

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

DAVID TYREE, TIMOTHY M.)	Case No. _____
CARTER, WALTER W. FUCHS,)	
AND BONNIE FUCHS)	District Judge _____
)	
Plaintiffs)	Magistrate Judge _____
)	
BARRY NEIL SHRUM,)	JURY DEMANDED
)	
Defendant)	

COMPLAINT

1. Plaintiff David Tyree is a citizen and resident of the State of New Jersey.
2. Plaintiff Timothy M. Carter is a citizen and resident of the State of Texas.
3. Plaintiffs Walter W. Fuchs and wife, Bonnie Fuchs (hereinafter jointly as "Fuchs") are citizens and residents of the State of Illinois.
4. Defendant Barry Neil Shrum is a citizen and resident of the State of Tennessee, and is doing business in Davidson County, Tennessee.
5. This Court has jurisdiction pursuant to 28 U.S.C. §1332 because diversity of citizenship exists between the Plaintiffs and Defendant and the amount in controversy exceeds \$75,000.
6. Venue is proper pursuant to 28 U.S.C. §1391(a), because the Defendant resides, and the cause of action arose, in the Middle District of Tennessee.

7. Prior to February 2007, representatives of Global Development Construction, Inc., ("Global Development") had representatives contact Richard M. Mahler, the agent of the Plaintiffs, concerning a residential development in Costa Rica where they could build a residential structure.

8. Global Development represented to Plaintiffs, through their agent, the following information:

- a. That if each of these Plaintiffs would invest \$125,000, they would be permitted to select lots at the development of Paradise Point OSA, Inc., in Costa Rica;
- b. That each Plaintiff would have a five (5) day grace period after making payment to withdraw from the deal for any reason;
- c. That if there was no withdrawal, their money would remain in an escrow account until closing;
- d. That if the payment were wire transferred to Global Development's attorney and agent, who was Defendant Shrum, that this money would be held in an escrow account until closing.
- e. That lots would be platted and recorded with the appropriate public registrar's office on Costa Rica;
- f. That the closing would occur upon completion of title work and deed conveyance.

g. That if payment were made immediately upon signing a contract, that each Plaintiff would receive a golf club membership worth \$100,000.

h. That if payment were made promptly upon signing the contract, each plaintiff would receive a yacht club membership worth \$50,000.

9. The representations of Global Development made to Richard Mahler were conveyed to each of the Plaintiffs. Each of the Plaintiffs reasonably relied upon these representations.

10. These plaintiffs desired to purchase the land in the development for primarily personal and family purposes.

11. Each of the Plaintiffs were provided with a Preferred Priority Reservation Agreement for Residential Lots at Paradise Point Development in Costa Rica (the "Agreement").

12. Plaintiff Tyree signed the Agreement on or about February 2, 2007. A copy of this Agreement is attached hereto as Exhibit 1 and incorporated herein by reference. Plaintiff Tyree wire transferred \$125,000 to Defendant Shrum in Davidson County, Tennessee, to be placed in an escrow account until closing.

13. Plaintiffs Fuchs signed the Agreement on or about February 7, 2007. A copy of this Agreement is attached hereto as Exhibit 2 and incorporated by reference. Plaintiffs Fuchs wire transferred \$125,000 to Defendant Shrum in Davidson County, Tennessee, to be placed in an escrow account until closing.

14. Plaintiff Carter signed the Agreement on or about February 13, 2007. A copy of this Agreement is attached hereto as Exhibit 3 and incorporated by reference. Plaintiff Carter wire transferred \$125,000 to Defendant Shrum in Davidson County, Tennessee, to be placed in an escrow account until closing.

15. Contrary to representations made in the Agreement and otherwise, Plaintiff Tyree never received any final sales agreement, any certified mail, any title work or any deed, and never participated or was notified of any closing.

16. Contrary to representations made in the Agreement and otherwise, Plaintiffs Fuchs never received any final sales agreement, any certified mail, any title work or any deed, and never participated or was notified of any closing.

17. Contrary to representations made in the Agreement and otherwise, Plaintiff Care never received any final sales agreement, any certified mail, any title work or any deed and never participated or was notified of any closing.

18. None of the Plaintiffs were ever provided any golf club membership or any yacht club membership.

19. Unbeknownst to Plaintiffs, and without Plaintiffs' authorization and without any closing, Defendant Shrum transferred money held in escrow to Global Development.

20. Ultimately, it was discovered that Global Development was a sham corporation and that there was no real development in Costa Rica.

21. Plaintiffs through Richard Mahler and his attorney Jack Stern attempted to contact Global Development and Defendant Shrum to determine if the money held in escrow was still there and could be refunded. In

approximately late December 2008 or early January 2009, Richard Mahler was able to learn that the money was gone.

22. Attempts were made to have Defendant Shrum account for the money to be held in escrow. On or about March 19, 2009, Defendant Shrum sent an e-mail to Attorney Jack Stern claiming that Defendant Shrum had transferred the funds in March 2007. A copy of the e-mail and the letter are attached hereto as Collective Exhibit 4. Attorney Jack Stern and Richard Mahler have both confirmed that neither of these individuals were ever sent the letter in 2007; that the existence of this letter was first revealed in March 2009; and Plaintiffs assert that the letter was part of the fraudulent scheme perpetuated by Global Development and Defendant Shrum.

23. As a result of the actions of Defendant Shrum in concert with Global Development, Plaintiffs sustained damages.

COUNT ONE—BREACH OF FIDUCIARY DUTY

24. The allegations of Paragraph 1-23 are incorporated herein by reference.

25. By agreeing to hold Plaintiffs funds in trust, Defendant Shrum had a fiduciary duty to not disburse funds except with the express agreement and authorization of the Plaintiffs and in accordance with the terms of the Agreement.

26. Defendant Shrum breached his fiduciary duty and caused damages to the Plaintiffs, for which he is liable.

COUNT TWO—BREACH OF CONTRACT

27. The allegations of Paragraphs 1-26 are incorporated by reference.

28. Defendant Shrum had a contractual duty to only disburse money under the terms of the Agreement, and failed to do so.

29. Defendant Shrum's conduct constitutes breach of contract, resulting in damages to the Plaintiffs for which Defendant Shrum is liable.

**COUNT THREE—VIOLATION OF THE TENNESSEE CONSUMER
PROTECTION ACT**

30. The allegations of Paragraphs 1-29 are incorporated by reference.

31. Plaintiffs are "consumers" pursuant to TENN. CODE ANN. §47-18-103(2).

32. The transactions with the Plaintiffs as described above constitute "trade," "commerce" and/or a "consumer transaction" pursuant to TENN. CODE ANN. §47-18-103(11).

33. The conduct of Defendant Shrum, both individually and in concert with Global Development, constitutes unfair or deceptive acts or practices, including but not limited to the following:

A. Violation of TENN. CODE ANN. §47-18-104(b)(2) by causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services.

B. Violation of TENN. CODE ANN. §47-18-104(b)(3) by causing likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another.

C. Violation of TENN. CODE ANN. §47-18-104(b)(4) by using deceptive representations or designations of geographic origin in connection with goods or services.

D. Violation of TENN. CODE ANN. §47-18-104(b)(5) by representing that goods or services have sponsorship, approval, characteristics, uses, or benefits that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that such person does not have;

E. Violation of TENN. CODE ANN. §47-18-104(b)(7) by representing that goods or services are of a particular standard, quality or grade if they are of another;

F. Violation of TENN. CODE ANN. §47-18-104(b)(9) by advertising goods or services with intent not to sell them as advertised;

G. Violation of TENN. CODE ANN. §47-18-104(b)(12) by representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve;

H. Violation of TENN. CODE ANN. §47-18-104(b)(14) by causing confusion or misunderstanding with respect to the authority of a representative or agent to negotiate the final terms of a consumer transaction;

I. Violation of TENN. CODE ANN. §47-18-104(b)(21) by using statements or illustrations in any advertisement which create a false impression of the quality, value, usability or origin of the goods or services offered;

J. Violation of TENN. CODE ANN. §47-18-104(b)(22) by using an advertisement containing an offer to sell goods or services when the offer is not a bona fide effort to sell the advertised goods or services.

K. Violation of TENN. CODE ANN. §47-18-104(b)(27) by engaging in other acts or practices which were deceptive to the Plaintiffs.

34. The Plaintiffs bring this as a private action pursuant to TENN. CODE ANN. §47-18-109 for all damages resulting from the violations identified above, and as such Plaintiffs allege pursuant to said statute that:

- a. Plaintiffs are entitled to a declaratory judgment that the acts or practices of Defendant Shrum, individually and in conjunction with Global Construction, violate the provisions of the Tennessee Consumer Protection Act;
- b. Plaintiffs allege on information and belief that Defendant Shrum's use or employment of the unfair or deceptive act or practices alleged above was willful or knowing such as would entitle Plaintiffs to treble damages; and
- c. Plaintiffs are entitled to attorneys' fees and costs.

COUNT FOUR—NEGLIGENCE

35. The allegations of Paragraphs 1-25 are incorporated by reference.

36. As the escrow agent for Plaintiffs, Defendant Shrum owed a duty to properly maintain the funds placed into escrow.

37. Defendant Shrum negligently breached that duty and caused damages to the Plaintiff.

38. The conduct of Defendant Shrum was not only negligent, but also grossly negligent and reckless such that punitive damages should be imposed.

39. Plaintiffs are entitled to recover all damages caused by Plaintiff's negligence.

COUNT FIVE—MISREPRESENTATION

40. The allegations of Paragraphs 1-39 are incorporated by reference.

41. Defendant Shrum, either individually and/or through Global Construction, misrepresented the nature of Plaintiffs' transaction with Global Construction, including but not limited to the escrow feature where funds would only be disbursed upon the occurrence of a closing.

42. All such representations outlined above were material to Plaintiffs, and Plaintiffs reasonably relied upon said representations.

43. To the extent that such representations were negligent, Plaintiffs sue Defendant Shrum for negligent misrepresentation.

44. To the extent that such representations were intentional, Plaintiffs sue Defendant Shrum for intentional misrepresentation.

45. The misrepresentations of Defendant Shrum resulted in damages to Plaintiff, for which Defendant Shrum is liable.

COUNT SIX—CONSPIRACY

46. The allegations of Paragraphs 1-45 are incorporated by reference.

47. Plaintiffs allege on information and belief that Defendant Shrum and Global Construction and/or others, jointly agreed to the actions above and/or to

ignore the provisions of the Agreement and the representations made to Plaintiffs.

48. Such conduct constitutes a civil conspiracy and resulted in damages to Plaintiffs for which Defendant Shrum is liable.

DAMAGES

49. The allegations of Paragraphs 1-48 are incorporated by reference.

50. Plaintiffs seek compensatory damages, including but not limited to the amount they had paid for the purchase of real estate and benefits therefrom to which they would have been entitled, including but not limited to the value of the golf club and yacht club memberships in the amounts indicated.

51. In the alternative to treble damages under the Tennessee Consumer Protection Act, Plaintiffs allege that Defendant's conduct was reckless, intentional and/or fraudulent, and that punitive damages should be imposed.

52. Plaintiffs also seek all damages pursuant to the Tennessee Consumer Protection Act as outlined and requested above.

53. Plaintiffs also seek an award of prejudgment interest on all sums.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray:

1. That service of process issue to Defendant and that he be required to file an answer as required by law.

2. That a jury be impaneled to consider the issues of this case.

3. That Plaintiff David Tyree receive judgment for compensatory damages in an amount that is just, not to exceed \$300,000.

4. That Plaintiff Timothy M. Carter receive judgment for compensatory damages in an amount that is just, not to exceed \$300,000.

5. That Plaintiffs Walter W. Fuchs and Bonnie Fuchs receive judgment for compensatory damages in an amount that is just, not to exceed \$300,000.

6. That Plaintiffs' awards be trebled under the Tennessee Consumer Protection Act, and that they receive their attorney fees and expenses.

7. That each of the Plaintiffs be awarded punitive damages in an amount that is just, not to exceed \$1,000,000 each.

8. For interest on all sums.

9. For general relief as the case merits.

Submitted this 29th day of June, 2009.

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