

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

COUNTRY INNS & SUITES BY	)	CASE NO. _____
CARLSON, INC., a Minnesota	)	
corporation,	)	
	)	
Plaintiff.	)	
	)	
vs.	)	
	)	COMPLAINT
FOURSTAR INVESTMENT GROUP,	)	
INC., a Florida corporation, and	)	
MOHAMMED M. RAHMAN, a Florida	)	
resident,	)	
	)	
Defendants.	)	

Plaintiff Country Inns & Suites By Carlson, Inc. (“Country”), as and for its Complaint against Defendants Fourstar Investment Group, Inc. and Mohammed M. Rahman (collectively “Defendants”), states and alleges as follows:

1. Plaintiff Country Inns & Suites By Carlson, Inc. (“Country”) is a corporation organized under the laws of the state of Minnesota with its principal place of business located at 701 Carlson Parkway, Minnetonka, Minnesota.

2. Country is the franchisor of the Country Inn & Suites By Carlson® hotel system. Country Inn & Suites By Carlson® system hotels (“System Hotels”) operate under license agreements with Country.

3. Defendant Fourstar Investment Group, Inc. (“Fourstar”) is a corporation organized under the laws of the state of Florida with its principal place of business located at 13056 Vale Wood Drive, Naples, Florida 34119.

4. Defendant Mohammed M. Rahman (“Rahman”) is a resident and citizen of the state of Florida California who resides at 13056 Vale Wood Drive, Naples, Florida 34119.

JURISDICTION AND VENUE

5. This action involves the breach of a License Agreement between Country and Fourstar, breach of a Termination Agreement between Country and Fourstar, and the breach of a Personal Guaranty of License Agreement (“Personal Guaranty”) executed by Rahman.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.

7. This Court has personal jurisdiction over Fourstar because it voluntarily consented to personal jurisdiction in the state and Federal courts of Minnesota pursuant to Article 25.4 of the parties’ License Agreement and Paragraph 9 of the Termination Agreement, as amended. This Court has personal jurisdiction over Rahman because he voluntarily consented to personal jurisdiction in the state and Federal courts of Minnesota through the Personal Guaranty. This Court also has personal jurisdiction over Defendants because they have purposefully availed themselves of the privilege of doing business in Minnesota, they have intentionally done business in Minnesota, enjoying the privileges and benefits of Minnesota’s laws and regulations, and purposefully directed their actions toward Minnesota.

8. Venue is proper in this District because Fourstar has voluntarily consented to venue in Hennepin County, Minnesota pursuant to Article 25.4 of the parties' License Agreement and Paragraph 9 of the Termination Agreement, as amended, and because Rahman voluntarily consented to venue in Hennepin County, Minnesota through the Personal Guaranty. Venue is also proper in this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims herein occurred in this District.

FACTUAL BACKGROUND

A. The Country Inn & Suites By Carlson® Franchise System

9. Country is a well-known licensor of quality guest lodging systems and is a leader in the mid-scale, limited service lodging industry. System Hotels offer consistently high quality accommodations and personal, warm hospitality.

10. Country is the owner of the Country Inn & Suites By Carlson® trademark and other trademarks, service marks, and trade dress (the "CIS Marks").

11. Currently, over 400 franchised System Hotels exist and operate throughout the United States and abroad. Country Inn & Suites By Carlson® franchisees enjoy a license from Country that allows them to use the CIS Marks and business system in connection with the operation of System Hotels.

12. As a result of Country's and its parents' and affiliates' efforts, the CIS Marks have become associated in the minds of the consuming public with quality hotel services emanating from Country.

B. The License Agreement and Personal Guaranty

13. Country entered into a License Agreement with Fourstar effective December 22, 2006. The License Agreement granted Fourstar the license and right to construct, own, and operate a Country Inn & Suites By Carlson® System Hotel to be located at 4290 Boatways Road, Fort Myers, Florida 33905 (the “Hotel”) for a period of 15 years. A true and correct copy of the License Agreement, with amendments, is attached as Exhibit A.

14. At or about the same time that Fourstar and Country executed the License Agreement, Rahman entered into a Personal Guaranty. Pursuant to the Personal Guaranty, Rahman individually guaranteed to Country that he would make full and prompt payment to Country of all fees, charges, payments, and amounts due or payable to Country and its affiliates that arise out of or relate to the License Agreement. Rahman also agreed that upon termination or expiration of the License Agreement, he would timely perform all of Fourstar’s post-termination obligations. A true and correct copy of the Personal Guaranty is attached as Exhibit B.

15. Pursuant to Article 1.1 of the License Agreement, the Construction Commencement Date for the Hotel was required to occur on or before September 30, 2007, and Defendants were required to diligently pursue the Construction of the Hotel to completion so that the Hotel would open for business on or before June 30, 2008. In addition, the Hotel was required to have no less than 87 guestrooms available for rental to guests.

16. At the request of Defendants, the Construction Commencement Date for the Hotel was extended by Country on seven different occasions, with the final extension being granted until December 31, 2010, as documented in the Second Amendment to License Agreement, a copy of which is attached to the License Agreement.

17. Article 25.28 of the License Agreement defines “Construction Commencement Date” as “[t]he date by which Licensee must begin the Construction of the Hotel. For new construction, ‘begin’ means that the building slab has been completed and framing has started. For the remodeling or renovation of an existing hotel, ‘begin’ means the removal of the FF&E, and the commencement of substantial demolition.”

18. Article 25.28 of the License Agreement defines “Construction” as “[a]ll activities and plans, specifications, drawings, scheme boards and other information with respect to the planning, design, construction, furnishing, and equipping of the Hotel, including the FF&E, OS&E and other interior finishes.”

19. Pursuant to Article 17.2(e) of the License Agreement, Defendants agreed that “failure to commence either Construction of the Hotel by the Construction Commencement Date, or Renovation of the Hotel by the Renovation Commencement Date, or open the Hotel by the date required in this Agreement, without an extension being provided by Country,” is a material default by Defendants that entitles Country to terminate the License Agreement upon notice to Fourstar subject to the right to cure.

20. Pursuant to Article 17.4 of the License Agreement, Defendants acknowledged that if the License Agreement was terminated because of Fourstar’s default, the actual damages that Country would suffer for the loss of prospective fees and

other amounts payable to Country under Article 5 would be difficult if not impossible to ascertain. Thus, Article 17.4 goes on to state that if the License Agreement is terminated because of Fourstar's default:

Licensee within 10 days of such termination will pay to Country as liquidated damages and not as a penalty a reasonable estimate of the probable damages that Country would suffer for the loss of prospective fees and other amounts payable under Article 5, calculated as follows: (i) three times the Royalty and Marketing Fees payable to Country under Sections 5.2 and 5.3 for the 12 months of the Hotel's Operation as a System Hotel immediately preceding the date of termination of this Agreement; or (ii) if the Hotel opens as a System Hotel but has not been Operating as a System Hotel for 12 months before the date of such termination, 36 multiplied by the average monthly Royalty and Marketing Fees payable to Country under Sections 5.2 and 5.3 through the date of termination; or (iii) if the Hotel fails to open as a System Hotel, \$1,000 multiplied by the number of guestrooms required in Section 1.1.

21. The specific calculation used to determine the amount of liquidated damages in this case is set forth at Article 17.4(iii). Because the Hotel failed to open as a System Hotel, the figure of \$1,000 is multiplied by 87—the number of guest rooms required in Section 1.1, resulting in liquidated damages of \$87,000.00.

22. Pursuant to Article 19.1(a) of the License Agreement, Defendants agreed that, upon termination of the Agreement, they would immediately:

Pay all amounts due and owing to Country and its Affiliates and submit any missing Reports to Country or its Affiliates, and deposit with Country an amount reasonably estimated by Country that will be sufficient to cover the amounts that will become due and owing after the termination, expiration or rescission date, attributable to the period prior to such date.

23. Pursuant Article 25.13 of the License Agreement, Defendants agreed that all reasonable and necessary costs and expenses, including attorneys' fees, incurred by

Country in enforcing any provisions of the License Agreement will be paid to the prevailing party in any such action.

C. The Termination Agreement

24. Defendants failed to commence construction of the Hotel by December 31, 2010, as required by the Second Amendment to License Agreement.

25. Because Defendants were unable to commence construction of the Hotel by the contractually agreed upon date, Country and Fourstar entered into a written Termination Agreement with an effective date of March 15, 2011, pursuant to which Fourstar's rights under the License Agreement were terminated effective that same day. A true and correct copy of the Termination Agreement is attached as Exhibit C.

26. Pursuant to paragraph 4 of the Termination Agreement, Fourstar agreed that it owed Country liquidated damages in the amount of \$87,000.00, as required by Section 17.4 of the License Agreement. The parties agreed, however, that if Fourstar or a Substitute Licensee (as that term is defined in the Termination Agreement) signed a Substitute License Agreement (as that term is defined in the Termination Agreement) on or before September 30, 2012 (the "Substitution Date"), then Country would waive its right to the liquidated damages. The parties further agreed that if neither Fourstar nor a Substitute Licensee signed a Substitute License Agreement before the Substitution Date, then Fourstar would pay the agreed upon liquidated damages in the amount of \$87,000.00 within 10 days of the Substitution Date.

27. By mutual agreement between the parties, and at the request of Defendants, the Substitution Date was extended on two separate occasions, with the final extension

being granted until September 30, 2014. True and correct copies of the First Amendment to Termination Agreement and Second Amendment to Termination Agreement are attached as Exhibits D and E.

28. Neither Fourstar nor a Substitute Licensee signed a Substitute License Agreement on or before September 30, 2014, as required by the Second Amendment to License Agreement. Accordingly, Defendants were required to pay Country liquidated damages in the amount of \$87,000.00 on or before October 10, 2014.

29. Pursuant to Paragraph 9 of the Termination Agreement, Fourstar acknowledged and agreed that if either party instituted any action to enforce any provision of the Termination Agreement or License Agreement, the prevailing party would be entitled to receive all costs and expenses incurred, including reasonable attorneys' fees.

30. By letter dated June 3, 2015, Country demanded that Defendants pay liquidated damages in the amount of \$87,000.00, as required by Article 17.4 of the License Agreement and paragraph 5 of the Termination Agreement. Country demanded that Defendants pay the amount due no later than June 15, 2015. A true and correct copy of the June 3, 2015, letter is attached as Exhibit F.

31. Despite their obligations to do so, Defendants have failed to pay Country liquidated damages in the amount of \$87,000.00.

COUNT I

**BREACH OF LICENSE AGREEMENT, TERMINATION AGREEMENT AND
PERSONAL GUARANTY –
FAILURE TO PAY LIQUIDATED DAMAGES**

32. Country incorporates by reference paragraphs 1 through 31 herein.

33. Fourstar had a contractual obligation under the License Agreement to pay certain Royalty Fees, Marketing Fees, Reservation Fees and other fees as set forth in the License Agreement, for the remaining unexpired term of the License Agreement.

34. Fourstar caused the premature termination of the License Agreement by failing to pay all amounts due and owing through the entire term of the Agreement.

35. By virtue of Fourstar's premature termination of the License Agreement, Country sustained a loss of future revenue over the entire 15 year term of the License Agreement.

36. Country has been damaged by Fourstar's breach of its obligation to operate the Hotel for the entire term of the License Agreement, in an amount contractually agreed to by the parties.

37. Pursuant to Article 17.4 of the License Agreement and paragraph 5 of the Termination Agreement, Fourstar agreed that it owes Country liquidated damages in the amount of \$87,000.00.

38. Pursuant to the Personal Guaranty, Rahman agreed to be personally liable to Country for any amounts owed by Fourstar that arise out of or are related to the License Agreement.

39. As a direct result of the above breaches, Defendants are liable to Country for liquidated damages in the amount of \$87,000.00, plus costs, disbursements, interest, and attorneys' fees.

COUNT II

BREACH OF LICENSE AGREEMENT, TERMINATION AGREEMENT AND PERSONAL GUARANTY – ATTORNEYS' FEES

40. Country hereby incorporates by reference paragraphs 1 through 39 herein.

41. Pursuant to Article 25.13 of the License Agreement and Paragraph 9 of the Termination Agreement, Fourstar agreed to compensate Country for any costs and attorneys' fees Country incurred in enforcing any provision of the License Agreement or Termination Agreement.

42. Pursuant to the Personal Guaranty, Rahman agreed that Article 25.13 would apply to him as a guarantor.

43. Country has commenced this action to recover amounts owed by Defendants under the License Agreement, Termination Agreement, and Personal Guaranty. Country is entitled to recover its attorneys' fees and costs incurred in connection with this action, in an amount to be proven at trial.

WHEREFORE, Country prays for judgment against Defendants, jointly and severally, as follows:

A. For an order ratifying and enforcing the termination of the License Agreement;

B. For an award against Defendants, jointly and severally, for liquidated damages arising from Fourstar's premature termination of the License Agreement, as specifically set forth in Article 17.4 of the License Agreement and Paragraph 4 of the Termination Agreement, in an amount to be proven at trial, but in no event less than \$87,000.00;

C. For an award against Defendants, jointly and severally, for Country's reasonable and necessary costs and expenses, including attorneys' fees, incurred in enforcing the provisions of the License Agreement, Termination Agreement, and Personal Guaranty, in an amount to be proven at trial;

D. For an award against Defendants for prejudgment and post judgment interest; and

E. For such other and further relief as the Court deems just and proper.

DATED: December 3, 2015.

**GRAY, PLANT, MOOTY, MOOTY
& BENNETT, P.A.**

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ATTORNEYS FOR PLAINTIFF