MEMORANDUM

SUPREME COURT : QUEENS COUNTY
IA PART 17

X	Index No. 2156/07
METROPLAZA TWO ASSOCIATES, LLC, etc.	By: Kitzes, J.
	Dated: October 12, 2007
- against -	
	Motion Seq. No. 9
HILTON INNS, INC., etc.	
X	

Plaintiff Metroplaza Two Associates, LLC n/k/a Metroplaza Hotel, LLC ("Metroplaza") has moved for, inter alia, a preliminary injunction prohibiting defendant Hilton Inns, Inc. from terminating its franchise pursuant to a notice of default and termination dated July 10, 2007.

On or about July 19, 2004, plaintiff Metroplaza and defendant Hilton Inns, Inc., a subsidiary of Hilton Hotels Corporation, entered into a new ten-year license agreement pursuant to which the defendant permitted the plaintiff to operate a hotel located at 120 Wood Avenue South, Iselin, New Jersey as the "Woodbridge Hilton." Plaintiff Metroplaza has held a franchise license for the Woodbridge Hilton for over twenty-three years. The plaintiff agreed to renovate the hotel by no later than March 31, 2005 as specified in a spreadsheet known as a "Product Improvement Planner." The plaintiff also agreed to maintain and operate the hotel as required by the licensor's Design and Construction

Standards and Brand Standards. Defendant Hilton Inns, Inc. alleges that plaintiff Metroplaza Two did not complete many of the fifty items of renovation work specified in the Product Improvement Planner and did not operate the hotel in a way that met the licensor's standards, thereby causing the licensee to fail quality assurance audits in 2005 and 2006. Deirdre O'Rourke Hemingway, the Director for International Quality Assurance for Hilton Inns, Inc., personally conducted an audit of the Woodbridge Hilton on June 28, 2006, and she allegedly observed that "the Hotel was woefully below Hilton's standards." She allegedly noted, inter alia, that (1) elevators shuddered and did not stop flush with landings, (2) the porte cochere (hotel entryway) had not been renovated, (3) external walkways to entrances had not been upgraded, (4) metal roofs on exterior overhangs were buckled, (5) carpeting was badly worn throughout the building, and (6) there were holes in the walls of showers where clotheslines had been removed. On September 22, 2006, defendant Hilton Inns, Inc. issued a notice of default requiring the plaintiff to complete six items of renovation work by certain deadlines. The plaintiff allegedly failed to demonstrate to the defendant that it had completed five of the six items, and the licensor sent a notice of termination on January 10, 2007 ending the relationship effective March 15, 2007.

On or about January 24, 2007, the plaintiffs began this action which essentially seeks to prevent the termination of the

licensing agreement for the Woodbridge Hilton and the termination of another licensing agreement for a proposed Homewood Suites Hotel. By memorandum dated June 20, 2007, this court granted plaintiff Metroplaza's motion for a preliminary injunction, inter alia, prohibiting defendant Hilton Inns, Inc. from terminating the Amended and Restated Franchise License Agreement dated August 1, 2004 pursuant to the notice of termination sent on January 10, 2007.

Shortly after this court granted the plaintiff's application for a preliminary injunction, defendant Hilton sent another notice of default and termination dated July 10, 2007 which sought to terminate the franchise license effective as of September 15, 2007. The second notice of default and termination is based on two inspections conducted by Hilton, the first on June 28, 2006 when the hotel was "graded 'Unacceptable' for failure in Condition and Brand Standards" and the second on January 30, 2007, when the hotel was "graded 'Unacceptable' for failure in Condition, Brand Standards and SALT." The second notice threatened: "Unless the Hotel receives at least an overall 'Acceptable' score on the Special Product Evaluation scheduled for August 31, 2007, the Hotel will be removed from the Hilton Hotel System ***."

Bruce Wolosin, a quality assurance manager for the Hilton Hotels Corp., alleges that he conducted a quality assurance audit

on August 31, 2007. He gave plaintiff Metroplaza a failing grade on the audit which purportedly is "an objective, fact-based evaluation of a hotel's physical condition, customer service, and management processes, as measured against Hilton Inn's brand-wide standards." Wolosin allegedly observed that, inter alia, (1) the parking lot had not been resurfaced, (2) the porte cochere had not been renovated, (3) the walkways to all public entrances had not been upgraded, (4) the building's exterior had not been washed clean of streaks and stains, (5) glass panels on lobby entry doors had not been replaced, (6) elevators shuddered, (7) buckled roofing had not been repaired, and (8) some doors to guest rooms did not lock automatically.

On the other hand, Anne Baykowski, the corporate controller for Metroplaza Hotel Holdings, Inc., alleges, inter alia, that (1) some of the alleged defects upon which the second notice of termination is based are the same as the alleged defects upon which the first notice of termination is based, and the first notice has already been stayed by this court, (2) some of the alleged defects are insignificant, (3) Metroplaza has already cured or has begun to cure other alleged defects, such as resurfacing the parking lot, fixing the porte cochere, and removing stains from the exterior of the building.

In order to obtain a preliminary injunction, plaintiff Metroplaza had to show (1) a likelihood of ultimate success on the

merits, (2) irreparable injury if provisional relief is withheld, and (3) a weight of the equities in its favor. (See, Aetna Insurance Co. v Capasso, 75 NY2d 860.) Plaintiff Metroplaza successfully carried this burden. In regard to the first requirement, "[i]t is enough if the moving party makes a prima facie showing of his right to relief; the actual proving of his case should be left to the full hearing on the merits ***." (Tucker v Toia, 54 AD2d 322, 326; Time Square Books, Inc. v City of Rochester, 223 AD2d 270; Bingham v Struve, 184 AD2d 85; Gambar Enterprises, Inc. v Kelly Services, Inc., 69 AD2d 297.) In the case at bar, plaintiff Metroplaza showed prima facie that defendant Hilton has attempted to terminate its franchise without adequate grounds. Although factual issues exist in this case, they do not in themselves preclude the issuance of a preliminary injunction. (See, CPLR 6312[c]; Egan v New York Care Plus Ins. Co., 266 AD2d 600; Board of Managers of 235 East 22nd Street Condominium v Lavy Corp., 233 AD2d 158.) "[T]he existence of a factual dispute will not bar the imposition of a preliminary injunction if it is necessary to preserve the status quo and the party to be enjoined will suffer no great hardship as a result of its issuance ***." (Melvin v Union College, 195 AD2d 447, 448.) In regard to the second requirement, the record shows that equitable relief is a more efficient remedy than monetary damages. (See, People by Abrams v Anderson,137 AD2d 259; Poling Transp. Corp. v A & P Tanker Corp.,

84 AD2d 796.) The interference with an ongoing business risks injury for which monetary damages may not be adequate. (See, Mr. Natural, Inc. v Unadulterated Food Products, Inc., 152 AD2d 729; U.S. Ice Cream Corp. v Carvel Corp., 136 AD2d 626.) In regard to the third requirement, plaintiff Metroplaza demonstrated that the alleged irreparable injury to be sustained by it is more burdensome than the harm that will be caused to the defendant through imposition of the injunction. (See, Reuschenberg v Town of Huntington, 16 AD3d 568; Credit Index, L.L.C. v Riskwise Intern. L.L.C., 282 AD2d 246; Mr. Natural, Inc. v Unadulterated Food Products, Inc., supra; McLaughlin, Piven, Vogel, Inc. v W.J. Nolan & Co., Inc., 114 AD2d 165; Metropolitan Package Store Ass'n, Inc. v Koch, 80 AD2d 940; Nassau Roofing & Sheet Metal Co., Inc. v Facilities Development Corp.,70 AD2d 1021; 67A NY Jur2d, "Injunctions," § 31.) Plaintiff Metroplaza, which employs over 250 individuals at the hotel, has been a Hilton franchisee for over twenty-three years

Accordingly, those branches of the motion which are for a preliminary injunction are granted. The parties may submit affidavits concerning the appropriate amount of the undertaking at the time of the settlement of the order.

Plaintiff Metroplaza also seeks an order permitting it to serve an amended complaint adding causes of action based on the second notice of termination. As a general rule, the amendment of

a complaint will be permitted where, as here, there is no significant prejudice or surprise to the defendant. (See, Edenwald Contr. Co. v City of New York, 60 NY2d 957; Holchendler v We Transport, Inc., supra; Dal Youn Chung v Farberov, 285 AD2d 524.) Moreover, an amendment will be permitted where, as here, the amendment is not patently lacking in merit. (See, G.K. Alan Assoc., Inc. v Lazzari , -AD3d-, 840 NYS2d 378; Trataros Constr., Inc. v New York City Hous. Auth., 34 AD3d 451.) Insofar as the merits of the proposed seventeenth, eighteenth, and nineteenth causes of action are concerned, this court has previously found that there is an issue of fact concerning whether the parties intended to make their franchise agreement subject to the New Jersey Franchise Practices Act (N.J. Stat. Ann. 56:10-1 et seq.). (See decision and short form order [one paper] dated September 25, 2007.)

Accordingly, that branch of the motion which is for an order permitting the service of an amended complaint is granted. The plaintiffs shall serve their amended complaint within twenty days of the service of a copy of the order to be entered hereon with notice of entry.

Settle order.

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J.S.C.