

HOSPITALITYLAWYER.COM PRESENTS:

THE **HOSPITALITY LAW**
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FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 10th - 12th, 2014

THE PENDULUM SWINGS . . .

SURVEY OF MANAGEMENT AGREEMENT LITIGATION

**Anthony F.
Cavanaugh**
Steptoe & Johnson
LLP

Bryan P. Couch
LeClairRyan

SPEAKER BIOGRAPHY



- Of counsel at Steptoe & Johnson LLP
- Complex commercial litigation; substantial experience in state and federal courts
- Focuses on advising hotel owners and their asset managers

SPEAKER BIOGRAPHY



- Bryan P. Couch
- Shareholder at LeClairRyan
- Complex commercial disputes, trademark litigation, business torts, and casualty claims
- Specializes in contractual disputes arising in the franchise and hospitality sectors

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WOOLLEY V. EMBASSY SUITES, INC. (1991)

- **“An agent is anyone who undertakes to transact some business, or manage some affair, for another, by authority of and on account of the latter, and to render an account of such transactions.”**
- **“a principal who employs an agent always retains the power to revoke the agency.”**
- **“it should always be within the power of the principal to manage his own business and that includes the power of the principal to reassume the control over his own business which he has but delegated to his agent.”**

DISCLAIMER EXAMPLE

In the performance of this Agreement, Operator shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making Operator a partner or joint venturer with Owner or as creating any similar relationship or entity.

MARYLAND CODE, TITLE 23

“If a conflict exists between the express terms of a [Hotel] operating agreement and the terms and conditions implied by the law governing the relationship between a principal and agent, the express terms and conditions of the operating agreement shall govern.”

MARYLAND CODE, TITLE 23

“Express covenants or other provisions of an operating agreement that establish a parties duties and obligations under an operating agreement create the only duties and obligations enforceable against the party under the operating agreement.”

*MARRIOTT INTERNATIONAL, INC.
V. EDEN ROC, LLLP
(2013)*

“[D]etailed management agreement places full discretion with [Renaissance] 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 INTERNATIONAL, INC.
V. EDEN ROC, LLLP
(2013)**

“[W]hile it is unnecessary to reach the question, we note that, contrary to defendant’s contention, the agreement is not an agency agreement. Defendant lacks control over plaintiff, the alleged agent, since the agreement provides for plaintiff to have unfettered discretion in managing the hotel's operations.”

*RC/PB, INC. V.
THE RITZ-CARLTON HOTEL COMPANY, LLC
(2013)*

“[E]xamination of the Operating Agreement as a whole show[ed] a delegation to Ritz-Carlton of a broad range of discretionary authority” in operating the hotel, which “’ undisputedly call[ed] for the rendition of services which require[d] the exercise of special skill and judgment.’ ”

THE *TURNBERRY ISLE* CASE

“[T]he Restatement of Agency recognizes that hotel managers are agents of the owners of the properties they operate.”

THE *TURNBERRY ISLE* CASE

“[H]otel management agreements are personal services contracts” because they call for “the rendition of services which require the exercise of special skill and judgment . . . managerial services [that were] wide-ranging and involve daily discretionary activities . . . [including] hiring and firing managerial personnel and hundreds of other employees, contracting for . . . services and the like.”

CONCLUSION

- **The courts are clear – owner has the power to terminate the hotel management relationship at will**
- **Owners should be especially wary of dealing with operators unwilling to acknowledge, for example, a duty of loyalty and disclosure to owners in connection with how the operator manages the owner's hotel**
- **Owners must be vigilant when negotiating management agreements to avoid operators' traps and must continue to challenge operators' attempts to evade their fiduciary duties**

CONCLUSION

- **Managers should maintain a log of communications with Owners, especially those communications that occur outside of proscribed channels to document potential owner interference**
- **Managers should continue to seek to define the relationship of the parties in the terms of the agreement despite the recent interpretation by specific courts in limited jurisdictions**