

2021 WL 426242 (Del.Ch.) (Trial Order)
Chancery Court of Delaware.

AB STABLE VIII LLC, Plaintiff/Counterclaim-Defendant,
v.
MAPS HOTELS AND RESORTS ONE LLC, Mirae Asset Capital Co., Ltd.,
Mirae Asset Daewoo Co., Ltd., Mirae Asset Global Investments, Co., Ltd., and
Mirae Asset Life Insurance Co., Ltd., Defendants/Counterclaim-Plaintiffs.

No. 2020-0310-JTL.
February 5, 2021.

Proposed Final Order and Judgment

J Travis Laster, Judge.

***1 [EDITOR'S NOTE: By ruling of the court, Proposed Order is GRANTED. Please see PDF for full proposed order.]**

WHEREAS, the Court conducted trial in the above captioned action (the “Action”) from August 24, 2020 to August 28, 2020;

WHEREAS, on November 30, 2020, the Court issued a post-trial Memorandum Opinion (the “Opinion”) concluding that Buyer is (i) entitled to return of the Deposit with all associated interest, (ii) awarded transaction-related expenses of \$3.685 million, (iii) entitled to its attorneys' fees and expenses under the Prevailing Party Provision, and (iv) entitled to court costs as the prevailing party;

WHEREAS, on January 12, 2021, Defendants/Counterclaim-Plaintiffs moved for the entry of a final judgment (Dkt. 485) and Plaintiff/Counterclaim-Defendant (“Plaintiff”) moved for a stay pending appeal (Dkt. 486) (together, the “Post-Opinion Motions”);

WHEREAS, on February 2, 2021, the Court heard argument and submitted a bench ruling on the Post-Opinion Motions; and

WHEREAS, at the February 2, 2021 hearing, the Court directed the Parties to submit a proposed final order and judgment implementing the Opinion and the Court's bench rulings on the Post-Opinion Motions;

NOW THEREFORE, for the reasons set forth in the Opinion and during the February 2, 2021 hearing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED this 5th day of February, 2021 that:

1. This Order incorporates by reference the definitions of terms as used in the Opinion (or if not defined therein, as defined in the Sale Agreement), unless otherwise defined herein.
2. Final judgment is entered for Defendants and against Plaintiff on Counts I through V of Plaintiff's Verified Complaint, which Counts together with all associated claims and requested relief are hereby DENIED.
3. Final judgment is entered in favor of Buyer and against Plaintiff on those portions of Count I (Breach of SPA Terms and Conditions) of Defendants' Amended Counterclaims (the “ACC”) alleging that Plaintiff breached the Ordinary Course Covenant and thus failed to satisfy the Covenant Compliance Condition (as alleged in ACC ¶ 192.F related to the pandemic and the Company Management Agreements), and that Plaintiff failed to satisfy the Title Insurance Condition (as alleged in ACC ¶ 196).

4. Final judgment is entered in favor of Buyer and against Plaintiff on Count VII (Award of Attorneys' Fees) of Defendants' Amended Counterclaims.

5. Final judgment is entered in favor of Defendants and against Plaintiff on Count III (Declaratory Judgment) of Defendants' Amended Counterclaims to the extent that the Court declares that:

a. Plaintiff breached the Ordinary Course Covenant and thus failed to satisfy the Covenant Compliance Condition, and failed to satisfy the Title Insurance Condition;

b. Buyer validly terminated the Sale Agreement as of May 4, 2020 and, as a result, the Defendants' ECLs were also terminated;

*2 c. As of September 10, 2020, Buyer was entitled to terminate the Sale Agreement under the Temporal Termination Right; and

d. Defendants are not obligated to consummate the Transaction.

6. Counts II, IV, V, and VI of Defendants' Amended Counterclaims, as well as those portions of Counts I and II not addressed in Paragraphs 3 and 5 above, are dismissed as moot, without prejudice.

7. Buyer is entitled to return of the Deposit, together with all accrued interest thereon. Buyer and Plaintiff shall jointly instruct the Escrow Agent in writing, according to the form attached as Exhibit C (Form of Termination Notice) and the form attached as Annex I (Form of Disbursement Request) to the Escrow Agreement, that the Escrow Agent shall transfer to Buyer the full amount of the Deposit, together with all accrued interest thereon, by wire transfer of immediately available funds to an account designated by Buyer in writing.

8. With respect to the balance in the Deposit Account (as defined in the Escrow Agreement) as of May 4, 2020, Plaintiff shall pay to Buyer: (i) \$23,428,918, representing pre-judgment interest at the legal rate of 5% per annum over the Federal Reserve discount rate, compounded quarterly (the "Applicable Rate"), less interest accrued in the Escrow Account, for the period of May 4, 2020 to the date of this Order (the "Pre-Judgment Interest Period"); and (ii) post-judgment interest at the Applicable Rate on the full amount of the Deposit, together with all accrued interest thereon, and pre-judgment interest as calculated in (i), running from the date of this Order until Buyer receives the Deposit and all interest accrued thereon (the "Post-Judgment Interest Period"), though Plaintiff may deduct from post-judgment interest the interest accrued in the Escrow Account for the Post-Judgment Interest Period.

9. Plaintiff shall pay to Buyer: (i) transaction-related expenses in the amount of \$3,685,000, (ii) \$148,790 in pre-judgment interest (calculated at the Applicable Rate, for the period of May 4, 2020 to the date of this Order), and (iii) post-judgment interest at the Applicable Rate on (i) and (ii), running from the date of this Order until Buyer receives full payment.

10. Plaintiff shall pay to Buyer: (i) attorneys' fees, expenses, and court costs pursuant to [Court of Chancery Rule 54\(d\)](#) totaling \$33,500,000 on account of the attorneys' fees, expenses, and costs Buyer has incurred in the Action for all trial-level proceedings through the date of this Order, and (ii) post-judgment interest at the Applicable Rate on (i), running from the date of this Order until Buyer receives full payment.

11. Without affecting the finality of this Final Order and Judgment, the court retains jurisdiction to determine and award any additional court costs, attorneys' fees, and expenses plus interest at the maximum allowable rate, following the prosecution of any further proceedings (including appeals) in this matter. Nothing herein shall affect the parties' rights to seek, or object to

requests for, additional attorneys' fees, expenses, and costs incurred for appellate proceedings and any further proceedings in this matter.

***3** 12. This constitutes a Final Judgment of the court and is immediately appealable.

13. Execution of this Final Order and Judgment is stayed pending resolution of an appeal to the Delaware Supreme Court or the expiration of any time for Plaintiff to appeal, whichever is later, provided that Plaintiff posts a bond in an amount of at least \$86,420,880 within ten business days of entry of this Order.

14. The court reserves jurisdiction to enforce the terms of this Final Order and Judgment.

Vice Chancellor Laster

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