

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO:**

SOHO OCEAN RESORT TRS, LLC,

Plaintiff,

v.

NIKOLE ROSENBERG,

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiff, SOHO OCEAN RESORT TRS, LLC (hereinafter, "SOHO"), by and through its attorneys, brings this action against Defendant, Nikole Rosenberg (hereinafter, "Defendant"), for damages and injunctive relief and states as follows:

PRELIMINARY ALLEGATIONS

1. "Jurisdiction" - This action is brought under 29 U.S.C. § 1132(a), under diversity as the Plaintiff is a citizen of Virginia and the Defendant is a citizen of the foreign state of Chile.
2. Jurisdiction is also proper under Section 1332(a) in that SOHO seeks injunctive relief and the value of the injunctive relief, the contract that SOHO is a party to that it seeks to protect through this action, well exceeds \$75,000.00.
3. This action is brought for the purpose of recovering damages and seeking injunctive relief against the Defendant.
4. SOHO, a Delaware limited liability company, is an owner and operator of hotels, condominiums and condominium/hotels and its principal place of business is Williamsburg, Virginia.
5. Defendant is an individual and is a citizen of the foreign state of Chile.

6. SOHO has a contract to manage and operate the Hyde Resort and Residences, a hotel/condominium, located in Hollywood, Broward County, Florida.

7. Venue is proper in this District under 29 USC § 1132(e)(2), in that the subject property is located within the Southern District of Florida.

BACKGROUND FACTS

8. SOHO has a proud sixty (60) year history of operating hospitality assets and it greatly values its stellar reputation.

9. In fact, the Hyde Resort and Residences (hereinafter, the “Hyde Resort”) recently was presented with the prestigious Four Diamond Award by the American Automobile Association which has only been awarded to a few select hotels in the South Florida market.

10. Defendant is not an owner of a condominium unit at the Hyde Resort.

11. Defendant often travels to Florida and stays at or visits the Hyde Resort.

12. When staying and/or visiting the Hyde Resort, Defendant often uses “commercial speech” to defame and state falsehoods about SOHO, its management of the Hyde Resort and many of its directors, officers and employees.

13. When Defendant is at the Hyde Resort, she is often rude to the staff, violates its Rules and Regulations and is disruptive to the other owners and guests.

14. Defendant complains about the level of occupancy, stating this is a condominium and not a hotel.

15. Defendant speaks in a disrespectful manner to employees and management alike, accusing management of being “corrupt.”

16. Defendant consistently yells at staff members and refuses to follow rules and regulations. For example, package pick up hours, procedures to use the cabanas, gym operation hours, etc.; making it more difficult to require other guests and owners to follow the rules and regulations.

17. Defendant routinely accesses social media and makes false, unfounded and defamatory accusations and statements about Plaintiff; thus damaging Plaintiff's 60 year old reputation and further complicating Plaintiff's ability to manage the Hyde Resort, as Plaintiff must address scores of owners who have been misinformed by Defendant's malicious statements.

18. Upon each visit to the Hyde Resort, Defendant takes pictures of operational aspects that she disagrees with and sends multiple e-mail messages to people outside of the operation.

19. For example, she once circulated pictures of a dirty unit after a party from a guest who paid rack rate (over \$300.00 per night for 3 units) on "WhatsApp," a social media application, asserting negligence on the Plaintiff's part, without giving the staff time to clean the unit. Moreover, the unit was not hers and she had no authority to be inside or taking pictures of said unit.

20. Defendant has misrepresented and held herself out as an expert in hotel operations, management and revenue management. She has no credentials associated with ownership or operation of a hotel. By misrepresenting her credentials, she has attempted to interfere with the operation of the Hyde Resort by attempting to force Plaintiff to adopt policies not consistent with good lodging practices.

21. Defendant has complained about one-night stays and demanded that the Resort maintain a three night minimum to stop “low class people” from entering the Resort. She claimed that the Resort “looks like The Bronx,” and she even compared the Resort to “Sodom and Gomorra” on the weekends.

22. Defendant has had several incidents with the manager of the Beach Concession, which is managed by the Hallandale Beach Club, an entity not associated with Plaintiff. Although not under the control of the Plaintiff, owners and guests of the Hyde Resort may nonetheless use the beach amenities. She has complained that the concessionaire’s staff is “unintelligent” and has erroneously attempted to defame Plaintiff by stating that Plaintiff is responsible for beach “bad policies and poor staffing.”

23. On July 25, 2018, Defendant interfered with the operation of both the Hyde Resort and another property managed by Plaintiff by bringing two unit owners with her to complain about the operation. She sought the Managing Director by standing in the lobby and stating that she would not move unless he spoke to her. The Resort’s Manager had to intervene. Meanwhile, Defendant remained in the lobby loudly complaining about the Plaintiff and its management in front of guests and employees.

24. On another occasion, she sought the Resort Manager out while he was in a meeting about a security matter and the contacting of the police with other management and staff members. She interrupted the meeting standing in the doorway and in a loud voice saying: “No, you will speak with me now.” In front of two unit owners, she blamed “hotel management” for mismanagement.

25. As recently as September 18, 2018, she repeatedly bullied a key staff member, cannibalizing the staff member’s time and called the staff member a liar. During this altercation,

she enlisted the president of the condominium association to further harass and bully the staff member.

26. The totality of her behavior has caused employees at the Hyde Resort to resign or threaten to resign, as a result of her callous, rude and harassing demeanor. The loss of staff is injurious to Plaintiff and results in income loss and degradation in service levels.

27. Potential employees at other hotels have refused employee opportunities at the Hyde Resort as a result of their respective knowledge of Plaintiff.

28. Defendant circulated an e-mail on October 27, 2017, in which she stated that: “given the fact that [SOHO] has not complied with delivering the services for a luxury resort and with the standards for ‘Hyde,’ they must be dismissed from the administration.”

29. On September 13, 2018, Defendant posted a completely inaccurate account of her then current stay on *TripAdvisor*, stating (rough translation): “the place is beautiful. But [sic] at the hands of [SOHO] it is very bad. Its manager [], and all of them are a real disaster. [Its manager] spends his time lounging in his office. To solve something [he] just fires people or slams the doors to the guests. They never answer an email. When Hyde is in the hands of professional people it will be an excellent condo. For now it is a disaster.”

COUNT I

DEFAMATION

30. SOHO realleges the allegations of Paragraphs 1 through 29 above as if fully set forth herein.

31. Set forth as examples in Paragraphs 12 through and including 29, Defendant has published and communicated commercial speech to third parties setting forth false statements about SOHO, its officers, directors and employees.

32. Defendant has acted with knowledge of the falsity of her statements and/or with reckless disregard as to whether her claims are, in fact, false.

33. Defendant's statements that SOHO is, for example, "mismanaging" the Resort and is "corrupt" are clearly defamatory per se.

34. As a result of Defendant's false statements, Plaintiff has been damaged.

35. Moreover, SOHO is in great danger of being damaged even greater should Defendant's defamatory and false statements continue and lead to the termination of its contract to manage and operate the Hyde Resort, as this contract is worth a great amount of money (well in excess of \$75,000) to SOHO.

36. SOHO respectfully requests the entry of injunctive relief, as set forth below, in order to avoid the termination of its contract to manage and operate the Hyde Resort.

COUNT II

INJURIOUS FALSEHOOD

37. SOHO realleges the allegations of Paragraphs 1 through 29 above as if fully set forth herein.

38. Set forth as examples in Paragraphs 12 through and including 31, Defendant has published and communicated commercial speech to third parties setting forth false statements about SOHO, its officers, directors and employees.

39. As a result of the published false statements about SOHO, its officers, directors and employees, Defendant has damaged SOHO's business interests from disparagement reflecting upon its character or the manner in which it conducts its business.

40. Defendant's various false statements have injured SOHO's trade and profession and it has indeed been injured.

COUNT III

TORTUOUS INTERFERENCE WITH BUSINESS

41. SOHO realleges the allegations of Paragraphs 1 through 29 above as if fully set forth herein.

42. Plaintiff is a party to a contract to manage and operate the Hyde Resort.

43. Defendant is well aware of the contractual relationship that Plaintiff has concerning the Hyde Resort.

44. Defendant's commercial speech statements, examples of which are set forth in paragraphs 12 through and including 29, are intentional and unjustified interference with the Plaintiff's contractual relationship.

45. Moreover, Defendant has acted solely for ulterior purposes of interfering with and terminating Plaintiff's contractual relationship without an honest belief that her actions are either for the benefit of any party to the contract and/or without proper due diligence to ensure that her statements are accurate, which they are indeed not.

46. Defendant's statements have damaged the Plaintiff.

47. Moreover, SOHO is in great danger of being damaged even greater should Defendant's defamatory and false statements continue and lead to the termination of its contract to manage and operate the Hyde Resort, as this contract is worth a great amount of money (well in excess of \$75,000) to SOHO.

REQUEST FOR RELIEF

WHEREFORE, SOHO OCEAN TRS OWNER, LLC, prays for relief against Defendant, Nikole Rosenberg, as follows:

A. Damages incurred in amount to be proven at trial; and

B. Injunctive Relief against the Defendant and all of those acting in concert with her and that they be prohibited from:

1. Visiting and staying at the Hyde Resort and Residences; and
2. communicating and/or publishing false commercial speech statements about SOHO OCEAN TRS OWNER, LLC, its officers, directors and employees about their trade and profession of operating and managing hotels and condominiums; and
3. communicating and/or publishing false commercial speech statements about the Hyde Resort and Residences and its operation and management; and
4. communicating and/or publishing false commercial speech statements about the Rules and Regulations for the operation of the Hyde Resort and Residences; and

C. Such other and further relief as this Court deems just and proper.

Dated: September 21, 2018

/s/Philip J. Kantor
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