

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

CAMBRIDGE INVESTMENT
RESEARCH, INC.,

Plaintiff,

v.

Case No.

TISHMAN REALTY AND CONSTRUCTION
CO., and METROPOLITAN LIFE
INSURANCE COMPANY, d/b/a WALT DISNEY
WORLD SWAN AND DOLPHIN RESORT, TISHMAN
SWAN LIMITED PARTNERSHIP, f/d/b/a SWAN
HOTEL ASSOCIATES, TISHMAN DOLPHIN LIMITED
PARTNERSHIP AND METROPOLITAN LIFE INSURANCE
COMPANY, f/d/b/a, DOLPHIN HOTEL ASSOCIATES,
WESTIN ORLANDO MANAGEMENT COMPANY,
SHERATON OPERATING CORPORATION,
MARRIOTT INTERNATIONAL, INC., and
JOHN DOE CORPORATIONS 1 THROUGH 10

Defendants.

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COMPLAINT

Plaintiff Cambridge Investment Research, Inc. (“**Cambridge**”) sues defendants Tishman Realty and Construction Co., and Metropolitan Life Insurance Company, d/b/a Walt Disney World Swan and Dolphin Resort, Tishman Swan Limited Partnership, f/d/b/a Swan Hotel Associates, Tishman Dolphin Limited Partnership and Metropolitan Life Insurance Company, f/d/b/a Dolphin Hotel Associates, Westin Orlando Management Company, Sheraton Operating Corporation, Marriot International, Inc., and John Doe Corporations 1 through 10 (the defendants are referred to collectively as the “**Hotel**”), seeking declaratory judgment under

28 U.S.C. § 2201, 28 U.S.C. § 2202, and Fed. R. Civ. P. 57. In support of its Complaint, Cambridge alleges:

Nature of the Dispute

1. On June 20, 2016, Cambridge and the Hotel entered into a multi-year contract wherein the Hotel would host Cambridge's annual conferences, including its 2020 conference, in Lake Buena Vista, Florida (the "**Contract**"). A true and correct copy of the Contract is attached as "**Exhibit A.**"

2. Cambridge invoked the force majeure provision of the Contract with the required written notice as a result of the ongoing Novel Coronavirus Disease 2019 ("**COVID-19**") pandemic and the serious risks that attending an indoor conference would create for the health and well-being of its attendees from all over the United States, estimated to be approximately 2,200 individuals in 2020.¹ The Hotel disagrees that Cambridge's invocation of the force majeure provision was proper under the Contract and claims that Cambridge is liable for a cancellation fee.

3. Cambridge seeks a declaratory judgment confirming its right to invoke the force majeure provision of the Contract. Alternatively, Cambridge seeks a declaratory judgment confirming that the parties' performance of the Contract was illegal, impossible or impracticable due to the COVID-19 pandemic, or that Cambridge's performance was excused due to frustration of purpose. Under each theory, Cambridge requests a declaratory judgment that it is not liable to the Hotel for cancellation fees or other damages.

¹ Cambridge typically draws close to 2,000 attendees each year to this event and the number has increased by approximately 300 attendees per year.

Parties, Jurisdiction and Venue²

4. Cambridge is a corporation organized and existing under the laws of the State of Iowa, with its principal place of business located in Iowa.

5. Tishman Realty and Construction Co. is a Delaware corporation with its principal place of business located in New York and doing business in Florida as the Walt Disney World Swan and Dolphin Resort.

6. Metropolitan Life Insurance Company is a Delaware corporation with its principal place of business located in New York and doing business in Florida as the Walt Disney World Swan and Dolphin Resort, and formerly doing business in Florida as Dolphin Hotel Associates.

7. Tishman Swan Limited Partnership is a Florida limited partnership with its principal place of business located in New York and formerly doing business in Florida as Swan Hotel Associates.

8. Tishman Dolphin Limited Partnership is a Florida limited partnership with its principal place of business located in New York and formerly doing business in Florida as Dolphin Hotel Associates.

² The Contract references multiple entities which appear to be parties to the Contract, including the Walt Disney World Swan and Dolphin (Ex. A at 1), Swan Hotel Associates, Dolphin Hotel Associates, Westin Orlando Management Company, and Sheraton Operating Corporation (*Id.* at 11). In addition, the Hotel's website lists Tishman Realty and Construction Co. and Metropolitan Life Insurance Company as its owners, as well as Marriott International, Inc. as its manager. *Fast Facts*, Walt Disney World Swan and Dolphin Resort Website, <http://www.swandolphinmedia.com/facts.html> (last visited October 21, 2020). As such, out of an abundance of caution and to ensure all indispensable parties have been joined, Cambridge has added all of these entities as defendants. In addition, Cambridge has added John Doe Corporations 1 through 10 as potential successors in interest to the Contract that are not yet known to Cambridge.

9. Westin Orlando Management Company is a Delaware corporation. Upon information and belief, its principal place of business is located in Florida and it is doing business in Florida managing the Hotel.

10. Sheraton Operating Corporation is a Delaware corporation with its principal place of business located in Maryland and doing business in Florida managing the Hotel.

11. Marriott International, Inc. is a Delaware corporation with its principal place of business located in Maryland and doing business in Florida managing the Hotel.

12. John Doe Corporations 1 through 10 are potential successors in interest to the Contract currently unknown to Cambridge. Cambridge is diligently working to identify any such entities.

13. This Court has jurisdiction of this action pursuant to 28 U.S.C. §1332(a) as it is a civil action between citizens of different states, Cambridge does not share citizenship with any of the defendants, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

14. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2), because a substantial part of the events or omissions giving rise to the claims occurred in this district. Additionally, the Contract states that the parties “agree not to contest jurisdiction or venue in Orange County, Florida.” Ex. A at 9.

Statement of Facts

15. Pursuant to the Contract, Cambridge’s 2020 annual conference would take place at the Hotel from September 20,2020 through September 27, 2020. The terms of the Contract include a minimum guest room revenue of \$1,089,649 and minimum banquet and

food and beverage revenue of \$750,000. *Id.* at 7. Cambridge’s annual conference typically draws approximately 2,000 participants and approximately 2,200 were expected in 2020.

16. The Contract contemplates several deadlines for its cancellation, unless one of the parties triggers the force majeure provision. *Id.* at 8. Relevant to defendants’ apparent position, if Cambridge “canceled” the event between September 21, 2019 to September 20, 2020, Cambridge becomes obligated to pay a fee equaling 75% of minimum guest room revenue plus 70% food and beverage minimum, for a total of \$1,086,135.20. *Id.* In fact, defendants provided Cambridge with an invoice for this amount. Cambridge attaches as “**Exhibit B**” a true and accurate copy of the Invoice.

17. Under the “Force Majeure” section, the Contract states:

[t]he performance of this Agreement by either party is subject to acts of God, government authority, disaster, or other emergencies, any of which make it illegal or impossible to provide the facilities and/or services for your meeting. It is provided that this Agreement may be terminated for any one or more of such reasons by written notice from one party to the other without liability.

Ex. A at 8.

18. The Contract further states that in the event of litigation, “the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs.” *Id.* at 9.

19. On March 9, 2020, Florida Governor Ron DeSantis entered Executive Order No. 20-52 declaring a state of emergency in Florida due to the spread of COVID-19. Executive Order No. 20-52 was most recently extended for sixty days on September 4, 2020 by Executive Order 20-213. True and correct copies of Executive Orders 20-52 and 20-213 are attached as “**Composite Exhibit C.**”

20. On March 13, 2020, Orange County Mayor Jerry L. Demings entered Executive Order 2020-01 declaring a state of local emergency in Orange County as a result of COVID-19. A true and correct copy of the most recent seven-day ratification and reaffirmance of that order dated October 16, 2020 is attached as “**Exhibit D.**”

21. The Walt Disney World Resort (“**Disney World**”) closed on March 16, 2020 due to COVID-19. Carlye Wisel, *Disney World and Disneyland Closed Indefinitely Amid Covid-19 Fears*, Vox, (March 31, 2020), <https://www.vox.com/the-goods/2020/3/12/21177375/disney-coronavirus-covid-19-theme-parks-disneyworld-disneyland>. On March 24, 2020, the Hotel also closed due to COVID-19. *Walt Disney World Swan and Dolphin Extends its Closure to the End of July*, WDWMagic.com (June 8, 2020), <https://www.wdwmagic.com/resorts/walt-disney-world-swan/news/08jun2020-walt-disney-world-swan-and-dolphin-extends-its-closure-to-the-end-of-july.htm>.

22. On March 24, 2020, Governor DeSantis issued Executive Order No. 20-82 directing all persons entering Florida from areas with substantial community spread, including Connecticut, New Jersey and New York, to isolate or quarantine for 14 days from the time of entry into Florida, or the duration of the person’s presence in Florida, whichever was shorter. A true and correct copy of Executive Order No. 20-82 is attached as “**Exhibit E.**”³

23. On the same day, Governor DeSantis also issued Executive Order No. 20-83, which directed the State Surgeon General and State Health Officer to issue a public health

³ Executive Order 20-82 was ultimately repealed on August 5, 2020 by Executive Order 20-192. A true and correct copy of Executive Order 20-192 is attached as “**Exhibit F.**” However, Executive Order 20-82 was in effect at the time that Cambridge was considering whether to proceed with the conference and Cambridge could not reasonably have anticipated that it would be repealed prior to the time of the conference.

advisory against all social or recreational gatherings of 10 or more people. A true and correct copy of Executive Order No. 20-83 is attached as “**Exhibit G.**”

24. Despite these measures, as of June 1, 2020, Florida had reported 56,830 cases and a death toll of 2,460 individuals due to COVID-19. Tiffini Theisen, *Florida Adds 667 Coronavirus Cases for Total of 56,830; Death Toll at 2,460*, Orlando Sentinel (June 1, 2020), <https://www.orlandosentinel.com/coronavirus/os-ne-coronavirus-monday-june-1-20200601-5emto2pcvuf2fidxvkor5fcy5a-story.html>.

25. By June 2020, it was clear that COVID-19 cases in Florida were increasing at an alarming rate and the number of cases in Florida were among the highest in the United States. *See, e.g.,* Miriam Berger, *U.S. sets another single-day record for new coronavirus cases, surpassing 40,000 for first time*, The Washington Post (June 27, 2020), <https://www.washingtonpost.com/nation/2020/06/26/coronavirus-live-updates-us/> (noting that seven states, including Florida, had set their own records for average number of new cases reported over past seven days); *2,581 new cases: Florida sees third consecutive day of largest single-day spike of COVID-19 cases*, 10 Tampa Bay WTSP News Site (June 13, 2020), <https://www.wtsp.com/article/news/health/coronavirus/highest-spike-of-covid19-cases-in-florida-june-13/67-367168c5-dcb9-4355-8c5d-54c951215928> (noting that June 12, 2020 saw the highest single-day jump in new COVID-19 cases in Florida since tracking began in March).

26. As a result of the numerous local, state, and national guidelines advising against group gatherings, quarantine restrictions for individuals traveling to Florida from certain states, and the rising number of COVID-19 cases in Florida as of early June 2020, Cambridge requested a telephone call with the Hotel to discuss the 2020 conference. Although the

conference was still months away, an event of that magnitude required proper planning ahead of time and a decision to invoke the Contract's force majeure provision would have to be made months in advance.

27. After the call, it became clear to Cambridge that it would be illegal, impossible or impracticable for the Hotel to provide the contracted for guest experience due to government restrictions and the concern for the health and well-being of attendees.

28. The numerous government restrictions in place would make it illegal, impossible or impracticable to hold the conference indoors at the Hotel. For example, the Hotel's elevators and walkway spaces would not be able to accommodate the transit of approximately 2,200 attendees while still observing proper social distancing. In addition, general sessions in ballrooms would require seating for over 1,000 attendees, while break-out sessions would require seating for anywhere from 15 to 500 attendees, which would be illegal, impossible or impracticable to accomplish while enforcing social distancing. Lastly, the Hotel would not be able to serve meals for the approximately 2,200 attendees in a safe manner or without violating government restrictions.

29. On June 4, 2020, while, upon information and belief, the Hotel was still closed for business, Cambridge notified the Hotel in writing that it was terminating the Contract under its force majeure provision. A true and correct copy of the pertinent email communications between Cambridge and the Hotel are attached as "**Composite Exhibit H.**"

30. On June 5, 2020, the Hotel responded stating that it did not appear that force majeure would apply, and that regardless of its applicability it could not be determined until the dates occurred. *See* Composite Ex. H. On June 12, 2020, the Hotel offered to credit 25%

of the cancellation fee toward Cambridge's 2026 conference if Cambridge would agree to host the conference at the Hotel. *See id.*

31. Disney World did not reopen until July 11, 2020. A true and correct copy of the correspondence from the Florida Department of Business & Professional Regulation to Walt Disney World Resort's President approving the reopening is attached as "**Exhibit I.**"

32. As of September 15, 2020, twelve states, Connecticut, Hawaii, Kansas, Kentucky, Maine, Massachusetts, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, and Vermont, the District of Columbia, and the city of Chicago had 14-day quarantine requirements or recommendations in effect for travelers, including returning residents, arriving from Florida. New York Times Website, <https://www.nytimes.com/2020/07/10/travel/state-travel-restrictions.html> (last accessed September 22, 2020). Approximately 320 of the 2,200 expected attendees reside in these places and would have been subject to quarantine rules upon their return home from the conference.

33. Moreover, approximately 15 percent of the expected Conference attendees were 65 or older, which puts them at a high risk for becoming severely ill or dying from COVID-19. *See* CDC Website, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last accessed October 21, 2020). The CDC reports that eight out of ten COVID-19 deaths reported in the U.S. have been in adults aged 65 years and older. *Id.*

34. At the time that Cambridge triggered the force majeure clause, there were less than ninety days until the scheduled start date of the Conference. Further, at that time, Cambridge had no way of knowing when or even if Disney World would reopen and, if so, what restriction might apply from federal, state, local and/or resort levels.

35. Since the June 2020 exchanges between Cambridge and the Hotel, COVID-19 cases and deaths in Florida have continued to rise. As of September 17, 2020, days before the projected start date of the conference, there were 674,456 total cases and 13,086 deaths. Florida Covid-19 Response Website, <http://www.floridahealth.gov/newsroom/2020/09/091720-1439-covid19.pr.html> (last accessed October 21, 2020). As of October 14, 2020, the number of total cases in Florida has risen to 741, 632 and 15,595 deaths have been reported, including a daily positivity rate of 5.42 percent (over the World Health Organization's recommended 5 percent during a 14-day span in order for further reopening to be recommended). Chelsea Tatham, *Florida adds 2,883 COVID-19 cases as daily positivity rate jumps to 5.42 percent*, 10 Tampa Bay WTSP News Site, (October 14, 2020). <https://www.wtsp.com/article/news/health/coronavirus/florida-coronavirus-numbers-october14/67-69985696-4cd7-4ed5-a43c-b683b306d490>.⁴ As of October 21, 2020, state guidelines continue to advise refraining from gatherings of 10 or more people, avoiding crowds, closed spaces and close contact, and practicing social distancing of six feet. Florida Covid-19 Response Website Prevention Page, <https://floridahealthcovid19.gov/prevention/> (last accessed October 21, 2020).

⁴ The positivity rate is measured differently by the State of Florida than it is by other sources, including Johns Hopkins University. Laura Cassels, *FL's COVID infection stats at odds with major national database*, Florida Phoenix, (October 16, 2020), <https://www.floridaphoenix.com/2020/10/16/fls-covid-infection-stats-at-odds-with-major-national-database/>. While Florida's official rate is around five percent, Johns Hopkins University's tracker has reported a rate closer to 12 percent because Florida's official rate is calculated from a pool including people who test negative multiple times on different days, resulting in a larger pool of overall test results, while Johns Hopkin's tracker includes only those tested for the first time, resulting in a smaller pool of overall test results. *Id.*

36. In addition, as of the date of this filing, Orange County Executive Order No. 2020-25 is still in place and requires that “[e]very person working, living, visiting, or doing business in Orange County is required to wear a Face Covering consistent with the current CDC guideline while in a place that is open to the public, whether indoors or outdoors.” A true and correct copy of Executive Order No. 2020-25 is attached as “**Exhibit J.**”

37. Enforcement of Executive Order No. 2020-25 as well as other local and state ordinances and guidelines preclude the Hotel from accommodating Cambridge’s guests. For example, diagrams provided by the Hotel demonstrate that one of its breakout rooms normally equipped to seat 208 guests (150 guests when accounting for the space used to set up equipment) would only accommodate only 25 guests due to six-foot social distancing guidelines. True and correct copies of the diagrams are attached as “**Composite Exhibit K.**”

38. As of October 21, 2020, the Disney Resort Hotels website advises that “[a]n inherent risk of exposure to COVID-19 exists in any public place where people are present. COVID-19 is an extremely contagious disease that can lead to severe illness and death.” Disney Resort Hotels Website, <https://disneyworld.disney.go.com/experience-updates/resorts/#modifications> (last accessed October 21, 2020). This page also touts that Disney-imposed charges and cancellation fees are waived through the date of check-in for reservations with arrivals through April 30, 2021 (and instructs guests coming to the resort as part of a convention to consult with the event organizer). *Id.*

39. In contrast to its public statements on its COVID-19 response and precautions, to date, the Hotel maintains that Cambridge cannot exercise the force majeure clause of the

Contract and has invoiced Cambridge for the full cancellation fee contemplated under the Contract of \$1,086,135.20. *See* Ex. B.

40. Despite the Hotel's rejection of Cambridge's reliance on the force majeure clause of the Contract, COVID-19 cases and deaths in Florida continue to rise and Florida guidelines admonishing against gatherings of ten or more people and promoting social distancing of at least six feet are still in place, weeks after the anticipated start date of the conference. These statistics demonstrate that it not only would have been illegal, impossible or impracticable for Cambridge and the Hotel to host a six-day indoor conference for approximately 2,200 guests, many of whom would have traveled from outside of Florida, beginning September 20, but they show that such a conference would also be illegal, impossible or impracticable in the months leading up to the conference as well as in Florida's current COVID-19 climate. In addition, attendance at the conference would have posed a serious risk to the health and wellbeing of attendees, Hotel staff, and Florida residents, and provided a potential basis of liability for Cambridge and the Hotel.

41. As such, Cambridge requires a declaratory judgement from the Court with respect to its right to invoke the Contract's force majeure clause. Alternatively, Cambridge seeks a declaratory judgment that it would have been illegal, impossible or impracticable for the parties to perform under the Contract, or that Cambridge was excused from performing under the Contract due to frustration of purpose.

First Cause of Action
Declaratory Judgment As To Force Majeure
Clause Or In The Alternative Impracticability Of
Performance Or Frustration of Purpose
Under 28 U.S.C. § 2201 and 28 U.S.C. § 2202

42. Plaintiff repeats and realleges Paragraphs 1 through 41 as though fully set forth herein.

43. An actual and present controversy has arisen as to the rights and duties of the parties to this action.

44. Cambridge contends that the parties' performance under the Contract was made illegal or impossible due to the COVID-19 pandemic thereby triggering the force majeure clause of the Contract. Cambridge provided proper notice of termination of the Contract pursuant to the force majeure clause and is entitled to be excused from liability for any cancellation fees.

45. The Hotel contends that the force majeure provision of the Contract does not apply in these circumstances and alleges that Cambridge is liable to the Hotel for the cancellation fees totaling \$1,086,135.20.

46. In the alternative, Cambridge contends that the parties' performance under the Contract was illegal, impossible or impracticable as a result of numerous local, state and federal laws and regulations in place in the months leading up to and during the time of the event in connection with COVID-19. These laws, regulations and rules restricted the Hotel from hosting the conference as contemplated under the Contract and made it illegal, impossible or impracticable for Cambridge to proceed in light of the threat to the safety and well-being of attendees of a conference hosting approximately 2,200 attendees.

47. In the alternative, Cambridge contends that its performance under the Contract was excused due to frustration of purpose. The COVID-19 pandemic is a supervening and unforeseeable event which took place more than three years after the Contract was executed.

At the time of execution, the nonoccurrence of a pandemic and the ability to host a conference for approximately 2,200 attendees without posing a threat to the safety and well-being of attendees was a basic assumption under which the Contract was made. The COVID-19 pandemic substantially frustrated the ability of the parties to safely host an indoor conference for approximately 2,200 attendees from all over the United States.

48. Cambridge has a reasonable expectation that its injury will continue into the future in the absence of declaratory relief.

49. Cambridge has retained the undersigned counsel in connection with this matter and has become obligated to counsel for the payment of reasonable attorneys' fees in connection with the prosecution of this action.

50. Cambridge is entitled to recover its reasonable attorneys' fees and costs in connection with this litigation. *See Ex. A at 9.*

WHEREFORE, Cambridge requests that the Court enter a declaratory judgment under Fed. R. Civ. P. 57, 28 U.S.C. § 2201, and 28 U.S.C. § 2202 finding that: (a) the force majeure clause of the Contract applies; (b) that Cambridge provided proper notice of termination of the Contract pursuant to the force majeure clause; (c) alternatively, that the parties' performance was illegal, impossible or impracticable under the Contract; (d) alternatively, that the doctrine of frustration of purpose excuses Cambridge's performance under the Contract. Under force majeure or, alternatively, the doctrines of impossibility or impracticability or frustration of purpose, Cambridge requests that the Court enter an order finding that: (a) Cambridge is excused from liability for any cancellation fees; (b) Cambridge be awarded its reasonable

attorneys' fees and costs in connection with this litigation; and (c) awarding Cambridge any additional relief that the Court deems just and proper.

Dated October 21, 2020

/s/ Ailen Cruz

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