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I have heard certain lawyers representing hotel owners refer to a “litany” of cases supposedly allowing owners to terminate their Hotel Management Agreements at will without consequences. These cases, beginning with the 1991 *Woolley* case, reflect the common law principle of agency that principals (here, hotel owners) may terminate their agents (hotel managers) at any time, regardless of the terms of any agreement between them, unless the agent has an “agency coupled with an interest.”¹

This view of the hotel owner/hotel manager relationship leads to such mischief as the attempted midnight takeover of the Four Seasons Residence Club Aviara and the successful, though short-lived midnight takeover of the Waikiki Edition, a Marriott International-operated resort in Honolulu.

Now a “litany” is a prayer consisting of a series of invocations and supplications by the leader with alternate responses by the congregation. The *Woolley* case and its three meager progeny are a prayer with no longer any response. They deserve no response—particularly as applied to sophisticated HMAs, rather than to the ownership of a cow in the 17th century.

¹The cases of course are *Woolley v. Embassy Suites*, 227 Cal.App.3d 1520 is 1991; *Pacific Landmark Hotel, Ltd. v. Marriott Hotels, Inc.*, 19 Cal.App.4th 615 is 1993; *Government Guarantee Fund v. Hyatt Corp.*, 95 F.3d 291 is 1996; and the latest of these very few cases, *Woodley Road Joint Venture v. IIT Sheraton Corp.*, 1998 Lexis 22825, decided in 1998 (the “Woolley Cases”). The owner’s lawyers can be expected to argue that owner need not pay damages to the manager.

Why have we seen no new *Woolley* case in more than 10 years? For one, HMAs themselves have become increasingly more sophisticated during the last 10 years—the time within which *Woolley* has seemed to disappear—and have become the dominant form for controlling hotel assets with more than 200 rooms. Since the 1990s, when the last of the *Woolley* line of cases was decided, the number of management contracts for the top management companies has increased more than three times, according to *The Negotiation and Administration of Hotel Management Contracts*. The absence of further *Woolley* decisions and the increased reliance upon hotel management agreements reflects the industry’s recognition of the substantial interests hotel management companies have in the properties they manage.

Not traditional agencies

Modern Hotel Management Agreements are not in any sense traditional agency relationships.

An essential component of a principal-agent relationship is the right of control (as found in *Woolley v. Embassy Suites, Inc.*, 227 Cal.App.3d 1520, 1531 (1991)). Under many modern HMAs for managed upper-upscale and luxury hotels, the manager has the exclusive responsibility and full control and discretion in the operation, direction, management and supervision of the hotel and its staff, for a term extending upwards of 80 years in some cases. The manager will often have the sole right to do all things and take all necessary

action for the operation of the hotel, including all labor relations functions. The owner will be afforded certain limited rights of approval, but never a right of discretion or control over any aspects of hotel operations whatsoever. For example, the manager might be required to submit an Annual Plan for owner's approval. But if the owner disapproves the Annual Plan, an arbitration panel will decide the matter, not the owner unilaterally. Most HMAs provide that the owner may only terminate the HMA upon the occurrence of specifically enumerated events and generally only upon giving the manager notice and an opportunity to cure. The manager has the right to control all operations in order to ensure that its quality and brand standards are met—and some agreements specifically provide that such control is all to manager's sole benefit.

Some HMAs are accompanied by a companion License Agreement governing trademarks and intellectual property. Other HMAs embody such provisions in the HMA itself. Under these provisions, owners may not take any action that may preclude the hotel from being operated in accordance with the licensor's (manager's) policies and procedures. Under licensing provisions, the owner becomes the manager's agent in the advancement and protection of the manager's brand through the operation of the hotel. In terms of control and fiduciary responsibilities, the owner is as much the manager's agent as the manager is agent of the owner.

A modern HMA will restrict an owner's right to transfer or mortgage the property, imposing limitations on transferee identity. Generally, the owner's granting of a mortgage is conditioned on the mortgagee entering into a Subordination and Non-Disturbance Agreement, typically a recorded agreement, with the manager insuring that the HMA will survive a foreclosure or a bankruptcy of the owner.

Interests coupled to the agency

Even under a traditional (agency for the care of a cow) analysis, modern hotel managers have protectable interests coupled to their agencies that should prevent owners from ejecting them from a hotel without any contractual basis:

- First and foremost, all modern courts recognize that intellectual property is a protectable property interest—whatever blunders the Woolley Cases might have had to something so obvious. A clear example of this is the Starwood Hotels & Resorts Worldwide case against Hilton Worldwide relating to the alleged theft by [Hilton](#) and certain Hilton executives (former [Starwood](#) executives) of trade secrets and other intellectual property of Starwood relating to its W hotel brand.²
- A HMA often grants the manager the right of quiet enjoyment that bars the owner from unilaterally terminating the HMA. Quiet enjoyment developed in the context of leases in order to prevent the fee owner from exercising the right it had to enter property even though it was subject to a lease.³ Over time, the covenant came to be implied in every lease in California.⁴ In commercial cases, the covenant can be waived or modified by agreement.⁵ Understanding the history of the law in this area makes plain that entities like hotel managers can negotiate the scope of the covenant of quiet enjoyment to secure for themselves an enhanced right to possess the property undisturbed by the owner under what is a unique and modern commercial construct. By granting a manager the right to quiet enjoyment of a hotel, owners surrender the ability to unilaterally remove the manager and guarantee the manager's right to remain in possession of the hotel for the duration of the HMA.
- A License Agreement, whether separate or embodied within the HMA, creates a cross-agency between owner and manager. All of the owner's use of manager's marks and IP will inure to the benefit of licensor (manager). The owner then

becomes an agent of the manager, with fiduciary duties to the manager to protect the substantial value and goodwill of the manager's name, reputation and intellectual property.

- The SNDA and any building restrictions in the HMA are property interests.⁶

The *Woolley* Cases, if a litany, are a prayer in a dead tongue.

²*Starwood Hotels & Resorts Worldwide, Inc., v. Hilton Hotels Corporation*, 09 CIV 3862 (S.D.N.Y. Apr. 16, 2009). See *In re Owens Corning*, 419 F.3d 195, 201 n.3 (3d Cir. 2005) (noting that Owens Corning Corporation's intellectual property assets were valued at over \$500 million); *U.S. v. Lyons*, 992 F.2d 1029, 1033 (10th Cir. 1993) (“the intangible intellectual property value of goods may vastly exceed the intrinsic worth of accompanying tangible goods”).

³*Petroleum Collections Inc. v. Swords*, 48 Cal.App.3d 841, 846 (1975) (covenant of quiet enjoyment “insulates the tenant against any act or omission on the part of the landlord, or anyone claiming under him, which interferes with a tenant’s right to use and enjoy the premises for the purposes contemplated by the tenancy”); ROBERT S. SCHOSHINSKI, *AMERICAN LAW OF LANDLORD AND TENANT* 94 (1980) (quiet enjoyment was “[i]nitially developed as a means of protecting the tenant against ouster by a superior title holder.”)

⁴See CAL. CIV. CODE § 1927 (2009).

⁵*Lee v. Placer Title Co.*, 28 Cal.App.4th 503, 513 (1994).

⁶See *Southern Cal. Edison Co. v. Bourgerie*, 507 P.2d 964, 965 (Cal. 1973) (“[W]e conclude that whether the condemner is a public or private entity, a building restriction constitutes ‘property’ within the meaning of article I, section 14 [of the California Constitution].”)

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