

Significant damages claim for breach of Hotel Management Agreement

On 15 October 2021, the Supreme Court of New South Wales ordered that a hotel owner is liable to pay approximately \$11 million in damages to a hotel management company for a breach of the Hotel Management Agreement.

Background Facts

In the case of *IHG Hotels Management (Australia) Pty Ltd v Green Garden Development No. 1 Pty Ltd [2021] NSWSC 1310*, IHG and Green Garden Developments (**Green Garden**) entered into a hotel management agreement (**HMA**) whereby Green Garden agreed to develop a new hotel and grant IHG the right to manage this hotel for an initial term of 20 years. The HMA also provided for an automatic renewal of the term for 5 years, unless a party to the agreement gave notice to the contrary. Green Garden had the right sell the hotel after 10 years and terminate the HMA, subject to a termination fee.

On 20 December 2019, Green Garden entered into a contract to sell the hotel, which settled on 2 September 2020. However, Green Garden did not obtain the Buyer's agreement to be bound by the HMA. This ultimately resulted in IHG bringing a claim against Green Garden for a breach of the HMA.

The Decision

Green Garden did not file any defence in the proceedings. The Court found that Green Garden had breached the HMA and awarded damages in favour of IHG for the fees it would have earned under the HMA. In calculating the damages, IHG presented three different scenarios to calculate the fees they would have earned:

1. Scenario 1 – the HMA remained in place for the initial 20 year term;
2. Scenario 2 – the HMA remained in place for the full 25 years; or
3. Scenario 3 – Green Garden elected to sell after 10 years and pay the termination fee.

IHG submitted that Scenario 2 was the most appropriate method of calculating the loss, which also happened to be the scenario that led to the highest damages calculation. In the absence of submissions from Green Garden, the Court accepted the submissions from IHG and awarded damages on this basis. IHG was also awarded interest and legal costs.

Key Takeaway

The damages awarded in this case were significant, however it should be noted that the hotel owner filed no defence and made no submissions to contest the claims or the calculations for damages. If Green Garden had defended the proceedings and argued the assessment of damages, we expect that the damages awarded would have been calculated differently, resulting in a lower damages amount. Regardless, this case still highlights important issues that both hotel management companies and hotel owners should take into consideration when negotiating a hotel management agreement.