

Midnight Raid 2.0, Hotel Management Agreements Under Siege

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Midnight Raid Panel Grabs Attention. Hotel Management Agreements and the midnight raid once again took center stage recently at the [Hotel & Lodging Legal Summit sponsored by the Georgetown University Law Center](#), and was the topic of discussion among attendees long after the panelist had concluded their final remarks. The panel of very seasoned and experienced hospitality professionals examined the “midnight raid” method for the replacement of hotel management in light of recent case law, and offered insights for future agreements and conduct. Some of the “take-aways” were that the rapid and unplanned transfer of hotel management can create disruption of hotel operations adversely impacting the guest, the departing manager and the incoming manager. Even if a hotel owner desires to oust the manager, it can be done in accordance with the management agreement with far less drama and disruption.

Secret Agent Man – Not! The panelists acknowledged that cases recently decided under the laws of Florida and New York establish that hotel management agreements are personal service contracts that are terminable by the owner as “principal”, without manager, as “agent” having recourse to the remedy of an injunction to either remain in or return to the hotel. Of course, the further reminder is that termination of the hotel manager without cause can be an expensive proposition.

Termination is Expensive. Termination of the hotel manager by owner, whether by midnight raid or liquidated damages, is expensive. The owner’s exercise of the power to terminate the hotel manager carries with it the manager’s right to seek damages from the owner. The measure of damages or the mechanism to measure the damages is a topic that will continue to develop. There are both pros and cons to the inclusion of liquidated damages provisions in the hotel management agreement. Many agreements do provide for a pre-negotiated and agreed to formula for the calculation of damages, but that is by no means universal.

Will Posting Collateral Be the Wave of the Future? On a related note, there is the question of whether or not hotel managers will seek collateral to secure post termination damages upon an owner’s termination. This is the issue raised in a footnote in the case of *FHR TB, LLC, et al., v TB Isle Resort, LP* (often referred to as the Turnberry case). The Judge seemed to say that the manager could have required the principals of the hotel owner to sign a guaranty or to post collateral to secure

the manager's damages claim against the owner if the owner exercised the at-will power to terminate the manager. The practicality of this may soon be tested, but this may be beyond what the market can bear today. As management agreements continue to be negotiated, we will watch out for the latest drafting topics and trends as owners and managers try to adapt to the current state of the law.

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