

Owner of Miami's famous Eden Roc Hotel wins appeal: Marriott can be removed as manager

[Tatiana Rokou](#) - 29 March 2013, 12:42

The dispute has been brewing for over a year. Eden Roc terminated its agreement with Marriott on March 30, 2012, citing a number of defaults. Marriott and Renaissance, however, refused to vacate the hotel or acknowledge the agreement's termination.



MIAMI - In a major victory not only for the owner of the historic **Eden Roc Hotel** in Miami Beach, but for hotel owners across the country, **Pryor Cashman LLP** (on behalf of its client, Eden Roc) has successfully argued to a New York appeals court that it should vacate an injunction requiring Eden Roc to accept the hotel management services of **Marriott International** and its subsidiary, **Renaissance Hotel Management Company, LLC**. The appellate court agreed and issued an order on March 26, 2013. (Marriott International, Inc. v. Eden Roc, LLLP, Index No. 653590/2012).

Marriott argued that its management agreement with Eden Roc could not be terminated by Eden Roc during the full term of that agreement, which could have lasted another 43 years. Although Marriott obtained an injunction from the lower court securing its place as Eden Roc's manager against Eden Roc's wishes, a unanimous panel of the Appellate Division, First Department of New York, agreed with Pryor Cashman that the parties' hotel management contract *"is a classic example of a personal services contract that may not be enforced by injunction."*

The dispute has been brewing for over a year. Eden Roc terminated its agreement with Marriott on March 30, 2012, citing a number of defaults. Marriott and Renaissance, however, refused to vacate the hotel or acknowledge the agreement's termination. In October 2012, therefore, Eden Roc and a team of transition professionals attempted to remove Marriott from the premises and to install in its place Eden Roc Management Company, an affiliated operating unit of the hotel's owner that is comprised of seasoned managers of leading lifestyle brands. Marriott resisted and obtained the injunction preventing its removal.

The appellate court's ruling firmly establishes that hotel management companies cannot insulate themselves from removal when they operate pursuant to classic management services agreements. The decision equally vindicates the rights of hotel owners to reclaim their valuable property when they see fit to do so.

"This decision marks the beginning of a new era for Eden Roc, one of the most iconic luxury hotels on Miami Beach," said **Diego Ardid**, Vice President of Eden Roc LLLP.

"This important decision is a vindication of Eden Roc's right to remove Marriott from the hotel, and gives hotel owners across the country legal footing to protect their investments. A hotel manager is barred from commandeering a property against the owner's wishes. Any doubts in that regard have been laid to rest," said **Todd E. Soloway**, a partner at Pryor Cashman, LLP who, along with partners Joshua D. Bernstein and William Charron represented Eden Roc.



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Hotel Owners Get New Way Out Of Sour Management Deals

By **Natalie Rodriguez**

Law360, New York (March 29, 2013, 9:34 PM ET) -- A recent New York state appeals court ruling that allowed a Miami Beach hotel owner to terminate its management agreement with a Marriott International Inc. affiliate gives other owners a new way to override contract provisions with hotel operators when the relationships turn ugly, experts say.

The March 26 ruling in favor of the owners of the Eden Roc Renaissance Hotel gave Eden Roc LLLP the power to end a long-term management contract on the basis of the relationship essentially being a personal services contract, despite contract provisions meant to protect Marriott's position until 2030. The crux of the argument is based on a fundamental legal principle: One person or entity can't force another to work for it and, vice-versa, it can't be forced to employ a certain person or entity.

The decision could have far-reaching implications in the hotel industry, where owners historically could only end a contract if the court recognized the management company to be an "agent" of the hotel owner, which is a different, sometimes hard-to-establish relationship. Owners now essentially have two paths available to them if they want to end decades-long, provision-heavy management contracts, giving them new negotiating powers, experts say.

"[The] Eden Roc decision is based solely on the inability to use an injunction to enforce a personal services contract," Jim Butler, chairman of the hospitality group for Jeffer Mangels Butler & Mitchell LLP, told Law360. "That is novel. To date, all the other cases have involved the use of 'agency' principles applied to the hotel context."

Eden Roc terminated its agreement with Marriott on March 30, 2012, alleging numerous issues with Marriott's management, including that it failed to properly market the hotel and duped Eden Roc into a \$240 million renovation. But Marriott refused to leave or acknowledge the termination.

Marriott, along with other management companies, has been careful to avoid agency-related language in its contracts and in the structuring of its relationships as a way to help protect itself from being kicked out, experts say.

"These contracts apparently confused some of the lower courts into thinking that because they purported to be non-agency contracts, they must be so, and therefore could not be terminated under agency principles," Butler said.

And indeed, a New York lower court had sided with Marriott and its subsidiary Renaissance Hotel Management Co. LLC last year, telling Eden Roc that it couldn't unilaterally nix the contract. Judge Melvin L. Schweitzer, rejecting the personal services contract argument,

issued an injunction preventing Marriott's ouster while litigation continued.

But while the appeals court agreed Marriott wasn't an agent of Eden Roc, it said Eden Roc could kick Marriott out on the basis that fundamental legal principles overrule contract provisions and Eden Roc had every right to be able to end the relationship.

"It gives owners that ability to rid themselves of their manager if its in their economic interest to do so, whether it's for a reason or for no reason," Todd E. Soloway of Pryor Cashman LLP, who represents Eden Roc, told Law360.

Still, experts say, there probably won't be a wave of killed management deals in the near future. While the ruling gives Eden Roc the right to retake control of the hotel's management, that doesn't mean there won't be financial repercussions. Litigation continues over whether Eden Roc has breached its contract, and damages could be awarded to the tossed out management company, as is often the case even when an agency argument is successfully used.

As a result, experts say they only expect to see a personal services contract argument used when the relationship has become absolutely unworkable and owners can't easily claim agency.

"Even though you may have a new basis to terminate, it doesn't allow you to escape liability," Greg Duff, a hospitality lawyer with Garvey Schubery Barer Law, told Law360. Even with this new route, hotel companies have to be willing to say "'I'm going to take my lumps and write you a check.'" The relationship has to be in a very bad place I think for owners to run in that direction."

Plus, the Eden Roc ruling is strongly tethered to the very particular facts of the case and the contract between the parties. In some ways, this could limit the ruling's precedential value, Duff noted.

But if four or five other courts end up ruling in a similar way, it could carry more weight, and some say that is a real possibility given the current laws of certain hospitality hotbed states.

"Although the outcome of the legal question decided by *Marriott v. Eden Roc* could theoretically vary if governed by different state law, at least in California, New York and Florida, the law is pretty much the same. We think that will hold true throughout most of the United States, but an individual analysis would need to be performed to be confident of that result in a particular jurisdiction," Butler said.

One thing the new ruling will certainly do, experts say, is change the dialogue between hotel owners and management companies that are at odds. Now, hotel owners have some new leverage at a mediation table when trying to work things out with a manager that an owner believes isn't performing to satisfactory standards, experts say. And it could help force parties into working things out, rather than rolling the dice with a lawsuit.

"The more certainty there is to how things might be resolved by a court or a third party, the more likely the parties are, I think, to behave logically," Duff said.

And experts say they expect the Eden Roc ruling to reinforce the relationships owners mean for when signing off on a management deal to begin with.

"[N]o operator can force its agency or its personal services on another if that party wishes to terminate. No amount of contractual acrobatics or gobbledygook will avoid the inevitable result," Butler said. "Perhaps the realization of that will permit operators and owners to get back to the real business of working together to provide great lodging for guests,

consistent brand standards that make sense, and efficient operation of hotels that provides a fair return to owners and their capital partners."

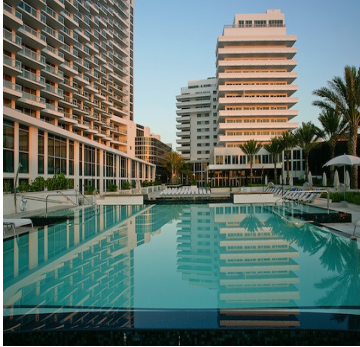
--Additional reporting by Eric Hornbeck and Sindhu Sundar. Editing by Elizabeth Bowen and Chris Yates.

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Miami Beach Eden Roc allowed to remove Marriott as manager; FROM THE COURTS

by Eric Kalis ekalis@alm.com

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The owner of the Eden Roc Hotel in Miami Beach has the green light to remove Marriott International Inc. as its manager after successfully appealing a trial court ruling in New York.

An appellate panel for the Supreme Court, New York County, granted Eden Roc LLLP's appeal Tuesday that sought the reversal of a preliminary injunction Marriott obtained in the trial court last November. Eden Roc had terminated its management agreement with the company for the 4525

Collins Ave. hotel in March 2012, citing numerous defaults.

In Tuesday's opinion written by Justice Melvin L. Schweitzer, the agreement between Eden Roc and Marriott was deemed to be "a classic example of a personal services contract that may not be enforced by injunction."

The ruling offers legal protection for other hotel owners to "protect their investments," attorney Todd E. Soloway, a partner at New York-based **Pryor Cashman**, said in a statement.

"A hotel manager is barred from commandeering a property against the owner's wishes," Soloway said. "Any doubts in that regard have been laid to rest."

HotelChatter

Will Marriott Be a Sore Loser After Eden Roc Lawsuit Drama?

Where: 4525 Collins Avenue , Miami Beach, FL, United States, 33140 | March 28, 2013 at 9:01 AM | by ASchechter

It's been about a year since trouble first started brewing down at Miami's famed **Eden Roc Hotel**. The property, which has been around since the 1950s, is managed by **Marriott**, but the relationship between Marriott and the hotel's owners was bad. So bad, in fact, that the hotel tried to **boot Marriott from the premises** during an after-dark siege. Serious drama, right?

A judge (who happened to be a self-professed **Eden Roc "fan"**) declared back in November that Marriott has the legal right to remain as manager of the hotel.

Or should we say, 'had.'

Yesterday, the hotel's attorney announced that **Eden Roc has won in a New York Appellate court the right to oust Marriott as manager of the property.** The attorney called it "a vindication," and believes the outcome of this bitter lawsuit will help settle future disputes between hotel owners and management:

"A hotel manager is barred from commandeering a property against the owner's wishes. **Any doubts in that regard have been laid to rest.**"

Whether or not this lawsuit will be a boon to hotel owners "across the country," we can't really tell. **But we sure are glad that things worked out for Eden Roc.** Marriott's a fine brand and all, but clearly, they had overstayed their welcome (something a hotel company, of all people, should really be more sensitive to!), and couldn't take a hint when the relationship was over.

We're guessing plenty of champagne corks will be going off tonight at Eden Roc. As for Marriott, well, better luck next time!



Eden Roc owner wins appeal against Marriott

By Nathan Greenhalgh on 3/27/2013

Marriott International lost a New York appeals court ruling on Tuesday against the owner of the Eden Roc Renaissance Hotel, located in Miami Beach, Florida.

The law firm representing Eden Roc LLLP, which owns the 631-room hotel, at the appeal issued a statement calling the ruling "a victory not only for the owner of the historic Eden Roc Hotel in Miami Beach, but for hotel owners across the country."

Marriott International, Bethesda, Maryland, had sued Eden Roc LLLP alleging a hostile takeover of the property. Marriott asserted that Eden Roc LLLP attempted a surprise takeover of the hotel during pre-dawn hours on Sunday, October 14, by force, in disregard of the law and its obligations under the hotel management agreement. The attempt ended when the Miami Beach police ordered the owner's effort to cease.

Marriott was granted a preliminary injunction in November 2012 allowing it to stay on as manager despite Eden Roc LLLP's efforts to terminate the management contract. However, the appeals court reversed that decision.



Exterior of Eden Roc Renaissance Hotel

The dispute has been going on for a year. [Eden Roc LLLP filed a lawsuit against Marriott International in April 2012](#), seeking US\$75 million in damages and accusing Marriott of mismanaging the hotel. After spending US\$300 million on the property, Eden Roc LLLP alleged in its lawsuit that Marriott and its Renaissance Hotel flooded the hotel with discount bookings for years, generating a “mere fraction” of the US\$30 million in profit projected for 2011 and the US\$35 million forecast for 2012. Eden Roc LLLP, a subsidiary of real estate development company Key International, Miami, bought the hotel for US\$100 million from Blackacre Capital Group in 2005.

Marriott continues to manage the Eden Roc Renaissance hotel, and the company told HOTELS that it is evaluating its options in light of Tuesday's ruling.

"We are aware of the court's decision to vacate the injunction that was granted us back in November, 2012. At this time, we, along with the owners, are evaluating our options and continue to communicate with each other," said Jeff Flaherty, Marriott International's senior director of global corporate relations.

Pryor Cashman LLP, which is representing Eden Roc LLLP, told HOTELS that the company was now considering its options for the hotel's management. Eden Roc LLLP had earlier announced plans to replace Marriott with Eden Roc Management Co., an affiliated operating unit, as the hotel's management company.



Marriott International Loses Eden Roc Hotel Appeal

By Claudette Covey March 27, 2013 6:41 PM

Ending an ongoing battle, the Eden Roc Hotel in Miami Beach scored a victory against Marriott International when its law firm, Pryor Cashman, argued to a New York appeals court that it should

vacate an injunction requiring Eden Roc to accept the hotel management services of Marriott International and its Renaissance brand. The appellate court agreed and issued an order on March 26.

“A company like Marriott cannot commandeer the owner’s property against the owner’s wishes if the ownership doesn’t want them running its business,” said Todd E. Soloway, a partner at Pryor Cashman. “The management companies have to recognize that they don’t own these properties. They’re just managers.”

The move is a blow to Marriott. In October, a New York State Supreme Court judge signed a temporary restraining order on October 16 keeping the company and Renaissance as manager of the property. In November, Marriott received a preliminary injunction allowing it to continue as manager.

Marriott argued that its management agreement with Eden Roc could not be terminated by Eden Roc during the full-term of that agreement, which could have lasted another 43 years. A unanimous panel of the Appellate Division, First Department of New York, agreed with Pryor Cashman that the parties’ hotel management contract “is a classic example of a personal services contract that may not be enforced by injunction.”

“This important decision is a vindication of Eden Roc’s right to remove Marriott from the hotel, and gives hotel owners across the country legal footing to protect their investments,” said Soloway.

Marriott was unavailable for comment but said it would be issuing a statement.



Marriott International has lost an appeal in its lawsuit against the owners of the Eden Roc Renaissance Hotel in Miami Beach.

Last year the owners sued Marriott saying the company mismanaged the property after it invested more than \$300 million, including \$240 million in renovations. Half a year later, Marriott filed a lawsuit against the owners after Eden Roc sent in staff for a late-night takeover of the hotel.

A New York State Supreme Court judge barred the owners from removing Marriott as its management company by granting a preliminary injunction. In a decision released Wednesday, that order was reversed by an appeals panel in Manhattan.

In the ruling, the appeals court said the agreement between Eden Roc and Marriott allowed the owners to manage "virtually every aspect of the hotel."

"Such an agreement, in which a party has discretion to execute tasks that cannot be objectively measured, is a classic example of a personal services contract that may not be enforced by injunction," the appeals court said.

Attorney [Todd Soloway](#), for Eden Roc, said the decision is a "vindication of the owner's right to remove Marriott from the hotel."

"It gives hotel owners across the country legal footing to protect their investments," he said. "A hotel manager is barred from commandeering a property against the owner's wishes. Any doubts in that regard have been laid to rest."

The Eden Roc is a 21-floor, 627-room art deco hotel overlooking Miami Beach. It opened in 1956 and was often the playground for movie stars and mobsters. Several episodes of the television show "I Love Lucy" were shot at the hotel. It was acquired by Eden Roc LLLP in 2005.



Last Updated: March 27, 2013 02:18pm ET

Eden Roc Wins Right to Remove Marriott

By [Jennifer LeClaire](#) | Miami



Eden Roc Hotel

MIAMI—Eden Roc Hotel has won the legal right to remove Marriott as manager.

Pryor Cashman LLP successfully argued to a New York appeals court that it should vacate an injunction requiring Eden Roc to accept the hotel management services of **Marriott International** and its subsidiary, **Renaissance Hotel Management Company, LLC**.

The appellate court agreed and issued an order on March 26, 2013. "This decision marks the beginning of a new era for Eden Roc, one of the most iconic luxury hotels on Miami Beach," says Diego Ardid, vice president of **Eden Roc LLLP**.

According to Pryor Cashman, Marriott argued that its management agreement with Eden Roc could not be terminated by Eden Roc during the full term of that agreement, which could have lasted another 43 years. Although Marriott obtained an injunction from the lower court securing its place as Eden Roc's manager against Eden Roc's wishes, a unanimous panel of the Appellate Division, First Department of New York, agreed with Pryor Cashman that the parties' hotel management contract "is a classic example of a personal services contract that may not be enforced by injunction."

The dispute has been brewing for over a year. Eden Roc terminated its agreement with Marriott on March 30, 2012, citing a number of defaults. According to Pryor Cashman, Marriott and Renaissance refused to vacate the hotel or acknowledge the agreement's termination. In Oct. 2012, Eden Roc and a team of transition professionals attempted to remove Marriott from the premises and to install in its place Eden Roc Management Company, an affiliated operating unit of the hotel's owner. Marriott resisted and obtained the injunction preventing its removal.

"This important decision is a vindication of Eden Roc's right to remove Marriott from the hotel, and gives hotel owners across the country legal footing to protect their investments," says **Todd E. Soloway**, a partner at Pryor Cashman, LLP who, along with partners Joshua D. Bernstein and William Charron represented Eden Roc. "A hotel manager is barred from commandeering a property against the owner's wishes. Any doubts in that regard have been laid to rest."

Marriot could not immediately be reached for comment.

Marriott International Loses Appeal in Eden Roc Suit

By Chris Dolmetsch - Mar 26, 2013

[Marriott International Inc. \(MAR\)](#), the largest publicly traded U.S. hotel chain, lost an appeal in its lawsuit against the owners of the Eden Roc Renaissance Hotel in Miami Beach, [Florida](#).

The owners of the 57-year-old Eden Roc sued Bethesda, Maryland-based Marriott in April, saying the company mismanaged the property after they invested more than \$300 million in the hotel, including a \$240 million renovation. Marriott sued the owners in the same court six months later, accusing them of attempting a hostile takeover.

New York State Supreme Court Justice Melvin L. Schweitzer granted Marriott a preliminary injunction in November and urged the two sides to resolve the case. In a decision released today, an appeals panel in [Manhattan](#) reversed Schweitzer's order and vacated the preliminary injunction.

“The parties’ detailed management agreement places full discretion with plaintiffs to manage virtually every aspect of the hotel,” the appeals court said in its decision. “Such an agreement, in which a party has discretion to execute tasks that cannot be objectively measured, is a classic example of a personal services contract that may not be enforced by injunction.”

The 21-floor, 631-room art deco hotel opened in 1956 and has hosted celebrities including Elizabeth Taylor, Katherine Hepburn and Humphrey Bogart, according to its [website](#).

Lapidus Design

The hotel, which was featured in several episodes of the 1950s television show “I Love Lucy,” was designed by architect Morris Lapidus, who also designed the neighboring Fontainebleau.

The ruling shows that ownership “has the absolute right to remove Marriott from the property if it so desires,” Todd Soloway, an attorney for owner Eden Roc LLLP with Pryor Cashman LLP, said in a telephone interview. Marriott is currently managing the property under its Renaissance brand and Eden Roc LLLP hasn't yet determined how to proceed, he said.

“This decision vindicates the owner’s absolute right to control its own property and its own hotel in which it has a huge investment,” Soloway said. “It bars hotel managers like Marriott from commandeering the owner’s property.”

Marriott spokesman Jeff Flaherty didn’t immediately comment on the decision in an e-mail.

The case is Marriott International Inc. v. Eden Roc LLLP, 653590/2012, [New York](#) State Supreme Court, New York County (Manhattan).

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NY Appeals Court Says Miami Hotel Can Boot Marriott Contract

By **Eric Hornbeck**

Law360, New York (March 26, 2013, 6:41 PM ET) -- A boutique Miami Beach hotel owner can pull the plug on its management agreement with a Marriott International Inc. affiliate, a New York state appeals court ruled Tuesday in overturning a lower court judge's discursive injunction.

Judge Melvin L. Schweitzer had blocked the owner of Miami Beach's famed Eden Rock Renaissance Hotel from physically removing Marriott, which managed the hotel, from the property, but a five-judge state appeals court panel said that ruling was based on an erroneous reading of the hotel management contract.

Judge Schweitzer had said that the agreement wasn't a personal services contract, which the hotel's owner said would allow it to simply kick Marriott and affiliate Renaissance Hotel Management out as the manager, but the appeals court panel disagreed.

"The parties' detailed management agreement places full discretion with plaintiffs to manage virtually every aspect of the hotel. Such an agreement, in which a party has discretion to execute tasks that cannot be objectively measured, is a classic example of a personal services contract that may not be enforced by injunction," the five-judge panel ruled.

Judge Schweitzer, by contrast, had found during a bench ruling in October that the 100-page-plus management agreement was heavily negotiated by sophisticated parties, unlike a typical personal services contract that traditionally governs so-called "master-servant" relationships most commonly associated with roles like schoolteachers or cooks.

"Historically, the distinct feature of a personal services contract is that it must follow the person with the skills at the root of the contract," the judge said during the October hearing in downtown Manhattan, waxing historic from the bench on ancient Roman contract law and Byzantine Emperor Justinian I.

"[This] agreement does not rely on services being rendered by any specific person or group of persons, but rather the agreement creates a long-term commercial relationship between commercial entities," Judge Schweitzer said.

Todd E. Soloway of Pryor Cashman LLP, who represents Eden Roc, told Law360 that the appeals court's decision vindicates the ownership's position that Marriott had no right to commandeer its hotel.

Marriott's attorneys didn't immediately respond to requests for comment Tuesday.

The appeals court's ruling allows Eden Roc to oust Marriott as the hotel's manager while lawsuits over the dispute proceed.

Eden Roc filed its first lawsuit in April 2012, claiming that it lost \$75 million because Marriott hadn't properly marketed the hotel, duped it into carrying out a \$240 million renovation and flooded the hotel with discount bookings.

Then, in the early morning hours of Oct. 14, Eden Roc tried to forcibly remove Marriott as the hotel's manager with a raid on the hotel that ultimately was thwarted by police, according to a lawsuit filed by Marriott on Oct. 15.

Justices John W. Sweeny Jr., Dianne T. Renwick, Luis A. Gonzalez, Sallie Manzanet-Daniels and Nelson S. Roman sat on the state appeals court panel.

Eden Roc is represented by Todd E. Soloway, William L. Charron, Joshua Bernstein and Bryan T. Mohler of Pryor Cashman LLP.

Marriott is represented by Edward P. Boyle, Kostas D. Katsiris, David N. Cinotti and Adam G. Possidente of Venable LLP.

The cases are Eden Roc LLP v. Marriott International Inc. et al., case number 651027/2012, and Marriott International Inc. et al. v. Eden Roc LLP, case number 653590/2012. Both cases are in the Appellate Division of the Supreme Court of the State of New York, First Judicial Department.

--Additional reporting by Sindhu Sundar and Kelly Rizzetta. Editing by Rebecca Flanagan.
