Marriott loses appeal in Eden Roc case: Why all long-term hotel management agreements are now terminable.

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Hotel Lawyer with a major legal development on terminating hotel management agreements — Marriott v Eden Roc.

Under a New York Appellate Division court decision issued March 26, 2013, virtually all hotel management agreements are now terminable at will by owners. And this result will prevail even against the Marriott-style management agreements that seek to avoid an “agency” characterization of the owner-operator relationship.

The decision was rendered in the case of Marriott International v. Eden Roc reversing the November 7, 2012 decision of Judge Melvin L. Schweitzer, who had granted Marriott’s motion for a preliminary injunction, halting the owner’s ouster of Marriott for poor performance.

In reversing the lower court decision, the Appellate Division succinctly stated that hotel management agreements giving full control to operators are personal services contacts and cannot be enforced by injunction. The court said:

The parties’ detailed management agreement places full discretion with plaintiffs to manage virtually every aspect of the hotel. Such an agreement, in which a party has discretion to execute tasks that cannot be objectively measured, is a classic example of a personal services contract that may not be enforced by injunction (see e.g. Wien & Malkin LLP, v Helmsley-Spear, Inc., 12 AD3d 65, 71-72 [1st Dept 1991], revd on other grounds, 6 NY3d 471 [2006][property management agreement a personal services contract]; Woolley v Embassy Suites, Inc., 227 Cal App 3d 1520, 1534, 278 Cal Rptr 719 [Cal App 1st Dist 1991]; Restatement 2d of Contracts, § 367). [emphasis added]

Termination may or may not be “free”

Please note that this decision has not addressed the question of damages that an owner may owe the operator for termination of a hotel management agreement under such circumstances. We should assume that unless there is adequate legal justification for the owner’s termination, that the owner will be liable to the operator for damages. In a long-term, no-cut contract, these damages could be substantial unless the operator has materially breached the contract. In the latter case, the owner might be entitled to terminate the contract without cost — in fact, the owner might be entitled to recover damages from the operator.

Why Marriott v Eden Roc is particularly important for hotel owners
Marriott International lost an appeal in its lawsuit against the owners of the Eden Roc Renaissance Hotel in Miami Beach, Florida. The owners of the 57-year-old Eden Roc sued Bethesda, Maryland-based Marriott in April, saying the company mismanaged the property after they invested more than $300 million in the hotel, including a $240 million renovation. Marriott sued the owners in the same court six months later, accusing them of attempting a hostile takeover. New York State Supreme Court Justice Melvin L. Schweitzer granted Marriott a preliminary injunction in November 2012. In a decision released March 26, 2013, an appeals panel in Manhattan reversed Schweitzer’s order and vacated the preliminary injunction. This is a significant legal decision for the hotel industry.

For some unexplained reason trial courts are notorious for rendering the wrong legal answer on termination of hotel management agreements. The lower court had to be reversed in the Eden Roc case. The same has been true in many other well-known cases such as Woolley v Embassy Suites (cited by the Marriott v Eden Roc decision), Marriott v Pacific Landmark, and others.

About the same time we successfully terminated the Fairmont management agreement for the Turnberry Resort last year [see How to terminate a hotel management agreement: A Tale of Two Hotels — Marriott’s Edition Waikiki and Fairmont’s
Turnberry Isle Resort], the owner of the Honolulu Edition lost a similar suit in the New York Supreme Court and filed bankruptcy to avoid reinstating Marriott as manager of the hotel.

If the lower court in the Edition case had followed the law as determined by the federal court in our Fairmont v Turnberry case or the law as clarified by Marriott v Eden Roc, there would have been no need for the Waikiki Edition hotel to file bankruptcy.

What it all means — all long-term hotel management agreements are terminable

Under one of two theories, hotel owners can now terminate their long-term hotel management agreements if they feel there is no satisfactory way to work with their operators. They may be liable for substantial damages for breach of contract unless the termination is justified, but they can take back their properties.

We believe the best way to resolve differences with an operator is through a dialog and a process of give and take to resolve the differences. But we have seen a number of cases, where patient owners have tried everything they know how to do and are still frustrated by non-responsive operators.

Thus, when all else has failed, owners may be able to terminate the hotel management agreement and take back the operation of their hotels. This will usually be in the face of a contract that contains many paragraphs in all capital letters, stating that the contract is not terminable and that the owner waives all of its rights to terminate.

Notwithstanding this contractual boiler plate, virtually every hotel management agreement either (a) creates an agency relationship between the owner and the operator, or (b) establishes a personal services contract for the operator’s services.

Despite any provision to the contrary in such contracts, in most jurisdictions, there is such a strong public policy developed over more than a century that the non-termination provisions will be struck down. Except in unusual circumstances, an owner always has the power to terminate an agency or a personal services contract. If the termination is wrongful, the owner will be liable for damages. But the law simply will not enforce the agency or personal services contract against the owner.

For a full copy of the Marriott v Eden Roc decision.

For a full copy of the court’s opinion discussed above, click here and scroll down until you see “Marriott International v. Eden Roc” and click on that link.

Do you need help with a hotel management agreement?

The hotel lawyers of JMBM’s Global Hospitality Group® have negotiated, re-negotiated, litigated, arbitrated and advised on more than 1,000 hotel management and franchise agreements. We have current state-of-the-art experience in dealing with every major branded hotel operator, most of the independent managers, and all the significant franchisors.
Our business and legal experience from all these deals provides the largest virtual database of hotel management and franchise agreement terms in the world. JMBM can help you confidently establish reasonable “market” terms for your deal. With our HMA PRO™ process, we can help you recruit the right brand and get a management agreement you can live with.

It is always best to start out with the right brand and operator for your hotel … and an agreement with fair terms you can live with. But when you don’t have that advantage and the situation becomes unbearable, what can you do as an owner to renegotiate or terminate a long-term, “no-cut” management agreement?

We have developed some very effective tools for dealing with long-term hotel management agreement problems. Clients really value our more than 20 years of business and legal experience to help them evaluate the situation, identify alternatives, develop successful strategies and execute them.

The right outcome can unlock millions of dollars of value.

**Articles about terminating hotel management agreements**

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- How to terminate a hotel management agreement: A Tale of Two Hotels — Marriott’s Edition Waikiki and Fairmont’s Turnberry Isle Resort
- Terminating hotel operators: M Edition lawsuit against Marriott has a new twist — Marriott is replaced overnight
- More on M Waikiki Edition lawsuit against Marriott – What Marriott’s General Counsel says
- M Waikiki’s Edition lawsuit against Marriott and Ian Schrager – an owner’s HMA dispute with Marriott
- Terminating hotel operators: Turnberry Resort drops Fairmont flag
- Hotel management agreement terminations — Is there a better way?
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free termination, $10.3 million in damages plus attorneys fees. When will hotel operators “get it”?

How to terminate a hotel management agreement when an operator really deserves it!

This is Jim Butler, author of www.HotelLawBlog.com and hotel lawyer, signing off. We’ve done more than $87 billion of hotel transactions and have developed innovative solutions to unlock value from hotels. Who’s your hotel lawyer?

Our Perspective. We represent hotel lenders, owners and investors. We have helped our clients find business and legal solutions for more than $87 billion of hotel transactions, involving more than 3,900 properties all over the world. For more information, please contact Jim Butler at jbutler@jmbm.com or +1 (310) 201-3526.

Jim Butler is a founding partner of JMBM, and Chairman of its Global Hospitality Group® and Chinese Investment Group™. Jim is one of the top hospitality attorneys in the world. GOOGLE “hotel lawyer” and you will see why.

Jim and his team are more than “just” great hotel lawyers. They are also hospitality consultants and business advisors. They are deal makers. They can help find the right operator or capital provider.