

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

REGAL TRAVEL, INC. : CIVIL ACTION  
 :  
 v. :  
 :  
 DOUBLETREE GUEST SUITES, :  
 DANA POINT, et al. : NO. 97-7046

MEMORANDUM ORDER

Plaintiff asserts a claim for anticipatory breach of contract arising from defendant's alleged attempt to modify the terms of confirmed hotel room reservations at the Doubletree Guest Suites in Dana Point, California for the 1998 Super Bowl weekend. Plaintiff seeks injunctive and declaratory relief.

Assuming to be true the allegations in plaintiff's complaint, the pertinent facts are as follow.

Plaintiff is a travel agency that specializes in selling ticket and travel packages for major sporting events. Defendant Doubletree Hotels Corp. a/k/a Doubletree of Phoenix, Inc. ("Doubletree Hotels Corp.") operates and manages the Doubletree Guest Suites Dana Point, a hotel located in Orange County, California. Defendant Felcor Inc., a/k/a Felcor/CSS Hotels, L.L.C. ("Felcor") owns the property at the Doubletree Guest Suites Dana Point. Defendant Laura Gray works as a sales manager at the hotel.

On February 20 and February 21, 1997, plaintiff reserved fifty-five suites at the hotel now known as the Doubletree Guest Suites Dana Point for the three nights of January 23 through January 25, 1998, surrounding the Super Bowl. When plaintiff made these reservations, the hotel was known as the Dana Point Hilton All Suites. Hilton Reservations Worldwide in Texas acted as the booking agent for the hotel.

Plaintiff had the option of choosing oceanfront rooms at a rate of \$95 per night plus tax or non-oceanfront rooms at a rate of \$85 per night plus tax. Plaintiff orally reserved oceanfront rooms. Plaintiff also received written confirmation of the reservations which did not specify oceanfront rooms but did cite a rate of \$95.<sup>1</sup> Plaintiff and Hilton discussed deposit and guarantee requirements. It was agreed that the deposit would be by credit card for one night per suite refundable until January 21, 1998.

While not expressly alleged, it appears from exhibits appended to plaintiff's complaint that each suite has been committed to a Regal customer. Plaintiff's commission is ten percent.

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<sup>1</sup> Plaintiff alleges that such confirmation was sent by telefax "attached hereto as Exhibit A." It appears from that exhibit that written confirmation was provided via Hilton on October 30, 1997.

On May 28, 1997, defendant Doubletree Hotels Corp. assumed the management and operation of the hotel. In July 1997, plaintiff's agents inspected the accommodations reserved at the now Doubletree Guest Suites and were shown only oceanfront suites.

On October 28, 1997, Ms. Gray telefaxed to plaintiff a Letter of Agreement which modified terms of the reservations that had been earlier confirmed. The minimum length of stay was increased from three to four nights, the suites were identified as non-oceanfront without a corresponding \$10 reduction in price, the non-refundable deposit due date was moved from January 21, 1998 to November 5, 1997 and the deposit was increased from a third to half the cost of the accommodations.

When plaintiff objected to the modified terms, Ms. Gray telefaxed a revised agreement which returned the minimum length of stay to three nights and moved the deposit due date to November 7, 1997. On October 29, 1997, Ms. Gray agreed to extend the deposit due date to November 19, 1997.

On November 18, 1997, plaintiff filed this action effectively seeking a court order directing defendants to supply plaintiffs with fifty-five oceanfront suites for the nights of January 23 through January 25, 1998.

Subject matter jurisdiction is predicated on diversity of citizenship. See 28 U.S.C. § 1331.<sup>2</sup>

"Federal courts have an ever-present obligation to satisfy themselves of their subject matter jurisdiction and to decide the issue sua sponte." Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995). See also American Policyholders Ins. v. Nyaol Products, 989 F.2d 1256, 1258 (1st Cir. 1993) ("a federal court is under an unflagging duty to ensure that it has jurisdiction"); Steel Valley Authority v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987) ("lack of subject matter jurisdiction voids any decree entered in a federal court"); Wisconsin Knife Works v. National Metal Crafters, 781 F.2d 1280, 1282 (7th Cir. 1986) ("[t]he first thing a federal judge should do when a complaint is filed is check to see that federal jurisdiction is properly alleged").

Plaintiff has failed to specify damages exceeding \$75,000. See 28 U.S.C. § 1332(a).<sup>3</sup>

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<sup>2</sup> Plaintiff is a Pennsylvania corporation with its principle place of business in King of Prussia. Defendant Felcor is a Delaware corporation with its principle place of business in Irving, Texas. Defendant Doubletree Hotels Corp. is a Delaware corporation with its principle place of business in Phoenix. Plaintiff fails to allege the citizenship of defendant Gray. Plaintiff does allege that Ms. Gray works in California and the court will infer for present purposes that she is a citizen of California.

<sup>3</sup> That in plaintiff's words "[t]his action involves interstate commerce" does not confer subject matter jurisdiction.

The total price of fifty-five hotel rooms for three nights at \$95 is \$15,675. Even if the court were to assume despite the absence of any supporting allegation that all of plaintiff's clients will refuse to stay at the Doubletree Guest Suites Dana Point to attend the Super Bowl without an oceanfront room or \$10 per night rebate, plaintiff's lost commissions would be \$1,567.50 at the ten percent it alleges it would receive.

Plaintiff does not allege that it is incapable of furnishing an \$8,621.25 deposit two months earlier than originally required. Assuming that plaintiff would lose two months of interest on such amount or be forced to pay interest to charge or borrow the funds, the resulting loss would be negligible. At an annual interest rate of 20%, exorbitant even for credit card issuers, the loss would be less than \$150.

Plaintiff also alleges that it "will be forced to breach contracts" it made for bus service and entertainment for its customers "if the reservations with Defendants is [sic] lost." Again this assumes the customers' unwillingness to attend the Super Bowl for \$95 per night without an oceanfront room or plaintiff's inability to post a \$8,621.25 deposit, none of which is alleged.<sup>4</sup> Moreover, plaintiff does not allege the amount of any loss which would be incurred from a breach of its ancillary

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<sup>4</sup> Plaintiff does not allege that the customers were in fact promised oceanfront rooms.

contracts.

Plaintiff asserts that because there "is only one Super Bowl for this season," the loss to their customers "is not replaceable" and likely to engender a loss of goodwill. Again this assumes plaintiff's inability to post the required deposit or the intention of customers to forego the Super Bowl trip if their accommodations do not front on the Pacific Ocean.<sup>5</sup>

In any event, the factual allegations in the complaint do not show that the amount in controversy exceeds \$75,000. The court may not exercise jurisdiction.

Because it is conceivable that plaintiff could in good faith and consistent with the strictures of Fed. R. Civ. P. 11 specify damages in excess of \$75,000 and, in any event, should be free to assert a claim in an appropriate state court, the complaint will be dismissed without prejudice.

The court cannot help noting that in whatever court litigation over this dispute may ensue, the cost and other burdens to the parties would almost certainly exceed the stakes involved. Perhaps defendants can find at least some oceanfront suites to commit to plaintiff and provide the others at \$85 rather than \$95. If it is a serious business concern, perhaps plaintiff can deposit \$8,621.25 now rather than forcing

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<sup>5</sup> Assuming that these customers prefer to attend the Super Bowl and look to plaintiff for the \$10 difference in room rates, this would amount to \$1,650 in potential damages.

defendants to risk having empty and otherwise eminently  
saleable accommodations four days before the Super Bowl.

**ACCORDINGLY**, this                    day of November, 1997, **IT IS**  
**HEREBY ORDERED** that the complaint in this action is **DISMISSED**  
without prejudice.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**