

COURT OF CHANCERY
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May 1, 2001

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Re: Green Isle Partners, Ltd., S.E. v. The Ritz Carlton
Hotel Company, L.L.C., et al., Civil Action No. 18416
Date Submitted: April 24, 2001

Dear Counsel:

Pending is this Court's decision on the merits of this action to inspect books and records of the defendants. The plaintiff claims inspection rights under a Hotel Operating Agreement, governed by Georgia Law, among the parties. Regrettably, the state of the post-trial briefing leaves the Court unable to resolve this matter, because it is unclear precisely what issues the Court is supposed to decide.

To elaborate, the merits-related issues were initially posed by the pretrial briefs--or so the Court thought. Those issues included (broadly speaking) (i) whether Green Isle was entitled under the Operating Agreement to inspect the books and records not only of the Ritz **Carlton** Hotel in San Juan, Puerto Rico, but

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also of affiliates of the defendant, Ritz-Carlton Hotel Company, L.L.C.; and (ii) whether inspection of the books and records should be subject to a confidentiality order. The trial took place on December 13, 2000. The last post-trial brief was filed on April 24, 2001--over four and one half months later--accompanied by plaintiffs counsel's letter of transmittal stating that the situation was urgent and requesting that the Court decide the matter "on the earliest possible date."

The difficulty is that the plaintiffs post-trial briefs do not even address the first of the two above-described issues. Moreover, they cite no provisions of the Operating Agreement or any case law. Rather, the plaintiffs posttrial briefs are devoted entirely to "facts" that are wholly outside the trial record, and that relate specifically to the results of the plaintiffs *post-trial* inspection of the books and records at the Hotel. The plaintiffs opening post-trial brief is essentially a lamentation which complains that (a) the defendants have withheld books and records that had been promised to the plaintiff, (b) documents that the defendants' trial witnesses had represented were contained in the stored files, were missing or damaged, (c) the inspected documents show that representations that Ritz-Carlton previously made regarding the operation of the project and the maintenance of

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books and records, were erroneous or false, and (d) the inspected documents indicate serious mismanagement and possible fraud in Ritz-Carlton's operation of the project.'

None of these arguments and accusations is based on evidence contained in the trial record. They apparently are based upon the affidavit of plaintiffs New York counsel, Ms. McDaniel, which is itself an admixture of substantive testimony and argument, and which was filed without leave of Court.² At the conclusion of its brief, the plaintiff attached a 16 page Order, replete with footnotes, which it requests the Court to enter.

The defendants vigorously protest the plaintiffs chosen manner of proceeding. They point out that the plaintiff s's post-trial brief is unrelated to the

¹**Specifically, plaintiff** s Opening Posttrial Brief asserts that the Stored Files affirmatively revealed "prolonged falsification of material financial information (p. 16);" "intentionally misdated check issuance records (p. 17);"**previously** undisclosed shortages found in bank account reconciliations (id);" and "affirmative efforts by the Atlanta-based management of **Ritz-Carlton** to alter adverse information in the Stored Files (id)."

*Plaintiffs counsel never informed the Court that it would be raising new issues based on counsel's affidavit testimony, none of which was part of the trial record, and it did not obtain leave of Court to do so. Nor did counsel **inform** the Court that in March of this year, the plaintiff filed an action against the defendants in the United States District Court for the District of Delaware, alleging **fraud** and mismanagement of the Hotel and seeking over \$400 million in damages. *Green Isle Partners, Ltd., S.E. v. The Ritz-G&ton Hotel Company, L.L.C., et al.*, U.S.D.C. Del., Case No. 01-202 (Complaint).

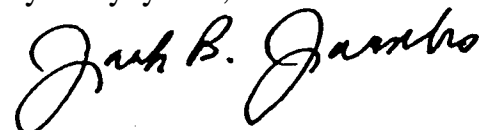
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issues presented at trial, and they object to the specifics of plaintiffs proposed form of order. The defendants counter with their own proposed form of order, which they ask the Court to enter.

By changing the procedural “rules of the game,” the plaintiff has thrown the procedural posture of this case into a cocked hat. As a consequence, the Court is uncertain as to how to proceed, because it is presently unclear what issues are left for the Court to adjudicate and what procedures are to be followed as a result of the plaintiffs change of direction. If all the Court is being asked to do at this point is enter a form of order, then the parties need to **frame** in a specific way the issues created by their competing forms of order. If the proposed forms of order require a new fact-finding process, then the parties need to address whether (i) any such process can now occur in this lawsuit, and (ii) if so, what that process should be.

Accordingly, counsel are instructed to contact my secretary and schedule an office conference to discuss these matters.

Very truly yours,



cc: All Chancellors
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