



OCEAN EAST RESORT CLUB ASSOCIATION, INC.

November 16, 2009

Clerk of Court
United States District Court
402 East State Street
Trenton, New Jersey 08608

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Re: Resort Condominiums International LLC, Civil Action No. 06-1222 (PGS)

Judge Peter G. Sheridan and
Messrs. David Berman and David Sager:

This letter is submitted on behalf of Ocean East Resort Club Association, Inc., the homeowners association of Ocean East Resort Club ("Ocean East") located in Ormond Beach, Florida, objecting to the proposed settlement in the aforementioned action.

Ocean East objects to the proposed settlement on the grounds that it fails to address adequately the main issue in the case – namely, that unit weeks which are deposited by Ocean East owners with RCI for exchange purposes are being used by RCI *for any other purposes whatsoever*. We believe that RCI's business practices which are the subject of the Complaint are so fraudulent and so blatantly antithetical to RCI's advertised business purpose that they should be banned rather than merely restricted for a two-year period.

Background

Ocean East is one of Florida's largest independent timeshare resorts (that is, it is not part of a timeshare developer chain). As such, Ocean East has been managed by its homeowners association, rather than its original developer, for approximately 25 years and has been an affiliate of Resort Condominiums International (RCI) during that entire period (RCI ID number #0462). Ocean East is a fixed-week (as distinct from "floating weeks") resort with a total of 5,814 unit weeks, which are individually-owned in fee simple by an aggregate of approximately 4,000 families who are scattered among 47 states in the United States and eight foreign countries.

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Analysis

1. RCI has historically earned its revenues by charging timeshare owners (a) membership fees to have the opportunity to register their unit weeks for exchange (“space-banking”) and (b) exchange fees when RCI members make their exchange requests. Therefore, by renting out space-banked timeshare weeks, RCI is depriving its members of the full exchange benefits for which they have paid twice – and for which they have forfeited the right to use their own properties. Moreover, RCI is utilizing these properties without sharing the resulting rental revenues with those very persons who own, and who provide, the properties. The net effect is that RCI receives up to three fees for a single service.
2. RCI encourages timeshare owners to deposit their unit weeks for exchange as early as possible. As a result, according to RCI, 54% of its members deposit their unit weeks a year or more in advance of the usage dates. Therefore, permitting RCI to use these unit weeks for another business purpose after only 45 days have elapsed since the deposit date has the practical effect of “drying up” the available exchange inventory before most consumers begin to plan their next annual vacation or begin an exchange search.
3. Such a practice constitutes an expansion of RCI’s business purpose to add another business which is in direct conflict with its original and advertised business model – i.e., to engage in the hotel rental business in competition with Ocean East and RCI’s other member resorts. Timeshare owners pay annual maintenance fees and ad valorem taxes per unit week in order to provide the funds to operate their resorts, which costs are justified by reason of the fact that the owner can use the unit week in one of three ways: (a) vacationing in the unit, or (b) exchanging the unit week for another unit week in another member resort through RCI, or (c) renting out the unit week through the resort’s front desk operation. Therefore, when RCI rents out unit weeks which are deposited with it for exchange, it is depriving owners who wish to rent out, rather than use or exchange, their unit weeks from realizing the maximum rental opportunities. Moreover, RCI has no product cost due to the fact that the owners have purchased the product to begin with and pay the annual fees; therefore, RCI typically charges less rent for the unit weeks which it rents than can the resort on behalf of its owners. (The fact that RCI’s founding purpose was to provide a major incentive for consumers to purchase timeshare unit weeks in preference to renting hotel rooms for their vacation experiences adds to the conflict.)
4. Since the time that RCI expanded its business model by entering the hotel rental field, it has on occasion turned down individual timeshare owners’ requested exchanges (for which they had to pay a fee in advance) and has then offered a rental at the very same time in the very same resort. Indeed, in the past year this has happened to one member of Ocean East’s Board of Directors, the facts of which case have been authenticated by an RCI executive. (Details are available upon request).

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Conclusion

For the foregoing reasons, on behalf of our Ocean East owners who are RCI members, Ocean East respectfully submits that: (a) RCI has entered into a business that is antithetical – not complimentary – to its stated and advertised purpose; (b) RCI has taken advantage of the trust placed in it by RCI members to fraudulently utilize their properties for purposes other than the purpose for which the properties have been entrusted to it through space-banking; and (c) RCI has therefore deprived RCI members of the usage of their properties without compensating those owners who have supplied RCI with the rental properties and who have paid the operating fees and ad valorem taxes thereon*.

Accordingly, Ocean East requests the Court *not* to curtail RCI's rental activities of RCI members' properties for limited periods of time over a mere two-year period by accepting the proposed settlement. Instead, Ocean East requests the Court to direct that the case proceed with a lead counsel who will seek (a) to have *all* of the profits derived by RCI from this blatantly fraudulent conduct disgorged to the owners of the properties involved and (b) to have RCI's sideline business of renting out other people's properties without notice and without compensation terminated altogether.

If, despite the above request, the proposed settlement of the class action is approved by the Court, Ocean East recommends that the proposed settlement be modified to be made permanent and not merely limited to a two-year corrective period after which RCI could revert to its current practices.

Very truly yours,


Richard Cooke
In his capacity as President of
Ocean East Resort Club Association, Inc.
and individually as a RCI member

* It could be argued that RCI's practice of charging its members for depriving them of the usage of their properties without compensation provides an example of "chutzpa" that almost rivals the classic definitional example of the word as found in the *Joys of Yiddish*.