

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

WINGATE INNS INTERNATIONAL, INC.,
a Delaware Corporation,

COMPLAINT

Plaintiff,

v.

Civil No.: 1:15-cv-6865

R K HOSPITALITY, LLC,
an Illinois Limited Liability Company;
SANJAY PATEL, an individual; and
JAYA PATEL, an individual

Defendants.

Plaintiff, Wingate Inns International, Inc., a Delaware Corporation, by and through its attorneys, Goldberg Segalla LLP, as and for its Complaint against Defendants, R K Hospitality, LLC, an Illinois limited liability company; Sanjay Patel, an individual; and Jaya Patel, an individual, alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Wingate Inns International, Inc. (“WII”), is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in Parsippany, New Jersey.

2. Defendant, R K Hospitality, LLC (“R K Hospitality”), is a limited liability company organized and existing under the laws of the State of Illinois.

3. Defendant Sanjay Patel (“S. Patel”) is a guarantor of R K Hospitality and is a citizen of the State of Wisconsin.

4. Defendant Jaya Patel (“J. Patel”) is a guarantor of R K Hospitality and is a citizen of the State of Illinois.

5. Pursuant to Schedule B of the January 31, 2008 franchise agreement by and between R K Hospitality and WII (the “Franchise Agreement”), discussed in more detail below, S. Patel and J. Patel (collectively, “the Patel Defendants”) are the sole members of R K Hospitality.

6. Accordingly, R K Hospitality is deemed a citizen of Illinois and Wisconsin.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332 as Plaintiff and Defendants are citizens of different states and the amount in controversy in this matter, exclusive of interest and costs, exceeds the sum of \$75,000.00.

8. This Court has personal jurisdiction over R K Hospitality by virtue of, among other things, paragraph 3 of the January 31, 2008 addendum to the franchise agreement pursuant to the Illinois Franchise Disclosure Act (the “IL Addendum”) which amends section 17.6.3 of the Franchise Agreement, described in more detail below, so that R K Hospitality has consented that “...all litigation by or between [R K Hospitality] and [WII], arising directly or indirectly from the franchise relationship shall be commenced and maintained, at [WII’s] election, in the state courts of Illinois or the United States District Court for Illinois...” A true and correct copy of the IL Addendum is attached hereto as Exhibit A.

9. This Court has personal jurisdiction over the Patel Defendants by virtue of, among other things, the terms of a guaranty (the “Guaranty”), described in more detail below, pursuant to which the Patel Defendants acknowledged that each were personally bound by section 17 of the Franchise Agreement, as amended by the IL Addendum.

10. Venue is proper in this District pursuant to section 17.6.3 of the Franchise Agreement, as amended by the IL Addendum, inasmuch as that provision contains an express waiver by R K Hospitality of any objection to venue in this District.

ALLEGATIONS COMMON TO ALL COUNTS

The Agreements Between the Parties

11. WII entered into a Franchise Agreement dated January 31, 2008 with R K Hospitality for the operation of a 108-room Wingate® guest lodging facility located at 600 Milwaukee Avenue, Prospect Heights, Illinois 60070, designated as Site No. 12368-73863-02 (the “Facility”). A true and correct copy of the Franchise Agreement is attached hereto as Exhibit B.

12. Pursuant to section 5 of the Franchise Agreement, R K Hospitality was obligated to operate a Wingate® guest lodging facility until January 31, 2028.

13. Pursuant to section 7 and Schedule C of the Franchise Agreement, R K Hospitality was required to make certain periodic payments to WII for royalties, system assessments, taxes, interest, and other fees (collectively, “Recurring Fees”).

14. Pursuant to section 7.3 of the Franchise Agreement, R K Hospitality agreed that interest would be owed “on any past due amount payable to [WII] under this [Franchise] Agreement at the rate of 1.5% per month or the maximum rate permitted by applicable law, whichever is less, accruing from the due date until the amount is paid.”

15. Pursuant to section 3.8 of the Franchise Agreement, R K Hospitality agreed to maintain at the Facility accurate books and records relating to the gross room revenue of the Facility and, pursuant to section 3.8 and section 4.8 of the Franchise Agreement, R K Hospitality agreed to allow WII to audit the entries in these books and records.

16. Pursuant to section 11.2 of the Franchise Agreement, WII could terminate the Franchise Agreement, with notice to R K Hospitality, if R K Hospitality discontinued operating the Facility as a Wingate® guest lodging establishment.

17. Pursuant to section 12.1 of the Franchise Agreement, R K Hospitality agreed that, in the event of a termination of the Franchise Agreement pursuant to section 11.2, it would pay liquidated damages to WII in accordance with a formula specified in the Franchise Agreement.

18. Pursuant to section 17.4 of the Franchise Agreement, R K Hospitality agreed that the non-prevailing party would “pay all costs and expenses, including reasonable attorney’s fees, incurred by the prevailing party to enforce this [Franchise] Agreement or collect amounts owed under this [Franchise] Agreement.”

19. In connection with the execution of the Franchise Agreement, and pursuant to an assumption agreement (the “Assumption of Development Incentive Note”), R K Hospitality and the Patel Defendants assumed liability of a Development Incentive Note (the “Note”) owed to WII in the amount of \$285,000.00. A true and correct copy of the Assumption of Development Incentive Note and the Note are collectively attached hereto as Exhibit C.

20. Pursuant to the terms of the Note, on each anniversary of the Facility’s opening date, one-fifteenth (1/15th) of the original principal amount would be forgiven.

21. Pursuant to the terms of the Note, if a termination of the Franchise Agreement occurs for any reason, “the outstanding principal balance of this Note shall be immediately due and payable without further notice, demand or presentment.”

22.

23. Pursuant to the terms of the Note, the amount of the Note would bear no interest unless R K Hospitality and the Patel Defendants defaulted or the Note was accelerated. The Note also provides that “[i]f this Note is collected by or through an attorney at law, [WII] shall be entitled to collect reasonable attorneys’ fees and all costs of collection.”

24. Effective as of the date of the Franchise Agreement, the Patel Defendants provided WII with a guaranty of R K Hospitality's obligations under the Franchise Agreement (the "Guaranty"). A true and correct copy of the Guaranty is attached hereto as Exhibit D.

25. Pursuant to the terms of the Guaranty, the Patel Defendants agreed, among other things, that upon a default under the Franchise Agreement, they would "immediately make each payment and perform or cause [R K Hospitality] to perform, each unpaid or underperformed obligation of [R K Hospitality] under the [Franchise] Agreement."

Termination

26. On or about March 1, 2010, R K Hospitality unilaterally terminated the Franchise Agreement by ceasing to operate the Facility as a Wingate® guest lodging establishment.

27. By letter dated April 15, 2010, a true copy of which is attached as Exhibit E, WII acknowledged R K Hospitality's unilateral termination of the Franchise Agreement, effective March 1, 2010, and advised R K Hospitality and the Patel Defendants of their obligation to pay as liquidated damages for premature termination the sum of \$216,000.00 as required under the Franchise Agreement, all outstanding Recurring Fees through the date of termination, and the outstanding balance owed under the Note.

28. Pursuant to section 13.2 of the Franchise Agreement, R K Hospitality was responsible to pay all outstanding Recurring Fees within ten (10) days of the termination of the Franchise Agreement.

29. Pursuant to section 12.1 of the Franchise Agreement, R K Hospitality was responsible to pay liquidated damages owed to WII within thirty (30) days of the termination of the Franchise Agreement.

30. Pursuant to the terms of the Note, the balance thereunder was immediately due and payable upon termination of the Franchise Agreement.

FIRST COUNT
(Accounting)

31. WII repeats and makes a part hereof each and every allegation contained in Paragraphs 1 through 30 of the Complaint.

32. Pursuant to section 3.8 and section 4.8 of the Franchise Agreement, R K Hospitality agreed to allow WII to audit R K Hospitality's financial information, including books and records relating to gross room revenue earned at the Facility.

33. The calculation of monetary amounts sought by WII in this action is based on the gross room revenue information supplied to WII by R K Hospitality.

34. The accuracy of this information cannot be confirmed without an accounting of the receipts and disbursements, profit and loss statements, and other financial materials, statements and books from R K Hospitality.

SECOND COUNT
(Liquidated Damages)

35. WII repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 34 of the Complaint.

36. On or about March 1, 2010, R K Hospitality unilaterally terminated the Franchise Agreement, effective March 1, 2010, by ceasing to operate the Facility as a Wingate® guest lodging establishment.

37. Section 12.1 of the Franchise Agreement provides that, in the event of termination of the Franchise Agreement due to action of the Franchisee, including ceasing to operate the Facility as a Wingate® guest lodging establishment, R K Hospitality shall pay liquidated

damages to WII within 30 days of termination, in accordance with a formula specified in the Franchise Agreement.

38. Section 12.1 specifies that liquidated damages under the Franchise Agreement “will not be less than the product of \$2,000 multiplied by the number of guest rooms” that R K Hospitality was authorized to operate at the Facility.

39. As a result of the termination of the Franchise Agreement, R K Hospitality is obligated to pay WII liquidated damages in the amount of \$216,000.00, as calculated pursuant to section 12.1 of the Franchise Agreement.

40. Notwithstanding WII’s demand for payment, R K Hospitality has failed to pay WII liquidated damages in the amount of \$216,000.00 as required pursuant to section 12.1 of the Franchise Agreement.

41. WII has been damaged by R K Hospitality’s failure to pay liquidated damages.

THIRD COUNT
(Breach of Contract)

42. WII repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 41 of the Complaint.

43. By virtue of the premature termination of the Franchise Agreement, WII sustained a loss of future revenue over the remaining term of the Franchise Agreement set to expire on January 31, 2028.

44. If the Court determines that R K Hospitality is not liable to pay WII liquidated damages as required by section 12.1 of the Franchise Agreement, R K Hospitality is liable to WII for actual damages for the premature termination of the Franchise Agreement.

45. WII has been damaged by R K Hospitality’s breach of its obligation to operate a Wingate® guest lodging facility for the remaining term of the Franchise Agreement.

FOURTH COUNT
(Breach of Contract)

46. WII repeats and makes a part hereof each and every allegation contained in Paragraphs 1 through 45 of the Complaint.

47. Pursuant to section 7 and Schedule C of the Franchise Agreement, R K Hospitality was obligated to remit Recurring Fees to WII.

48. Despite its obligation to do so, R K Hospitality has failed to remit certain of the Recurring Fees due and owing under the Franchise Agreement in the current amount of \$219,259.55.

49. R K Hospitality's failure to remit the agreed Recurring Fees constitutes a breach of the Franchise Agreement and has damaged WII.

FIFTH COUNT
(Unjust Enrichment)

50. WII repeats and makes a part hereof each and every allegation contained in Paragraphs 1 through 49 of the Complaint.

51. At the time of the termination of the Franchise Agreement, R K Hospitality was obligated to pay WII Recurring Fees.

52. Despite its obligation to do so, R K Hospitality failed to pay certain of the Recurring Fees due and owing under the Franchise Agreement in the current amount of \$219,259.55.

53. R K Hospitality's failure to compensate WII constitutes unjust enrichment and has damaged WII.

SIXTH COUNT
(Breach of Contract)

54. WII repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 53 of the Complaint.

55. In connection with the execution of the Franchise Agreement and pursuant to the terms of the Assumption of Development Incentive Note, R K Hospitality and the Patel Defendants assumed liability of a Note owed to WII in the amount of \$285,000.00.

56. Pursuant to the terms of the Note, on each anniversary of the Facility's opening date, one-fifteenth (1/15th) of the original principal amount would be forgiven.

57. The Note provides that if a termination of the Franchise Agreement occurs for any reason, "the outstanding, principal balance of this Note shall be immediately due and payable without further notice, demand or presentment."

58. On or about March 1, 2010, R K Hospitality unilaterally terminated the Franchise Agreement by ceasing to operate the Facility as a Wingate® guest lodging establishment.

59. At the time of termination of the Franchise Agreement, the outstanding balance of the Note became due and owing to WII.

60. Despite their obligation to do so, R K Hospitality and the Patel Defendants failed to pay \$180,668.50 due and owing under the Note.

61. R K Hospitality and the Patel Defendants' failure to remit the agreed upon outstanding balance constitutes a breach of the Note and has damaged WII.

SEVENTH COUNT
(Unjust Enrichment)

62. WII repeats and makes a part hereof each and every allegation contained in Paragraphs 1 through 61 of the Complaint.

63. At the time of the termination of the Franchise Agreement, R K Hospitality and the Patel Defendants were obligated to pay WII outstanding balance under the Note.

64. Despite their obligation to do so, R K Hospitality and the Patel Defendants failed to pay the outstanding balance due and owing in the current amount of \$180,668.50.

65. R K Hospitality and the Patel Defendants' failure to compensate WII constitutes unjust enrichment and has damaged WII.

EIGHTH COUNT
(Breach of Contract)

66. WII repeats and makes a party hereof each and every allegation contained in Paragraphs 1 through 65 of the Complaint.

67. Pursuant to the terms of the Guaranty, the Patel Defendants agreed, among other things, that upon a default under the Franchise Agreement, they would immediately make each payment and perform each obligation required of R K Hospitality under the Franchise Agreement.

68. Despite their obligation to do so, the Patel Defendants have failed to make any payments or perform or cause R K Hospitality to perform each obligation required under the Franchise Agreement.

69. Pursuant to the Guaranty, the Patel Defendants are each individually liable to WII for R K Hospitality' liquidated damages in the amount of \$216,000.00, or actual damages in an amount to be determined at trial, R K Hospitality's Recurring Fees due and owing under the Franchise Agreement in the current amount of \$219,259.55, and the balance owed under the Note in the amount of \$180,668.50.

WHEREFORE, WII demands judgment:

- A. on the First Count ordering that R K Hospitality, LLC account to WII for any and all revenue derived as a result of marketing, promoting, or selling guest lodging services at the Facility;
- A. on the Second Count against R K Hospitality, LLC for liquidated damages in the amount of \$216,000.00, as calculated pursuant to section 12.1 of the Franchise Agreement, together with interest, attorneys' fees and costs;
- B. on the Third Count against R K Hospitality, LLC for actual damages in an amount to be determined at trial, together with interest, attorneys' fees, and costs;
- C. on the Fourth Count against R K Hospitality, LLC for Recurring Fees due and owing under the Franchise Agreement, in the current amount of \$219,259.55, together with interest, attorneys' fees, and costs;
- D. on the Fifth Count against R K Hospitality, LLC for Recurring Fees due and owing under the Franchise Agreement, in the current amount of \$219,259.55, together with interest, attorneys' fees, and costs;
- E. on the Sixth Count against R K Hospitality, LLC, Sanjay Patel and Jaya Patel for principal due and owing under the Note, in the current amount of \$180,668.50, together with interest, attorneys' fees, and costs;
- F. on the Seventh Count against R K Hospitality, LLC, Sanjay Patel and Jaya Patel for principal due and owing under the Note, in the current amount of \$180,668.50, together with interest, attorneys' fees, and costs;
- G. on the Eighth Count against the Sanjay Patel and Jaya Patel, for damages in the amount of all liquidated damages in the amount of \$216,000.00, or

actual damages, Recurring Fees due and owing under the Franchise Agreement, in the current amount of \$219,259.55, and principal due and owing under the Note in the amount of \$180,668.50, together with interest, attorneys' fees, and costs; and

H. for such other, further and different relief as to this Court seems just and proper.

Dated: Buffalo, New York
August 6, 2015

GOLDBERG SEGALLA LLP

s/ Joseph M. Hanna

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