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FILED

JAN 14 2010

Alvin J. Robinson
CLERK OF COURT

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Attorneys for Plaintiff
Vegas South Partners, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VEGAS SOUTH PARTNERS,)
LLC, a Delaware limited)
liability company,)

Plaintiff,)

v.)

MANDALAY CORP. d/b/a)
Mandalay Bay Resort and)
Casino, a Nevada corporation,)

Defendant.)

**COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIVE
RELIEF AND DAMAGES AND
DEMAND FOR JURY TRIAL**

Case No.:
Dept. No.:

A-10-607771-C
XIX

Plaintiff, VEGAS SOUTH PARTNERS, LLC, through undersigned counsel,
sues Defendant, MANDALAY CORP., and alleges as follows:

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I. INTRODUCTION

1. This action seeks preliminary and permanent injunctive relief and damages as a result of the Defendant's refusal to permit the re-opening of Plaintiff's outdoor bar and lounge at the Mandalay Bay Resort and Casino pool area known as the Bambu Bar. Plaintiff, entered into a lease with the Defendant and spent over \$400,000 (Four Hundred Thousand Dollars) in renovations in order to prepare an outdoor bar and lounge for a grand opening in time for the 2009 summer season. Plaintiff completed the renovations in time for the season and had not yet received its liquor license, so it opened the Bambu Bar for business under a Management Agreement with Defendant. Plaintiff continued to operate the Bambu Bar through the summer until Defendant elected to terminate that Agreement on August 25, 2009. During that period of time Defendant Mandalay received income that it shared with the Plaintiff Vegas South. Mandalay now refuses to cooperate with Vegas South in obtaining a liquor license allowing the re-opening of the Bambu Bar and instead claims to have terminated the existing lease without paying Vegas South its investment as required by the recoupment term of the lease. Mandalay did not properly terminate the lease given its actions as described below and has no legal basis to interfere with Vegas South's re-opening and rightful possession of the premises at issue.

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II. JURISDICTION AND VENUE

2. This is an action for preliminary and permanent injunctive relief and damages in excess of Four Hundred Thousand Dollars (\$400,000.00), exclusive of interest and costs.

3. Jurisdiction is proper in Clark County because Defendant Mandalay Corp. has its principal place of business in Clark County. In addition, the cocktail lounge which is the subject of this Complaint is located in Clark County.

4. Venue is proper in this Court because the claims and causes of action accrued in Clark County.

III. PARTIES

5. At all times material hereto, Plaintiff Vegas South Partners, LLC ("Vegas South"), was and is a Delaware limited liability company doing business in Clark County, Nevada.

6. Defendant Mandalay Corp. ("Mandalay") was at all times relevant a Nevada corporation with its principal places of business in Clark County, Nevada.

IV. GENERAL ALLEGATIONS

7. On or about May 5, 2009, Vegas South and Mandalay entered into a lease for the purpose of renovating and operating an outdoor bar and lounge known as the Bambu Bar (the "Lease"). A copy of the Lease is attached hereto as Exhibit "1" and incorporated herein by reference.

1
2 8. Among other things, between May 2009 and the present, the
3 following steps were taken by Vegas South for the purpose of preparing the Bambu
4 Bar for the 2009 summer season grand opening: (1) raised over \$400,000 (Four
5 Hundred Thousand Dollars) in capital for the build-out; (2) hired an architect and
6 a contractor and entered into contracts for those services; (3) prepared
7 construction plans and received all necessary approvals; (4) funded the building of
8 the Bambu Bar; (5) arranged for and purchased the necessary operating
9 equipment; (6) hired management to begin staffing the bar operations; and (7)
10 hired and trained staff.
11

12
13 9. At significant expense, Vegas South took all steps necessary to
14 establish a outdoor bar and lounge just in time for the 2009 summer season.
15

16 10. Vegas South kept Mandalay advised of its progress throughout its
17 build-out, staffing and promotional efforts.

18 11. Mandalay not only encouraged Vegas South to invest substantial
19 monies in the development of the Bambu Bar, it also approved the build-out and
20 preparations. In addition, Mandalay tied in Plaintiff's point of sale terminals to its
21 system to allow hotel guests to charge and for accounting purposes.
22

23 12. Vegas South spent over \$400,000 (Four Hundred Thousand Dollars)
24 on the development and opening of the Bambu Bar.

25 13. Vegas South submitted its application for a liquor license, but did not
26 receive the license in time for the summer season.
27

1
2 14. On or about June 11, 2009, Vegas South and Mandalay entered into a
3 Management Agreement in order to permit Vegas South to operate the Bambu Bar
4 under Mandalay's liquor license. A copy of the Management Agreement is
5 attached hereto as Exhibit "2" and incorporated herein by reference.
6

7 15. Vegas South operated the Bambu Bar during the 2009 summer
8 season without incident.

9 16. On or about August 20, 2009, Mandalay sent Vegas South a five day
10 notice to terminate the Management Agreement.
11

12 17. The Lease protects Vegas South in the event Mandalay decides to
13 terminate before Vegas South has an opportunity to recoup its substantial
14 investment:

15 Section 3.2: Early Termination. Either party, in its sole
16 discretion, shall have the absolute right to terminate
17 this Lease at any time during the Lease Term and
18 Renewal Term upon not less than ninety (90) days' prior
19 written notice to the other party. In the event that
20 Landlord elects to terminate this Lease pursuant to this
21 Section 3.2 without cause, Landlord shall reimburse
22 Tenant the Net Book Value of the Tenant Improvements
23 and custom printed Mandalay Bay-specific material
24 unuseable at Tenant's other businesses...

25 18. After the Management termination and at the behest of Mandalay,
26 Vegas South was required to and did make certain changes in its management and
27 ownership and Mandalay approved of those changes.
28

 19. Vegas South and Mandalay engaged in a course of dealing that
recognized the change in ownership and management. Mandalay promised a lease

1
2 amendment memorializing the change in ownership listed at Exhibit C of the
3 Lease.

4
5 20. Mandalay failed to prepare the agreed amendment to document the
6 change in ownership listed at Exhibit C of the Lease.

7
8 21. Mandalay agreed that Vegas South could forego the payment of rent
9 during the transition from the Management Agreement to an independent
10 operation under a Vegas South liquor license and that transition has yet to occur.

11
12 22. In order to complete the licensing process, the Clark County
13 Department of Business License requires confirmation from Mandalay as the
14 landlord under the Lease that the Lease is valid.

15
16 23. Mandalay refused to confirm the validity of the Lease for the Clark
17 County Department of Business License, therefore Vegas South is unable to
18 receive its liquor license.

19
20 24. Instead of timely providing an amendment to conform to the
21 approved ownership changes, Mandalay wrongfully terminated the Lease by letter
22 dated December 15, 2009 for the alleged failure to pay rent. A copy of the letter
23 purporting to terminate the Lease is attached hereto as Exhibit "3" and
24 incorporated herein by reference.

25
26 25. Mandalay breached the Lease and its duty of good faith and fair
27 dealing by refusing to document the previously agreed to and approved ownership
28 changes and any attempt to provide Mandalay notice and an opportunity to cure

1
2 would be futile as Mandalay has already notified Vegas South that it would not
3 comply and any additional delay would cause irreparable harm to Vegas South.
4

5 26. During this ownership change, Mandalay did not provide Vegas
6 South with a notice of breach and opportunity to cure because Vegas South
7 immediately took the appropriate action in changing the management and
8 ownership with Mandalay's approval.

9 27. Mandalay never provided Vegas South written notice of breach or an
10 opportunity to cure a default of the Lease as required by the Lease and Nevada
11 law and, therefore, Vegas South is entitled to open the Bambu Bar and operate
12 same until such time as Mandalay pays Vegas South its investment for the early
13 termination. Further, any written notice of Vegas South's failure to pay rent were
14 of no consequence as Mandalay informed Vegas South not to pay rent, in spite of
15 any notices regarding same. Mandalay had no reason to provide an effective
16 written notice of breach because it was informed of the changes Vegas South
17 undertook to obtain the required liquor license and approved of those changes.
18

19 28. Unless Mandalay is enjoined from interfering with Vegas South's
20 reopening of the Bambu Bar and required to return possession, Vegas South will
21 suffer irreparable harm, including but not limited to, loss of goodwill, damage to
22 reputation, substantial negative publicity, and loss of jobs.
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2 29. Mandalay continues to damage Vegas South's goodwill and
3 reputation by showing the Bambu Bar to other prospective tenants even though
4 Vegas South's Lease remains in force.
5

6 30. All conditions precedent to the filing of this action have been
7 extinguished, performed or were otherwise waived.

8 31. Plaintiff has been forced to retain the undersigned counsel and is
9 required to pay their reasonable attorneys' fees and costs.
10

11 **V. CLAIMS**

12 **COUNT I**

13 **PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

14 32. Plaintiff adopts and reincorporates the allegations contained in
15 paragraphs 1 through 31 as if specifically set forth herein.
16

17 33. Plaintiff spent a significant amount of money, time and effort
18 preparing for the opening of the Bambu Bar in time for the 2009 summer season.

19 34. After Plaintiff spent over \$400,000 (Four Hundred Thousand Dollars)
20 on the build-out and staffing, the Bambu Bar is ready to resume operations and is
21 fully staffed for that purpose.
22

23 35. Plaintiff has complied with all liquor licensing requirements and only
24 requires that Mandalay acknowledge the validity of the Lease for the Clark
25 County Department of Business License.
26
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1
2 36. Plaintiff has no adequate remedy at law due to the unique
3 preparation and staffing for the continued operation of the Bambu Bar and is
4 entitled to enforce the Lease as modified by the parties.
5

6 37. If Mandalay is permitted to block Vegas South's performance under
7 the Lease by simply refusing to provide written confirmation of the approved
8 ownership changes, then Vegas South's reputation will be irreparably harmed and
9 it will cause substantial negative publicity.
10

11 WHEREFORE, Plaintiff Vegas South seeks a preliminary and permanent
12 injunction requiring that: (1) the Lease shall remain in full force and effect and
13 shall be modified only to include the change in ownership as previously requested
14 by Mandalay; (2) Possession of the Bambu Bar be returned to Vegas South and
15 Vegas South be permitted to immediately open the Bambu Bar in accordance with
16 the terms of the Lease and after receipt of a temporary license; (3) Vegas South be
17 permitted to continue to operate the Bambu Bar until such time as Mandalay
18 provides the required sixty (60) day early termination notice and simultaneously
19 therewith, pays Vegas South the recoupment amount required by the Lease; and
20 (4) that Vegas South be awarded its reasonable attorneys fees and costs pursuant
21 to Section 27.5 of the Lease.
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COUNT II

DECLARATORY RELIEF

38. Plaintiff adopts and reincorporates the allegations contained in paragraphs 1 through 37 as if specifically set forth herein.

39. This is an action for declaratory relief under Nevada Statutes §§ 30.010, *et seq.*, in that Plaintiff Vegas South is in doubt as to its legal rights with regard to the interpretation of the Lease.

40. Section 15.1 and Exhibit C of the Lease required certain ownership of Vegas South; however, Defendant Mandalay later determined that those individuals did not meet its criteria for the operation of the Bambu Bar.

41. Plaintiff Vegas South took the appropriate action and arranged for new ownership.

42. Defendant Mandalay accepted the change in ownership and agreed to modify the Lease accordingly.

43. Defendant Mandalay provided written confirmation of its acceptance of the change in ownership, but it has failed to deliver the promised amendment to the Lease.

44. Plaintiff Vegas South asserts that the Lease remains valid and that Defendant Mandalay is not entitled to terminate the Lease without paying Vegas South pursuant to the above-quoted recoupment term.

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45. Plaintiff Vegas South is in doubt as to its legal rights. Plaintiff has no adequate remedy at law and only a declaration will serve to make Vegas South whole.

WHEREFORE, Plaintiff Vegas South seeks a declaration that: (1) the Lease remains in full force and effect; (2) the new ownership selected by Vegas South and approved by Mandalay shall replace the ownership named in the Lease; (3) that all other terms of the Lease shall remain the same; and (4) that Vegas South be awarded its reasonable attorneys fees and costs pursuant to Section 27.5 of the Lease.

COUNT III

UNJUST ENRICHMENT

46. Plaintiff adopts and reincorporates the allegations contained in paragraphs 1 through 45 as if specifically set forth herein.

47. Defendant Mandalay led Plaintiff Vegas South to believe that Vegas South's investment in the build-out of the Bambu Bar would be protected in the event that Mandalay determined that it did not want Vegas South to operate the business.

48. Long after Defendant Mandalay was advised of Plaintiff Vegas South's change in ownership, Mandalay continued to act as if the Lease was in full force and effect, thereby confirming Vegas South's continued reliance that they were protected on its substantial investment in the build-out.

1
2 49. By wrongfully continuing to do business with Vegas South, Defendant
3 Mandalay knowingly received, accepted and retained the benefit of Plaintiff Vegas
4 South's substantial investment in the Bambu Bar, an investment that rightfully
5 belongs to Vegas South.
6

7 50. Defendant Mandalay has been unjustly enriched to the detriment of
8 Plaintiff Vegas South and would be further enriched if it were permitted to open
9 and operate the Bambu Bar now that the build-out is complete.
10

11 51. Defendant Mandalay has no lawful right to the benefits it has
12 received under the circumstances and, to the extent it is permitted to retain those
13 benefits by opening and operating the Bambu Bar, it would be unjustly enriched.
14

15 52. Plaintiff Vegas South has no adequate remedy at law and,
16 accordingly, invoking the equitable powers of this Court is the only way for
17 Plaintiff to become whole.
18

19 53. As a direct and proximate result of Defendant's wrongful conduct,
20 Plaintiff has been damaged.
21

22 WHEREFORE, Plaintiff Vegas South demands judgment against Defendant
23 Mandalay for compensatory and special damages, including both the actual loss
24 and unjust enrichment caused by Defendant Mandalay's wrongful
25 misappropriation of Plaintiff's investment, disgorgement of profits earned by
26 Mandalay at the Bambu Bar, interest, attorneys' fees and costs and any other
27 remedy this Court finds appropriate.
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COUNT IV

BREACH OF CONTRACT –
IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

54. Plaintiff adopts and reincorporates the allegations contained in paragraphs 1 through 53 as if specifically set forth herein.

55. Implied in every contract is the covenant of good faith and fair dealing, requiring that the parties to the contract perform its terms in good faith and in a manner that preserves for each party the bargained for benefits of the contract.

56. The Lease contains what could be and is in this case inconsistent terms – the requirement that certain named individuals own Vegas South and the requirement that Vegas South receive a liquor license.

57. Mandalay believed the individuals named in the Lease as owners of Vegas South were not acceptable to the Clark County Department of Business License and in order to obtain a liquor license as required by the Lease, Mandalay asked Vegas South to name new owners acceptable to both Clark County and Mandalay.

58. After requesting and approving the change in ownership, Mandalay breached the implied covenant of good faith and fair dealing by refusing to cooperate in documenting the change Mandalay felt was required for the liquor license.

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2 59. The relevant Lease terms requiring specified ownership of Vegas
3 South could not in good faith be read to permit Mandalay to terminate the Lease
4 without paying Vegas South under the recoupment term.
5

6 60. By attempting to terminate Vegas South prior to documenting the
7 ownership change, Mandalay deliberately contravened the intention and spirit of
8 the contract

9 61. As a direct and proximate result of Defendant's wrongful conduct,
10 Plaintiff has been damaged.
11

12 WHEREFORE, Plaintiff Vegas South demands judgment against
13 Defendant Mandalay for compensatory and special damages, including both the
14 actual loss of Plaintiff's investment and the loss of profits it would have received
15 from the operation of the Bambu Bar, interest, attorneys' fees and costs pursuant
16 to Section 27.5 of the Lease and any other remedy this Court finds appropriate.
17

18 COUNT V

19 REFORMATION OF CONTRACT

20 62. Plaintiff adopts and reincorporates the allegations contained in
21 paragraphs 1 through 61 as if specifically set forth herein.
22

23 63. Mandalay requested that Vegas South make changes to its ownership
24 to allay any concerns it may have with certain of the owners listed in the Lease.

25 64. Consistent with their course of dealing, Vegas South and Mandalay
26 agreed to the Vegas South change in ownership, but the parties failed to formalize
27

1
2 the change and that omission is now preventing Vegas South from obtaining the
3 liquor license required by the Lease.

4
5 65. Mandalay is now effectively holding hostage the documentation
6 recognizing the change in ownership and management and attempting to
7 improperly extract from Vegas South the entirety of its \$400,000 (Four Hundred
8 Thousand Dollars) plus investment.

9
10 WHEREFORE, Plaintiff Vegas South demands judgment against Defendant
11 Mandalay for reformation of the Lease to accurately reflect the current ownership
12 of Vegas South, attorneys' fees and costs pursuant to Section 27.5 of the Lease and
13 any other remedy this Court finds appropriate.

14
15 **COUNT VI**

16 **WRONGFUL EVICTION**

17
18 66. Plaintiff adopts and reincorporates the allegations contained in
19 paragraphs 1 through 65 as if specifically set forth herein.

20
21 67. On or about December 9, 2009, Vegas South was notified in writing
22 that Mandalay self-helped and unilaterally took possession of the property.

23
24 68. At all times material thereto, Mandalay had no right to take
25 possession of the property.

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27 69. At all times material thereto, the actions of Mandalay were malicious,
28 wanton and done with the express intent to injure and/or harm Vegas South.

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70. At all times material thereto, Vegas South had a legal right to occupy and possess the property at issue.

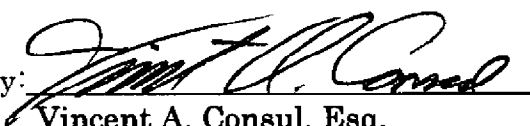
WHEREFORE, Plaintiff, VEGAS SOUTH, demands judgment against Defendant, MANDALAY, for compensatory and special damages, punitive damages, disgorgement of profits earned by Mandalay at the Bambu Bar, interest, court costs, attorneys' fees and any other relief and/or remedy this Court finds appropriate.

JURY DEMAND

Plaintiff demands a jury trial for all issues triable as of right to a jury.

Dated this 14th day of January, 2010.

BOIES, SCHILLER & FLEXNER LLP

By: 
Vincent A. Consul, Esq.

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