

**Metroplaza Two Assoc., LLC v Hilton Inns, Inc.**

2007 NY Slip Op 32138(U)

June 21, 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., X  
etc.

INDEX NO. 2156/07

Seq NO.

- against -

BY: KITZES, J.

HILTON INNS, INC., etc.

X

DATED: June 21, 2007

LaSalle Bank N.A., as trustee for the registered holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-C24 ("lender" or "proposed intervenor"), has moved for, inter alia, an order permitting it to intervene in this action.

On or about July 19, 2004, plaintiff Metroplaza Two Associates, LLC and defendant Hilton Inns, Inc. 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 "Woodbridge Hilton." 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.

On or about November 29, 2005, Artesia Mortgage Capital Corp., the lender's predecessor in interest, made a \$36,000,000 loan to plaintiff Metroplaza secured by a mortgage on the Woodbridge Hilton. On or about November 29, 2005, as further security for the loan, plaintiff Metroplaza executed an assignment of the franchise license agreement in favor of Artesia which provided in relevant part: "Upon the occurrence of an Event of Default (as defined in the Security Instrument) and at any time thereafter during the continuance thereof, [Artesia] shall have the right, power, and privilege ... to ... exercise any and all rights and remedies and undertake any and all actions which would be available to [Metroplaza] under the Franchise Agreement." On or about November 29, 2005, Metroplaza, Hilton, and Artesia executed a "comfort letter" whereby Hilton granted Artesia rights and remedies in the event that Metroplaza defaulted on its obligations under the franchise agreement. For example, the comfort letter

required Hilton to notify Artesia in writing of any default by Metroplaza under the franchise agreement and to afford Artesia an extended cure period. On or about June 7, 2006, Artesia assigned its rights under the note, mortgage, comfort letter and related loan documents to the proposed intervenor, and Hilton subsequently acknowledged the assignment. Seeking declaratory and injunctive relief and monetary damages, the proposed intervenor alleges, inter alia, that Hilton breached the terms of the November 29, 2005 comfort letter by failing to serve a copy of the September 22, 2006 notice of default upon it and by failing to allow the lender an adequate opportunity to cure Metroplaza's alleged defaults under the franchise agreement.

That branch of the motion by the lender which is for an order permitting it to intervene in this action is granted. The lender shall serve its intervenor complaint within twenty days after the service of the order to be entered hereon with notice of entry. The lender made a sufficient showing of a real and substantial interest in the outcome of this litigation warranting its intervention. (See, Capital Resources Co. v Prewitt, 266 AD2d 176; Patterson Materials Corp. v Town of Pawling, 221 AD2d 609; Greenpoint Sav. Bank v McMann Enterprises, Inc., 214 AD2d 647.) The court notes that the lender cured an initial defect in its motion papers by submitting a copy of the proposed intervenor complaint attached to the affirmation of

Jaimee Katz Sussner, Esq. dated May 11, 2007. (See, CPLR 1014; Serdaroglu v Serdaroglu, 209 AD2d 608.)

Those branches of the lender's motion which are for a preliminary injunction are granted to the extent that the defendants are prohibited from terminating the Amended and Restated Franchise License Agreement dated August 1, 2004 between plaintiff Metroplaza Two Associates, LLC and defendant Hilton Inns, Inc. during the pendency of this action. (See, Aetna Insurance Co. v Capasso, 75 NY2d 860.) The court notes that plaintiff Metroplaza has obtained similar injunctive relief. (See decision dated June 20, 2007 rendered on Metroplaza's companion motion.) 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.