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Hotel Business Review
A weekly online journal of best practices in hotel management and operations

December 2008

Common Legal Issues that Confront Hotel Operators


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The ultimate responsibility and goal of a hotel manager is to achieve a profit for the hotel's owner and ensure that the hotel's guests are happy with their stay. To that end, a hotel manager acts behind the scenes at a hotel like a puppeteer with numerous day-to-day responsibilities for nearly all aspects of a hotel's operations, including, but not limited to, supervising and managing personnel, marketing, sales, security, maintenance, and food and beverage operations. In addition to attending to these numerous tasks to create a positive guest experience, a hotel manager must also be aware that managing a hotel includes the potential for the manager to be subject to a variety of legal liabilities to the hotel's guests and its owner. A thorough analysis of all of the potential legal issues that attach to a hotel's operations would require an expansive treatise that covered everything from, inter alia, common law contract, negligence, and tort claims, to federal and state securities and antitrust laws. However, the basic legal duties that apply to a hotel manager, and which have formed the basis for most of the claims asserted against hotel managers, are those that concern the hotel manager's role as an innkeeper to its guests and fiduciary to its owner.

Liabilities to Guests: The Hotel Manager As Innkeeper

The earliest explicit legal principles applicable to a hotel manager are those of the "innkeeper." Indeed, "[t]he duties of innkeepers have developed over centuries. By Chaucer's time, English law recognized the responsibilities of innkeepers to their customers. At common law, the innkeeper was required, among other things, to provide food, lodging and a safe harbor for its guests. These principles were carried across the Atlantic and, by and large, helped shape our formulations of innkeepers' duties." Darby v. Compagnie National Air France, 96 N.Y.2d 343, 347 (2001) (internal citations omitted). Today's hotel managers are still liable as innkeepers. See generally Fabend v. Rosewood Hotels & Resorts, L.L.C., 381 F.3d 152 (3d Cir. 2004) (applying an "innkeeper" analysis to a management company that operated hotel on United States Park land); Clayman v. Starwood Hotels & Resorts Worldwide, 343 F. Supp. 2d 1037 (D. Kan. 2004) (holding Starwood Hotels & Resorts Worldwide, the owner and manager of the hotel, liable under the principles stated in Restatement (Second) of Torts § 314A).

In addition to innkeeper laws existing under the common law, many states have codified innkeeper laws into state statutes, which generally require that an innkeeper provide food and lodging to guests in a non-discriminatory manner. Moreover, while an innkeeper is not an insurer of the safety of its guests, the innkeeper laws impose a duty on a hotel manager to use reasonable care in promoting their safety. See, e.g., Shiv-Ram, Inc. v. McCaleb, 892 So. 2d 299 (Ala. 2003), as clarified on denial of reh'g, (Apr. 2, 2004) (A hotel keeper must furnish safe premises for the guest, which they may use in the ordinary and reasonable way without danger; and if any guest, while using the building where she is reasonably expected to go, is injured by a defective condition of the building, the manager is liable for the injuries to his guest that are approximately caused by his negligence in the defective condition).

These basic innkeeper principles have been tested by disgruntled hotel guests in numerous cases. For example, lawsuits asserting tort and negligence claims have been filed as a result of injuries caused by defects in guest room furnishings or other conditions, including, but not limited to, claims for injuries resulting from slips and falls, falling ceiling fans, defective chairs, faucet burns, intoxication of guests, gas stove explosions, hot water, and insects. In these cases, courts generally hold that an innkeeper owes its guests a duty of maintaining the hotel premises in a reasonably safe condition so that guests may enjoy the hotel without exposing themselves to danger. Morell v. Peekskill Ranch, Inc., 64 N.Y.2d 859, 860 (failure to warn of dangerous condition on resort walking path); DiSalvo v. Armae, Inc., 41 N.Y.2d 80, 82-83 (1985) (failure to protect children at play on resort grounds from traffic on private resort road); Orlick v. Granit Hotel & Country Club, 30 N.Y.2d 246, 249-50 (1972) (failure to properly construct and light stairways in hotel); Buchaca v. Colgate Inn, Inc., 296 N.Y. 790, 791 (1947) (failure to keep inn sidewalk free of ice); Allon v. Park Central Hotel Co., Inc.,

272 N.Y. 631, 632 (1936) (failure to supervise hotel swimming pool); Clark v. New York Hotel Statler Co., Inc., 253 N.Y. 583, 584 (1930) (failure to maintain hotel's revolving door entrance); Maloney v. Hearst Hotels Corp., 274 N.Y. 106, 109 (1937) (failure to safeguard against fire inside hotel); Manahan v. N.W.A., 821 F. Supp. 1105, 1108 (D.V.I. 1991) (citing Restatement (Second) of Torts § 314A), aff'd, 995 F.2d 218 (3d Cir. 1993) (An innkeeper owes its guests a "duty to take reasonable action to protect them against unreasonable risk of physical harm.").

Liabilities to Owners: The Woolley Case and Its Progeny

In contrast to the early and defined laws relating to a hotel manager's duties and potential liabilities to its guests, there was not a similar set of guidelines relating to the potential liabilities of a hotel manager to its owner until the early 1990s. However, the seminal case of Woolley v. Embassy Suites, Inc., 227 Cal. App. 3d 1520 (Cal. App. 1st Dist. 1991) forever changed the industry's understanding of the legal relationship between a hotel manager and the hotel's owner. In Woolley, a California state court established that, as a matter of law, the nature of the relationship between a hotel owner and its manager is akin to that of a principal and its agent and, therefore, the hotel manager (the agent) owes the owner fiduciary duties, which include the duties of good faith, loyalty, fair dealing, and full disclosure. Moreover, Woolley held that, because a principal always has the power to terminate its agent, a hotel owner always has the power to terminate its hotel manager no matter the terms of their management agreement. The manager could, however, claim damages resulting from such an early termination provided that the manager has not breached its fiduciary duties. Conversely, the fiduciary nature of the relationship allows an owner to terminate a management agreement without penalty based if a breach of fiduciary duties is proved and seek damages relating to those breaches, including, but not limited to, disgorgement of all profits. See Restatement Agency § 401, com. b ("A failure of the agent to perform his duties which results in no loss to the principal may subject the agent to liability for ... any profits he has thereby made …").

In the wake of Woolley, a number of high profile lawsuits were filed in which owners sought to terminate their hotel management agreements based on the principal-agent fiduciary duty principles. That is, those owners sought to terminate their management agreements prior to the end of their terms without having to compensate the manager for early termination by asserting breaches of fiduciary duties, and sought damages for those alleged breaches. High profile cases asserting breaches of fiduciary duties included Pacific Landmark Hotel, Ltd. v. Marriott Hotels, Inc., 19 Cal. App. 4th 615 (Cal. App. 4th Dist. 1991), Government Guar. Fund of the Republic of Finland v. Hyatt Corp., 166 F.R.D. 321, 323, 34 V.I. 257 (D.V.I. 1996), and 2660 Woodley Road Joint Venture v. ITT Sheraton Corp., 2002 WL 53913 (D. Del. 2002), aff'd in part, vacated in part, remanded by 369 F.3d 732 (3rd Cir. 2004).

Claims of breaches of fiduciary duties by owner's against their hotel managers now cover the gamut of the hotel manager's services and practices, ranging from failures to account, group purchasing programs, guest loyalty programs, and any other potential breach of the manager's contractual or common law obligations that could potentially be construed as breach of the fiduciary duties of good faith, loyalty and full disclosure. Woodley Road was the first case in which a jury rendered a verdict on a claim that a hotel manager failing to meet its fiduciary duties to the hotel's owner. That jury awarded the owner $51.8 million in damages against the manager, and permitted the owner to terminate the hotel's long-term management contract without penalty even though there were more than thirty years remaining in its term. Although the Woodley Road jury verdict was significantly reduced by the trial judge and on appeal, it undoubtedly sent a shockwave through the hotel industry and caused managers to take notice of their fiduciary duties and related potential liabilities to their owners.

Conclusion

On top of its day-to-day responsibilities, nearly every aspect of managing a hotel has the potential to create legal liabilities for the manager to guests and owners. In fact, hotel managers have faced claims based on countless laws and regulations, including, but not limited to, zoning laws, privacy laws, intellectual property laws, the American's with Disabilities Act, federal and state antitrust laws, consumer protection laws, and, recently federal and state securities laws. While the laws and duties that apply to innkeepers and fiduciaries are not the sole basis for potential legal liabilities for hotel managers, abiding by the guiding principles of reasonable care to hotel guests and duties of good faith, loyalty, and full disclosure to hotel owners is a necessary and critical first step that a hotel manager must understand in order to minimize the potential for legal liabilities.

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