SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART 53

Justice

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IGC 444 PARK LLC,IN GOOD COMPANY HG D/B/A IN GOOD COMPANY HOSPITALITY,

Plaintiff,

- v -

444 PAS RESTAURANT ASSOICATES LLC,DAVID MOINIAN, MOIN DEVELOPMENT CORP., JP MORGAN CHASE

Defendant.

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INDEX NO. 656304/2020

POST-TRIAL DECISION and ORDER

This case was tried without a jury on June 13, 2025. As discussed below, IGC 444 Park, LLC (**IGC 444**) and In Good Company HG d/b/a In Good Company Hospitality (**IGC**, and together with IGC 444, collectively, hereinafter, the **Plaintiffs**) proved by clear and convincing evidence that 444 PAS Restaurant Associates LLC (**444 PAS**) breached the Food & Beverage Management Agreement (the **Management Agreement**; PX A) no fewer than three times. They also proved by clear and convincing evidence that David Moinian made a *per se* defamatory statement about IGC 444 to others to cause IGC 444 reputational harm and embarrassment such that an award in the amount of $25,000.00 in actual damages and $1.00 in punitive damages is appropriate.

FACTUAL BACKGROUND

By way of background, this action stems from a dispute between the Plaintiffs and 444 PAS, a foreign corporation licensed to do business in New York arising primarily out of a Management Agreement, dated July 16, 2018 between 444 PAS and IGC 444 pursuant to which 444 PAS who

OTHER ORDER – NON-MOTION

operated the Mondrian Park Avenue Hotel (the **Hotel)** located at 444 Park Avenue South, NY NY hired IGC to run the food and beverage service (the **Service**) of the Hotel. Mr. Moinian is the Managing Member of 444 PAS. On August 1, 2018, pursuant to the terms of the Management Agreement, IGC 444 actually began managing the Service.

On January 21, 2019, IGC 444 served 444 PAS and Mr. Moinian with a notice of default (PX B) indicating that 444 PAS had failed to (i) pay the Hotel's vendors, (ii) pay IGC 444 a 1% late fee on the outstanding invoices, (iii) maintain a working capital balance of $150,000.00 in the operating account, (iv) provide IGC with proof of insurance policies in accordance with the Managing Agreement, (v) add IGC 444 to the liquor licensees and keep IGC 444 apprised of policy changes relating to the Services, (vi) maintain the Hotel and food and beverage facilities, and (vii) pay the Management Fee, including late fees. Subsequently, on July 13, 2020, IGC 444 served 444 PAS and Mr. Moinian with a second notice of default (PX H).

Ultimately, the Plaintiffs sued 444 PAS, Mr. Moinian, and Moin Development Corp. The Plaintiffs claim that 444 PAS and Mr. Moinian committed multiple breaches of the Management Agreement, resulting in various events of default which they failed to cure. They also claim that Mr. Moinan defamed them by besmirching their reputation in their profession to others and by accusing them of taking kick-backs.

Although they had previously asserted additional causes of action, the Plaintiffs confirmed at trial that they were voluntarily dismissing all of their causes of

action sounding in breach of contract and defamation. The Plaintiffs claim that they are owed (i) exemplary damages, (ii) termination fees, (iii) punitive damages, and (iv) attorney's fees.

At trial, the Plaintiffs adduced Jeffrey Brosi. one of IGC 444's principals, as a witness. The defendants adduced Mr. Moinian as a witness.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Following trial, the Court makes the following findings of fact and comes to the following conclusions of law:

Breach of Contract

1. To prevail upon a cause of action for breach of contract, a plaintiff must prove that: (i) a contract exists; (ii) plaintiff performed in accordance with the contract; (iii) the defendant breached its contractual obligations; and (iv) the defendant's breach resulted in damages (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]).

2. It is undisputed that, on July 16, 2018, IGC 444 and 444 PAS entered into the Management Agreement.

First Breach of Contract

3. Section 10(f) of the Management Agreement requires the 444 PAS to maintain $150,000 working capital in the Operating Account:

> (f) Tenant shall ensure that a working capital balance (the "Working Capital Amount") equal to One Hundred and Fifty Thousand Dollars ($150,000.00) is

> maintained at all times during the Term in the Operating Account, which amount shall be considered the sole property of Tenant unless such amount is required to pay any outstanding debts or liabilities of the Food and Beverage Facilities, in which case such amount shall be promptly spent in satisfaction of any such debt and/or liability. In the event that the Working Capital Amount falls below One Hundred and Fifty Thousand Dollars ($150,000.00) sum (which deposit amount shall not be considered an Operating Expense hereunder).

(PX A § 10[f]).

4. Mr. Brosi credibly testified that 444 PAS breached the Management Agreement by never fully funded its obligation to maintain $150,000.00 in the Operating Account.

Second Breach of Contract

5. Section 10(c) of the Management Agreement required 444 PAS to pay Operating Expenses:

> (c) Tenant shall sign and submit any and a checks and invoices prepared by Manager and submitted to Tenant for payment of expenses relating to the operation of the Food and Beverage Facilities out of the Operating Account within five (5) days of Manager's presentation of such check and/or invoice to Tenant. In the event that Tenant does not sign and submit any such check or invoice within such five (5) day period, Tenant shall pay to Manager a late fee equal to one percent (1%) of the total value of the check or invoice in question, which cost shall be absorbed and paid solely by Tenant, and shall not be considered an Operating Expense for purposes of this Agreement. Notwithstanding, no late fee shall be due Manager if Tenant reasonably objects to the payment of any expense or invoice relating to the operation of the Food and Beverage Facilities out of the Operating Account.

(PX A § 10[c]).

6. At trial, IGC 444 adduced the following invoices: (i) Management Fee invoices (PX C), pursuant to Section 21 of the Management Agreement (PX A § 21[a]-[b]), (ii) marketing invoices (PX D), (iii) event team invoices (PX E), (iv) bookkeeping invoices (PX F), and (v) reimbursement invoices (PX G).

7. Mr. Brosi credibly testified that aside from certain amounts paid by JP Morgan, a balance of (i) $62,716.53 in Management Fee invoices, (ii) $10,500.00 in marketing invoices, (iii) $8,000.00 in bookkeeping invoices, and (iv) $7,362.09 in reimbursement invoices remain due and outstanding.

8. On January 21, 2019, IGC 444 demanded payment by way of notice of default:

> Dear 444 Restaurant Associates LLC:
>
> As you are aware, 444 PAS Restaurant Associates LLC, as Tenant and IGC 444 Park LLC as, Mnager entered into a Food & Beverage Management Agreement on July 16, 2018 concerning the premise located 444 Park Avenue South, New York, New York (Mondrian Park Avenue Hotel).
>
> TAKE NOTICE that the Manager hereby provides you with notice that you are in default of Paragraphs 10(c), 10(d), 10(f), 14(a-c), 15(e), 15(f), 15(h), 15(i), 21(a), 21(b) and 21(c) of the July 16, 2018 Management Agreement. The Tenant has failed to pay the vendors for the premises, who are currently owed more than Two Hundred and Fifty Thousand Dollars ($250,000.00). tenant has been provided by Manager with checks to pay the vendors and have failed to do so. Additionally, Tenant has failed to pay Manager a 1% late fee on the utstanding invoices. Significantly, Tenant has failed to ensure that a working capital balance of One Hundred and Fifty Thousand Dollars ($150,000.00) is maintained in the operating account. The account is currently overdrawn.
>
> Tenant has failed to provide Manager with proof that the required insurance policies purusuant to the agreement are in effect and that the Manager has been added as an additional insured under the policies. Tnenat has failed to add Manager as a co-licensee to the Hotel's liquor licensees issued to Tenant and/or Owner, as the case may be by the New York State Liquor Authority.

Additionally, the Tenant has failed to keep the Manager apprised of policy changes with the Hotel which are directly affecting the Mangers ability to manage the Food and Beverage Facilities.

Tenant has failed to properly maintain the Hotel and Food and Beverage Facilities as required by the Management Agreement. There have been on going issues with the building elevators and plumbing systems which have not ben addressed by the Tenant. Lastly, Tenant has failed make payments of the agreed upon Management Fee including late fees.

In the event Tenant fails to cure all breaches, defaults and defects, the Manager will avail themselves of all their termination Rights in Paragraph 23 on the July 16, 2018 Management Agreement.

Please be guided accordingly,

Manager,

IGC 444 Park LLC

(PX B).

9. In its response to IGC 444's Notice to Admit (PX M), 444 PAS admitted that the aforementioned invoices are true and accurate copies of the invoices submitted by IGC 444 and that 444 PAS has failed to issue payment for the invoices.

Third Breach of Contract

10. Section 23(a)(ii) of the Management Agreement provides:

(a) Tenant shall have the right to terminate this Agreement as follows:

. . . .

(iii) At any time during the Term upon at least sixty (60) days' advance written notice to Manager, provided that in such case, Tenant shall pay to Manager a termination fee of One Million Dollars ($1.000,000.00), in addition to any other amounts owed to Manager hereunder.

(PX A § 23[a][iii]).

11. Mr. Brosi credibly testified that IGC 444 was not given 60 days' advance notice of termination pursuant to Section 23(a)(iii) and is owed the $1 million Termination Fee.

12. Mr. Brosi also credibly testified that as a result of the first two breaches, IGC 444 was unable to offer certain menu items and was prevented from positioning these various hotel restaurant establishments successfully.

13. Thus, IGC 444 may submit judgment as against 444 PAS (i) for the unpaid invoices referenced above together with statutory interest running from the date the amounts were due and (ii) the $1 million Termination Fee together with statutory interest running from 60 days from the date that IGC 444 was terminated without the required notice (and payment).

14. Mr. Moinan's testimony that 444 PAS was underperforming was both not credible and also reflected an expectation not reflected in the unambiguous language of the Management Agreement. To wit, IGC 444 did not guarantee any level of revenue. Additionally, no credible contemporaneous evidence was adduced of dissatisfaction as to IGC 444 other than that occasioned by 444 PAS's failure to pay the third party vendors and Operating Expenses which was consistent with Mr. Brosi's testimony that his company could not provide many of the menu items. Additionally, the fact that JP Morgan paid some of the amounts due IGC 444, and the fact that there were no

documents adduced indicating any dissatisfaction with IGC 444 by JP Morgan, undermines the narrative that JP Morgan was dissatisfied with IGC 444 and further rendered Mr. Moinan's testimony less credible.

15. However, Mr. Moinan himself is not liable in his personal capacity for the corporate defaults of the Management Agreement. In order to pierce the corporate veil, a plaintiff must show that (i) the owners exercised complete domination of the corporation in respect to the transaction at issue. and (ii) such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury (*Morris v New York State Dept. of Taxation and Finance*, 82 NY2d 135, 141 [1993]). Mr. Moinan did not sign the Management Agreement personally. He did so on behalf of 444 PAS and IGC 444 failed to adduce any legal basis to pierce the corporate veil as against Mr. Moinan in respect of the breaches of contract.

Defamation

1. The elements of defamation are "a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and, it must either cause special harm or constitute defamation per se" (*Dillon v City of New York*, 261 AD2d 34, 37-38 [1st Dept 1999]).

2. Absent special damages, the defamation claim must fall under one of the following four categories of defamation per se: (i) charging plaintiff with a serious crime, (ii) statements that tend to injure another in his or her trade, business, or profession, (iii) statement that

plaintiff has a loathsome disease, or (iv) statement that imputes unchastity to a woman (*Liberman v Gelstein*, 80 NY2d 429, 435 [1992]).

3. "[O]nly statements alleging facts can properly be the subject of a defamation action" (*Gross v New York Times Co.*, NY2d 146, 152-153 [1993]). "Whether a particular statement constitutes an opinion or an objective fact is a question of law" (*Mann v Abel*, 10 NY3d 271, 276 [2008]). The court must consider (i) "whether the specific language has a precise meaning that is readily understood," (ii) "whether the statements are capable of being proven true or false", and (iii) "whether the context in which the statement appears signals to readers or listeners that the statement is likely to be opinion, not fact" (*Silverman v Daily News, L.P.*, 129 AD3d 1054, 1055 [2015]).

4. The statements made by Mr. Moinan in his email, dated July 13, 2020 (PX I), were made because, as Mr. Moinan himself testified, he was angry. The statements were not made for a legitimate purpose and were made in response to a simple request for monies owed. Mr. Moinan's testimony that he merely intended to inspire an investigation was simply not credible, and he adduced no documents in support of his assertion. Mr. Moinan did not make the statements to his attorneys, nor did he exclude third parties from the communications, nor did he indicate to Mr. Brosi that an investigation was being initiated due to billing issues. He did none of that. Instead, he just acted out and in a manner designed to embarrass and besmirch the reputation of IGC 444 and Mr. Brosi.

5. For completeness the Court notes that Mr. Moinan testified that he knew and understood the restaurant industry. He understood the practice of billing holds and it simply was not credible than he relied on statements by his manager that IGC 444 was stealing without any inquiry whatsoever and would simply rely on others to investigate this claim which he acknowledged he never even followed up on. Indeed, the record is entirely bereft of any evidence of either an investigation conducted on Mr. Moinan's part, or any financial wrongdoing committed on IGC 444's part.

6. As such, the statements that Mr. Moinan published to IGC 444's competitors and lenders were angry and retaliatory and at bottom nothing more than an attempt to put off demand for amounts due by attempting to embarrass IGC 444 with scurrilous remarks to others.

7. Mr. Moinan's conduct in adding additional third-party recipients to the email chain, accusing Mr. Brosi and IGC 444 of committing a serious crime, and making disparaging remarks that tend to injure another in his business and profession, constituted defamation *per se*.

8. Given the timing and manner in which Mr. Moinan made the statements at issue, and notwithstanding IGC 444's request for $500,000.00 in actual damages and $250,000.00 in punitive damages, an award of $25,000.00 in actual damages and $1.00 in punitive damages is appropriate as against Mr. Moinan in his personal capacity.

9. However, and although a closer call, IGC 444 is not entitled to a judgment as against 444 PAS on its defamation claim. Although Mr. Moinan was trying to stiff arm the Plaintiffs as to their legitimate claim for money owed by 444 PAS and not by him personally under the Management Agreement, Mr. Moinan's statements can not be said to have been made by him in his official capacity as an officer of 444 PAS, nor were they made in the conduct of the normal course of business and they could not be reasonably viewed to be a corporate response.

10. Thus, IGC 444 may submit judgment as against Mr. Moinan individually in accordance with the above in respect of its claim for defamation.

Accordingly, it is hereby

ORDERED and ADJUDGED that IGC 444 is entitled to judgment on its breach of contract cause of action as against 444 PAS; and it is further

ORDERED and ADJUDGED that IGC 444 is entitled to judgment on its defamation cause of action as against Mr. Moinan; and it is further

ORDERED and ADJUDGED that Mr. Moinan is liable to IGC 444 in the amount of $25,000.00 in actual damages and $1.00 in punitive damages; and it is further

ORDERED that IGC 444 may submit judgment on notice for the amounts due under the Management Agreement, together with contractual late fees and statutory pre-judgment interest, in accordance with the rulings set forth herein.

DATE: 6/18/2025

ANDREW BORROK, JSC

Check One: [X] Case Disposed [ ] Non-Final Disposition

Check if Appropriate: [ ] Other (Specify _____)