

Global Hospitality & Leisure Update

Consumer Protection and Hotel Exchange Rate

In 2008, *Shaw v. Marriott International, Inc.* ended a trilogy of “house exchange rate” cases in which hotel companies were charged with consumer fraud and unjust enrichment when they used the official exchange rates when quoting room rates on their website but a less favourable exchange rate when calculating the ultimate price that guests pay on checking-out. Although the damage sought for each case was relatively small - US\$1,500 or treble the disparity in prices - the intention of the plaintiffs in each case was to form a class action suit that would involve and benefit every guest who had ever experienced such a discrepancy.

The Result

In all three cases the guest plaintiff’s arguments were rejected by the courts. The facts and the basis for the judgment in each varied only marginally.

In *Shaw v. Hyatt International Corporation* the discrepancy between the US dollar exchange rate published on Hyatt’s website and that actually paid by Mr Shaw on checking out of the Ararat Park Hyatt Moscow Hotel was 14%. Mr Shaw made the booking on his computer in London however the action was brought in Illinois where Hyatt has its corporate offices. The Court of Appeals for the Seventh Circuit was unable to find a sufficient nexus between the transaction and Illinois as Hyatt are registered as a Delaware corporation.

In *Bykov v. Radisson Hotels International, Inc. and Others* Mr Bykov had asked an employee to make the reservation. The Minnesota District Court gave a summary judgment that, as the plaintiff had not made the booking himself and it was ultimately charged to his company, he lacked standing. This was affirmed by the Court of Appeals for the Eighth Circuit.

In *Shaw v. Marriott International, Inc.* Mr Shaw pursued his action in the D.C. courts. The facts were similar to the Hyatt case except Marriott had made no representation on its website that the exchange rate was merely an approximation. Nonetheless the D.C. District Court found that Mr Shaw and his companions had made the transaction on a business trip and hence they were not afforded the protection of the District of Columbia's Consumer Protection Procedures Act.

The Implications

Although in all three cases the hotel company escaped liability they did so on the grounds either that the relevant legislation did not apply or on the disqualification of the plaintiffs. It is not impossible to envisage that a court interpreting different consumer legislation would come to a different conclusion.

There are several steps that hotel operators may wish to consider to minimise their exposure to this type of claim:

- ensure that the basis of the exchange rate used in the reservation website is the same (or as is close as is practically possible) as the basis of the exchange rate used by the hotel;
- where there are likely to be exchange rate fluctuations and it is impossible to guarantee the rate of currency conversion this should be made clear on the website at the time of quoting the rate or when the guest makes a reservation over the phone. Consider whether the system should allow the guest to "fix the rate" at the time of booking either by immediate pre-payment or simply accepting a currency exchange rate; and
- when negotiating with third party hotel booking sites ensure that the third party bears as much of the risk as possible of any discrepancy between the price they quote and the actual price the guest will need to pay.

Finally, these cases also highlight the complexity of determining which jurisdiction should govern claims against hotels and hotel companies. This is particularly apparent where bookings are made over the internet. None of these cases satisfactorily resolved this issue. Accordingly, all parties will need to consider carefully how to draft their jurisdiction clauses.

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