

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

William Reed, Donna Reed, Bonnie)
Youmans, Jane Yates, Phillip Caulder, all)
individually and for the benefit and on)
behalf of all others similarly situated,)

Civil Action No. 2:14-cv-01583-DCN

Plaintiffs,)

**C O M P L A I N T
(Jury trial demanded)**

v.)

Big Water Resort, LLC, TLC Holdings,)
LLC, Richard Clark, James Thigpen,)
Jimmy “Steve” Lovell, and Ocoee, LLC.)

Defendants.)

Plaintiffs William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder, individually and pursuant to Rule 23, FRCP, for the benefit of all others who purchased memberships in the private club known as Big Water Resort, complain of Defendants as follows:

P A R T I E S

1. Plaintiffs William Reed and Donna Reed are citizens and residents of Charleston County, South Carolina.
2. Plaintiffs Bonnie Youmans is a citizen and resident of Colleton County, South Carolina.
3. Plaintiff Jane Yates is a citizen and resident of Florence County, South Carolina.
4. Plaintiff Phillip Caulder is a citizen and resident of Beaufort County, South Carolina.
5. Defendant Big Water Resort, LLC is a limited liability company organized and existing under the laws of the State of South Carolina.
6. Defendant TLC Holdings, LLC is a limited liability company organized and existing under the laws of the State of South Carolina.

7. Defendant Richard Clark, upon information and belief, is a citizen and resident of the State of Tennessee.

8. Defendant James Thigpen, upon information and belief is a citizen and resident of the State of South Carolina.

9. Defendant Jimmy “Steve” Lovell, upon information and belief, is a citizen and resident of the State of Illinois.

10. Defendant Ocoee, LLC is a limited liability company organized and existing under the laws of the State of South Carolina.

J U R I S D I C T I O N

11. This Court has personal jurisdiction and venue is proper in this district by virtue of, among other things, the fact that a substantial part of the events giving rise to this Complaint occurred in this District.

12. This Court has original jurisdiction over this action because the matter in controversy exceeds the sum or value of \$5,000,000, this is a class action, and members of the class of plaintiffs are citizens of states different from the Defendants. *See* 28 U.S.C. § 1332(d)(2).

F A C T S

13. This case arises from the Defendants Clark’s, Lovell’s, Thigpen’s and TLC Holdings, LLC’s scheme to solicit millions of dollars from over a thousand people in exchange for the sale of nearly worthless memberships in the Big Water Resort.

14. Big Water Resort was held out by Defendants Big Water Resort, LLC, Clark, Thigpen, and Lovell as a private club where members would have guaranteed exclusive access to certain property located in Clarendon County known as the Big Water Resort and owned by TLC Holdings, LLC.

15 Plaintiffs purchased memberships from Big Water Resort, LLC for in excess of \$8,400.00 per membership.

16. Big Resort Water, LLC promised the Plaintiffs that they would have a membership in a private club operated at the Big Water Resort in Clarendon County for their lifetime plus the life of one survivor.

17. Under the contract, the Plaintiffs and all members were permitted to sell their memberships.

18. One of the critical promises in the contract between Big Water Resort, LLC and Plaintiffs was that the club would be members only.

19. Another of the critical promises in the contract between Big Water Resort, LLC and Plaintiffs was that the club would have access to the land owned by TLC Holdings, LLC for the lives of each member and their survivor.

20. Big Water Resort, LLC breached its contract with Plaintiffs and all class members by converting from a private club to a public facility.

21. The conversion of the Big Water Resort, LLC from a private club to a public facility damaged Plaintiffs and all class members because the exclusive rights they bargained for have been rendered worthless by opening up the facility to the public.

22. The proposed class is comprised of members in the Big Waters Resort, LLC whose memberships have been rendered nearly valueless due to the resort's conversion from a private club to a public facility.

23. Defendants Clark, Thigpen, and Lovell, upon information and belief, were former principals / owners / directors of Big Water Resort, LLC.

24. Defendants Clark, Thigpen, and Lovell are also principals / owners / directors of TLC Holdings, LLC.

25. Defendants Clark, Thigpen, and Lovell failed to take steps necessary to allow the Big Water Resort, LLC to accomplish the purpose of giving members access to a private facility at the Big Water Resort for the course of their lifetimes and their survivors' lifetimes.

26. Defendants Clark, Thigpen and Lovell acted for their own independent purpose to the detriment of Big Water Resort, LLC and the class by failing to enter into a long term lease or contract between Big Water Resort, LLC and TLC Holdings, LLC to ensure that Big Water Resort, LLC and the class had guaranteed access to the property.

27. Upon information and belief, Defendants Clark, Thigpen, and Lovell, to the detriment of Big Water Resort, LLC and for their personal gain, stripped Big Water Resort, LLC of the funds paid by members for membership and left Big Water Resort, LLC without any operating capital. Such operating capital was necessary for Big Water Resort, LLC to continue to operate as a private club.

28. Upon information and belief, Defendant TLC Holdings, LLC knowingly took the membership funds from Big Water Resort, LLC, built minor improvements on its property, and then marketed its property for sale to third parties who would not be obligated to operate the club privately or on the property.

29. Defendants Clark, Thigpen and Lovell stripped the operating capital of Big Water Resort, LLC for their own personal gain, to the detriment of Big Water Resort, LLC, and allowed Big Water Resort, LLC to enter into contracts which promised purchasers guaranteed access to the land that was not leased to Big Water Resort, LLC or owned by Big Water Resort, LLC.

Defendants Clark and Lovell's conduct caused Big Water Resort, LLC to breach its contracts with its members including all class members sought to be represented by Plaintiffs.

30. Defendants Clark, Lovell and TLC, Holdings, LLC then transferred the subject property to Defendant Ocoee, LLC as an effort to avoid obligations owed to Plaintiffs and the Plaintiff class.

C L A S S A C T I O N A L L E G A T I O N S

31. Plaintiffs bring this class action under Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of all persons who purchased memberships in the Big Water Resort, LLC from Defendants during the class period ("the class"). Excluded from this class are the Defendants, any entity in which a Defendant has or had a controlling interest, and their legal representatives, agents, affiliates, heirs and successors and interest or assigns of any such excluded party.

32. Members of the class are so numerous that joinder of all members is impracticable. The disposition of the members' claims in a class action will provide substantial benefits to the parties and to the Court. During the class period, Defendants had over a thousand sales to unsuspecting members like the Reeds who purchased memberships in the Big Water Resort, LLC.

33. Plaintiffs' claims are typical of the claims of the class. Plaintiffs and all members of the class sustained damages as a result of the Defendants' misconduct.

34. Plaintiffs will fairly and adequately protect the interests of the class and have retained competent counsel with significant class action representation. Plaintiffs have no interests that are contrary to, or in conflict with, those of the class that Plaintiffs seek to represent in this action.

35. A class action is superior to all other available methods for the fair and efficient resolution of this controversy because the damages suffered by individual class members may be relatively small whereas the expense and burden of individual litigation would make it difficult for the members of the class to individually address the wrongful acts of Defendants. There will be no difficulty in the management of this class action. There is a well-defined community of interest in the questions of law and fact relevant to this dispute, and those questions predominate over any questions that may only affect individual class members.

C A U S E S O F A C T I O N

Count One: Breach of Contract – against Big Water Resort, LLC

36. Plaintiffs incorporate by reference each allegation above as if set forth fully below.

37. Plaintiffs and all class members entered into contracts with Big Water Resort, LLC.

38. Plaintiffs and all class members paid consideration to Big Water Resort, LLC in the form of payments for their memberships and annual assessments.

39. In exchange, Big Water Resort, LLC promised that it would provide Plaintiffs, and all class members, exclusive access to a members-only club.

40. Big Water Resort, LLC promised that it would provide Plaintiffs and all members access to the club facilities on a first-come, first-serve basis among members.

41. Defendant Big Water Resort, LLC breached its contracts with Plaintiffs and class members by opening access to campground facilities and services to the general public and turning the club from an exclusive members-only club to a public facility.

42. These breaches of contract by Defendant Big Water Resort, LLC caused damage to Plaintiffs and the class members because the transferable exclusive memberships purchased by members are now worthless due to the loss of any exclusivity.

43. The implied covenant of good faith and fair dealing required that Big Water Resort, LLC have a continuing right to access the lands where the club is located either through ownership of said lands or through a lease agreement with the property owner.

44. Defendant Big Water Resort, LLC breached the covenants of good faith and fair dealing by failing to enter into any kind of contractual agreement such as a lease or purchase agreement whereby the Big Water Resort, LLC could secure guaranteed access to the land at the campground in Summerton, South Carolina.

45. Furthermore, the implied covenant of good faith and fair dealing required Big Water Resort, LLC to operate these private facilities with sufficient capital to own and operate the facilities.

46. Defendant Big Water Resort, LLC breached the implied covenant of good faith and fair dealing by failing to maintain sufficient capital necessary to maintain the campground facilities as a private club in order to meet its obligation to its members under the contracts.

47. As a direct result of these breaches Plaintiffs and all class members have suffered damage.

Count Two: Tortious Interference with Contract – against Defendants Clark, Thigpen and Lovell

48. Plaintiffs incorporate by reference each allegation above as if set forth fully below.

49. There existed valid contracts between Defendant Big Water Resort, LLC and all class members including Plaintiffs.

50. Defendants Clark, Thigpen, and Lovell had knowledge of the contracts between Big Water Resort, LLC and all class members including Plaintiffs.

51. Defendants Clark, Thigpen, and Lovell intentionally procured the breach of contract between Big Water Resort, LLC and all class members including Plaintiffs.

52. There was an absence of justification for the procured breach of contract between Big Water Resort, LLC and all class members including Plaintiffs.

53. Defendants Clark, Thigpen and Lovell were acting outside of the scope of their authority for Big Water Resort, LLC when they caused Big Water Resort, LLC to breach its contracts with all class members including Plaintiffs.

54. Defendants Clark, Thigpen, and Lovell acted in bad faith when they caused Big Water Resort, LLC to breach its contracts with all class members including Plaintiffs.

55. Defendants Clark, Thigpen and Lovell committed a tort against Big Water Resort, LLC by breaching their fiduciary duties to that LLC by pulling out the funding necessary for Big Water Resort, LLC to operate as a private club. This tort against Big Water Resort, LLC caused Big Water Resort, LLC to breach its contract with all class members including Plaintiffs.

56. Plaintiffs and the other class members experienced resulting damages as a direct result of the breaches of contracts caused by Defendants Clark, Thigpen, and Lovell.

Count Three: Fraudulent Conveyance – against Defendants Clark, Thigpen, and Lovell

57. Plaintiffs incorporate by reference each allegation above as if set forth fully below.

58. Defendants Clark, Thigpen, and Lovell transferred money from Big Water Resort, LLC to themselves with the intent and purpose to delay, hinder and defraud the class members of just and lawful damages owed by Big Water Resort, LLC for its breach of contract described in Count One above.

59. This fraudulent conveyance from Big Water Resort, LLC to Defendants Clark, Thigpen, and Lovell is void and of no effect under S.C. Code § 27-23-10.

60. Defendants Clark, Thigpen, and Lovell should be required to return the capital taken from Big Water Resort, LLC to Plaintiffs for the money damages owed to all class members as a result of Big Water Resort, LLC's breach of contract described in Count One.

Count Four: Piercing the Corporate Veil – against Defendants Clark, Thigpen and Lovell

61. Plaintiffs incorporate by reference each allegation above as if set forth fully below.

62. Big Water Resort, LLC's corporate identity should be pierced to assist Plaintiffs because equity and fairness require such treatment.

63. Upon information and belief, Defendants Clark, Thigpen, and Lovell failed to observe corporate formalities in their actions as principals / owners / directors of Big Water Resort, LLC.

64. Big Water Resort, LLC is grossly undercapitalized due to the Defendants Clark, Thigpen, and Lovell withdrawing the membership dues paid by Plaintiffs and the class members for Defendants Clark's, Thigpen's and Lovell's individual gain.

65. Big Water Resort, LLC is insolvent at this time as evidenced by its conversion from a private club to a public facility because it could not pay its debts.

66. Defendants Clark, Thigpen and Lovell siphoned funds from Big Water Resort, LLC and at all times they were the dominant managers.

67. At all times relevant to the allegations herein, Defendants Clark, Thigpen, and Lovell were the only functioning managers; there were no other functioning officers or directors of Defendant Big Water Resort, LLC.

68. Upon information and belief, there is an absence of corporate records justifying the siphoning of membership dues paid by the class and taken by Defendants Clark, Thigpen, and Lovell.

69. Big Water Resort, LLC was a facade for the operation of Defendants Clark's, Thigpen's, and Lovell's scheme. There would be fundamental injustice and unfairness if the corporate veil was not pierced in this instance because Defendants Clark, Thigpen, and Lovell absconded with the funds necessary for Big Water Resort, LLC to operate as a private club as promised to all class members.

70. It would be fundamentally unfair for individual businessmen such as Defendant Clark, Thigpen, and Lovell to be permitted to hide from the consequences of their scheme by doing so through a corporate shell.

71. Fundamental unfairness would result if Big Water Resort, LLC was treated as a corporate shell protecting wrongdoings of Defendants Clark, Thigpen, and Lovell and the stripping of the membership funds from Big Water Resort, LLC.

72. Based on the foregoing, Plaintiffs ask that Defendants Clark, Thigpen, and Lovell be held responsible for the breach of contract committed by Big Water Resort, LLC.

Count Five: Violation of Time Share Statutes – against Defendants Clark, Thigpen, Lovell, and Big Water Resort, LLC

73. The Big Water resort is a recreational campground and an accommodation.

74. Defendants Clark, Thigpen, Lovell, and Big Water Resort, LLC are sellers who created a vacation time sharing plan or are in the business of selling interests in a vacation time share plan, or employed agents to do the same.

75. The contracts whereby Plaintiffs and all class members purchased memberships in the Big Water Resort as described above are a vacation time sharing lease plan because the contracts are arrangements by membership agreements in which the Plaintiffs and all class members

received a right to use accommodations or facilities, or both, but did not receive an ownership interest in real property for a period of more than three years.

76. Defendants Clark, Thigpen, Lovell and Big Water Resort, LLC violated S.C. Code Ann. § 27-32-80 by leasing or otherwise transferring the accommodations and facilities at Big Water Resort to M. B. Hutson without the capital accounts and funding from membership dues necessary to operate the resort as a private club and this transfer substantially affected the rights of the Plaintiffs and all class members who were purchasers of the vacation time sharing plan as evidenced by the conversion of the club from a private members only club to a public facility.

77. Defendants Clark, Thigpen, Lovell and Big Water Resort, LLC violated S.C. Code Ann. § 27-32-80 by leasing or otherwise transferring the accommodations and facilities at Big Water Resort to Ocoee, LLC without the capital accounts and funding from membership dues necessary to operate the resort as a private club, or, upon information and belief, without contracts or leases binding Ocoee, LLC to keep the club operational for the course of the membership agreements and this transfer substantially affected the rights of the Plaintiffs and all class members who were purchasers of the vacation time sharing plan as evidenced by the conversion of the club from a private members only club to a public facility.

78. Defendants Clark, Thigpen, Lovell and Big Water Resort, LLC violated S.C. Code Ann. § 27-32-110 by failing to honor and comply with all provision of the contracts with Plaintiffs and all class members as described herein.

79. Defendants Clark, Thigpen, Lovell and Big Water Resort, LLC violated S.C. Code Ann. § 27-32-110 by making misleading and deceptive representations with respect to the purchaser's rights, privileges, and benefits and the nature, extent, and characteristics of the memberships in the Big Water resort.

80. Plaintiffs and all class members are thus entitled to a refund from Defendants Clark, Thigpen, Lovell and Big Water Resort, LLC of all consideration paid by Plaintiffs and all class members pursuant to the contracts under S.C. Code Ann. § 27-32-120.

Count Six: Civil Conspiracy – against Defendants TLC, LLC, Ocoee, LLC

81. Plaintiffs incorporate by reference each allegation above as if set forth fully below.

82. Defendant TLC, LLC and Defendant Ocoee, LLC combined with two or more persons, including Defendant Lovell and Defendant Clarke, for the purpose of injuring the class.

83. There were multiple overt acts committed in furtherance of the conspiracy including, *inter alia*: using membership dues paid by class members to build improvements on land owned by Defendant TLC, LLC or Defendant Ocoee, LLC when there was no contractual agreement or lease that required the Big Water Resort to have guaranteed access to said lands for the duration of Plaintiffs' membership.

84. Defendant TLC, LLC and Defendant Ocoee, LLC knew of the promises made by Big Water Resort, LLC to the members and knew that the members were promised access to the land for their lifetime and for the lives of their successors.

85. Defendant TLC, LLC and Defendant Ocoee, LLC knowingly took these monies for improvements and/or the improvements paid for with these monies and also marketed the property for sale to third parties in derogation of the rights of all class members including Plaintiffs.

86. The above acts establish a civil conspiracy that directly caused all class members special damages including, *inter alia*, loss of value of their membership interests in Big Water Resort, LLC.

Count Seven: Negligent Misrepresentation-against Defendant Big Water Resort, LLC

87. Plaintiffs incorporate by reference each allegation above as if set forth fully below.

88. Defendant Big Water Resort, LLC, by and through its agents or employees made false representations to the Plaintiffs, by representing the campground would be private and exclusive to members.

89. Defendant Big Water Resort, LLC had a pecuniary interest in making these representations.

90. Defendant Big Water Resort, LLC owed Plaintiffs and all potential members a duty of care to see that truthful and accurate information was communicated to the Plaintiffs

91. Defendant Big Water Resort, LLC breached this duty by failing to exercise due care in the preparation of its marketing materials and the supervision of its sales staff and agents.

92. The Plaintiffs justifiably relied upon these representations.

93. As direct and proximate result Plaintiffs suffered a pecuniary loss based upon their reliance on these representations.

94. Plaintiffs demand a jury trial as to all claims.

WHEREFORE, Plaintiffs individually and on behalf of all class members pray as follows:

- a. that a sum of money compensation be awarded to Plaintiffs and all class members that will fairly and reasonably compensate Plaintiffs for all damages which have been and will be suffered, as more fully described above;
- b. that Plaintiffs and all class members receive full refunds pursuant to the fifth cause of action;
- c. that a sum of money for punitive damages be awarded to Plaintiffs and all class members;
- d. that court costs and prejudgment interest be awarded to Plaintiffs and all class members as allowed by law; and

- e. that the Plaintiffs and all class members receives all relief to which they are entitled, and for any further such relief the Court deems just and proper.

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