

Fiddler's Creek developer sued as 4 golfers seek more than \$10 million for golf deposits

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Four men who purchased golf memberships at Fiddler's Creek have filed a class-action lawsuit against developer Aubrey Ferrao, accusing him of pocketing more than \$10 million in golf membership deposits that were to be held in escrow.

The lawsuit, filed late Thursday in U.S. District Court in Fort Myers, contends Ferrao engaged in a scheme of illegal, unfair, unlawful and deceptive business practices by orchestrating a plan to embezzle escrow funds and not reporting that income in his taxes.

It alleges he set up "myriad layers of corporate entities" as his alter-ego to protect himself from individual liability and to help him embezzle golf club initiation deposits.

It's the latest litigation against Fiddler's Creek, which faced a similar lawsuit in May that was settled in December.

But those plaintiffs, golfers Glenn and Dawn Vician and Richard and Kristi Lohmeyer, filed a motion in January to reopen it, saying Fiddler's Creek LLC, Gulf Bay, GBP Development LLC and its affiliates agreed to settle for a "substantial" amount, but they never received a payment.

In February, Fiddler's Creek filed a memo calling that motion a "sham," objecting to any mention of a settlement because it was confidential and sealed.

"It is clear that the plaintiffs maliciously and intentionally filed the sham pleadings simply to disclose to the public that they had received financial consideration under the settlement agreement and had not merely dismissed the pending litigation," wrote Ricardo Reyes, the defendants' lawyer.

"(Plaintiffs') motivation was to embarrass ... and further injure the business reputation of Fiddler's Creek," he wrote. "Notably, what plaintiffs failed to mention was that they were paid no compensation for the ridiculous claims of conversion or theft of deposits."

But in another memo Reyes pointed out the plaintiffs didn't receive the first settlement installment by deadline because it was Martin Luther King Day and banks were closed.

He objected to reopening the case and disclosing the sealed agreement, pointing out the lawsuit was dismissed with prejudice. U.S. District Court Judge John E. Steele granted his request.

Gulf Bay then sued the couples in Collier Circuit Court, accusing them of using "guerilla tactics" and filing a "shotgun complaint" to disclose the settlement.

The new class-action lawsuit targets only Ferrao. That's because Fiddler's Creek and its related companies filed for Chapter 11 bankruptcy protection in February, hoping to reorganize with a \$25 million loan. That came just weeks after Regions Bank filed a foreclosure complaint seeking more than \$48 million.

Attorney Robert Stochel of Indiana, who filed both class-action lawsuits, said Friday a judge never certified May 2009 complaint as a class-action lawsuit.

"The plaintiffs in the new case are different, but raise similar claims," said Stochel, who is co-counsel with attorney Glenn Vician and Naples attorney Eric John Vasquez. "But this time there is only one defendant. That is Aubrey Ferrao."

"Mr. Ferrao has caused his companies to file for bankruptcy," he added. "So because there is a bankruptcy, there is a stay against taking any legal action against his companies. He is not in bankruptcy. So we are pursuing a case against him."

Just as they did last May, Fiddler's Creek officials branded this lawsuit baseless.

"This is a spurious lawsuit," Ferrao's spokesman, Howard Lalli, said Friday, adding that the earlier lawsuit was settled without any payment. "There was no finding previously and we wouldn't expect there to be this time."

In the new complaint, Matthew Suffoletto, Raymond David, Steven Taub and Stephen Shulman accuse Ferrao of embezzling deposits that were to be held in escrow until all golf facilities were completed at Fiddler's Creek, which is located off Collier Boulevard near Marco Island.

Buyers were promised two championship eighteen-hole golf courses, one designed by Arthur Hills; a driving and practice putting green; a roughly 30,000-square-foot clubhouse with a mixed grill room, lounge, pro shop and a men's and women's locker room. Members are now using a temporary clubhouse.

The 46-page lawsuit alleges:

The escrowed deposits were golfers' security that promises would be fulfilled, but because they were never held in escrow and were spent, golfers are being deprived of money necessary to complete all golf facilities.

Reyes admitted last fall that none of the Fiddler's Creek entities owned by Ferrao had declared any income relating to golf initiation deposits that were taken out of escrow.

"Ferrao had at least 28 corporate entities and partnerships that he operated ... file a single, consolidated tax return, so that all tax benefits and revenues flowed directly and ultimately to Ferrao, and Ferrao and the companies that he controlled failed and refused to pay any income taxes on the millions of dollars of golf deposit revenues that Ferrao ultimately took control of and spent," the lawsuit says.

It lists the companies affiliated with Fiddler's Creek — GBP Development Ltd., FC Golf Ltd., 951 Land Holdings Ltd. — and calls Fiddler's Creek LLC a successor developer used by Ferrao, the chief executive officer and owner, to orchestrate his schemes, protect himself and facilitate embezzlement.

Through power of attorney, Ferrao has "vast powers" and access to take, spend and transfer golf initiation deposits. He also has complete control over escrow agents he employs because they aren't independent. He had misleading, false and deceptive marketing information published to induce and deceive buyers into paying golf deposits.

They were in addition to annual fees and based on the homes and communities. Suffoletto's deposit was \$37,500; Taub paid \$90,000; David, \$40,000; and Shulman, a former golf member, \$75,000. But once the course became public, outsiders could play just by paying daily greens fees.

By creating a non-legal entity called The Golf Club at Fiddler's Creek, Ferrao could transfer funds without accountability. And as a "public relations gimmick," Gulf Bay created an advisory board of homeowners, but it only provides advice to Gulf Bay about golf operations.

At a May 7 meeting, the board requested information about the escrow account and company principal Joseph Parisi revealed there were no longer any golf initiation deposits in the account. Certain club members also received a letter telling them Ferrao hadn't deposited the funds into an escrow account.

The lawsuit seeks compensatory damages for corporate conversion, breach of fiduciary duty and piercing the corporate veil, holding Ferrao personally liable for his companies. It says the four golfers represent a class of more than 200 golfers who became members and paid a deposit after Jan. 1, 2000, and who didn't receive a refund.

Staff writer Laura Layden contributed to this report.

