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Starwood Waiters Add Competition Claims To Tip Suit

By Allison Grande

Law360, New York (June 29, 2010) -- Two waiters at a Hawaiian resort owned by Starwood Hotels & Resorts Worldwide Inc. have tweaked their putative class action complaint in order to comply with a recent Hawaii Supreme Court decision that heightened the standards for pleading the competition element of alleged tip-sharing violations under state law.

The plaintiffs lodged their second amended complaint Monday in the U.S. District Court for the District of Hawaii, adding specific allegations related to the nature of competition involved in the hotel's alleged violation of a state law requiring any hotel that applies a service charge for its food services to either distribute those proceeds directly to its employees as tips or to clearly disclose to its customers how it plans to use that additional revenue.

The plaintiffs' amended complaint stems from a March 29 ruling handed down by the Hawaii Supreme Court in *Davis v. Four Season Hotel Ltd.* finding that, while employees who have been injured by a loss of tip income have standing to pursue claims for violations of this statute, they must sufficiently allege how the hotel's conduct will negatively affect competition in order to recover on this claim.

The plaintiffs argued in their April 16 motion for leave to amend their complaint that the proposed changes would "address the concerns raised by the Hawaii Supreme Court" by specifically alleging that the hotel's failure to remit the entire 20 percent service charge to their waiters has an unlawful anti-competitive effect on other hotels, as well as on the plaintiffs.

By failing to inform customers that the hotel keeps a portion of the service charge, Starwood gains a competitive advantage over hotels and restaurants that do properly follow

the requirements of the statute because Starwood is able to reduce the published cost of its food and beverages by improperly profiting from the imposition of this charge, the revamped complaint alleges.

The plaintiffs also contend that the hotel's violation of this statute "provides defendant with an unfair competitive advantage over plaintiffs, who are competing with defendant for the money customers are willing to pay for the services provided."

Starwood filed a memorandum in opposition of the requested relief on May 28, arguing that these amendments should be denied as futile because the court lacks jurisdiction due to the plaintiffs' failure to exhaust the administrative remedies in their collective bargaining agreements. Even if the court had jurisdiction, the new complaint adds claims that are preempted by federal law and "fails to establish how plaintiffs were harmed by defendants' allegedly unfair method of competition," Starwood said.

But following a June 21 hearing, Judge Leslie E. Kobayashi granted the plaintiffs' request to amend their complaint on the grounds that Starwood's exhaustion and preemption arguments "are not before the court at this time" because the amended complaint does not add any new claims.

"Plaintiffs merely seek to add additional supporting allegations for the existing claims," Judge Kobayashi ruled. "If this court denied the motion, it would not extinguish the existing claims."

Westin Maui Resort & Spa waiters Reneldo Rodriguez and Johnshawn Basler originally launched the action in January 2009 on behalf of all those who worked as waiters at the hotel while Starwood implemented the disputed service charge policy.

Like in the second amended complaint filed Monday, the original complaint alleged that this policy violates several Hawaii laws regarding unfair methods of competition, deceptive practices, intentional interference with contractual relations, unjust enrichment and unpaid wages.

The plaintiffs are represented by Weinberg Roger & Rosenfeld PC and Lichten & Liss-Riordan PC.

Starwood is represented by Alston Hunt Floyd & Ing.

The case is Rodriguez et al. v. Starwood Hotels & Resorts Worldwide Inc., case number 09-cv-00016, in the U.S. District Court for the District of Hawaii.

--Additional reporting by Ryan Davis

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