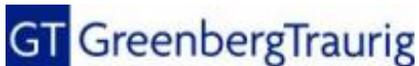


Not so Fast at the Eden Roc



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Within hours of the appeals court's ruling [[Marriott International v Eden Roc 3-26-2013.pdf](#)], there have been announcements about the demise of the long-term hotel management agreement and the hotel owner's inviolate right to terminate (revoke) management agreements "at-will." But the wiser course might be to not speak too soon, but, rather, to ponder the consequences. Remember that Judge Schweitzer's prior ruling on October 26, 2012 granted Marriott's request for a preliminary injunction to prevent the hotel owner from removing the hotel operator in another of a series of "midnight raids," where the hotel owner sweeps in and removes the hotel operator. The hotel operator at the Eden Roc chose to stand its ground, and the injunction order maintained the status quo. In many situations, the parties are able to resolve their dispute, either on their own or with the assistance of a mediator. In fact, the Judge urged the parties to do just that.

The parties were not able to resolve their differences, and on March 26, 2013, a New York appeals court vacated Judge Schweitzer's injunction. This is not a sweeping and staggering new law. Citing the 1991 Woolley case, the order merely confirms that a principal may freely remove its agent and terminate the agency relationship "at-will" (absent the presence of a "coupled interest" as part of the contract; see the attached link to our prior piece on the Turnberry decision). (To this extent, I disagree with the appellate court's dicta that the agreement in question is not an agency agreement; in fact it is). The order further confirms that certain contracts that have the characteristics of a personal services contract cannot be enforced by

means of an injunction. It is also not news that if a hotel owner desires to terminate its management agreement with the hotel operator in this manner, that the hotel owner may be answerable in damages to the hotel operator. Some blog posts within the last 24 hours make reference to the recent Fairmont Hotels & Resorts termination at the Turnberry Resort. Very few of those blog posts complete the factual story and note that the hotel owner ultimately paid Fairmont damages reported to be roughly \$19,000,000, representing the approximate present value of expected future management fees. Depending on the performance of the hotel, an Owner's summary revocation of a hotel management agreement could be akin to selling "puts"; you get to own the stock, but do you really want to own it that cost?

So, let's just be more judicious here. Hotel owners and hotel operators actually do talk with each other more often than not, and do enter into legally binding agreements for management of the owner's hotel. I will continue to advocate for good faith negotiation over litigation, and monitor the complete story, including the fact that terminating the hotel management agreement may grant an owner its wish to regain the hotel, but that will come at a price, and then, the next step is that the hotel owner will need to replace the removed hotel operator with yet another hotel operator - which hotel owners realize can add a significant expense for the owner.

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