



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

INFINITY WORLD DEVELOPMENT
CORP, a Nevada Corporation,

Plaintiff,

v.

MGM MIRAGE, a Delaware Corporation,
MIRAGE RESORTS INCORPORATED, a
Nevada corporation, and PROJECT CC,
LLC, a Nevada Limited Liability
Company,

Defendants.

C.A. No.: _____

VERIFIED COMPLAINT

Plaintiff Infinity World Development Corp., a Nevada Corporation (“Infinity” or “Plaintiff”), by and through its undersigned attorneys, for its Verified Complaint against Defendants MGM MIRAGE, a Delaware Corporation; Mirage Resorts Incorporated, a Nevada Corporation; and Project CC, LLC, a Nevada Limited Liability Company (collectively, “MGM”), alleges as follows:

INTRODUCTION

1. This action seeks a judicial declaration that MGM has defaulted on its obligations in connection with a joint venture with Infinity to design, construct, and operate a development on the Las Vegas Strip in Las Vegas, Nevada called CityCenter (the “Joint Venture”). In particular, the agreement governing the Joint Venture (the “JV Agreement”) includes as an Event of Default a written admission by MGM of its inability to pay its debts as they mature; MGM’s material breach of a representation and warranty; or a breach by MGM of

any of its obligations under the JV Agreement. A default in any one of these areas would be an Event of Default that relieves Infinity of its obligations; MGM has defaulted in all three.

2. In its Form 10-K filed with the Securities and Exchange Commission (“SEC”) on or about March 17, 2009, MGM admitted there is substantial doubt it will even be able to continue as a going concern. MGM admitted that it is uncertain it will be able to meet its 2009 financial commitments, which include significant capital contribution obligations to the Joint Venture under the JV Agreement. MGM admitted it does not believe it will be in compliance with financial covenants with the lenders for its senior credit facility by March 31, 2009, and further admitted that it had to seek a waiver of its breach of those financial covenants and that this waiver will expire on May 15, 2009.

3. The above admissions by MGM — that MGM doubts it can continue as a going concern, will be in breach of its financial covenants next week, and thereafter will be able to function only at the whim of its lenders — make it clear that MGM is in default of its obligations under the JV Agreement. Further, as set forth below, MGM has materially breached other duties to Infinity, including a series of material nondisclosures regarding its performance under the Joint Venture, all of which have harmed Infinity as set forth below.

NATURE OF ACTION

4. This is an action for a declaratory judgment brought pursuant to Section 10 Del. C. §§ 6501 and 6502 to determine a question of actual controversy between Infinity on the one hand and MGM on the other in construing the rights and obligations of the parties arising out of the JV Agreement.

5. Infinity seeks a determination by the Court that MGM’s actions and statements, including admissions made in its Form 10-K filed with the Securities and Exchange

Commission on March 17, 2009, constitute Events of Default under the JV Agreement, material breaches of the JV Agreement, and breaches of the implied covenant of good faith and fair dealing that excuse Infinity from further performance under the JV Agreement and entitle it to an award of damages.

PARTIES

6. Plaintiff Infinity is a Nevada Corporation with its principal place of business at Emirates Tower, Level 47, Sheikh Zayed Road, Dubai U.A.E.

7. Defendant MGM MIRAGE is a Delaware Corporation with its principal place of business at 3600 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

8. Defendant Mirage Resorts, Inc. is a Nevada Corporation with its principal place of business at 3600 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

9. Defendant Project CC, LLC is a Nevada limited liability company with its principal place of business at 3600 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

10. Defendants Mirage Resorts, Inc. and Project CC, LLC are wholly owned subsidiaries of Defendant MGM MIRAGE. As a result, all rights, privileges and liabilities held by each Defendant are held by MGM MIRAGE and the Defendants are referred to collectively herein as "MGM."

JURISDICTION AND VENUE

11. The Court has in personam jurisdiction over Defendant MGM MIRAGE because it is a Delaware Corporation. The Court has in personam jurisdiction over the remaining defendants because the parties to the JV Agreement consented to the exclusive jurisdiction of the state and federal courts of Delaware.

12. The Court has subject matter jurisdiction over this controversy pursuant to 10 Del. C. § 6501 et seq. and the Court's inherent equitable authority.

FACTUAL BACKGROUND

The JV Agreement

13. In 2007, Infinity and MGM undertook the Joint Venture to design, construct and operate a development on the Las Vegas Strip in Las Vegas, Nevada, the terms of which are described in the JV Agreement. The CityCenter development was to consist of 67 acres of hotel, resort, condominium, retail and gaming operations. The Joint Venture is owned equally by MGM and Infinity.

14. Pursuant to the JV Agreement, the parties formed CityCenter Holdings LLC, a Delaware Limited Liability Company, to, through a wholly owned subsidiary, manage, design, plan, develop, construct, operate, lease and sell the CityCenter project. Infinity was assigned a 50% interest in all interests, rights and obligations in and to the JV Agreement.

15. Under the JV Agreement, MGM was appointed Managing Member and is responsible for the day to day management of the CityCenter project. After project completion, MGM will be responsible for managing the day to day operations of CityCenter.

16. As of date of the JV Agreement, MGM represented and warranted, *inter alia*, that, as of the signing date, MGM had no reason to believe that the amounts proposed for the construction of the CityCenter project were inaccurate. (JV Agreement at § 10.1(y)).

17. The JV Agreement specifically provides that the occurrence of certain events shall constitute an "Event of Default."

18. Such events include any "admission by a Member in writing of its inability to pay its debts as they mature." (JV Agreement § 13.1 *et seq.*)

19. The JV Agreement requires MGM to make certain Capital Contributions to fund the CityCenter project. Failure to comply with this requirement constitutes an Event of Default under the JV Agreement.

20. Failure to comply with the representations and warranties contained in the JV Agreement constitutes an Event of Default under the JV Agreement. (JV Agreement § 13.1(c)).

MGM Files A 10-K Revealing That It Is In Breach Of The JV Agreement

21. On March 17, 2009, MGM filed a Form 10-K (the “MGM 2008 Form 10-K”) with the Securities and Exchange Commission, available at www.sec.gov, in which it admitted that due to non-compliance with its financial covenants under its senior credit facility, it was forced to obtain a waiver from its lenders, which required an amendment to the facility increasing MGM's interest rate and severely restricting its ability to incur indebtedness, make equity contributions, and dispose of assets:

Our senior credit facility contains financial covenants, and we do not expect to be in compliance with such financial covenants in 2009. (emphasis in original) . . . [W]e do not expect to be in compliance with those financial covenants at March 31, 2009. As a result, on March 17, 2009 we obtained from the lenders under the senior credit facility a waiver of the requirement that we comply with such financial covenants through May 15, 2009.

Additionally, we entered into an amendment of our senior credit facility which provides for, among other terms, the following:

- We agreed to repay \$300 million of the outstanding borrowings under the senior credit facility, which amount is not available for reborrowing without the consent of the lenders;
- We are prohibited from prepaying or repurchasing our outstanding long-term debt or disposing of material assets; and other restrictive covenants were added that limit our ability to make investments and incur indebtedness;

– The interest rate on outstanding borrowings under the senior credit facility was increased by 100 basis points; and

– Our required equity contributions in CityCenter are limited through May 15, 2009 such that we can only make contributions if Infinity World makes its required contributions; our equity contributions do not exceed specified amounts (though we believe the limitation is in excess of the amounts expected to be required through May 15, 2009); and the CityCenter senior secured credit facility has not been accelerated.

Following expiration of the waiver on May 15, 2009, we will be subject to an event of default related to the expected noncompliance with financial covenants under the senior credit facility at March 31, 2009.

MGM further admitted that when entering into the waiver and amendment to the senior credit facility, the lenders indicated that they are likely to assert a claim after the expiration of the waiver on May 15, 2009 that MGM's statements already constitute an event of default under the senior credit facility.

22. MGM also disclosed in its Form 10-K that it has significant financial commitments in 2009 and does not expect its sources of funds to be able to meet those financial commitments:

We have significant indebtedness and significant financial commitments in 2009. As of December 31, 2008, we had approximately \$13.5 billion of total long-term debt. In late February 2009, we borrowed \$842 million under our senior credit facility, which amount represented — after giving effect to \$93 million in outstanding letters of credit — the total amount of unused borrowing capacity available under our \$7.0 billion senior credit facility . . . [O]n March 17, 2009 we repaid \$300 million under the senior credit facility, which amount is not available for reborrowing without the consent of the lenders. We have no other existing sources of borrowing availability, except to the extent we pay down further amounts outstanding under the senior credit facility.

In addition to commitments under employment, entertainment and other operational agreements, our financial

commitments and estimated capital expenditures in 2009, as of December 31, 2008, totaled approximately \$2.8 billion . . . and consisted of:

- Contractual maturities of long-term debt totaling approximately \$1.0 billion;
- Interest payments on long-term debt, estimated at \$0.8 billion;
- CityCenter required equity contributions of approximately \$0.7 billion;
- Other commitments of approximately \$0.3 billion, including \$0.2 billion of estimated capital expenditures;

To fund our anticipated 2009 financial commitments, we have the following sources of funds in 2009:

- Available borrowings under our senior credit facility of \$1.2 billion as of December 31, 2008;
- Expected proceeds in 2009 from the sale of TI of approximately \$0.6 billion;
- Operating cash flow: Our current expectations for 2009 indicate that operating cash flow will be lower than in 2008. In 2008, we generated approximately \$1.8 billion of cash flow from operations before deducting a) cash paid for interest, which commitments are included in the list above, and b) the tax payment on the 2007 CityCenter transaction.

We are uncertain as to whether the sources listed above will be sufficient to fund our 2009 financial commitments and we cannot provide any assurances that we will be able to raise additional capital to fund our anticipated expenditures in 2009 if the sources listed above are not adequate (emphasis added).

23. In fact, MGM's financial situation is so dire that it admitted in its Form 10-K that it has "substantial doubt" about its ability to continue as a going concern:

There is substantial doubt about our ability to continue as a going concern. (emphasis in original) The uncertainties described above regarding 1) our ability to meet our financial commitments, and 2) our potential noncompliance with financial covenants under our

senior credit facility, raise a substantial doubt about our ability to continue as a going concern. . . . As a result, the report of our independent registered public accounting firm on our consolidated financial statements for the year ended December 31, 2008 contains an explanatory paragraph with respect to our ability to continue as a going concern.

24. Deloitte & Touche, LLP, MGM's independent auditor, confirmed MGM's admission that it has substantial doubts about its ability to continue as a going concern in its Report of Independent Registered Public Accounting Firm accompanying MGM'S 2008 Form 10-K:

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and financial statement schedule as of and for the year ended December 31, 2008. Our report dated March 17, 2009 expressed an unqualified opinion on those financial statements and financial statement schedule and included . . . an explanatory paragraph expressing substantial doubt about the Company's ability to continue as a going concern.

25. Infinity is informed and believes and based thereon alleges that, as a result of the going concern qualification present in MGM's 2008 Form 10-K, Deloitte & Touche, LLP is unable to complete its annual audit of the CityCenter Joint Venture, which is required by the JV Agreement (JV Agreement Section 7.2(a)).

Mismanagement and Cost Overruns

26. As the Managing Member of the Joint Venture, MGM was tasked with managing the CityCenter development and construction, as well as maximizing the revenues from condominium sales at CityCenter. MGM, as project manager, has received management fees for a project that is significantly over budget despite downsizing certain of the facilities. MGM's mismanagement of CityCenter, and failure to implement contingency plans for possible

downturns in the economic and financial markets, have caused Infinity to make capital contributions far in excess of the levels originally estimated by MGM.

27. In August 2007, MGM provided an estimate of \$7.488 billion to complete CityCenter. MGM has since increased that estimate by approximately \$1.3 billion, to \$8.8 billion, and further increases appear likely. MGM anticipated a financing package for CityCenter of \$5 billion, subsequently revised it to \$3 billion, and then ultimately raised only \$1.8 billion. In the case of Infinity, total capital contributions to CityCenter to date have equaled approximately \$4.3 billion. Further, Infinity's parent is responsible for approximately \$1.1 billion under a guarantee and contribution agreement. Considering the decrease in scope of certain aspects of the project, Infinity is being asked to pay significantly more for a project that is considerably less than it bargained for. Despite repeated concerns expressed by Plaintiff about the escalating costs of the CityCenter project, MGM has continued to push forward excessively spending without regard to appropriate accountability. The increases described above are substantially higher than MGM originally presented to Infinity, even though the project has been materially scaled back from what was originally presented to Infinity. These cost overruns, many of which were not shared with Plaintiff prior to their incurrence, demonstrate MGM's lack of candor in the management of the development of the CityCenter project.

28. Consistent with MGM's gross underestimate of costs, available financing, and project size are MGM's own estimates of revenue and EBITDA. In October 2008, MGM estimated total revenue of \$2.173 billion with total EBITDA of \$716 million and EBITDA after capital expenditure of \$674 million. This is compared with MGM's March estimates of revenue of \$1.640 billion (down \$533 million), EBITDA of \$501 million (down \$215 million) and EBITDA after capital expenditures of \$459 million (down \$215 million).

29. As a result of its increased Capital Contribution obligations and other obligations, MGM is now over-extended financially, doubts it can continue as a going concern, is operating at the whim of its banks, and is unable to make the contributions necessary to complete CityCenter.

30. These admissions and actions constitute breaches by MGM resulting in Events of Default under the JV Agreement and are breaches of the implied covenant of good faith and fair dealing, and Plaintiff seeks a declaration from this Court to that effect as detailed below.

FIRST CAUSE OF ACTION
(For Declaratory Relief)

31. Plaintiff repeats, realleges and hereby incorporates by reference the preceding allegations contained in paragraphs 1 through 30 of this Verified Complaint as though the same were fully and completely set forth herein.

32. As a result of the foregoing, an actual controversy exists between Infinity on the one hand and MGM on the other regarding whether the actions and statements of MGM, including the admissions made in the MGM 2008 Form 10-K, constitute breaches of the JV Agreement.

33. Pursuant to the provisions of 10 *Del. C.* §§ 6501 and 6502, Infinity is entitled to a declaration by the Court of its rights and MGM's duties, and a judicial declaration is necessary as to the rights of Infinity and MGM's duties under the JV Agreement.

34. Infinity seeks a determination, *inter alia*, that MGM caused an Event of Default under the JV Agreement because (1) MGM admits that it will be unable to pay its debts as they come due; and (2) it is and/or will be in breach of the terms of its senior credit facility.

35. Infinity also seeks a determination, *inter alia*, that MGM's statements in the MGM 2008 Form 10-K, individually and collectively, constitute breaches of the representations and warranties in the JV Agreement.

36. As a consequence of such Events of Default, Plaintiff is entitled to an Order excusing all future performance required by Plaintiff under the JV Agreement.

37. Plaintiff lacks an adequate remedy at law.

SECOND CAUSE OF ACTION
(For Breach of Contract)

38. Plaintiff repeats, realleges and hereby incorporates by reference the preceding allegations contained in paragraphs 1 through 37 of this Verified Complaint as though the same were fully and completely set forth herein.

39. The JV Agreement requires that MGM make certain capital contributions to fund the CityCenter project.

40. MGM admits that it doubts it will be able to continue as a going concern, that it will be in default on its senior credit facility as of March 31, 2009, and that it is uncertain that its capital sources will be sufficient to fulfill its 2009 commitments.

41. The JV Agreement provides that an admission by a Member in writing of its inability to pay its debts as they mature constitutes an Event of Default.

42. Through its statements in the MGM 2008 Form 10-K and otherwise, MGM admits that it will be unable to pay its debts as they mature.

43. In addition, in the JV Agreement, MGM represented that construction budgets were accurate.

44. At the time these representations were made, MGM knew such representations were unreasonable.

45. As a direct and proximate result of MGM's breach of the JV Agreement, Infinity has suffered damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(For Breach of the Implied Covenant of Good Faith and Fair Dealing)

46. Plaintiff repeats, realleges and hereby incorporates by reference the preceding allegations contained in paragraphs 1 through 45 of this Verified Complaint as though the same were fully and completely set forth herein.

47. The JV Agreement contains an implied covenant of good faith and fair dealing. In its misrepresentations and lack of candor regarding its financial well-being, MGM violated its duty of good faith and fair dealing owed to Infinity.

48. This unfair and improper conduct of MGM is wholly unreasonable and constitutes gross disregard of MGM's obligations under the JV Agreement.

49. As a direct and proximate result of MGM's breach of the implied covenant of good faith and fair dealing, Infinity has suffered damages in an amount to be proven at trial.

WHEREFORE, Infinity prays as follows:

On the First Cause of Action, that, pursuant to 10 *Del. C.* §§ 6501 and 6502, this Court determine and declare that:

(a) MGM's admission that there is "substantial doubt" that it will be able to continue as a going concern constitutes an Event of Default under the JV Agreement;

(b) MGM's admission that it expects to be unable to pay its debts as they come due constitutes an Event of Default under the JV Agreement;

(c) MGM's admission that it will be in breach of the terms of its senior credit facility constitutes an Event of Default under the JV Agreement;

(d) MGM's actions together with its statements in the MGM 2008 Form 10-K individually and collectively constitute breaches of the representations and warranties in the JV Agreement and therefore constitute Events of Default; and

(e) Plaintiff is entitled to an Order declaring that it is excused from all future performance under the JV Agreement as a result of MGM's breaches.

On the Second Cause of Action that the Court award:

(a) Damages according to proof.

On the Third Cause of Action that the Court award:

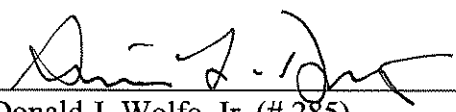
(a) Damages according to proof.

Plaintiff also requests that the Court award Plaintiff its reasonable attorneys' fees and costs, as well as such other relief as the nature of the case may require, or which the Court deems just and appropriate.

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Dated: March 22, 2009