

Marriott Intl., Inc. v Eden Roc, LLLP

2013 NY Slip Op 33127(U)

December 5, 2013

Supreme Court, New York County

Docket Number: 65359/12

Judge: Melvin L. Schweitzer

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELVIN L. SCHWEITZER
Justice

PART 45

MARRIOTT INTERNATIONAL, INC. AND
RENAISSANCE HOTEL MANAGEMENT COMPANY,
LLC

INDEX NO. 653590/12

MOTION DATE _____

MOTION SEQ. NO. 004

MOTION CAL. NO. _____

- v -

EDEN ROC, LLLP

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *by defendant to dismiss the second cause of action of the amended complaint is GRANTED, as are any claims asserted by MARRIOTT INTERNATIONAL, INC. per the attached Decision and Order.*

Dated: December 5, 2013

Melvin L. Schweitzer
MELVIN L. SCHWEITZER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

agreement by removing Renaissance as manager of the Hotel prior to the expiration of the Management Agreement's term, and in derogation of the Management Agreement's termination provisions. Plaintiffs contend that the Management Agreement permits premature termination only under an express set of circumstances, none of which occurred (*id.*, ¶ 2).

Procedural history

Prior to the filing of this action, on April 2, 2012, Eden Roc filed an action against plaintiffs and nonparty Marriott International Design & Construction Services (MIDCS), also assigned to this Part, bearing index No. 651027/2012 (Related Action). In the Related Action, Eden Roc alleges that Renaissance breached the Management Agreement by failing to operate the Hotel in accordance with the Management Agreement and Renaissance's "brand standards." Marriott is a defendant because allegedly, as Renaissance's parent company, it agreed to be liable as primary obligor for Renaissance's performance of its obligations under that agreement. MIDCS is a party based on a "Technical Services Agreement," between it and Eden Roc, dated July 3, 2006, relating to a Hotel renovation project.

The complaint in the Related Action originally contained 14 causes of action for breach of contract, a declaration that Eden Roc properly terminated the agreements, breach of the implied covenant of good faith and fair dealing, conversion, breach of fiduciary duty, tortious interference with prospective business relations, slander of title, trespass, an accounting, and breach of a guaranty against Marriott. By decision dated September 18, 2013, this court dismissed seven of the fourteen causes of action.

On October 15, 2012, plaintiffs filed this action against Eden Roc, together with a motion for a temporary restraining order. The original complaint² alleged that, at 1:30 a.m. on

² As discussed below, plaintiffs' amended complaint is the subject of the instant motion to dismiss.

October 14, 2012, a group of 50 to 60 individuals (including uniformed security officers) stormed into the Hotel, and through intimidation, told Renaissance's employees at the Hotel that they were taking over the Hotel's management on Eden Roc's behalf. The police ultimately thwarted the takeover attempt, and informed the takeover group that, without a court order permitting Eden Roc to evict Renaissance, they had to leave the property.

Plaintiffs alleged that Eden Roc's conduct has caused them irreparable harm, including unrest among Hotel employees who are now fearful of losing their jobs, and uncertainty among existing and prospective Hotel guests about their travel plans. Allegedly, the conduct threatens plaintiffs' reputation, and subjects plaintiffs' confidential information to access by a competitor management company.

The original complaint contained two causes of action. The first was for breach of contract. Eden Roc's purported termination of the Management Agreement is causing plaintiffs irreparable harm, and they face the threat of further imminent harm absent injunctive relief enjoining Eden Roc from removing Renaissance as manager of the Hotel, and from interfering with Renaissance's management of the Hotel.

The second cause of action sought a declaration that there is no basis for Eden Roc to terminate the Management Agreement or oust Renaissance from the Hotel.

Together with the filing of the complaint, plaintiffs sought a preliminary injunction enjoining Eden Roc from any other "extra-judicial attempts to oust it as manager of the Hotel." By decision dated November 27, 2012, this court granted the requested preliminary injunction, enjoining Eden Roc from taking any action to remove plaintiffs as managers of the Hotel.

By decision dated March 23, 2013, the Appellate Division vacated the injunction (*Marriott Intl., Inc. v Eden Roc LLLP*, 104 AD3d 583 [1st Dept 2013]) (Appellate Division Decision). The Court held that the Management Agreement is a personal services contract not subject to enforcement by injunction. Plaintiffs moved for reargument, or, alternatively, leave to appeal to the Court of Appeals from the Appellate Division Decision. On September 3, 2013, the Appellate Division denied that motion.

Prior thereto, on May 6, 2013, by order to show cause (motion 003), Eden Roc claimed that plaintiffs contravened the Appellate Division Decision, and sought an order requiring plaintiffs to cease managing the Hotel, directing plaintiffs to pay to Eden Roc a fine equal to at least \$278,163, plus legal fees and costs that Eden Roc incurred as a result of plaintiffs' alleged trespass and violation of the Appellate Division Decision, and directing plaintiffs to cease managing Eden Roc's hotel business and vacate the Hotel. Additionally, on May 10, 2013, Eden Roc made the instant motion to dismiss the complaint (motion 004).

This court disposed of motion 003, by decision dated May 21, 2013, stating that:

“pursuant to the Appellate Division decision, this court hereby declares that Eden Roc has the authority to remove and eject Marriott Renaissance as manager of the Eden Roc hotel forthwith or on whatever other timetable it chooses for the orderly transition of business to a new manager, subject to whatever other cognizable judgments, liens or other interests there are and which be asserted in and to the Eden Roc property.”

The court also advised the parties that the declaratory judgment “has no effect on the existing claims and lawsuits for damages that each of them has filed against the other, and the court understands that each side, in adhering to this Declaratory Judgment, has reserved its respective rights as to its respective claims for damages and other relief in this matter.”

On June 13, 2013, plaintiffs filed an amended complaint, and the parties stipulated that the motion to dismiss would apply to the amended complaint.

Amended complaint

As noted above, plaintiffs contend that, under the Management Agreement, Renaissance has the exclusive right to manage the Hotel through the year 2030, with Renaissance having the option to extend its management through 2055. The Management Agreement sets forth the limited circumstances under which Renaissance or Eden Roc is entitled to terminate the Management Agreement prior to the expiration of its term. None of these circumstances has occurred (amended complaint, ¶ 15).

Allegedly, Eden Roc purports to terminate Renaissance as manager on baseless grounds, just as Renaissance is due increased management fees from a renovated Hotel and an improving economy (*id.*, ¶ 26). Plaintiffs allege that Eden Roc's breach robs Renaissance of 42 years of entitlement to management fees under the Management Agreement. Renaissance has also suffered damages as a result of the financial concessions it made to Eden Roc in reliance on Renaissance's contractual rights to manage the Hotel through 2055.

The amended complaint contains two causes of action. The first cause of action is asserted by Renaissance for breach of contract. By ejecting Renaissance as manager of the Hotel prior to the expiration of the Management Agreement's term, Eden Roc has breached the Management Agreement's sections 2.01 (term of the Management Agreement); 3.01 (payment of management fees); 3.02 (distribution of operating profit); 8.01.C (quiet enjoyment of the Hotel); and 9.01 (specific conditions giving rise to a right to terminate). Allegedly, Eden Roc has also

breached the provisions of a first amendment to the Management Agreement, granting Renaissance the right to extend its management of the Hotel through 2055.

The second cause of action is asserted by both plaintiffs seeking a declaratory judgment and injunctive relief. Plaintiffs state that they included this claim for a declaratory judgment and permanent injunction or reinstatement as manager of the Hotel to preserve their rights in the event that the Court of Appeals reverses or modifies the Appellate Division Decision holding that the Management Agreement is a personal services contract.

Arguments

Eden Roc argues that any claim for injunctive relief must be dismissed because of the Appellate Division Decision holding that the Management Agreement is a personal services contract that cannot be specifically enforced by courts. Eden Roc cannot be restrained from terminating the Management Agreement and ousting Renaissance from the Hotel.

Eden Roc also argues that Marriott should be dismissed as a plaintiff in this action because it lacks standing to pursue any claims against Eden Roc. There is no dispute that (1) Renaissance and Eden Roc are the only parties to the now-terminated Management Agreement, and (2) Marriott has no contractual relationship with Eden Roc other than having executed a guarantee of Renaissance's obligations under the Management Agreement. In the amended complaint, plaintiffs fail to allege any basis for Marriott's assertion of claims against Eden Roc.

Plaintiffs argue that if the Appellate Division denies the motion for reargument or leave to appeal to the Court of Appeals (which, as it turns out, is what occurred), this court should sever and enter judgment on the second cause of action pursuant to CPLR 603 and 5012. This would allow plaintiffs to seek permission directly from the Court of Appeals to appeal the

Appellate Division Decision, rather than delaying a motion for permission to appeal until after final judgment on Renaissance's claim for damages.

As for the request to dismiss Marriott as a plaintiff, plaintiffs acknowledge that the issue of Marriott's standing will be moot if the second cause of action is dismissed based on the Appellate Division determination on the motion for reargument.

Discussion

As noted above, Eden Roc no longer seeks dismissal of the first cause of action, because rather than seeking injunctive relief, as in the original complaint, the first cause of action in the amended complaint seeks damages for breach of contract. That cause of action is viable notwithstanding the parties' personal services relationship (*see e.g. Cohen v OrthoNet N.Y. IPA, Inc.*, 19 AD3d 261, 261 [1st Dept 2005]). The Appellate Division Decision did not address the viability of a claim for damages - only injunctive relief by ruling that 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" (*Marriott Intl., Inc. v Eden Roc, LLLP*, 104 AD3d at 584). Moreover, Eden Roc states in its reply memorandum that plaintiffs could prevail on the first cause of action, "by proving that Eden Roc breached the Management Agreement by terminating it and removing Renaissance as manager . . ." (reply memorandum at 7).

The second cause of action seeking injunctive relief is dismissed based on the Appellate Division Decision denying reargument or, alternatively, leave to appeal to the Court of Appeals. Plaintiffs acknowledge that dismissal would be warranted in the event that the motion is denied.

Plaintiffs request in their opposition papers for the court to sever and enter judgment on the second cause of action, pursuant to CPLR 603 and 5012, so that plaintiffs could seek permission directly from the Court of Appeals to appeal the Appellate Division Decision, pursuant to CPLR 5602 (a) (1) (ii), rather than delaying a motion for permission to appeal until after final judgment on Renaissance's claim for damages.

The request is denied. Plaintiffs argue that "it would be far more efficient and beneficial to the parties to enter judgment on the Second Claim immediately than to wait until after trial on Renaissance's claim for damages." Apparently, Eden Rock disagrees with the assertion that "it would be far more efficient and beneficial to the parties," because it opposes this request.

Moreover, the court, itself, is not persuaded that granting the severance and judgment request will serve the "interests of convenience and efficiency," as argued by plaintiffs. According to plaintiffs, severing and entering judgment on the second cause of action would allow the parties to resolve finally the issue of whether the Management Agreement is a personal services agreement not subject to enforcement by injunction. Considering that the Appellate Division has ruled on the issue, denied reargument, and denied leave to appeal to the Court of Appeals, the court deems the issue resolved, considering that the Court of Appeals is not required to hear plaintiffs' sought after appeal.

Furthermore, severance is improper where, as is the case here, there are common factual and legal issues (*Neckles v VW Credit, Inc.*, 23 AD3d 191, 192 [1st Dept 2005] [motion court erred in granting the plaintiff's motion to sever the main action from the third-party action in that they involve common factual and legal issues which should be tried together]). The first cause of action is based on the allegations that "[b]y ejecting Renaissance as manager of the Hotel prior to

the expiration of the Management Agreement's term, Eden Roc has breached the Management Agreement, including, but not limited to, Sections 2.01 (term of the Management Agreement), 3.01 (payment of management fees), 3.02 (distribution of operating profit), 8.01.C. (quiet enjoyment of the Hotel), and Section 9.01 (specific conditions giving rise to a right to terminate)" (amended complaint, ¶ 47) and the second cause of action is largely based on the allegation that "there is no basis for Eden Roc to terminate the Management Agreement or oust Renaissance from the Hotel" (*id.*, ¶ 57). Although the dismissal of the second cause of action means that the damages and injunctive claims will not be considered together at trial, they should be considered together on an appeal to the Court of Appeals.

As for the request to dismiss Marriott as a plaintiff, as stated above, plaintiffs acknowledge that the issue of Marriott's standing will become moot if the second cause of action is dismissed based on the Appellate Division determination on the motion for reargument. That is because Marriott is seeking only injunctive and declaratory relief.

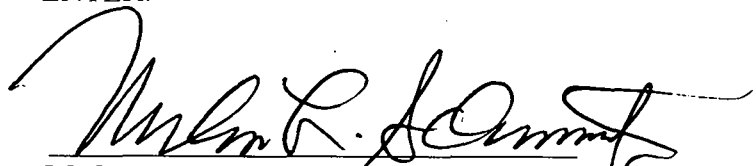
Accordingly, it is

ORDERED that the motion is granted, and the second cause of action is dismissed as are any claims asserted by Marriott International, Inc.; and it is further

ORDERED that Eden Roc, LLLP is directed to serve its answer to the amended complaint within 20 days after service of a copy of this order with notice of entry.

Dated: December 5, 2013

ENTER:


J.S.C.
MELVIN L. SCHWEITZER