

NY Hotel Hit With \$21M Suit Over Lapsed Rooftop Bar Permit

By David McAfee

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Law360, Los Angeles (March 15, 2013, 8:08 PM ET) -- New York's Hotel Indigo was hit with a \$21 million breach of contract lawsuit in state court Friday by China Latina LLC, alleging that the hotel misrepresented that it had a certificate of occupancy for China Latina's rooftop bar, which was later shut down by police.

Friday's complaint raises allegations that Fortuna Hotel Chelsea LLC, which operates under the Hotel Indigo brand, lied about being certified to operate the rooftop lounge for five months, leading to the indefinite closure of China Latina's bar.

Jeffrey J. Schietzelt, counsel to the plaintiff, said the lease specified how his client would utilize the space, but Hotel Indigo didn't uphold the agreement.

"It's a claim for breach of contract of a commercial lease based upon the Hotel Indigo's failure to maintain a certificate of occupancy that allowed for use of premises as described in the lease," Schietzelt told Law360 on Friday. "The rooftop bar was issued a summons based upon the failure to maintain a proper certificate that allowed for that use."

China Latina filed claims for breach of contract, fraudulent inducement, specific performance, unjust enrichment and violations of section 349 of New York General Business Law against Hotel Indigo, seeking a total of \$21 million.

On Sept. 1, 2012, China Latina and Hotel Indigo signed a 10-year lease agreement, which provided for the operation of a kitchen, restaurant, outdoor ground-level café and a rooftop lounge in the premises, according to the complaint, filed in Supreme Court of New York on Friday.

On Sept. 9, 2012, eight days after signing the lease, Indigo Hotel allowed the certificate of occupancy for the entire premises to lapse. The hotel allowed China Latina to operate there for five months without a proper certificate of occupancy and without notice to the restaurant, according to the complaint.

On Feb. 2, representatives of the New York City Police Department entered the rooftop bar and issued a criminal summons for failure to have a valid certificate of occupancy in place, according to China Latina.

On Feb. 5, just three days later, the police intervention resulted in the indefinite closure of the bar.

China Latina seeks \$21 million, punitive damages, a decree ordering the delivery of a valid certificate of occupancy, and attorneys' fees and costs.

Representatives for Hotel Indigo didn't immediately return requests for comment Friday.

China Latina is represented by Jeffrey J. Schietzelt of Silverson Pareres & Lombardi LLP.

Counsel information for Fortuna Hotel Chelsea wasn't immediately available Friday.

The case is China Latina LLC v. Fortuna Hotel Chelsea LLC dba Hotel Indigo, case number 650938, in the Supreme Court of the State of New York.

--Editing by Rebecca Flanagan.