

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

<p>FOX NEWS NETWORK, LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>TRU BY HILTON MILWAUKEE BROOKFIELD,</p> <p style="text-align: center;">Defendant.</p>

Index No.:

Date Purchased

SUMMONS

Plaintiff designates N.Y. County as the place of trial

Plaintiff's address is: 1211 Avenue of the Americas, New York, NY 10036

To the above-named defendant(s): *TRU by Hilton Milwaukee Brookfield*

YOU ARE HEREBY SUMMONED to serve a copy of your answer on Plaintiff's attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of venue is Plaintiff's county of residence.

Dated: New York, New York
September 17, 2020

MINTZ & GOLD LLP

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Defendant's Address:
TRU by Hilton Milwaukee Brookfield
20925 Watertown Rd
Waukesha, Wisconsin 53186

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COMPLAINT

Plaintiff Fox News Network, LLC (“Plaintiff”), by and through its attorneys, Mintz & Gold LLP, complaining of the Defendant TRU by Hilton Milwaukee Brookfield (“TRU”), alleges as follows:

THE PARTIES

1. Plaintiff is a Delaware limited liability company with its offices located at 1211 Avenue of the Americas, New York, New York 10036. Plaintiff is, among other things, a cable news network.

2. Upon information and belief, Defendant TRU is an entity with its principal place of business located at 20925 Watertown Rd, Waukesha, Wisconsin 53186.

FACTUAL BACKGROUND

3. Plaintiff is a news network that had an interest in providing nationally-televised news coverage of the Democratic National Convention.

4. The Democratic National Convention was scheduled to take place in Milwaukee, Wisconsin.
5. In anticipation of the Democratic National Convention, Plaintiff desired to reserve a number of hotel rooms to accommodate its reporters and production staff.
6. On or about March 25, 2019, Defendant TRU and Plaintiff entered into an agreement pursuant to which Plaintiff reserved rooms in Defendant TRU' hotel for a total price of \$106,032.30 (the "Hotel Contract").
7. In connection with the Hotel Contract, Plaintiff paid Defendant TRU the sum of \$106,032.30.
8. On or about April 13, 2020, Plaintiff and Defendant TRU executed an addendum to the Hotel Contract (the "Addendum").
9. The Addendum stated, in pertinent part, as follows:

"**FORCE MAJEURE.** Notwithstanding any other provision of this agreement to the contrary, for the purposes of this agreement, a quarantine, a "stay-at-home," "shelter-in-place," "do not travel" or "essential travel only" order by any relevant governmental authority, or an infectious disease outbreak such as the Coronavirus Disease 2019 (CoVID-19) will constitute an event of force majeure if it (1) results in the cancellation of the Democratic National Convention 2020(the "Event") as an "in-person" event, (2) prevents the Hotel from being able to supply the rooms provided for in this agreement, or results in the inability of the Hotel to deliver or provide to Fox News the other benefits of this agreement described herein, or (3) affects the business operations of Fox News, including, but not limited to, the ability of Fox News to utilize the rooms (as determined by Fox News, in its sole discretion). Each of the Hotel and Fox News agree that the occurrence of a force majeure event shall result in the cancellation of this agreement and the release of each of them from their respective obligations under this agreement. If a force majeure event occurs pursuant to this agreement, the Hotel agrees, upon request from Fox News, that the Hotel will promptly refund to Fox News in full any and all amounts previously paid by Fox News to the Hotel in connection with this agreement."

10. The Democratic National Convention was cancelled as an “in-person” event due to CoVid-19.

11. Further, the change in the status and format of the Democratic National Convention from an “in-person” event to a virtual event affected “the ability of [Plaintiff] to utilize the rooms (as determined by [Plaintiff], in its sole discretion).”

12. The cancellation of the Democratic National Convention as an “in-person” event, and the change in status and format of the convention that affected the ability of Plaintiff to utilize the rooms of Defendant TRU due to CoVid-19 constitutes a force majeure event under the terms of the Addendum.

13. Pursuant to the terms of the Addendum, Plaintiff and Defendant TRU agreed that “the occurrence of a force majeure event shall result in the cancellation of [the Hotel Contract] and release each of them from their respective obligations under [the Hotel Contract].”

14. The Addendum further provides that, if a force majeure event occurs pursuant to the terms of the Hotel Contract as modified by the Addendum, TRU would, upon request from Plaintiff, promptly refund to Plaintiff in full any and all amounts previously paid by Plaintiff to Defendant TRU in connection with the Hotel Contract.

15. Despite repeated demands for a refund to Plaintiff in full of any and all amounts previously paid by Plaintiff to Defendant TRU in connection with the Hotel Contract pursuant to the terms of the Hotel Contract and the Addendum, Defendant TRU has failed and refused to refund to Plaintiff in full any and all amounts previously paid by Plaintiff to Defendant TRU in connection with the Hotel Contract.

FIRST CAUSE OF ACTION
(Breach of Contract)

16. Plaintiff repeats and realleges the allegations above as though fully set forth herein.

17. Plaintiff and Defendant TRU entered into the Hotel Contract and Addendum for consideration pursuant to which Plaintiff paid a deposit to Defendant TRU (the "Deposit").

18. Plaintiff has duly performed all the conditions of the Hotel Contract and Addendum on its part by paying the Deposit.

19. Defendant TRU has breached the terms of the Hotel Contract and Addendum by failing to refund the Deposit to Plaintiff.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

20. Plaintiff repeats and realleges the allegations above as though fully set forth herein.

21. Plaintiff paid the Deposit, in good faith, to Defendant TRU pursuant to the terms of the Hotel Contract in the amount of \$106,032.30.

22. Pursuant to the terms of the Hotel Contract and the Addendum, the sum of \$106,032.30 remains due and owing to Plaintiff.

23. Plaintiff's payment of the Deposit conferred a benefit upon Defendant TRU at Plaintiff's expense.

24. As a result of Defendant TRU's failure to refund to Plaintiff the full amount of the Deposit, Defendant TRU has been unjustly enriched in the amount of \$106,032.30.

25. Equity and good conscience require that Defendant TRU make restitution to Plaintiff in the amount of \$106,032.30.

WHEREFORE, Plaintiff demands judgment as follows:

- A. On the First Cause of Action, damages in the amount of \$106,032.30, plus interest, costs and attorneys' fees in an amount to be determined at trial;
- B. On the Second Cause of Action, damages in the amount of \$106,032.30, plus interest, costs and attorneys' fees in an amount to be determined at trial;
- C. On both of its Causes of Action, Plaintiff's reasonable attorneys' fees, including costs, interest, and disbursements incurred in this action; and
- D. Such other further relief as to the Court appears just and proper.

Dated: New York, New York
September 17, 2020

MINTZ & GOLD LLP

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