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Battle Over The Pointe's Margaritaville Heats Up

By NEIL HARTNELL

Attorneys for Margaritaville's Bahamian franchisee yesterday said 79 percent of the brand's defenses have been dismissed as their bid to block its tie-up with the \$250m Pointe project heats up.

Todd Levine and Adam Steinberg, who are acting for Boss Investments, said Palm Beach County's 15th judicial circuit court had presently left the Margaritaville defendants with just seven of 34 defenses to their client's "breach of contract" claim following a January 16, 2020, order.

The attorneys, in written replies to *Tribune Business* questions, said they were "very confident" in the merits of Boss Investments' case as the two sides continue exchanging documents and interviewing witnesses ahead of a scheduled March 2020 trial.

They added that Boss, whose principals are Peter Maury, the Association of Bahamas Marinas (ABM) chief, and Mike Grandonico, planned to depose China Construction America's (CCA) senior Bahamas-based executive, Daniel Liu, arguing that The Pointe's developer is "at the centre of this dispute" due to Margaritaville's branding of its resort.

Boss Investments, which is the Paradise Island-based Margaritaville franchisee, is alleging that the brand's tie-up with The Pointe violates its contract as the exclusive licensee for The Bahamas, and Messrs Levine and Steinberg yesterday warned that CCA would have to "remove everything related" to the brand should their client's court case succeed.

This could result in the new resort being stripped of any branding associated with Margaritaville and/or Jimmy Buffett," they added, a development that could significantly disrupt both CCA's plans and The Pointe's opening should it occur.

Leslie Pindling, spokesman for The Pointe and its Newworld One Bay Street holding vehicle, declined to comment when contacted by Tribune Business yesterday as neither is named as a defendant in the lawsuit and nor is CCA. There is no suggestion they have done anything wrong in relation to the dispute.

He referred this newspaper to Larry Magor, a Margaritaville representative. When Tribune Business rang the number for Mr Magor that was provided by Mr Pindling, a different name was given on the voice mail and the message was not returned before press time.

Pledging to continue the attack on Margaritaville's defenses to their client's claim, Messrs Levine and Steinberg said they planned to interview the brand's key executive and employee witnesses over the next two months.

“Boss also intends to commence taking the deposition of Daniel Liu, senior vice-president of China Construction America,” they added.

“China Construction and its affiliate are at the center of this dispute due to their contract with Margaritaville to open the Margaritaville at the Pointe in violation of the exclusive license that Margaritaville already granted to Boss for the same intellectual property throughout The Bahamas.”

The two attorneys alleged that Margaritaville had used Boss Investments to establish a “foothold” in The Bahamas for the lifestyle brand created by Jimmy Buffett only to then turn around and give the same rights to downtown Nassau’s The Pointe development.

“We are very confident in Boss’s position that Margaritaville clearly and intentionally violated the license that grants Boss the exclusive rights to the Margaritaville-branded property, and the exclusive rights to use Jimmy Buffett’s name, image, likeness, song titles and other Buffett-related intellectual property for the entire Bahamas, in connection with the development, décor, name, promotion and operation of one or more combined restaurants, bars, live-entertainment and retail establishments,” Messrs Levine and Steinberg alleged.

“It is also Boss’s position that Margaritaville used Boss to bring the brand to The Bahamas, and once Boss established the brand and gave it a foothold in The Bahamas for the first time, Margaritaville unlawfully leveraged Boss’s successful efforts to provide China Construction or its affiliate with the same intellectual property rights that Margaritaville had already licensed exclusively to Boss.

“Margaritaville thwarted Boss’s attempt to open a second location in a prime location near the port, which turns out to be steps away from the soon to be opened Margaritaville at the Pointe. The Pointe project will also divert Boss’s customer base away from Boss’s existing Margaritaville facility,” the duo continued.

“This has caused, and will continue to cause, Boss to incur substantial damages. It is our position that Boss is also entitled to receive royalties that will be paid to Margaritaville for the Pointe project. Boss also anticipates being awarded additional damages.”

Asked about the consequences if their client’s claim was to succeed, Messrs Levine and Steinberg added: “Boss’s damages include lost revenue and royalties from the Margaritaville at the Pointe project.

“In addition to damages, we believe Boss is entitled to injunctive relief to cause China Construction and/or its affiliate to remove everything related to Margaritaville, Jimmy Buffett and the related intellectual property. This could result in the new resort being stripped of any branding associated with Margaritaville and/or Jimmy Buffett.”

Boss Investments was forced to re-file its action with the Florida state court in late 2018 after the southern district federal court said it had no jurisdiction to hear the matter. It is alleging that Margaritaville's tie-up with CCA's downtown Nassau resort development, adjacent to the British Colonial Hilton, violates its own exclusive right to use the brand's trademarks and intellectual property within Bahamian territory.

Boss Investments and its principals, in their original lawsuit, said their expansion plans have been "completely shattered" as a result, with staff morale undermined because "they "now believe their jobs are in jeopardy" due to the competitive threat posed by The Pointe's Margaritaville brand.

"The development of Margaritaville at the Pointe, which contains the same word, 'Margaritaville', in the exact same recognisable font, as the name of Boss's first venue (and proposed second venue) will directly impact, cause confusion with customers, and compete with Boss's first venue, as the new complex is being developed less than two miles away from the first venue in downtown Nassau, immediately adjacent to the port where millions of cruise passengers embark and disembark annually," Boss Investments alleged.

"As defendants know, Boss relies on cruise line passenger business to support its business..... The development of Margaritaville at the Pointe prevented Boss from opening its second venue due to defendants' deceitful actions in instructing Boss to 'slow play' its proposed Port location for the second venue because Margaritaville purportedly had a better location.

"This blatant misrepresentation resulted in Boss losing the opportunity to lease the property it had been considering at the port [of Nassau] for its second venue. Furthermore, Boss cannot be reasonably expected to open a second venue in the port area, as it had planned from the outset, due to the massive Margaritaville complex being built approximately a football field away."