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Order on Defendant's Motion to Dismiss (Mary Ann Digan et al.)

Elizabeth E. Long
Fulton County Superior Court

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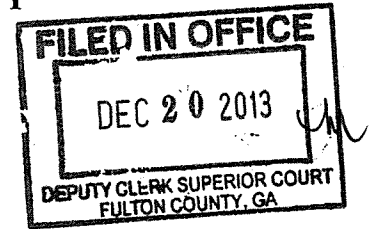
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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**



MARY ANN DIGAN, *et al.*

Plaintiffs,

v.

LINGER LONGER DEVELOPMENT COMPANY,
REYNOLDS COMPANIES, LLC, REYNOLDS
CAPITAL GROUP, LLC, REYNOLDS
DEVELOPMENT AND MANAGEMENT GROUP,
LLC, RF VENTURE, LLC, NEW LEAF HOMES,
LLC and JOHN DOES 1-30,

Defendants.

Civil Action File No.:
2012CV221450

ORDER ON DEFENDANTS' MOTION TO DISMISS

On December 11, 2013, counsel appeared before the Court to present oral argument on Defendant Linger Longer Development Company's Motion to Dismiss Plaintiff's Complaint. Upon consideration of the argument of the parties, the briefs submitted on the motion and the record of the case, this Court finds as follows:

Plaintiffs are former members of "The Club at Reynolds Plantation" (the "Club"), a resort golf club owned by Defendant Linger Longer Development Company ("LLDC"). In order to become members of the Club, Plaintiffs made "initiation deposits" to LLDC pursuant to a membership agreement (the "Membership Agreement"). On May 4, 2011, the Greene County Superior Court ordered LLDC into receivership. On August 1, 2012, the Receiver sold the Club's assets to MetLife. Pursuant to the Membership Agreement, LLDC in its sole discretion, could sell the Club and terminate memberships and

In the event of the termination of memberships, the Club will repay to the former members within ninety (90) days of termination, the amount of Initiation Deposit the former member previously made to the Club.

On August 30, 2012, the Greene County Superior Court amended its original order to add all of LLDC's "unencumbered property" to the Receivership estate.

Plaintiffs contend that LLDC, by and through the Receiver, committed an anticipatory breach of the membership agreements by admitting, in a letter dated August 31, 2012, that LLDC was unable to repay the initiation deposits. Plaintiffs further contend that LLDC breached its contracts with Plaintiffs by failing to repay their initiation deposits within 90 days of the sale to MetLife. Plaintiffs bring claims for breach of contract, money had and received, unjust enrichment, and an accounting against LLDC.

LLDC seeks to have Plaintiffs' claims dismissed, contending that their claims are subject to the exclusive claims process administered through the receivership. LLDC also argues that Plaintiffs' breach of contract claims fail on the merits because LLDC cannot be liable for the actions of the Receiver and, in any event, a breach of contract did not occur.

A court should grant a motion to dismiss when a plaintiff "would not be entitled to relief under any state of facts that could be proven in support of his claim." Northeast Georgia Cancer Care, LLC v. Blue Cross & Blue Shield of Georgia, Inc., 297 Ga. App. 28, 29 (2009). In ruling on such a motion, the Court must accept as true all of plaintiff's well-pleaded factual allegations, and draw all reasonable inferences in plaintiff's favor. Baker v. McIntosh County Sch. Dist., 264 Ga. App. 509, 509 (2003).

"The purpose of a receivership is to preserve the property which is the subject of the litigation and to provide full protection to the parties' rights to the property until a final disposition of the issues." Chrysler Ins. Co. v. Dorminey, 271 Ga. 555, 556 (1999).

In its "Order Appointing Receiver" and "Second Amendment to Order Appointing Receiver" (collectively, the "Receivership Orders"), the Greene County Superior Court

established a receivership designed to encompass all of the assets of LLDC, including “all memberships, membership fees, [and] membership deposits,” for the purpose of satisfying the claims of its secured and unsecured creditors. Specifically, the Receivership Orders authorized the Receiver to “establish a process for notification to potential unsecured creditors of LLDC, for presentment of claims from the unsecured creditors of LLDC (including prior members of any golf clubs administered by LLDC)....” The Receivership Orders further provide that:

Any third-party claims by unsecured creditors purporting to affect or be related to the Unencumbered Property shall be subject to this Amended Order based upon the jurisdiction of this Court over the Unencumbered Property.

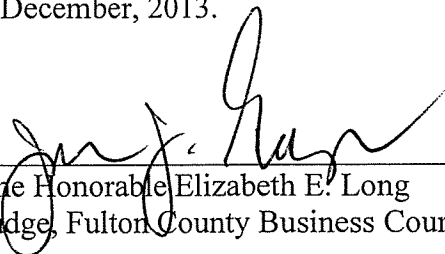
Plaintiffs, who are unsecured creditors of LLDC, seek to circumvent the receivership by arguing that they are not pursuing receivership property. The Receiver filed an injunction action against these Plaintiffs in 2012 to prevent them from filing this action. In November of 2012 a consent order (the “Consent Order”) was entered permitting Plaintiffs to proceed here in Fulton County. In the Consent Order, the parties acknowledge that the initiation deposits were not turned over to the Receiver. On that basis, Plaintiffs now ask this Court to find that their claims, seeking the return of the initiation deposits, fall outside the scope of the receivership.

The Court is not persuaded by Plaintiffs’ position. The Consent Order cannot circumvent the clear language of the Receivership Orders, which establish that the receivership is designed to include all of the assets of LLDC, including any membership fees or deposits of Plaintiffs. The fact that the Receiver may have acknowledged in the Consent Order that he has no such membership fees or deposits does not undercut the jurisdiction of the receivership, which clearly included all LLDC assets.

The Court finds Plaintiffs’ focus on the character of the property that the receivership received misplaced. The Membership Agreement did not restrict how LLDC used the initiation

deposits nor did it require LLDC to maintain separate accounts for the deposits. The Receivership Orders create a framework for the proper assertion and resolution of claims of unsecured creditors of LLDC. Plaintiffs qualify as unsecured creditors of LLDC and are therefore subject to the process established by the Receivership Orders. The recent case of Superior Roofing Co. v. American Professional Risk Svcs., Inc. supports this view. No. A13A0667, 2013 WL 2501924 (Ga. App. Jun. 12, 2013). Accordingly, the Court is compelled to uphold the Receivership Orders and therefore dismisses this action. Defendant's motion is **GRANTED**.

IT IS SO ORDERED, this 20 day of December, 2013.



The Honorable Elizabeth E. Long
 Judge, Fulton County Business Court

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