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New York Court Holds Hotel Management Agreement Enforceable by Specific Performance

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In a significant development for hotel owners and operators, a New York state court judge recently held that a hotel management agreement ("HMA") was enforceable by specific performance, enabling the operator of the Intercontinental New York Times Square Hotel to continue managing the hotel despite the owner's attempted termination.

In *IHG Management (Maryland) LLC v. West 44th Street Hotel LLC*, Index No. 655914/2017 (Sup. Ct. N.Y. Cty. Apr.10, 2018), addressing an issue of first impression, the court held that a section of the HMA providing that it would not be terminable at will was enforceable under article 23 of the Maryland Commercial Law. That statute expressly provides for specific performance of HMAs, notwithstanding common law jurisprudence under which some HMAs have been held to be personal services contracts that cannot be enforced by specific performance. Emphasizing the need to look closely at each HMA's terms, the court concluded that the agreement was not a personal services contract because it requires the owner to participate in operating the hotel, provides it greater rights than in HMAs that have been held to be personal services contracts, and states that it is an agency agreement. These facts, together with the statute, sufficed in the court's view to remove the HMA from the scope of precedents in which hotel operators have been denied specific performance. The court therefore granted the operator a preliminary injunction barring the owner from terminating the agreement.

For some time, due to the Maryland statute, hotel operators interested in ensuring security of tenure have had an incentive to obtain agreements that require application of Maryland law, and owners have had the opposite incentive. The *IHG* case apparently is the first decision confirming those incentives. An appeal has been noticed.

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