Metroplaza Two Assoc., LLC v Hilton Inns, Inc.
2007 NY Slip Op 32137(U)
June 20, 2007
Supreme Court, Queens County
Docket Number: 0002156/2007
Judge: Orin R. Kitzes
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MEMORANDUM

SUPREME COURT : QUEENS COUNTY
IA PART 17

METROPLAZA TWO ASSOCIATES, LLC, etc. X	INDEX NO. 2156-07
- against -	BY: KITZES, J.
HILTON INNS, INC., etc. X	DATED: June 20, 2007

Plaintiff Metroplaza Two Associates, LLC has moved for a preliminary injunction, inter alia, prohibiting defendant Hilton Inns, Inc. from terminating the Amended and Restated Franchise License Agreement dated August 1, 2004 between the plaintiff, as licensee, and the defendant, as licensor, for the hotel known as the Hilton Woodbridge.

On or about July 19, 2004, plaintiff Metroplaza and defendant Hilton entered into a 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 "Hilton Woodbridge." 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 alleges that plaintiff Metroplaza 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. On September 22, 2006, defendant Hilton issued a notice of default requiring the plaintiff to complete six items of renovation work by certain deadlines. According to the defendant, the plaintiff failed to submit evidence 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.

Plaintiff Metroplaza, which has operated the Hilton franchise hotel in Iselin, New Jersey for over twenty years, alleges that it is current on all of its payment obligations to the defendant and that it has recently invested $2,500,000 for the purposes of renovating and improving the hotel. Plaintiff Metroplaza allegedly spent most of the $2,500,000 for renovations required by the defendant, and the plaintiff allegedly invested in upgrades that exceeded the defendant's demands such as $175,000 in an audio-visual system and $45,000 for high speed internet access for all rooms. Gross revenues generated by the hotel allegedly grew approximately $2,000,000 this past year, and the hotel leads others in the area in occupancy, average daily rate, and revenue available per room. James K. Wolosoff, the managing member of plaintiff Metroplaza, alleges that documents show that the plaintiff has either cured or begun curing each purported default

in the notice of default sent by the plaintiff. Wolosoff alleges: "when Licensor inspected the Hotel on January 3, 2007, Licensee had long since provided Licensor with a renovation program, budget, financing and contracts for that program, and, indeed, had long since completed the vast majority of the items in that program. *** Compared to the work that had already been paid for and completed, the remaining work to be completed (which has been in the process of completion) is de minimus, and includes hallway carpet [etc.]. *** Licensee is not in default. Licensee has cured or commenced curing any purported 'defaults' in the prior notice of default." (Emphasis in original.)

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 it

substantially complied with the notice of default sent by defendant Hilton. 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.)

Accordingly, the motion is granted. The parties may submit affidavits concerning the appropriate amount of the undertaking at the time of the settlement of the order.

Settle order.

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J.S.C.