

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL  
CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA

OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,  
STATE OF FLORIDA,

Plaintiff,

vs.

Case No. 10-CA-001113

BONITA BAY GROUP, INC.,  
BONITA BAY PROPERTIES, INC.,  
RESOURCE CONSERVATION  
PROPERTIES, INC., DAVID LUCAS,  
and BRIAN LUCAS,

Defendants.

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**AMENDED COMPLAINT**

Plaintiff, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA (hereinafter referred to as "Plaintiff"), sues Defendants, BONITA BAY GROUP, INC., BONITA BAY PROPERTIES, INC., RESOURCE CONSERVATION PROPERTIES, INC., DAVID LUCAS and BRIAN LUCAS (hereinafter referred to as "Defendants").

**Jurisdiction**

1. This action is brought pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2008).
2. This Court has jurisdiction pursuant to the provisions of said statute.

3. Plaintiff is an enforcing authority of Florida's Deceptive and Unfair Trade Practices Act (FDUTPA) as defined in Chapter 501, Part II, Florida Statutes, and is authorized to seek damages, injunctive and other statutory relief pursuant to this part.

4. The statutory violations alleged herein occurred in or affected one judicial circuit in the State of Florida and the office of the State Attorney in the Twentieth Judicial Circuit has deferred to the Department of Legal Affairs. Venue is proper in the Twentieth Judicial Circuit as the principal place of business of the Defendant entities is Lee County, Florida.

5. Plaintiff has conducted an investigation, and the head of the enforcing authority, Attorney General Bill McCollum has determined that an enforcement action serves the public interest.

6. Defendants, at all times material hereto, provided goods or services as defined within Section 501.203(8), Florida Statutes (2008).

7. Defendants, at all times material hereto, solicited consumers within the definitions of Section 501.203(7), Florida Statutes (2008).

8. Defendants, at all times material hereto, were engaged in a trade or commerce within the definition of Section 501.203(8), Florida Statutes (2008).

#### **Defendants**

9. Defendant Bonita Bay Group, Inc. is a closely held, sub-chapter S Florida for-profit corporation with two shareholders, Linda Lucas and Louise Ukleja, and has a principal place of business at 9990 Coconut Road, Bonita Springs, Lee County, Florida.

10. Defendant Bonita Bay Group, Inc. is a holding company which, through various wholly owned subsidiary corporations, limited liability companies and limited partnerships, operates or has operated recreational clubs and marinas in Lee and Collier Counties.

10. Defendants Bonita Bay Properties, Inc. and Resource Conservation Properties, Inc. are wholly owned subsidiaries of Defendant Bonita Bay Group, Inc.

11. Defendants Bonita Bay Properties, Inc. and Resource Conservation Properties, Inc. are Florida for-profit corporations and have principal places of business at 9990 Coconut Road, Bonita Springs, Lee County, Florida.

12. Defendant Bonita Bay Properties, Inc. directly operates or has operated one recreational club and, through a subsidiary entity, operates or has operated various other recreational clubs and marinas in Lee or Collier Counties.

13. Defendant Resource Conservation Properties, Inc., through subsidiary entities, operates or has operated various recreational clubs or marinas in Lee or Collier Counties.

14. Defendant David Lucas is a resident of Ft. Myers, Lee County, Florida and is Chairman of the Board of Directors of Defendant Bonita Bay Group, Inc.

15. Defendant Brian Lucas is a resident of Lee County, Florida and is Vice Chairman of the Board of Directors of Defendant Bonita Bay Group, Inc.

16. Defendant David Lucas as the Chairman of the Board of Directors of Bonita Bay Group, Inc. had control of the Defendant entities and their wholly owned subsidiaries.

At all times material hereto, Defendant David Lucas knew of, managed, controlled, ratified and/or participated in the business affairs, activities and actions of the Defendant entities and their wholly owned subsidiaries. Defendant David Lucas had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts of subordinate officers, employees, agents, and representatives of the Defendant entities and their wholly owned subsidiaries, as described below, were unfair, deceptive and/or prohibited by law.

17. Defendant Brian Lucas as the Vice Chairman of the Board of Directors of Bonita Bay Group, Inc. had control of the Defendant entities and their wholly owned subsidiaries. At all times material hereto, Defendant Brian Lucas knew of, managed, controlled, ratified and/or participated in the business affairs, activities and actions of the Defendant entities and their wholly owned subsidiaries. Defendant Brian Lucas had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts of subordinate officers, employees, agents, and representatives of the Defendant entities and their wholly owned subsidiaries, as described below, were unfair, deceptive and/or prohibited by law.

#### **Club Memberships**

18. The various recreational clubs and marinas operated by the Defendants directly or indirectly through subsidiaries are or were owner operated, i.e. each club or marina was owned by one of the Defendants directly or indirectly through subsidiaries.

19. The various recreational clubs and marinas operated by the Defendants directly or indirectly through subsidiaries ultimately were owned solely by Defendant Bonita Bay Group, Inc.

20. The various recreational clubs and marinas operated by the Defendants directly or indirectly through subsidiaries (hereinafter collectively referred to as “the Clubs”) offered memberships to consumers for use of the facilities.

21. Membership in any one of the Clubs was governed by a set of documents which consisted of the Membership Agreement, the Membership Plan and the Rules and Regulations. One of the Clubs did not utilize the Membership Plan but the provisions of its Membership Agreement and its Rules and Regulations were consistent with the three documents of the other

Clubs. The Membership Agreements, the Membership Plans and the Rules and Regulations of the Clubs shall be referred to collectively as the “Governing Documents”.

22. The Governing Documents of the Clubs generally state that “Membership in the Club permits the member to use the Club Facilities . . . is not an investment in the [Defendant] Company or the Club Facilities . . . does not provide a member with an equity or ownership interest . . . [and] a member only acquires a revocable license to use the Club Facilities . . . .”

23. Since the establishment of the first club in 1985, consumers have been required to pay a deposit at inception of membership in order to become a member of one of the Clubs.

24. Deposits for membership in the Clubs generally have ranged from \$25,000 to \$180,000 per member.

25. As of November, 2008, deposits paid to date to the Defendants directly or indirectly through subsidiaries for membership in the Clubs have amounted to approximately \$250 million.

26. The membership deposits paid to the Defendants went into the general revenue of Defendant Bonita Bay Group, Inc. and were used for purposes of the Defendants.

27. The membership deposits paid to the Defendants were not segregated or otherwise escrowed for instant refunding to members but were used as the Defendants saw fit.

**COUNT I**  
**Deceptive and Unfair Trade Practices**  
**Chapter 501, Part II, Florida Statutes**

28. In regard to the refund of membership deposits, the Governing Documents generally provided the following:

In the event a member resigns or if a member becomes entitled to a refund as otherwise provided by the terms of the Membership Plan, a member will receive a 100% refund of the membership deposit previously paid to the Club.

29. In regard to the timing of the refund of membership deposits, the Governing Documents generally provided the following:

The member whose membership has been resigned as provided by the terms of the Membership Plan will receive his or her refund within 30 days after the effective date of resignation or as otherwise provided by the terms of the Membership Plan, without having to be placed on any waiting list to receive their refund (“instant refundability”). Resignation is effective the beginning of the following month after the member delivers to the Club written notice of resignation of the membership (the “effective date”).

30. As of November of 2008, there were in excess of 8500 members in the Clubs.

31. Since November of 2008, more than 800 members of the Clubs have resigned and are on the Clubs’ “resigned list”.

32. By notice dated November 7, 2008, the Defendants informed members of the Clubs that Defendants were amending their “membership plans to suspend the immediate refund of membership deposits”.

33. Since November 7, 2008 to date, no refunds have been paid to resigning members of the Clubs.

34. The Governing Documents at all times material prior to November 7, 2008 provided for the instant refundability of membership deposits.

35. At all times material prior to November 7, 2008, the instant refundability of membership deposits was an integral part of the Defendants’ real estate development and marketing and the Defendants’ sale of residential homesites and amenities to consumers.

36. Defendants’ suspension of the instant refundability of membership deposits constitutes an unfair or deceptive act or practice.

37. Subsequent to November 7, 2008, Defendants initiated a “restructuring” strategy that included the hiring of a chief restructuring officer and the selling of the Clubs to the members.

38. From the last quarter of 2009 to date, Defendants have sold various Clubs to the members.

39. The consideration for the Clubs heretofore sold to members consisted of cash from individual members who agreed to remain members of the Clubs and a release by the individual members in favor of the Defendants and all their affiliated entities and owners by which the individual members released all of their claims for repayment of the aforementioned membership deposits.

40. The cash received by the Defendants from the sale of the Clubs was used to pay off the Defendants’ mortgage of all their assets, including the Clubs, dated November 7, 2007 to a consortium of banks led by KeyBank, N.A. which secured a \$120 million credit line extended to the Defendants.

41. Individual resigned and active members of the Clubs before the sales who did not agree to be members of the sold Clubs by making the cash payment and executing the aforementioned release in favor of the Defendants and all their affiliated entities and owners were sanctioned by being ostracized from the sold Clubs and being assessed a financial penalty by the sold Clubs that would have to be paid by future purchasers of the residences who desired to become members of the sold Clubs.

42. As a result of the foregoing, the Defendants have engaged in deceptive acts or practices as aforesaid in violation of the provisions of Chapter 501, Part II, of the Florida Statutes.

**COUNT II**  
**Fraudulent Transfers**  
**Uniform Fraudulent Transfer Act**  
**Chapter 726, Florida Statutes**

43. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 27 inclusive as if fully set forth hereinafter.

44. Defendant David Lucas has admitted under oath that member deposits paid to the Defendants directly or indirectly through subsidiaries for membership in the Clubs have amounted to approximately \$250 million.

45. Defendant David Lucas has admitted under oath that membership deposits paid to the Defendants directly or indirectly through subsidiaries for membership in the Clubs went into the general revenue of Defendant Bonita Bay Group, Inc.

46. Defendant David Lucas has admitted under oath that membership deposits paid into the general revenue of Defendant Bonita Bay Group, Inc. were used as needed by the Defendants for general corporate purposes as diverse as land purchases, employee payroll or shareholder taxes.

47. Defendant David Lucas and the Defendants' chief restructuring officer have admitted under oath that membership deposits paid into the general revenue of the Defendants were treated as loans from members, were carried as liabilities on the Defendants' consolidated financial statements and were not taxable income to the Defendants.

48. Upon making the payments of the membership deposits, members individually and collectively became creditors of the Defendants and of the Defendants' subsidiary entities that operated the Clubs.



49. The Defendant's chief restructuring officer testified under oath that the debts to members for re-payments of the deposits were owed by the Defendants' subsidiary entities that operated the Clubs.

50. The Uniform Fraudulent Transfer Act (UFTA) in part provides that a "transfer made ... by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made ..., if the debtor made the transfer ...: (a) [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor; or (b) [w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor: 1. [w]as engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or 2. [i]ntended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due." F.S. § 726.105(1) The UFTA also establishes that "[a] transfer made ... by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made ... if the debtor made the transfer ... without receiving a reasonably equivalent value in exchange for the transfer ... and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer...." F.S. § 726.106(1)

51. The transfers to the Bonita Bay Group, Inc., i.e. the Defendants, of the membership deposits paid by members rendered the Defendants' subsidiary entities that operated the Clubs insolvent or unable to re-pay the debts for the membership deposits as the debts became due.

52. The Defendants' subsidiary entities that operated the Clubs made the transfers to the Bonita Bay Group, Inc., i.e. the Defendants, of the membership deposits paid by members without receiving reasonably equivalent value in exchange for the transferred monies.

53. As a result of the foregoing, the Defendants made fraudulent transfers in violation of Chapter 726 of the Florida Statutes and thereby engaged in deceptive acts or practices in violation of the provisions of Chapter 501, Part II, of the Florida Statutes.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment against the Defendants:

1. Granting permanent injunction against the Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with the Defendants who receive actual notice of this injunction, prohibiting and enjoining such persons from violating the provisions of Chapter 501, Part II, Florida Statutes (2008);
2. Awarding such equitable or other relief as is just and appropriate pursuant to Section 501.207(3), Florida Statutes (2008);
3. Awarding actual damages to all consumers who are shown to have been injured, pursuant to Section 501.207(1)(c), Florida Statutes (2008);
4. Assessing civil penalties in the amount of Ten Thousand Dollars (\$10,000.00) for each act or practice found to be in violation of Chapter 501, Part II, Florida Statutes (2008);
5. Awarding reasonable attorneys fees pursuant to F.S. 501.2075; and
6. Granting such other relief as this Honorable Court deems just and proper.

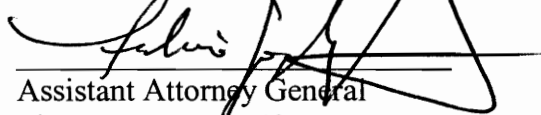
Dated this 29<sup>th</sup> day of April, 2010

Respectfully Submitted

**BILL McCOLLUM**

**Attorney General**

By: Fulvio Joseph Gentili



Assistant Attorney General

Fla. Bar. No. 0037493

Office of the Attorney General

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that a true copy of this Amended Complaint has been served upon Defendants' counsel of record, Daniel J. Gerber, Esq., Rumberger, Kirk & Caldwell, Lincoln Plaza, Suite 1400, 300 South Orange Ave., PO Box 1873, Orlando, FL 32802-1873.



Fulvio Joseph Gentili