

HOSPITALITYLAWYER.COM PRESENTS

2013 THE **HOSPITALITY LAW**
CONFERENCE
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

TERMINATING HOTEL MANAGEMENT AGREEMENTS AND DIVORCE ISSUES THAT OCCUR

PRESENTER



John H. Thomas

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- Chaplin School of Hospitality & Tourism Management



- Philip Colicchio, Founding Partner
- Taylor, Colicchio & Silverman, LLP
- Litigation & Appeals, Commercial Law, & Hospitality Practice



- Bill Hoffman, President & CEO
- Trigild
- Attorney, Licensed Real Estate Broker (hotels, commercial office buildings, retail shopping centers, residential projects, and restaurants).

SCOPE OF THIS PRESENTATION

Legal issues are the subject of this discussion

Practical issues will be presented by Bill Hoffman

- **Reasons for Hotel Management Agreement (HMA) terminations are like those for marital divorce – “irreconcilable differences”**
- **Money – revenues to support working capital and expenses**
- **Breach of loyalty or fiduciary duties**
- **Breach of non-compete or territorial restrictions**

LAW OF AGENCY

- Principal (Hotel Owner) has an irrevocable power to terminate its Agent (Hotel Manager)

Exceptions:

- Partially executed action; the Principal remains bound
- Agency coupled with an interest

The power to revoke agency does not mean that the Principal is not liable for damages to the Agent for wrongful termination

SECRET DIVORCE

- Owner and Manager usually do not want disputes in public
- Courts are public
- Arbitration is confidential

THERE MUST BE 50 WAYS TO LEAVE YOUR LOVER

- Line of cases from *Robert E. Wooley v. Embassy Suites, 1991*
 - Power of Owner to unilaterally terminate HMA
 - Agency law supersedes any “irrevocable” language in agency contract
- Turnberry Isle Hotel and Resort, Miami (Aventura), 2011
 - Followed *Wooley* precedent despite “irrevocable” and “right of first offer and first refusal” language in HMA

Eden Roc case rejected *Wooley* and Turnberry, 2012

More on that case later

YOU DON'T LOVE ME ANYMORE

- Ritz-Carlton Bali v. Bulgari Bali
 - Non-compete clause

ASKING FOR THE RING BACK

- **\$1.75 million “key money loan,” with terms “amortized on a straight line basis in arrears over ten years, without interest.”**
 - **Not an agency coupled with an interest**

BEWARE THE PRENUPTIAL

- HMA provided two termination clauses
 - Termination for cause (silent as to damages)
 - Termination without cause, with notice requirement
 - - with liquidated damages stated

Owner terminated for cause, but jury rejected the cause

MARRIAGE COUNSELORS : I.E. BANKRUPTCY COURT

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- The Donald takes over Doral Hotel & Resort, Miami, 2012

HONEY, I'M LEAVING

- St. Regis/ Ritz-Carlton Fort Lauderdale, 2011

THE LOCKS ARE CHANGED AND YOUR SUITCASE IS ON THE SIDEWALK

- **Four Season Aviara, Carlsbad, California, 2009**
- **Edition Waikiki, Hawaii, 2011**
- **Turnberry Hotel & Resort, Miami, 2011**

CHILD CUSTODY FIGHT ACROSS STATE LINES

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- Four Seasons Hotel Caracas, Venezuela

WAR OF THE ROSES (THE MOVIE, NOT THE ACTUAL WAR

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- Eden Roc Hotel, Miami Beach, 2012

PRACTICAL MATTERS WITH LEGAL ISSUES

- **Contracts with employees, vendors, guests, future events**
- **Licenses and leases**
- **Proprietary software, operations and management systems**
- **Accounting records, taxes, incident reports**
- **Trademarks, copyrights, patents**
- **Defamation**