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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
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Attorneys for Plaintiffs,
1013 LLC, ABD-EL-RAHMAN SULTAN TRUST,
HENRY CHAN, MOHAMED AYMAN EL-DAKHAKNI,
ZENY LAMARSH, MAGDALENA PASRON, MOHAMED
MATAR, NIKKI SZETO, KWOK HUNG SZETO,
WENDELL WO, and BENNET WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

1013 LLC, ABD-EL-RAHMAN SULTAN) CIVIL NO. C.V. 09-003 15
TRUST, HENRY CHAN, MOHAMED)
AYMAN EL-DAKHAKNI, ZENY LAMARSH,) COMPLAINT; EXHIBITS "1"
MAGDALENA PASRON, MOHAMED) "2"; DEMAND FOR JURY
MATAR, NIKKI SZETO, KWOK HUNG) TRIAL; SUMMONS
SZETO, WENDELL WO, and BENNET WO)

ACK KSO

Plaintiffs,

v.

IRONGATE AZREP BW LLC, a Delaware)
LLC; IRONGATE BEACH WALK LLC; AZ)
BEACH WALK LLC; IRONGATE CAPITAL)
PARTNERS, LLC; ADAM FISHER; JASON)
GROSFELD and S&P DESTINATION)
PROPERTIES, INC.)

Defendants

COMPLAINT

1. Plaintiff 1013 LLC is a limited liability company formed under the laws of California, with its principal place of business in California, whose address is 140 Second Street, Suite 200, San Francisco, California 94105.

2. Plaintiff Abd-El-Rahman Ahmed Sultan Trust is a Trust formed under the laws of Hawaii whose address is 1288 Ala Moana Blvd. #20-D Honolulu, Hawaii 96816. Abd-El-Rahman Ahmed Sultan is Trustee of the Abd-El-Rahman Ahmed Sultan Trust.

3. Plaintiff Henry Chan is a citizen of California whose address is P.O. Box 26189, San Francisco, California 94126.

4. Plaintiff Mohamed Ayman El-Dakhkhni is a citizen of Hawaii whose address is 234 Beachwalk Lane, Honolulu, Hawaii 96815.

5. Plaintiff Zeny Lamarsh is a citizen of California whose address is 1353 N. Ripon Road, Ripon, California 95366.

6. Plaintiff Magdalena Pasron is a citizen of California whose address is 1309 Aspen Dr. Pasifica, California 94044.

7. Plaintiff Mohamed Matar is a citizen of Hawaii whose address is 234 Beachwalk Lane, Honolulu, Hawaii 96815.

8. Plaintiffs Nikki Szeto and Kwok Hung Szeto are citizens of

California, whose address is 1489 Webster Street, #218, San Francisco, California, 94115.

9. Plaintiffs Wendell Wo and Bennett Wo are citizens of Hawaii whose address is 702 South Beretania Street, Honolulu, Hawaii 96813.

10. Defendant IRONGATE AZREP BW, LLC (“Irongate”) is a Delaware LLC with its principal place of business in Los Angeles, California.

11. Defendant IRONGATE BEACH WALK, LLC is a Member of IRONGATE AZREP BW, LLC.

12. Defendant AZ BEACH WALK, LLC is a Member of IRONGATE AZREP BW, LLC.

13. Defendant IRONGATE CAPITAL PARTNERS, LLC is a California company with its principal place of business in Los Angeles, California.

14. Defendant ADAM FISHER (“Fisher”), upon information and belief is a resident of Hong Kong, P.R.C. and at all relevant times hereto was an Authorized Representative of IRONGATE BEACH WALK, LLC.

15. Defendant JASON GROSFELD (“Grosfeld”), upon information and belief is a resident of Los Angeles, California, and at all relevant times hereto was an Authorized Representative of IRONGATE BEACH WALK, LLC.

16. Defendant S&P DESTINATION PROPERTIES, INC. is a Canadian corporation with its principal place of business in Vancouver, B.C., Canada.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal questions) and 28 U.S.C. § 1367 (supplemental jurisdiction over related state claims), 15 U.S.C. § 1719 (Interstate Land Sales Full Disclosure Act); and 15 U.S.C. § 77v (Securities Act of 1933).

18. Venue is proper in the District of Hawaii pursuant to 28 U.S.C. §§ 1391(b) and 1391(c).

FACTS RELEVANT TO ALL COUNTS

19. In 2006, Defendants Irongate and Irongate Capital Partners, LLC, controlled by Defendants Grosfeld and Fisher, advertised for sale in Hawaii, the United States and elsewhere 463 condominium hotel units in a project named the Trump International Hotel and Tower at Waikiki Beach Walk [hereinafter “the Trump Hotel Project” or “Project”]. These hotel units were offered prior to construction to potential buyers in Hawaii, on the U.S. Mainland and in Japan through, *inter alia*, wire and mail communications.

20. In or about November, 2006, Defendant Irongate as developer by and through its principals Defendants Grosfeld and Fisher and its broker S&P entered into sales contracts with, *inter alia*, Plaintiffs to buy planned hotel units in the Trump Hotel Project. Plaintiffs were required to make “Reservation Deposits” prior to execution of sales contracts, “Initial Deposits” of ten percent (10%) of the

purchase price of the hotel units upon receipt of sales contracts, “Second Deposits” of five percent (5%) of the purchase price sixty (60) days after execution of sales contracts, and a Third Deposit of five percent (5%) of the purchase price one hundred and eighty (180) days after execution of the sales contracts, for a total of twenty percent (20%) of the purchase price, with the balance due at or before closing.

21. Plaintiffs made these deposits in amounts ranging from \$117,780 to \$350,000.00.

22. While these hotel units were ostensibly sold as stand alone condominiums, in fact they and the Project were specifically designed for these hotel units to be controlled and operated as hotel rooms in a planned Trump International Hotel Waikiki [“the Hotel”]. On the Trump International Hotel Waikiki website, www.trumpwaikikihotel.com, the Hotel operation is advertised as having 463 rooms and suites, which would out of necessity include the hotel units Plaintiffs contracted the purchase.

23. Prospective purchasers were informed by Defendants’ sales literature of a rental program to be offered to hotel unit owners. This rental program was projected to “obtain optimum rental income and occupancy” for hotel unit purchasers through the hotel owner’s management of the hotel units. Hotel units were to be rented by the Hotel through “a computerized rotational system to ensure

fairness.” The Hotel would set room rates. Rental revenues would be subject to a “service fee” and “reserve fee”, and net rental revenue would then be split between the hotel unit owner (55%) and the hotel owner (45%). The hotel unit owner’s share of revenues would also be subject to a charge for 50% of operating costs allowed to the unit. The owner of the hotel units’ role would be to receive revenues which would be “remitted...on a periodic basis”. Exhibit “1”.

24. On this basis, hotel unit owners would be passive investors whose returns would be the result of the efforts of the Hotel owner and operator.

25. While hotel unit owners would ostensibly be free to attempt to “facilitate” rentals through another rental manager, such unit owners would still be subject to the “reserve fee”, the 50% of operating costs, a nightly fee set by the hotel for such rentals and other fees, and the units would remain under the control of the Hotel owner to discourage any refusal to participate in the Hotel rental program.

26. The Hotel operations are to be controlled by a Front Desk Unit Owner, which would also control, inter alia, all the amenities, halls, walkways, lobbies, landscaping and even the decoration and maintenance of the hotel units and allowable guests. Indeed, the Front Desk control of the hotel units would be for practical purposes total, including the power to hire and direct a hotel manager at the hotel unit owners’ expense.

27. Defendants represented to prospective buyers of the hotel units that this rental program through the Front Desk Unit was to be administered and managed by a “third party”, and that their promotion of the rental management program was distributed by a “third party”. Their sales material stated that “the developers of the project will neither administer nor control the rental program” and that this was compliant with “federal securities regulations”. (Exhibit 1)

28. In fact, contrary to Defendants’ representations that the developer, Defendant Irongate, would “neither administer nor control the rental program”, Defendant Irongate as, inter alia, “Front Desk Unit Owner” will, in fact, control and administer the rental program.

29. Moreover, Defendant Irongate as Parking Unit Owner, Spa Unit Owner and Commercial Units Owner would also control the use of those facilities, and thus all the amenities, restaurants and parking in the Project.

30. Defendant Irongate as Owner of the Front Desk Unit, the Parking Unit, the Spa Unit, the Office Unit and the Commercial Units, will also dominate the Board of Directors of the Condominium Association with the right to elect five Directors, a majority, thus locking in its control of the hotel units and the entire property.

31. Defendants did not disclose to Plaintiffs that Defendant Irongate’s control of the Board of Directors of the Association would make any modifications

to or lessening of Defendant Irongate's control of the Hotel, the rental program the hotel units, the Association of Apartment Owners for the condominium and the property impossible without Defendant Irongate's or any successor's consent or agreement, locking Plaintiffs into their passive role with no real control of the hotel units, the property or the costs and fees they would be charged.

32. Defendant also made misrepresentations to buyers of the hotel units including Plaintiffs about the role and participation of Donald J. Trump ("Trump") in the Project. As of 2006, Trump and his organization were represented in a press release to be a developer of and a partner in the Project. Specifically, in September, 2006 Defendants Grosfeld and Fisher on behalf of Defendants Irongate and Irongate Capital represented in a press release that "The Trump Organization" was "partnering with Irongate for the Trump Hotel Project". Defendant's sales materials also included the representation:

In an industry where quality is sometimes difficult to discern, the TRUMP signature is known and trusted as 'the' name in luxury real estate. DONALD J. TRUMP consistently demonstrates his ability to add value to ventures through innovative approaches. No other real estate company has established the international brand identity that DONALD J. TRUMP has created.

While expanding his interests in luxury residential real estate and world-class hotels, DONALD J. TRUMP has continually set new standards of excellence. **Personally involved in everything that his name represents**, his commitment has made him

the pre-eminent developer of quality real estate around the world. [Emphasis added] [Exhibit “2”].

33. Upon information and belief based upon the allegations of Donald J. Trump in, *inter alia*, Trump et al. v. Grosfeld et al, 1:09-cv-03664-CM in the United States District Court for the Southern District of New York, and the lack of documentation of any other roles, Trump was not a partner and had no “personal involvement” with the development of the Project. Instead, insofar as documented, Defendant Irongate possessed only a revocable license to use the Trump name and “marks” in advertising, marketing and promotion of the Project.

34. Defendants omitted to disclose to Plaintiffs that the only participation of Donald J. Trump in the development of the Trump Hotel Project was the granting of a revocable license for the use of his name, which disclosure was necessary in order to make their statements concerning his role not misleading.

35. Construction of the Project will be complete and closing of the sale of the hotel units are scheduled for later in 2009.

FIRST CLAIM
INTERSTATE LAND SALES FULL DISCLOSURE ACT

36. The Interstate Land Sales Full Disclosure Act (15 U.S.C. § 1701 et seq.) applies to the sale of the hotel units to Plaintiffs.

37. As set forth above in paragraphs 20-37, *supra*, Defendants Irongate and its agent S&P employed a scheme to defraud Plaintiff’s in connection with

their sales of the hotel units in the Project in violation of 15 U.S.C. § 1703

(a)(2)(A).

38. Defendants also obtained money from Plaintiffs by means of untrue statements of material fact and omissions to state material facts necessary to make these statements not misleading with respect to information pertinent to the hotel units as set forth in paragraphs 20-35 supra in violation of 15 U.S.C. § 1703

(a)(2)(b).

39. Defendants' through their actions as set forth in paragraphs 25- 37 supra engaged in a practice or course of business that operated as a fraud or deceit upon Plaintiffs, in violation of 15 U.S.C. § 1703 (a)(2)(c).

40. Defendants knew of the falsity of their misrepresentations.

41. Defendants made use of means and instruments of interstate commerce and the mails in making these misrepresentations and omissions.

42. Defendants made the foregoing misrepresentations and omitted the foregoing material facts with the intent to induce Plaintiffs to act upon them.

43. Plaintiffs reasonably relied upon these misrepresentations in contracting to purchase hotel units from Defendants.

44. Defendants Fisher and Grosfeld are also liable to Plaintiff under Interstate Land Sales Full Disclosure Act as controlling members of Defendant Irongate.

45. As a result, Defendants are liable to Plaintiffs under 15 U.S.C. § 1703 (a) for damages or such other relief as the Court deems fair, just and equitable.

SECOND CLAIM
SECURITIES ACT OF 1933

46. Plaintiffs reallege and incorporate herein by reference paragraphs 1-45 of the Complaint

47. The sale of the hotel units which were tied to management, rental and control of the hotel units by Defendant Irongate constituted the sale of securities in the form of investment contracts under the Securities Act of 1933, 15 U.S.C. § 77e et.seq, because the controlling documents including the Amended and Restated Declaration of Condominium Property Regime of Trump International Hotel and Tower at Waikiki Beach Walk, Amended and Restated Bylaws of the Association of Trump International Hotel and Tower at Waikiki Beach Walk, and the Rules and Regulations of the Association of Trump International Hotel and Tower at Waikiki Beach Walk vest virtually total control over the hotel units to Defendant Irongate as, inter alia, Front Desk Unit Owner.

48. Purchasers of hotel units will, as set forth in paragraph 23, supra, be essentially passive recipients of a share of revenues generated by the use of the hotel unit as a hotel room or suite.

49. Also, any profits generated by the amenities in the hotel including parking are to be pooled as “common profits” and distributed to “unit owners” in

proportion to their percentage interest in the Common Elements.

50. These investment contracts were inter alia, sold through the use of communications in interstate commerce and the mail.

51. These investment contracts were not registered with the Securities and Exchange Commission, in violation of Sections 5(a) and 5(c) of the Securities Act of 1933, 15 U.S.C. § § 77e (a) and 77e (c).

52. Pursuant to Section 12(a)(1) of the securities act of 1933, Plaintiffs have a right of rescission as to their purchases, which they hereby invoke and demand.

THIRD CLAIM
MISREPRESENTATION- SECURITIES ACT OF 1933

53. Plaintiffs reallege and incorporate herein by reference paragraphs 1-52 of the Complaint

54. As set forth in paragraphs 20-37, supra, and more particularly paragraphs 29-36, supra, Defendants Irongate and S&P made material misrepresentations and omitted to state material facts in the course of the sale of securities to Plaintiffs, in violation of Section 12(a)(2) if the Securities Act of 1933.

55. Plaintiff purchased these securities based on these misrepresentations, which they did not know were untrue.

56. Pursuant to Section 12(a)(2) of the Securities Act of 1933 at 15 U.S.C.

§ 78t (a), Plaintiffs are entitled to recover from Defendant Irongate their damages caused thereby, for which Defendants Fisher and Grosfiel are jointly and severely liable pursuant to 15 U.S.C. § 78t (a).

FOURTH CLAIM
SECURITIES FRAUD, SECURITIES AND EXCHANGE ACT OF 1934

57. Plaintiffs reallege and incorporate herein by reference paragraphs 1-56 of the Complaint

58. The misrepresentations and omissions, as set forth in paragraphs 20-37, supra, and Exhibits “1” and “2”, made by Defendants in the course of the sale of the hotel unit securities were material, were meant to be relied upon and were relied upon by Plaintiffs in contracting to purchase hotel units in the Trump Hotel Project.

59. These misrepresentations had to be made knowingly, as Defendants had to know their own control of the hotel rental program pursuant to their scheme involving, inter alia, ownership of the Front Desk Unit and the actual role, or non-role, of Donald J. Trump in the Project and therefore, that these representations were untrue.

60. As a result, Defendants Irongate and S&P are liable to Plaintiffs under Section 10b of the Securities and Exchange Act of 1934, 15 U.S.C. § 78j (b) and SEC Rule 10-b(5) 17 CFR § 240. 10b-5 for the losses incurred thereby.

FIFTH CLAIM
STATE LAW – HAWAII CONDOMINIUM ACT

61. Plaintiffs reallege and incorporate herein by reference paragraphs 1-60 of the Complaint

61. Defendants' misrepresentations as set forth in paragraphs 20-37, supra, violated the Hawaii Condominium Act, HRS § 514B-94(a), which states

No person may:

(1) Knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease; or

(2) Issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter concerning a project that contains any false written statement or is misleading due to the omission of a material fact.

62. As a result thereof, Defendants' sales to Plaintiffs are voidable and Defendants are jointly and summarily liable to Plaintiffs pursuant to HRS § 514B-94 (b) for the damages therefore, plus interest, costs and attorneys fees.

SIXTH CLAIM
STATE LAW – HAWAII SECURITIES ACT

63. Plaintiffs reallege and incorporate herein by reference paragraphs 1-62 of the Complaint

63. Defendants actions as set forth above also violate the Hawaii

Securities Act, HRS § 485A, et seq.

64. The hotel units were not registered as securities under HRS Chapter 485A as required by HRS § 485A-301(3).

65. The hotel units were also sold through a scheme to defraud, and/or untrue statements of material fact as set forth in paragraphs 20-37 supra, and/or through acts, practices and a course of business that operated as a fraud or deceit upon the Plaintiffs as set forth in paragraphs 20-37 supra, in violation of HRS § 485A-501(a).

66. As a result, Defendants are liable to Plaintiffs for the damages, plus interest and costs of attorneys fees pursuant to HRS § 485A 509(b), (d), and (g).

SEVENTH CLAIM
HAWAII UNFAIR AND DECEPTIVE TRADE PRACTICES

67. Plaintiffs reallege and incorporate herein by reference paragraphs 1-66 of the Complaint

67. Defendant's conduct as set forth above constitute unfair and deceptive acts or practices in the conduct of trade or commerce under HRS § 480-2 (a).

68. Under HRS § 480-12, all of the Plaintiffs' contracts with Defendants are void.

69 Under HRS § 480-13(b)(1), Defendants are liable to those Plaintiffs who are consumers for their damages trebled plus attorneys fees and costs.

**EIGHTH CLAIM
FRAUD**

70. Plaintiffs reallege and incorporate herein paragraphs 1- 69, supra.

71. Defendants as set forth in paragraphs 20-37 knowingly and intentionally made material misrepresentations to Plaintiffs to induce them to enter into sale contracts for hotel units in the Trump Hotel Project.

72. Plaintiffs reasonably relied on their misrepresentations in entering into such contracts with Defendant Irongate.

73. As a result thereof, Defendants are liable to Plaintiffs for general, special and punitive damages.

**NINTH CLAIM
NEGLIGENT MISREPRESENTATIONS**

74. Plaintiffs reallege and incorporate herein paragraphs 1-73, supra.

75. The misrepresentations and omissions as set forth in paragraphs 20-37 supra were made negligently, giving rise to a right of rescission of the Sales Contracts by Plaintiffs.

Wherefore, Plaintiffs pray:

1. For the voiding or rescission of Plaintiffs sales contracts to with Defendant Irongate;
2. For the return of their deposits for the hotel units plus interest thereon;
3. For their damages trebled;

4. For punitive damages;
5. For their costs and attorneys fees;
6. For such other relief as the Court deems just.

DATED: Honolulu, Hawaii, July 13, 2009



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