They cost increasing sums for no return. They have no potential to increase in value because they have no value whatsoever.

187. This timeshare is no different. It has no value and cannot increase in value.

188. Because timeshares can only increase in liability to the purchaser, any statement that they would increase in value is false.

The Misrepresentations are Material

189. All five of the misrepresented facts were material.

190. Each misrepresentation was material because each was a driving reason for the Plaintiffs to sign.

191. Plaintiffs made their purchase because they thought it would be beneficial to them, that it would be a good investment, save money, be easy to sell, etc.

192. The Plaintiffs would not have purchased the timeshare had they been aware that these statements were false.

193. Because each misrepresentation was a driving factor directly related to the Plaintiffs' reason for purchasing, each misrepresentation is material.

Each Representation was Knowingly False when Made

194. The Defendant knew that each misrepresentation was false when made.

195. Firstly, the Defendant knew each statement was false because each statement is banned by statute.

196. The Tennessee Legislature has seen fit to ban these statements because in timeshare sales transactions these statements are so often false when made.

197. Furthermore, even without the ban the Defendant still knew that these statements were false.

Good Investment

198. Firstly, Defendant knew that its timeshares, and this timeshare specifically, are not a good investment because it knows there is no potential for them to reduce the amount of money spent or return a profit.

199. Defendant knows this because it knows that it will subject purchasers to high interest loans and increasing maintenance fees. These fees and costs prevent the timeshare from ever reducing the amount of money spent by the purchaser. Defendant designs these fees to prevent the purchaser from ever getting any investment merit from the purchase.

200. Here, the amount of money spent by the purchaser on booking rooms prevents the timeshare from ever being a good investment.

Save Money

201. Defendant also knew that its timeshares would not save money because it knows that it is cheaper to book rooms online or in person.

202. Defendant knows how much it charges online or in person to book a room per night. Defendant also knows how much it charges for its timeshares.

203. Because Defendant knows both of these, it knows that timeshares are more expensive than booking a room online or in person.

Easy to Sell

204. The Defendant knew that the timeshare would not be easy to sell because it knows that timeshares similar to this one, on eBay and elsewhere, have no resale value.

205. Because this timeshare lacked resale value, and the Defendant knows this, it knows that this timeshare would not be easy to resell.

Available That Day Only

206. Defendant knew that the timeshare was not limited by time or quantity such that it would be available that day only.

207. Defendant knew that its statements that there was a limited quantity of timeshares, and that it was offering a deal were false because there is no such limitation as to how many points it can sell.

208. Therefore, the Defendant knew that there was no limit by time or quantity.

209. Because Defendant knew that there was no limit by time or quantity, it knew that the timeshare was not available that day only.

Immediately Increase in Value

210. Defendant knew that the timeshare would not immediately increase in value.

211. Defendant knew that its timeshare would not increase in value because it knows it will subject purchasers to increasing fees that render the timeshare valueless.

212. Since Defendant knows its timeshares are valueless liabilities, it knows that its timeshares cannot increase in value.

213. Therefore, Defendant knew that its timeshares would not immediately increase in value.

Plaintiffs' Reliance was Reasonable

214. Plaintiffs' reliance on the misrepresentations was reasonable under the circumstances given that they had just been subjected to a 4-hour procedure designed to induce a state of compliance in the potential purchaser.

215. Further, the Defendant prevented the Plaintiffs from reading the contract before signing as stated in the Plaintiffs' affidavits at paragraphs 13-15.

216. Because Defendant only gave the Plaintiffs oral misrepresentations to rely on, and because the Defendant intentionally put them in a vulnerable mindset, the Plaintiffs' reliance was reasonable.

Damages

217. Plaintiffs have suffered damages in the form of a down payment, loan payments, and maintenance fees. Further, the Plaintiffs have suffered damages in the form of attorney's fees.

Fraudulent Inducement

218. Fraudulent inducement has one additional element to those listed above: that the Defendant's misrepresentations were intended to induce reliance on the statement.

219. Here, that additional element is met because the misrepresentations were sales pitches designed to get the Plaintiffs to sign and purchase.

220. Further, the Defendant induced reliance on the statements by preventing the Plaintiffs from reading the contract. The only information available to the Plaintiffs was the Defendant's oral misrepresentations.

221. Therefore, the Defendant attempted to induce reliance on its misrepresentations and did so by obtaining the Plaintiffs' signatures. Thus, the additional element is met.

Fraudulent Concealment

222. Fraudulent concealment has three elements. 1) the Defendant had knowledge of a material fact; 2) the Defendant had a duty to disclose that fact, but did not, and; 3) the Plaintiffs suffered harm as a result.

Defendant Concealed its Contract

223. Here, the Defendant had knowledge of its contract, but intentionally failed to provide it to the Plaintiffs.

224. Defendant failed to provide its contract to the Plaintiffs as stated in paragraphs 18-20.

225. As the Defendant was the only one with access to the contract, it had a duty to disclose it.

226. Defendant had knowledge of its contract, and its staff had a duty to disclose that contract but failed to do so, and the Plaintiffs have suffered harm as a result.

227. The Plaintiffs have been harmed because the Defendant's contract was significantly different than they had been led to believe. The Plaintiffs have suffered harm in the amount of their down payment on the contract, loan payments, and maintenance fees.

Defendant Concealed its Public Offering Statement

228. Similarly, the Defendant had knowledge of its public offering statement.

229. As set out previously in paragraphs 33 and 34 herein, the Defendant failed to properly provide a public offering statement.

230. Defendant has a duty to disclose its public offering statement under Tenn. Code Ann. § 66-32-114.

231. The Plaintiffs were harmed by this failure as they were not given the disclosures mandated by the Tennessee Legislature. This has led to economic harm in the form of a down payment, loan payments, and maintenance fees.

Defendant Withheld Licensed Real Estate Agents and their Disclosures

232. Defendant had knowledge that it failed to use licensed real estate agents as its sales reps.

233. Defendant further knows that it failed to provide disclosures and warning that these sales reps would have provided.

234. Defendant had a duty to use licensed real estate agents under Tenn. Code Ann. § 66-32-102(17).

235. The Tennessee Legislature implemented this requirement in the Tennessee Timeshare Act to ensure that purchasers received disclosures from those with duties to provide them.

236. Defendant has acted in a manner to prevent the Plaintiffs from receiving the disclosures intended to be received. For example, a licensed real estate agent would have the duty to tell the purchaser that many things in the contract were different from the sales presentation, and that the timeshare was not a good investment.

237. Defendant harmed Plaintiffs by failing to make these disclosures through licensed real estate agents. Without the benefit of those disclosures, Plaintiffs did not know that the sales reps had made numerous misrepresentations.

238. Plaintiffs suffered financial harm in the amount of their down payment, loan payments, and maintenance fees.

FOURTH CLAIM FOR RELIEF
(Bifurcated Trial - Second Trier of Fact)

239. Plaintiffs incorporate by reference all the preceding paragraphs, as though fully set forth herein.

240. There is a second phase for a second trier of fact on the matter of punitive damages.

241. The second trier of fact shall assess the amount of damages needed in order to deter Defendant's future actions in violation of Tennessee law. Plaintiffs requests the maximum amount of punitive damages allowable pursuant to Tenn. Code Ann. § 29-39-104(a)(5).

242. Plaintiffs are entitled to relief because Defendant's unlawful acts have conferred a benefit upon itself.

243. Defendant has and is appreciating the benefit.

244. Defendant accepted and retained the benefit of monies paid by the Plaintiffs under circumstances where it would be inequitable for Defendant to retain the benefit without the payment of value for the same.

245. Defendant willfully violated several sections of the Tennessee Timeshare Act of 1981, specifically Tenn. Code Ann. § 66-32-102(17) and 114.

246. As a direct and proximate cause of the Defendant's actions, the Plaintiffs have been damaged in an amount to be proved at trial and are entitled to relief under Tenn. Code Ann. § 66-32-118.

247. Defendant's conduct was malicious, oppressive, and committed with a reckless disregard to the rights of the Plaintiffs, and in direct opposition to the laws of Tennessee. This warrants punitive damages under Tenn. Code Ann. § 66-32-118.

248. After such a ruling, with no substantive questions of law to apply as to whether there is liability, the second trier of fact phase, either by Judge or Jury, would have one task: to assess the punitive damages needed in order to deter future unlawful conduct.

PRAYER FOR RELIEF

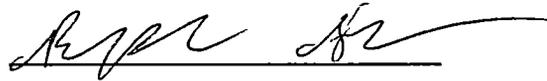
WHEREFORE, Plaintiffs pray for relief against Defendant as follows:

1. For judgment in favor of the Plaintiffs and against Defendant,
2. For rescission of the agreements and restitution,
3. Alternatively, for contract termination returning all monies (Unjust Enrichment),
4. For punitive damages,
5. For prejudgment interest,
6. For attorney's fees and costs incurred herein,

7. For credit disparagement removal by trade line removal,
8. And for such other and further relief as the Court deems just and proper.

DATED this 6th day of September 2022.

Respectfully Submitted,



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