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Timeshare Exit Attys Can't Leave Wyndham False Ad Suit

By **Joyce Hanson**

Law360 (August 21, 2019, 9:55 PM EDT) -- A Florida federal judge has tossed bids by a timeshare exit company and affiliated lawyers to escape a lawsuit alleging they ran a scheme to persuade timeshare owners to default on their contracts, finding solid support for claims that the group falsely advertised their services.

U.S. District Judge Gregory A. Presnell on Tuesday denied motions to dismiss by Washington state-based Reid Hein & Associates LLC, which does business as Timeshare Exit Team, and its three controlling directors. He simultaneously tossed motions to dismiss by Seattle law firm Schroeter Goldmark & Bender LLC and Oklahoma attorney Ken B. Privett, who have retainer agreements with the exit company.

The defendants still face claims in plaintiff Wyndham Vacation Ownership Inc.'s June 10 amended complaint for false advertising under the Lanham Act and Florida's Deceptive and Unfair Trade Practices Act.

"Wyndham alleges that SGB and Privett are aware of TET's false advertising due to its widespread dissemination," Judge Presnell ruled. "Accepting these allegations as true, the court finds that Wyndham has pled viable claims of contributory false advertising against SGB and Privett."

In their July 1 motions to dismiss, Schroeter Goldmark and Privett disputed Wyndham's allegations, noting that Judge Presnell in May dismissed the original Dec. 19 complaint's attempt to state a cause of action for contributory false advertising under the Lanham Act.

"The allegations pled against Schroeter Goldmark & Bender in the amended complaint remain virtually indistinguishable from those found to be factually and legally deficient by this honorable court through orders dated May 23 and May 29," Schroeter Goldmark argued.

Wyndham initially filed suit on Dec. 19, alleging that Timeshare Exit Team profits from deceiving timeshare owners into paying thousands of dollars with the expectation that the company will help them get out of their contracts. The company intentionally publishes false and misleading advertisements to convince owners that they can safely and legitimately exit their contracts, the suit said.

Timeshare Exit Team, which isn't a law firm, instructs owners to stop making payments on their contracts, telling them that nonpayment will help them get out of their responsibility, the suit said. But the company doesn't tell them that failing to pay could result in breach of contract and foreclosure of their timeshare interests, according to the suit.

The company hired lawyers at Schroeter Goldmark along with attorneys Privett and Mitchell R. Sussman for a fixed fee to engage in negotiations with Wyndham, the vacation company alleged.

But the lawyers don't actually speak to any Wyndham owners; rather, they simply send boilerplate demand letters to Wyndham, telling it to stop communicating with their clients, the suit said.

The lawyers use three deceptive and unlawful strategies in the scheme, according to Wyndham. The "resignation" is a letter notifying Wyndham that the owner has resigned from the contract. The "deed back" is a quitclaim deed purporting to turn the Wyndham owner's timeshare interest back to Wyndham, "even though Wyndham lacked mutual interest in taking back the timeshare interest," according to the suit. And the "strawman" is a ploy where the interest is transferred to a strawman buyer who lacks any intent or ability to pay — without Wyndham's consent, the suit said.

Alfred "Bud" J. Bennington Jr., a lawyer for Wyndham, told Law360 in a Tuesday email that Wyndham and other timeshare developers around the country continue to litigate cases to put a stop to the conduct of third-party exit companies, their principals and the lawyers working with them.

"Today, Wyndham received a major win in that fight," Bennington wrote. "The impact of this ruling is apparent in light of the ongoing contentious litigation by developers to thwart improvident timeshare exit activity."

In a separate timeshare suit initiated on April 30, Wyndham brought Lanham Act claims in Florida federal court against attorney Harold O. Miller and website owner John E. Mortimer, saying they target timeshare owners and fraudulently tell them they can get consumers out of their unwanted contracts. Miller filed a **motion to dismiss on July 8**.

Wyndham also **filed a lawsuit in March** against Timeshare Owners Relief LLC and Resort Legal Team Inc., alleging the group of Florida-linked companies and their backers are advertising a bogus timeshare relief scheme that uses a fake law firm to induce customers to default on their timeshare obligations.

Representatives for the defendants did not immediately respond Wednesday to requests for comment.

Wyndham Vacation Ownership is represented by Alfred J. Bennington Jr., Glennys Ortega Rubin, Mary Ruth Houston, Michael L. Gore and Daniel J. Barsky of Shutts & Bowen LLP.

Reed Hein and its directors are represented by John Benford and Amy L. Baker of Wilson Elser Moskowitz Edelman & Dicker LLP.

Schroeter Goldmark is represented by Robert M. Klein, Houston S. Park III and Lelia M. M. Schleier of Klein Glasser Park & Lowe PL.

Ken B. Privett is represented by Nichole Mooney and Timothy W. Sobczak of Dean Mead.

The case is Wyndham Vacation Ownership Inc. et al. v. Reed Hein & Associates LLC et al., case number 6:18-cv-02171, in the U.S. District Court for the Middle District of Florida.

--Editing by Aaron Pelc.