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EL DORADO COUNTY SUPERIOR COURT
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Assigned to Judge
STEVEN C. BAILEY

NOV 14 2016

FOR ALL PURPOSES

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DIAMOND RESORTS TAHOE BEACH & SKI
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COLLECTION MEMBERS ASSOCIATION, and
DIAMOND RESORTS CALIFORNIA
COLLECTION MEMBERS ASSOCIATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FILE BY FAX

COUNTY OF EL DORADO

DIAMOND RESORTS TAHOE BEACH &
SKI DEVELOPMENT, LLC, a Delaware
limited liability company; DIAMOND
RESORTS U.S. COLLECTION MEMBERS
ASSOCIATION, a Delaware non-profit
corporation; and DIAMOND RESORTS
CALIFORNIA COLLECTION MEMBERS
ASSOCIATION, a Delaware non-profit
corporation,

Plaintiffs,

v.

THE TAHOE BEACH AND SKI CLUB
OWNERS ASSOCIATION, a California non-
profit corporation;

Defendants.

Case No.: SC20160189

**PLAINTIFFS' COMPLAINT FOR:
(1) DECLARATORY RELIEF; AND
(2) INJUNCTIVE RELIEF**

Plaintiffs, DIAMOND RESORTS TAHOE BEACH & SKI DEVELOPMENT, LLC
("Tahoe Development"), DIAMOND RESORTS U.S. COLLECTION MEMBERS
ASSOCIATION (the "U.S. Collection Association"), and DIAMOND RESORTS CALIFORNIA
COLLECTION MEMBERS ASSOCIATION (the "California Collection Association")
(collectively, "Plaintiffs") allege as follows for their Complaint against Defendants THE TAHOE
BEACH AND SKI CLUB OWNERS ASSOCIATION (the "Association"):

1 THE PARTIES

2 1. Tahoe Development is a Delaware limited liability company with its principal
3 place of business in Las Vegas, Nevada.

4 2. The U.S. Collection Association is a non-profit Delaware corporation with its
5 principal place of business in Las Vegas, Nevada.

6 3. The California Collection Association is a non-profit Delaware corporation with
7 its principal place of business in Las Vegas, Nevada.

8 4. Upon information and belief, the Association is a California non-profit corporation
9 that was created to operate the Tahoe Beach & Ski Club timeshare resort located at 3601 Lake
10 Tahoe Boulevard, South Lake Tahoe, California (the "Resort"). Plaintiffs further allege, upon
11 information and belief, that the Association's principal place of business is located at the Resort.

12 VENUE

13 5. Venue is proper in El Dorado County, California pursuant to Section 392,
14 California Code of Civil Procedure, because this is an action for the determination of interests in
15 real property located at the Resort in South Lake Tahoe, El Dorado County, California.
16 Additionally, substantially all of the acts and events giving rise to this action occurred in South
17 Lake Tahoe, California.

18 6. All conditions precedent to the filing of this action have occurred, have been
19 performed, or have been waived.

20 FACTS COMMON TO ALL CAUSES OF ACTION

21 7. The Resort is a timeshare resort on Lake Tahoe consisting of 140 units and other
22 common areas within the Resort. Each unit comprises fifty-one (51) timeshare unit weeks. The
23 unit weeks are known as "Vacation Plans."¹

24 ¹ Vacation Plans comprise Original, Regular, and Biennial Vacation Plans as described in Article
25 1.43 of the First Amended and Restated Declaration of Vacation Plan of the Tahoe Beach and Ski
26 Club. Comp. Exh. A, p. 7 of the First Amended and Restated Declaration of Vacation Plan.
27 While Original and Regular Vacation Plans entitle their owners to use of their respective unit for
28 one week each year, Biennial Vacation Plans entitle their owners to use of their respective unit for
one week every other year. All references to Vacation Plans herein include Original, Regular,
and Biennial Vacation Plans, however, each Biennial Vacation Plan is counted as 1/2 of a
Vacation Plan since, pursuant to the Declaration of Vacation Plan, Biennial Vacation Plans "carry
exactly one-half the rights and obligations of an Original or Regular Vacation Plan." *Id.*

1 A. **The Governing Documents and Governance of the Resort**

2 8. The Resort operates and is subject to various governing documents, including the
3 Declaration of Vacation Plan and the Amendments thereto, the Association's Bylaws, and its
4 Rules and Regulations (collectively, the "Governing Documents"). True and correct copies of the
5 Governing Documents are collectively attached hereto as **Exhibit "A."**

6 9. Pursuant to the First Amended and Restated Declaration of Vacation Plan
7 ("Declaration of Vacation Plan"), the Association is responsible for managing and operating the
8 units and common areas of the Resort, and for assessing and collecting annual and special
9 assessments ("Assessments") from Vacation Plan owners ("Owners") at the Resort. Comp.
10 Exh. A, p. 14² of Declaration of Vacation Plan.

11 10. The Association operates the Resort through its Board of Directors (the "Board").
12 The Board is currently comprised of five (5) individuals. Comp. Exh. A, p. 8 of the Bylaws.
13 Directors serve for a term of three (3) years or until the later election of their successors. *See id.*
14 Elections are staggered, with two (2) directors elected one year, two (2) other directors elected the
15 next year and the fifth director elected the following year. *See id.*

16 11. The Resort is managed by Grand Pacific Resorts.

17 B. **The U.S. Collection, the California Collection, and Their Members**

18 12. The U.S. Collection Association and the California Collection Association
19 (collectively, the "Collection Associations") are both associations consisting of thousands of
20 members. Both the U.S. Collection Association and the California Collection Association offer
21 their respective members the opportunity to reserve timeshare interests at timeshare resorts
22 located throughout the United States.

23 13. Essentially, from time to time, Tahoe Development conveys timeshare interests to
24 the trusts for the benefit of the Collection Associations in return for points representing an interest
25 in the applicable Collection Association, and those timeshare interests are then held in the
26
27

28 ² For ease of reference in locating the Declaration of Vacation Plan and the Bylaws, a blue-
colored title page has been inserted in front of each of these documents found in Exhibit A.

1 applicable trust by the trustee, First American Trust, FSB (the "Trustee"). Tahoe Development
2 also owns Vacation Plans at the Resort.

3 14. The Collection Associations manage the beneficial ownership interests of Vacation
4 Plans at the Resort held by the Trustee for the use and benefit of their respective members, and
5 hold the power of direction over the Trustee with respect to the use and disposition of such
6 Vacation Plans. The Collection Associations are billed Assessments for their respective Vacation
7 Plans at the Resort, and have timely remitted payment of these Assessments to the Association.
8 The Collection Associations are responsible for the payment of their respective Assessments to
9 the Association and are also responsible for bringing and defending lawsuits relating to their
10 respective Vacation Plans at the Resort on behalf of their members.

11 15. The U.S. Collection Association currently holds 922 Vacation Plans for the use
12 and benefit of its members at the Resort.

13 16. The California Collection Association currently holds 287.5 Vacation Plans for the
14 use and benefit of its members at the Resort.

15 17. Tahoe Development currently holds 503 Vacation Plans at the Resort.

16 18. As such, Tahoe Development and the Collection Associations have a considerable
17 interest in the management and operations of the Resort as a whole, as well as in the vacation
18 experience of all of their respective members and guests who stay at the Resort.

19 **C. Operation & Management of the Resort/Association Owned Vacation Plans**

20 19. The Association has, from time to time, taken ownership of Vacation Plans, mostly
21 through deeds in lieu of foreclosure, when the Vacation Plans' Owners fail to pay Assessments or
22 otherwise meet their obligations ("Association Owned Vacation Plans").

23 20. If the Association Owned Vacation Plans are not resold, then the Owners are
24 forced to bear the burden of unpaid Assessments for such Vacation Plans. In other words, when
25 the Association holds a Vacation Plan, then there is no person or entity paying assessments or
26 maintenance fees for said Vacation Plan.

27 21. Thus, the timely resale of Association Owned Vacation Plans to parties who will
28 likely meet their obligations is in the best interest of all Owners to ensure that there are as many

1 assessment paying Owners as possible. Unpaid assessments for various Vacation Plans cause the
2 common burden of assessments to be spread among fewer Owners, resulting in assessments to
3 Owners that are higher than they would otherwise be if the Association Owned Vacation Plans
4 were sold to assessment paying Owners.

5 22. As more and more Vacation Plans are owned by the Association, the Owners are
6 required to take increased related risks associated with such ownership, including the risk of
7 additional Owner defaults as a result of higher assessments, further accelerating assessment
8 increases and additional defaults. The Association also runs the risk of holding Vacation Plans
9 available for rental in the marketplace in competition with other rental sources, making it
10 increasingly difficult for the Association to effectively fulfill its core function of operating and
11 maintaining the Resort as a timeshare resort as required by the Governing Documents.

12 **D. The Association Accumulates Vacation Plans in an Effort to Disenfranchise**
13 **Plaintiffs (and other Owners) by Voting the Interests Related to the**
14 **Association Owned Vacation Plans**

15 23. While it is in the best interests of all Owners at the Resort that the Association
16 hold as few Association Owned Vacation Plans as possible, the Association has undertaken a
17 scheme to accumulate Vacation Plans in an effort to disenfranchise Owners at the Resort,
18 including Plaintiffs, by voting the interests appurtenant to the Association Owned Vacation Plans
19 for incumbent directors seeking re-election or candidates favored by certain members of the
20 Board regardless of the will of the assessment paying Owners at large.

21 24. Such action had been unprecedented because the Association had never sought to
22 vote the interests appurtenant to the Association Owned Vacation Plans for any specific candidate
23 or issue prior to the 2015 Election. Indeed, the interests appurtenant to the Association Owned
24 Vacation Plans had only ever been used to establish quorum at a meeting when necessary in the
25 past.

26 25. In the 2015 election two (2) incumbent members to the Board (the "2015
27 Election") Jacob Bercu ("Bercu") and Alfred Fong ("Fong"), were seeking re-election to the
28 Board. Non-incumbent owners, Frank Goeckel, as a representative of Tahoe Development, and

1 Cathy Ryan, were also seeking election to the Board in the 2015 Election. As part of the 2015
2 Election, the Board sought to vote the interests appurtenant to the Association Owned Vacation
3 Plans for Bercu and Fong, based upon an agreement of the Board (which included Fong and
4 Bercu).

5 26. Indeed, prior to the 2015 Election, Plaintiffs requested assurances from the
6 Association that it did not intend to vote the interests appurtenant to Association Owned Vacation
7 Plans, including ones where ownership was disputed, at the 2015 Election.

8 27. In a letter dated June 17, 2015, a copy of which is attached hereto as **Exhibit "B,"**
9 the Association refused to confirm whether it would or would not be voting the interests
10 appurtenant to the Association Owned Vacation Plans for specific candidates at the 2015
11 Election.

12 28. Ultimately, the Board decided not to vote the Association Owned Vacation Plans
13 for a specific candidate at the 2015 Election.

14 29. However, in the election for two (2) additional members of the Board at the 2016
15 annual meeting of the Association (the "2016 Election"), the Association voted the interests
16 appurtenant to the Association Owned Vacation Plans for specific candidates at the 2016
17 Election.

18 30. At the 2016 Election, the Association appointed its auditor, Steve Shanafeld
19 ("Shanafeld"), to act as the "independent" inspector of elections. Immediately prior to the start of
20 the annual meeting where the 2016 Election was to take place, Frank Goeckel, the authorized
21 representative for Plaintiffs, advised Shanafeld that Plaintiffs would object to the 2016 Election if
22 the Association, through its Board, voted the interests appurtenant to the Association Owned
23 Vacation Plans. In response, Shanafeld advised Goeckel that he would not count any votes cast
24 by the Association relating to the interests appurtenant to the Association Owned Vacation Plans
25 for a specific candidate at the 2016 Election.

26 31. Despite Goeckel's advisement to Shanafeld, and despite the misrepresentations by
27 Shanafeld prior to the 2016 Election, Shanafeld allowed and the Association cast the votes
28

1 appurtenant to the Association Owned Vacation Plans for specific candidates at the 2016
2 Election.

3 32. It was not until weeks later that Plaintiffs learned that the Association had cast the
4 votes appurtenant to the Association Owned Vacation Plans in the 2016 Election.

5 33. Despite a request for assurances that the Association will not seek to vote the
6 interests appurtenant to the Association Owned Vacation Plans in the future, the Association has
7 refused to acknowledge that it is not entitled to, should not, and will not vote such interests for
8 specific candidates at future elections of the Board.

9 34. The Association's efforts to vote the Association Owned Vacation Plans for any
10 specific candidate at any election disenfranchises all Owners at the Resort because it allows the
11 current Board to perpetuate their own power even if the assessment-paying Owners at the Resort
12 would have otherwise elected a different candidate had the Association Owned Weeks not been
13 voted.

14 35. Tahoe Development and the Collection Associations have hired the law firm of
15 Baker & Hostetler LLP and are obligated to pay it a reasonable fee for its services.

16 **FIRST CAUSE OF ACTION**
17 **DECLARATORY RELIEF**

18 36. Plaintiffs reallege and incorporate Paragraphs 1 to 35 of this Complaint herein as if
19 set forth in full by this reference.

20 37. This is an action for declaratory relief pursuant to Section 1060, California Code
21 of Civil Procedure.

22 38. A dispute has arisen and an actual and present controversy now exists as between
23 Plaintiffs and the Association pertaining to whether the votes appurtenant to the Association
24 Owned Vacation Plans can be voted for any purpose, other than quorum, including voting the
25 interests for any specific candidate in the 2016 Election or future elections of the Board.

26 39. Plaintiffs contend that the Association is not entitled to and should not have voted
27 the interests appurtenant to the Association Owned Vacation Plans at the 2016 Election and
28 should not be permitted to do so in the future.

1 40. The Association contends that it is entitled to and did properly vote the interests
2 appurtenant to the Association Owned Vacation Plans at the 2016 Election and should be
3 permitted to do so in the future.

4 41. California corporate law, which applies to the Association, has long prohibited
5 directors from voting interests in the corporation held by the corporation itself in elections.
6 Stated differently, the efforts to vote the Association Owned Vacation Plans is akin to voting
7 treasury stocks of a corporation in an election, which is not permitted. This applies with equal
8 force to the Association so as to secure honesty and fairness in the election process and to not
9 disenfranchise any segment of the ownership at the Resort by improperly perpetuating certain
10 individuals in power.

11 42. Plaintiffs seek a declaration that:

- 12 • The Association's vote of the interests appurtenant to the Association
13 Owned Vacation Plans at the 2016 Election was improper and unlawful;
- 14 • The Association's votes relating to the Association Owned Vacation Plans
15 at the 2016 Election should be recalled and should not be included in the
16 final results of the 2016 Election;
- 17 • The Association be prohibited from voting the interests appurtenant to the
18 Association Owned Vacation Plans in any future election for any specific
19 candidate, purpose or issue other than to establish quorum.

20 **SECOND CAUSE OF ACTION**
21 **PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

22 43. Plaintiffs reallege and reincorporate Paragraphs 1 to 35 of this Complaint herein as
23 if set forth in full by this reference.

24 44. This is an action for preliminary and permanent injunctive relief pursuant to
25 California Code of Civil Procedure Section 526.

26 45. The Governing Documents of the Resort do not authorize the Association to vote
27 the interests appurtenant to the Association Owned Vacation Plans for any purpose. Rather, the
28 Governing Documents of the Resort, and California law, require the Association to operate the

1 Resort for the benefit of all Owners, which obligation is negated to the extent that the Association
2 disenfranchises any segment of the Owners at the Resort.

3 46. The use of the voting interests appurtenant to the Association Owned Vacation
4 Plans disenfranchises any Owner that does not vote in accordance with the Association and its
5 Board by decreasing the voting power of said Owner.

6 47. The Association voted the interests appurtenant to the Association Owned
7 Vacation Plans in the 2016 Election and has refused to assure Plaintiffs that the Association will
8 refrain from voting said interests in future elections of the Board.

9 48. Plaintiffs are suffering irreparable harm as a result of the Association's stated
10 intent to continuing voting the interests appurtenant to the Association Owned Vacation Plans.

11 49. Plaintiffs have no adequate remedy at law for the Association's previous use of the
12 Association Owned Vacation Plans nor for the Association's stated intention to continue voting
13 said interests as future election.

14 50. Plaintiffs are entitled to the issuance of a preliminary injunction and a permanent
15 injunction enjoining the Association and all persons acting in concert with the Association from:

- 16 • Voting the interests appurtenant to the Association Owned Vacation Plans
17 at any future election for any purpose other than to establish quorum.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs request that judgment be entered in their favor and against
20 Defendants as follows:

21 1. That the Court enter a preliminary injunction and a permanent injunction enjoining
22 the Association and all persons acting in concert with the Association from:

- 23 • Voting the interests appurtenant to the Association Owned Vacation Plans
24 at any future election for any purpose other than to establish quorum.

25 2. For a judicial declaration that:

- 26 • The Association's vote of the interests appurtenant to the Association
27 Owned Vacation Plans at the 2016 election was improper and unlawful;
28

- The Association's votes relating to the Association Owned Vacation Plans at the 2016 Election should be recalled and should not be included in the final results of the 2016 Election; and
- The Association be prohibited from voting the interests appurtenant to the Association Owned Vacation Plans in any future election for any specific candidate, purpose or issue.

3. For costs of suit herein incurred, including, but not limited to, reasonable attorneys' fees, expert witness fees, and costs;

4. For such other and further relief as the Court may deem proper, just and equitable.

Dated: November 14, 2016

Respectfully submitted,

BAKER & HOSTETLER LLP

By: 

Matthew D. Pearson

Attorney for Plaintiffs
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SKI DEVELOPMENT, LLC, DIAMOND
RESORTS U.S. COLLECTION MEMBERS
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