

Travel Case

I. Background

Red Corporation (Red Corp., or “Red”), a company of Negoland, and Blue Corporation (Blue Corp., or “Blue”), a company of Arbitria, agreed that Blue request travel arrangements to Red in accordance with the Land Operator Agreement (“LOA”), in which Red provides land operator services to Blue’s tour customers. In the summer of 2012, Red was requested by Blue to arrange for a ten-day training session tour, which would be held in February of 2013 for Blue’s important Arbitrian customer, Purple Corporation (Purple Corp. or “Purple”). However, during the training session in February, participants of Purple Corp. encountered a number of troubles.

First, the rooms of Alpha Hotel, which Red had booked, prepared were not ocean-view rooms, contrary to what Purple Corp. and Blue Corp. had requested. Second, ten of the hundred participants of the training session suffered allergic reactions to the meals that Alpha Hotel had provided, even though Blue had requested allergen-free meals. Because of the allergic symptoms, they had no choice but to return to Arbitria with an emergency. At the same time, the remaining members had to change the accommodation and their itinerary. These events incurred medical expenses and additional costs involved in implementing change in the itinerary.

Another series of troubles happened regarding the cruise trip, which was the highlight of the training session. First, although Purple Corp. specified their preference of Negoland Cruise Corp. over Red Cruise Corp., because Red had failed to submit passenger list to Negoland Cruise, participants of Purple Corp. could not board Negoland Cruise’s cruise ship as they wished. Second, as a result of taking Red Cruise’s ship as Red Corp. recommended, they missed the return flight, for the Red Cruise’s ship was hindered by an unexpected storm, whereas Negoland Cruise’s ship they would have taken otherwise arrived on time.

Since Purple is unable to pay for the training session fee due to its bankruptcy, Blue Corp. bore financial losses as a consequence.

II. Claim:

1. Red Corp. is liable for breach of contract in relation to the fact that it didn’t provide information about the situation of Alpha Hotel after November 2012.
2. Red Corp. is liable for breach of contract in relation to the fact that the cruise by Negoland Cruise was not arranged for.
3. Blue Corp. does have the right to claim US\$395,700 from Red Corp. as damages for breach of contract.

4. Blue Corp is not obliged to pay the cost incurred in connection with the change of accommodations and flight.

1. Red Corp. is liable for breach of contract in relation to the fact that it didn't provide information about the situation of Alpha Hotel after November 2012.

(1) Provision of information about Alpha Hotel after November 2012 is the duty which Red Corp. should have performed with due care of a prudent manager.

(i) As stated in the Land Operator Agreement (hereinafter abbreviated to "LOA") Article III, Section 7 and Article IV, Red Corp. had the duty to provide information with due care of a prudent manager.

(ii) "Due care of a prudent manager" should be interpreted according to the common intention of the parties, according to UNIDROIT Principles of International Commercial Contracts 2010 (hereinafter denoted as "U"), Article 4.1(1), and relevant circumstances written in U4.3(a)~(f) must be put into consideration

(e) The meaning commonly given to terms and expressions in the trade concerned:

Due care of a prudent manager is the duty of care at the level that is reasonably expected of the same kind.

(iii) In response to the problematic situation of Alpha Hotel, most of travel agencies in Negoland have stopped recommending Alpha Hotel since then (Para. 33). Therefore, Red Corp., also had duty to report it to Blue, as part of due care of a prudent manager.

(2) Red has not exercised due care of a prudent manager and therefore has violated LOA.

The failure of providing the information was attributed to default by Mr. Wolf, an employee of Red Corp.'s travel section who made the travel arrangements. He missed the information because he was on a vacation when the food poisoning occurred and he failed to check the database of such information (Para. 33). This fact proves Red Corp. has neglected duty to exercise care that is reasonably expected of an average travel agent.

Therefore, Red Corp. is liable for breach of contract for it didn't provide information about the situation of Alpha Hotel after November 2012.

2. Red Corp. is liable for breach of contract in relation to the fact that the cruise by Negoland Cruise was not arranged for.

(1) Red's duty is to make the arrangements for the cruise of Negoland Cruise.

(i) It is specifically the cruise of Negoland Cruise that Red Corp. is obliged to arrange for.

“The cruise” should be interpreted according to the common intention of Red and Blue (U4.1) and upon interpretation all the circumstances including the ones written in U4.3

(a)~(f) must be considered.

(a) Preliminary negotiations between the parties:

Before conclusion of the contract, Mr. Pearl of Blue and Mr. Wolf of Red decided to book Negoland Cruise by a mutual consent at the counsel on the phone (Para. 16, 17)

(c) The conduct of the parties subsequent to the conclusion of the contract:

After conclusion of the contract, Red booked Negoland Cruise and specified the cruise is “Negoland Cruise” on Travel Arrangement Report (Exhibit 9)

(ii) Validity of the operator contract

The operator contract to arrange the cruise by Negoland Cruise becomes valid according to Article 6 of LOA at the time Blue approves the price quote (Exhibit 8) issued by Red in accordance with the preceding article. (Para. 18) Since the contract is valid, Red has duty to perform Operator Services.

(2) Red’s duty to arrange Negoland Cruise cannot be changed according to Article 10 of LOA.

(i) Red didn’t perform Operator Services with the due care of a prudent manager, which is required in Article 10, (6) of LOA.

The reservation of Negoland Cruise was cancelled because the clerk of Red forgot to submit the passenger list (Para. 28). Such failure cannot happen in a general travel agency with “the due care of general manager”.

(ii) Red cannot claim “Changes made on Operator Services” written in Article 10 of LOA (2)

The failure to book transportation is caused by Red due to the lack of due care of a prudent manager. If Red is released from the liability arising from the non-performance by claiming “Changes made on Operator Services” despite failure to exercise the due care of a

prudent manager, Article 4 in LOA becomes practically meaningless, which conflicts with U4.5 (All terms to be given effect).

(iii) Red cannot claim “Changes made on Operator Services” written in Article 10 of LOA(6)

The situation under which “a change is reasonable or unavoidable” does not include the one under which there is a failure to fulfill the due care of a prudent manager. The change arising from Red’s negligence was neither reasonable nor unavoidable, since it could have been safely avoided just by submitting the required document.

From the above reasons of (1) (2), Red's duty is to arrange nothing but the cruise of Negoland Cruise Corp., so Red is liable for breach of contract.

3. Blue Corp. does have the right to claim US\$395,700 from Red Corp. as damages for breach of contract.

Blue Corp. has paid for the damages that it has received in the form of redemption to Purple required by the Travel Terms and Conditions (Exhibit 7). The following discussion deals with whether Blue is entitled to claim payment from Red as compensation.

(1) The amount US\$395,700 that Blue has paid to Purple is attributable to Red’s default. As a response to Purple’s claim, Blue has paid the said amount, which resulted in a financial loss on Blue. The details of the payment is as follows:

- (i) Accommodation at Negoland industrial park: US \$26,700
- (ii) Costs relating to the hospitalization for the treatment of allergies and emergency return to Arbitria: US\$36,0000
- (iii) Negoland cruise fee US\$26,700

U 7.4.2 states that “The aggrieved party is entitled to full compensation for harm sustained as a result of non-performance.” For each payment, whether there was a causal connection is discussed below:

- (i) Accommodation at Negoland industrial park: US \$26,700

Had Red Corp. provided Blue with necessary information (especially of mishandling, food poisoning and incidents of fatal allergic reactions regarding Alpha Hotel), Blue would have chosen a different hotel with a high probability (Para. 34).

(ii) Costs relating to the hospitalization for the treatment of allergies and emergency return to Arbitria: US\$36,0000

This cost arose from Red's non-performance of duty to provide information examined in Issue 1. Had Red Corp. provided Blue with necessary information, especially concerning mishandling, food poisoning and incidents of fatal allergic reactions regarding Alpha Hotel, Blue, with a high probability, would have chosen a different hotel (Para. 34).

(iii) Negoland cruise fee US\$26,700

As shown in the Issue 2, the cruise fee is attributed to Red's fault, which is a failure to arrange for a cruise ship of Negoland Cruise Corp. Red is liable for damages that arose from its non-performance of the obligation.

(2) There is a reasonable degree of certainty to the loss Blue has incurred.

According to U7.4.3, "Compensation is due only for harm, including future harm, that is established with a reasonable degree of certainty."

(3) Blue's financial loss was foreseeable.

According to U7.4.4, "the non-performing party is liable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance."

Before entering into the Agreement, Mr. Pearl, of Blue Corp. had reminded Mr. Wolf of Red Corp. that Purple was not tolerant of any trifling mistake over travel arrangements in the past, and that any mistake might terminate the business, which would incur losses of millions of Abu dollars (Para. 16).

Thus, Red Corp. could reasonably foresee that Purple would firmly claim to Blue the full payment for the expenses and that, as a result, Blue would decide to meet Purple's request in order to avoid termination of business. Hence, Blue's financial loss was reasonably foreseeable.

Therefore, Red owes Blue the above compensation payment.

4. Blue Corp is not obliged to pay the cost incurred in connection with the change of accommodations and flight.

(1) Additional cost of Negoland Industrial Park

The costs that Red Corp. has paid in this case were caused by Red's failure to perform its duty to provide information, as indicated in Issue 1. Had Red Corp. provided appropriate and necessary information, Blue would have considered other accommodations (Para. 34); therefore, the additional expenses incurred are attributable only to Red's default, which means that Red alone is liable for the expenses.

Also, the change in itinerary also is a result of Red's default aforesaid. Thus, Red Corp. is not entitled to change its Operator Services under Article 10, (4) and (6) of Land Operator Agreement (based on the same premises and reasons given in Issue 2).

(2) Cost of extended stay at Negoport and change in flight schedule

The costs that Red Corp. has paid in this case arose from Red's failure to perform the duty to arrange a cruise ship of Negoland Cruise Corp., which was demonstrated in Issue 2. Since they are costs that would not have been incurred if Red Corp. arranged for Negoland Cruise without fault, Blue is not liable for them. In addition, the change in itinerary also is a result of Red's default aforesaid. Thus, Red Corp. is not entitled to change its Operator Services under Article 10, (4) and (6) of Land Operator Agreement (based on the same premises and reasons given in Issue 2).

Hotel Case

I . Background

Aside from Travel Case, another series of conflicts occurred concerning Blue Star Negoland. Blue Star Negoland, or “the Hotel”, is one of the “Blue Star” brand hotels located in Negotown, the capital of Negoland, and Blue Corp. was in charge of its management. Blue and Red Corp, which is “the Owner” of the Hotel, entered into the Hotel Management Agreement upon the implementation of management. While the Hotel’s business was in a good condition from 2007 to 2009, it started to show a declining trend in 2010. Although Blue and Red held meetings to improve the business performance of the Hotel, the effect of the strategies remained limited, since the proposals and policies of the two corporations were in conflict.

Meanwhile, Blue acquired White Hotels Corporation through a merger. While Blue Star Negoland kept struggling in 2012, the performance of White Hotel Negotown (White Hotel) improved substantially. During this time, Blue sent the past customers of Blue Star Negoland e-mails that announce its online reservation system started to accept reservations for White Hotel.

Given these situations, in February 2013, Red Corp. requested removal of Bob Orange, the General Manager of Blue Star Negoland, and assignment of the right to manage White Hotels to a third party, criticizing Blue for using the customer information of Blue Star Negoland for the e-mails. Finally, in July 2013, Red sent a notice to Blue that it intends to terminate the Hotel Management Agreement.

II . Claim

(1) Red Corp. cannot terminate the Hotel Management Agreement because of Blue Corp.’s default under the Agreement.

(2) Red Corp. cannot terminate the Hotel Management Agreement by paying damages to Blue Corp. even if there is no default by Blue Corp. under the Agreement.

(Issue 1) Red Corp. may not terminate the Hotel Management Agreement.

1. There is no default by Blue Corp. on the Hotel Management Agreement (hereinafter “the Agreement”).

(1-1) Blue Corp. has no obligation to remove Mr. Bob Orange from his position.

The requirements for entitling Red the right to request Blue to remove the General Manager, as stipulated in Article III, Section 8 of the Agreement, are the following three points.

- (a) Poor performance due to lack of skills or neglect of his duties
- (b) Two prior written notices, on dates at least 30 days apart, from Red with respect to poor performance of the General Manager
- (c) Providing a reasonable opportunity to cure such circumstances not exceeding 90 days

Blue admits satisfaction of (b) and (c), which are the procedural requirements.

However, the substantive requirement, as stated in the above (a), is not satisfied. That is, poor performance of the Hotel is **not** due to the lack of skills or neglect of his duties.

- (i) The absence of lack of skills or neglect of duties.

The “skills” required here is interpreted as the managerial skills that an average GM of the hotel of the same kind would be expected to have. Based on this definition, Mr. Bob Orange did not lack in skills or neglect his duties.

- (A) Mr. Bob Orange has enough ability to manage Blue Star Negoland.

He was elected the General Manager first among other members and won the President’s Prize in 2004 (Para. 11). he contributed to good performance of the Hotel for three years from 2007 to 2009 (Para. 37). Therefore, it can be inferred that Mr. Bob Orange had great skills as a manager.

- (B) Mr. Bob Orange made efforts to reform the Hotel.

Given the meeting in January 2012, as a result of replacing all beds with the beds by Dormir the Internet hotel review score rose from 3.5 to 4 points, which is equivalent to what most of the other four-star hotels receive (Para. 42,43).

Such room upgrade for all guestrooms had already been proposed to Red by September 2010. And this year as a result of the upgrade, the rate of suite occupancy improved nearly to 100% and has stayed stable since then (Para. 38, 39).

Therefore, since Mr. Orange has made efforts to raise room occupancy rate, and has achieved substantial results in the reformations that he proposed, there is no lack of managerial ability or neglect of his duties.

(C) Mr. Bob Orange made efforts to educate employees.

The cause of the deterioration in the quality of employees lies in the wage gap between competing foreign-capital hotels and Blue Star Negoland (Para. 40). Despite the fact, Red has been rejecting Orange's demand for higher wages (Para. 42).

In addition, the loss of personnel has been brought under control as a result of Mr. Orange's direct communication with each employee (Para. 45).

Therefore, there is no neglect of duties on the part of Mr. Orange.

(1-2) The poor business performance of the Hotel was induced by external factors.

(i) Red's non-cooperation with Blue's management.

Had Red Corp. accepted Blue's proposal, the Hotel could have improved performance.

Mr. Orange made a rational proposal, that the Hotel mainly target businessmen (Para. 38).

As shown in the previous section (i)(B), Mr. Orange has a history of substantial results in the reformations that he had proposed.

As shown in the report in Exhibit 20, the consultant claims that it is a reasonable decision for Blue Star Negoland to target businessmen first. This claim coincides with that of Mr. Ruby, and Mr. Orange, and of Blue Corp.

Therefore, if Red Corp. agreed adopt Blue's proposal, the Hotel could have improved performance.

(ii) The emergence of foreign-capital hotels led to the poor business performance.

The slide of business is attributable to the intensified competition among a series of new powerful foreign-capital hotel chains, which is reflected in the declining performance of the Hotel since 2010 (Para. 37, Exhibit. 6).

Therefore, the poor performance of Blue Star Negoland cannot be attributed to the General Manager Mr. Orange, but to other external reasons, including Red Corporation's non-cooperation and entry of foreign-capital hotels.

(2). Management of White Hotel

Management of White Hotel Negotown (hereinafter referred to as White Hotel) does not constitute breach of the Agreement and Blue does not have an obligation to get out of the management of White Hotel.

(i) Article VII, Section1

The obligation of Blue in the Section 1 of Article VII, by its text, is the provision “through General Manager” and “within Blue Star Negoland”. Therefore, by interpretation according to the meaning that a reasonable person of the same kind (U4.2) considering the meaning commonly given to the terms in the trade concerned (U4.3), the obligation set forth here for Blue only applies to the acts of Blue represented by General Manager within Blue Star Negoland.

Given this presumption, Red’s second claim in Exhibit 16 is beyond the scope of the obligation for Blue set forth in the Agreement, and therefore has no legal basis. Also, the obligation not to compete is established separately in the Article 10 of the Agreement, which makes it unjust to interpret the Section 1 of Article 7 as non-competition clause.

(ii) Article X, Section2

The Section 2 of Article X of the Agreement prohibits the usage of trademarks including "Blue Star" or “Blue”, while “White Hotel Negotown” does not contain any of these on a literal level.

Therefore, Blue’s management of White Hotel Negoland does not make any breach of contract.

(3) Sending e-mails to past guests of Blue Star Negoland

Since the customer information that Blue has used belongs to Blue, there is no violation of Hotel Management Agreement.

(i) There is no violation of Article III, Section 4.

Blue Star Negoland adopts international reservation system which is managed operated by Blue Corp.(Para.12). The customer information is appurtenant to the reservation system by its nature, and thus is a specific property of Blue.

As stipulated in Article III, section 3, 1(h), Blue has the obligation to furnish centralized reservation services, and in section 10, all of Blue’s management modules are

and shall be at all times, the exclusive property of Blue. Thus, Blue may dispose of its property at will, unless otherwise prohibited explicitly in the Agreement.

(ii) There is no violation of Article VII, Section 1.

As shown in the preceding part, the obligation specified in Article VII, Section 1 only covers Blue's acts through General Manager within Blue Star Negoland. The management of White Hotel Negotown is beyond the scope of application of the article.

Therefore, the customer information is not a property of the Hotel of the said section of the Article, and there is no default on the part of Blue.

(Issue 2) Blue Corp. will demand compensation for the damages inflicted on Blue Corp. as a result of the said termination.

1. Red Corp. is not entitled by the Article to terminate the Hotel Management Agreement.

In the Agreement, the only article that sets conditions for termination is Article VIII (4), and as stipulated in U.1.3, the mutual agreement controls the parties.

Since there is no breach of agreement at all, the requirement for termination is not satisfied and Red Corp. does not have the right to terminate the Agreement.

Since there is no violation of the Agreement, the conditions set in the said two articles are not met, and therefore Red does not have the right to terminate the Agreement.

2. Red Corp. cannot claim the right to optional termination.

Rules of termination are established in U7.3. Since there is no other provision about optional termination in UNIDROIT, the governing law of the dispute, it should be interpreted that the optional termination is not allowed. When the right to optional termination is not established by default, such condition should have been written in the agreement as a special provision. Because there is no special covenant about the optional termination in the agreement, Red has no right to the optional termination.

Therefore, Red Corp. does not have the right to terminate the Hotel Management Agreement, which means that if Red Corp. terminates the Agreement, Blue deserves compensation for the damages caused by the termination.