

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT DEPT.
CIVIL ACTION NO. 2019CV002269

CHARMAINE LEARY)
 Plaintiff)
 vs.)
 DIAMOND RESORTS INTERNATIONAL)
 and)
 DIAMOND RESORTS FINANCIAL SERVICES)
 Defendants)

COMPLAINT AND DEMAND
FOR JURY TRIAL

PARTIES

1. The Plaintiff Charmaine Leary ("Leary") has a date of birth of May 3, 1940 and resides at 23 Rachel Street, Springfield, Massachusetts, 01129.
2. The Defendant Diamond Resorts International is a foreign corporation having an address of 10600 W. Charleston Boulevard, Las Vegas, Nevada, 89135, and its agent for service of Process in Massachusetts is National Registered Agents, Inc., 155 Federal Street, Suite 700, Boston, Massachusetts, 02110.
3. The Defendant Diamond Resorts Financial Services is a foreign corporation and has a principal address of 10600 W. Charleston Boulevard, Las Vegas, Nevada, 89135, and it is the financing arm for Diamond Resorts International on the properties purchased by Ms. Leary. Hereinafter the two Diamond Resort entities will be referred to collectively as "Diamond."

FACTS

4. Leary is a resident of the Commonwealth of Massachusetts, over the age of 60, and as such is an “elderly person” as defined by M.G.L. Chapter 191A, Section 14.
5. Diamond Resorts International is engaged in the timeshare business and has timeshares in many different states and foreign countries that it markets and sells. Additionally, Diamond does business in Massachusetts as it owns and/or manages various vacation properties in the Commonwealth of Massachusetts. Additionally, Diamond advertises and solicits business in Massachusetts by and through various media ads and direct mail and email solicitation campaigns directed at Massachusetts residents.
6. In May, 2019 Ms. Leary was vacationing at Diamond facility in Virginia Beach, Virginia. As part of the vacation, Ms. Leary was required to attend a sales presentation by Diamond at Virginia Beach. These sales presentations generally run several hours long and are part of the scheme utilized by Diamond to lure in buyers.
7. The sales scheme used by Diamond is confusing and misleading. In essence, while Ms. Leary is buying interests in property, she is being sold a represented quantity of Membership points. In May 2019, Ms. Leary, at age 79, purchased an interest in a Virginia Beach timeshare for \$27,860. Ms. Leary paid an initial deposit of \$7,000 and financed the balance of the purchase price \$19,871 through Diamond at an interest rate of 17.962%. Diamond’s Truth in Lending Disclosure stated that Ms. Leary would be paying \$23,035 in interest payments over the 10 year loan period in connection with that purchase.

8. The loan interest rate charges constitute an onerous and harsh penalty, and creates a significant hidden profit for Diamond Resorts, as the finance charge is essentially equivalent to a double purchase price.
9. As the sales generally are recognized as a sale of personal property there is no legitimate basis for this grossly inflated interest rate. Further, Ms. Leary has a very favorable credit score that would have allowed to finance any such obligation at a much lower interest rate.
10. In connection with the purchase of the Virginia Beach timeshare, Ms. Leary had been informed that she would be getting a Silver Membership.
11. On August 28, 2019, Ms. Leary was vacationing in Daytona Beach, Florida, at another Diamond Resorts, and during the mandatory sales presentation asked about her Silver Membership and was told that she did not have such a Membership, as the "points" she had purchased in the Virginia Beach deal were only "temporary" points.
12. Based on this information, Ms. Leary negotiated a new purchase of a Daytona Beach resort designed to give her permanent points for a Silver Membership. As part of the purchase, Ms. Leary paid \$12,000 in an initial deposit and the balance of the purchase price, \$4,715, was financed by Diamond on a consolidated loan at a 17.4428% annual percentage rate loan.
13. On September 3, 2019, Ms. Leary exercised her right to cancel the Daytona Beach contract.
14. On September 12, 2019, Ms. Leary was in Las Vegas, Nevada, staying at a Diamond Resort and while there she spoke to a Diamond representative, Abbas Abbas, about getting out of the Diamond Resorts altogether.

15. During this discussion, she indicated that she wanted out of Diamond Resorts. In response, Mr. Abbas told her that he was aware that she had previously cancelled a contract but it wasn't going to happen again as Diamond Resorts has many "good lawyers." Additionally, Mr. Abbas told Ms. Leary that due to a prepayment penalty she could not prepay the existing Virginia Beach contract.
16. Mr. Abbas kept Ms. Leary there for approximately several hours and during this meeting sold Ms. Leary a new Las Vegas timeshare, allegedly as a Gold Member. As part of this deal, Abbas/Diamond sold Ms. Leary a new contract for \$29,300, for which she paid 20% down, or \$5,860. The balance of the purchase price, \$23,440, was combined into a new loan with the balance of the Virginia Beach property for the total loan amount of \$44,329.00.
17. The new loan was scheduled to run 120 months at a 15.31% interest rate, creating a total finance charge of \$43,225 on the principal sum of \$44,329.
18. Ms. Leary objected to this extraordinary loan, and in response to her objections Mr. Abbas told her that she could mortgage her home to obtain the funds to pay off the loan.

COUNT I
(Elder Abuse In Violation of Massachusetts Law)

19. The Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 18 and incorporates them herein by reference.
20. Ms. Leary is an elderly person as defined by Massachusetts Law.
21. Diamond owns and manages timeshare resort properties in the Commonwealth of Massachusetts and as such does business within the Commonwealth of Massachusetts.
22. Elder abuse as defined by Massachusetts law at M.G.L. Chapter 19A, Section 14 includes the financial exploitation of an elderly person by another.

23. Financial exploitation as defined by Massachusetts law is

“ an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person” and “such act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such act or omission is a consequence of misrepresentation, undue influence, coercion or threat of force by such other person”.

24. Diamond has sold a number of contracts to Ms. Leary based on misleading, confusing and deceitful conduct by it and its representatives, and subjected these contracts to absurd and outrageous interest rates that were not consistent with Ms. Leary’s credit score, but just another vehicle to drive profits.

25. In addition, Diamond through its agents repeatedly misrepresented the material terms of various purchases, including membership points, her ability to prepay the obligation, and threatened her with its attorneys and a potential suit.

26. In addition, Diamond in connection with the Las Vegas purchase turned a requested cancellation into a further purchase by incomplete and dishonest information.

27. Ms. Leary has been coerced into buying these contracts through a pattern and practice of coercion, misrepresentation, and undue influence.

WHEREFORE, the Plaintiff demands judgment against Diamond Resorts for its violation of C. 191A, Section 14, and that Ms. Leary be awarded all economic damages reasonably caused by or related to Diamond’s violations, plus such interest, costs and attorney’s fees as allows by Law.

COUNT II
(Fraud)

28. The Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 27 and incorporates them herein by reference.
29. The Defendant marketed and sold the Plaintiff various timeshare interests based upon false and misleading grounds.
30. In connection with Plaintiff's purchase of the Virginia Beach timeshare, she was told that Diamond would accept her trade of other timeshares she held and that the trade-in, plus the purchase, would give her the points for a Silver Membership.
31. Diamond failed and refused to accept or trade in her other interests, and advised her later that the Silver Membership she purchased was only temporary.
32. In addition, in connection with the Las Vegas purchase, Diamond, through its representative Mr. Abbas, told her that she could not prepay her debt.
33. There are no provisions in the Timeshare Agreement that prohibit the prepayment of a Membership obligation, but the false representation was made by Abbas for the purpose of persuading Ms. Leary to purchase the Las Vegas interest.
34. Based on these misrepresentations Ms. Leary felt compelled to purchase the Las Vegas timeshare and due to these various material misrepresentations, Ms. Leary has suffered financial damages.

WHEREFORE, Ms. Leary seeks to annul and rescind the various transactions and to recover from Diamond all financial payments, charges, expenses and damages incurred, as well as recover her costs, statutory interest, and her reasonable attorney's fees.

COUNT III
(Violation of C. 93A)

35. The Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 34 and incorporates them herein by reference.
36. Ms. Leary is a consumer as defined by Massachusetts Law.
37. Diamond is engaged in trade or commerce as defined by Massachusetts Law.
38. Diamond in its sale tactics and representations at various times made incomplete and inconsistent representations to Ms. Leary in an effort to convince her to spend more money. Significantly, it told Ms. Leary in connection with the Virginia Beach purchase that she was purchasing Silver Membership status, only to subsequently tell her that the Silver Membership points she purchased were “temporary” points.
39. Additionally, in connection with the Las Vegas purchase Diamond threatened Ms. Leary telling her that she wasn’t going to cancel this purchase as it had good lawyers. Diamond further represented that she could not prepay her Virginia Beach obligation, and in the long, arduous, and hostile negotiation was able to convince Ms. Leary to buy a new obligation telling her that she could take out a mortgage on her primary home to pay off the Diamond obligations.
40. The unfair and deceptive conduct is implicit in the representation to Ms. Leary that she cannot prepay the existing obligation, but if she purchased a new obligation she could access the equity value of her home to pay off this new larger obligation.
41. On or about December 17, 2019 Leary, by and through her counsel sent Diamond a written Settlement Demand pursuant to M.G.L. Chapter 93A and in the letter advised Diamond that it had 30 days to respond, in writing, to the Settlement demand.
42. Diamond did not send any written response to Leary’s Settlement demand.

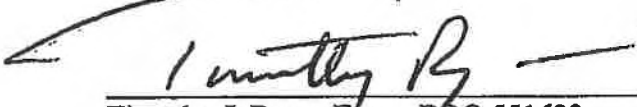
WHEREFORE, the Plaintiff demands the following relief:

- a) judgment against Diamond for Leary's economic costs and losses arising out of or relating to the contracts referenced herein;
- b) that the Court find that Diamond's actions were knowingly and intentionally unfair and/or deceptive;
- c) that the Court award Plaintiff double or treble, pursuant to C.93A any damages awarded; and
- d) that the Plaintiff be awarded her costs, statutory interest, and her reasonable attorney's fees.

THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL COUNTS SO TRIABLE.

THE PLAINTIFF
CHARMAINE LEARY
By Her Attorney,

Dated: May 26, 2020



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