

Maryland Statute Under Fire – Court Substantially Narrows Application in Matter of First Impression

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Key Take: *The Maryland statute has become an obstacle to hotel owners seeking to terminate long-term hotel management agreements that incorporate Maryland law.*

On January 12, 2022, the Maryland Circuit Court for Howard County dismissed a hotel manager’s counterclaim for specific performance of the management agreement and upheld a hotel owner’s right to seek rescission of a hotel management agreement limiting – for the first time – the application of Maryland Code of Commercial Law Section 23-102, which states a Maryland court can issue orders of specific performance compelling hotel owners to continue to employ their unwanted hotel managers.

In the hotel management context, beginning in 1991 with *Woolley v. Embassy Suites, Inc.*, a prevailing line of authority developed holding that hotel management agreements were revocable at the will

of the hotel owners notwithstanding the language to the contrary in the written agreements.[1] This holding was predicated on two legal principles: 1) that a hotel management agreement constitutes an agency relationship, and a principal retains the right to revoke the agency regardless of the contract's terms (so long as the agency is not coupled with an interest), and 2) that hotel management agreements constitute personal services contracts and cannot be enforced by injunction or specific performance.[2]

By virtue of this line of authority, hotel owners had the right to terminate an unwanted hotel manager, regardless of whether such termination was permitted under the hotel management agreement. If the termination was not contractually permitted, courts would nevertheless decline to award injunctive relief or the remedy of specific performance to return a manager to management, and the only recourse available to a manager was to seek an award of monetary damages, which exposed managers to potentially significant hardship if termination was early in the management term and the manager had made a significant investment to manage the hotel.

However, in 2004, in an effort to mitigate the hardship imposed by courts refusing to enjoin hotel owners from terminating their hotel management agreements (or declining to award specific performance), hotel managers successfully lobbied the General Assembly of Maryland to pass a one-of-a-kind statute specifically applicable to hotel management agreements. This statute (unique to Maryland) provided that, notwithstanding the common law rule that a principal (such as a hotel owner) can always revoke an agency relationship (which courts have uniformly found hotel management agreements to be), Maryland courts could issue orders of specific performance compelling hotel owners to continue to employ their unwanted hotel managers.[3]

Specifically, pursuant to Section 23-102(a), Maryland codified that “[i]f a conflict exists between the express terms and conditions of an 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.” Further, under Section 23-102(b), a court “may order the remedy of specific performance for anticipatory or actual breach or attempted or actual termination of the operating agreement notwithstanding the existence of an agency relationship between the parties to the operating agreement.” By virtue of this statute, to the extent Maryland law applied, hotel managers had a tool to defend against wrongful terminations to protect their investment in the hotels and their long-term hotel management agreements.

Although the statute presented a conflict between Maryland and every other jurisdiction in the United States on this issue, the Maryland statute remained largely unchallenged until recently. Indeed, there are only a handful of decisions discussing the statute, but they largely favor hotel managers.

In 2018, a New York court held that a hotel management agreement “provides for the application of Maryland law” and therefore “a court may order specific performance for anticipatory or actual breach or attempted or actual termination of a hotel management agreement.”^[4] Based on this ruling, both owners and managers were on notice that courts outside of Maryland may apply Maryland’s statute notwithstanding the conflict with the common law developed in their jurisdiction.

Further, in 2020, a Maryland court concluded that the statute was “both remedial and procedural.” Therefore, although the hotel management agreement applied the law of the District of Columbia, “Maryland law governs ... the availability of remedies potentially available in the event of a contractual breach” and, even if it did not, because the law of the District of Columbia provides for

specific performance for breach of contract, that remedy remained available regardless of Maryland's statute.[5]

Consequently, hotel managers operating under a hotel management agreement that incorporates Maryland law, or operating a hotel in a jurisdiction that provides for specific performance as a remedy for breach of contract, now have authorities that support a request for the remedy of specific performance for wrongful termination notwithstanding the common law of agency developed in other jurisdictions.

To date, only one Maryland court, in an unpublished decision from 2022, has declined to apply Maryland's statute in the face of a hotel manager's argument that the hotel owner wrongly sought to terminate a hotel management agreement.

In *Bigstore Hotel Partners, LLC v. IHG Management (Maryland) LLC*, the owner of the Even Hotel in Pittsburgh, Pennsylvania, brought an action asserting a single claim for rescission of the hotel management agreement as the remedy for the manager's substantial and material breaches of the hotel management agreement. Relying on the Maryland statute, the manager counterclaimed for specific performance to stop the alleged anticipatory breach and/or attempted termination of the hotel management agreement. The hotel owner moved to dismiss, arguing that Section 23-102 did not apply to its claim for rescission. In turn, the manager argued that rescission was an attempt to terminate and therefore the statute applied warranting specific performance.

Siding with the hotel owner,[6] Judge Bernhardt recognized that while the statute is "very favorable to hotel managements," Maryland did not intend to "create a wall of almost immunity around hotel management from ... certain types of actions at law." [7] The Maryland court rejected the manager's argument, held that rescission was materially

different from attempted termination of a hotel management agreement and that the rescission claim did not implicate the statute, then dismissed the manager's counterclaim for specific performance.

Although few courts have interpreted or applied Maryland's statute, it is clear that the statute provides hotel managers with significant protection against wrongful termination where the dispute is litigated in Maryland or where the hotel management agreement incorporates Maryland law. Hotel owners should be mindful of this when negotiating the choice of law provision in their hotel management agreements and when deciding whether to purchase a hotel located in Maryland. For those hotel owners subject to Maryland's statute, they must consider alternative or otherwise creative arguments and claims, such as a claim for rescission, to avoid the application of the Maryland's statute and the remedy of specific performance for breach and wrongful termination of hotel management agreements.

Citations

[1] *Woolley v. Embassy Suites, Inc.*, 278 Cal.Rptr. 719 (Cal.App.1991); *see also Pac. Landmark Hotel, Ltd. v Marriott Hotels, Inc.*, 19 Cal App 4th 615 (Cal Ct App 1993); *Govt. Guar. Fund of Republic of Finland v Hyatt Corp.*, 95 F3d 291 (3d Cir 1996); *2660 Woodley Rd. Joint Venture v ITT Sheraton Corp.*, CIV. A. 97-450 JJF, 1998 WL 1469541 (D Del Feb. 4, 1998).

[2] *See, e.g., Marriott International, Inc. v. Eden Roc, LLP*, 962 N.Y.S.2d 111 (N.Y. App. Div. 2013)(holding that a hotel management agreement is a personal services contract that may not be enforced by injunction).

[3] As noted in *Marriott Hotel Services, Inc. v Wardman Hotel Owner, L.L.C.*, 2020 WL 10758279, at *8 (Md Cir Ct, Montgomery Cnty Dec. 3, 2020), the bill file for Section 23-102 “makes plain that this provision was added to allow enforcement of hotel management agreements by specific performance despite their being considered personal service or agency contracts.” (footnote omitted).

[4] *IHG Management (Maryland) LLC v. West 44th Street Hotel LLC*, 163 A.D.3d 413 (1st Dep’t 2018) (“It is undisputed that the [agreement] at issue provides for the application of Maryland law, which specifically provides that a court may order specific performance for anticipatory or actual breach or attempted or actual termination of a hotel management agreement.”) (citing Md. Code Ann., Com. Law §§ 23-102[b]; 23-101[c])).

[5] *Marriott Hotel Services, Inc. v Wardman Hotel Owner, L.L.C.*, 2020 WL 10758279, at *8 (Md Cir Ct, Montgomery Cnty Dec. 3, 2020).

[6] *Bigstore Hotel Partners, LLC v. IHG Management (Maryland) LLC*, No. C-13-CV-21-000391 (Md Cir Ct, Howard Cnty Jan. 12, 2022) (granting owner’s motion to dismiss hotel manager’s counterclaim for specific performance).

[7] Author’s note: The court’s quote is from the hearing transcript and the court’s ruling at the conclusion of the hearing, which was followed by a one-page order that incorporated the court’s reasonings its the order.