

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO.:

CINDI AVILA

Plaintiff,

v.

KERZNER INTERNATIONAL BAHAMAS
LIMITED, a Bahamian Company; KERZNER
INTERNATIONAL LIMITED, a Bahamian
Company; ISLAND HOTEL COMPANY
LIMITED, a Bahamian Company; PARADISE
ISLAND LIMITED, a Bahamian Company; and
BROOKFIELD ASSET MANAGEMENT, INC.,
a Canadian Company, XYZ CORPORATION(S)
(owner(s) and/or operator(s) of the “Atlantis”
resort located at Paradise Island, Bahamas),

Defendants,

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiff, CINDI AVILA, sues the Defendants, KERZNER INTERNATIONAL BAHAMS LIMITED, a Bahamian company; KERZNER INTERNATIONAL LIMITED, a Bahamian company; ISLAND HOTEL COMPANY LIMITED, a Bahamian company; PARADISE ISLAND LIMITED, a Bahamian company; BROOKFIELD ASSET MANAGEMENT, INC., a Canadian company; and XYZ CORPORATION(S), owner(s) and/or operator(s) of the “Atlantis” resort located at Paradise Island, Bahamas, and state:

1. This is an action seeking damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of interest, costs and attorney fees.
2. At all times material, Plaintiff, CINDI AVILA, was a U.S. citizen, residing and domiciled in Miami, Florida.

3. The above listed Defendants are owners and/or operators of the resort “Atlantis,” located at Paradise Island, Bahamas (at times collectively referred to as “Atlantis Resort Defendants”).

4. Defendant, XYZ CORPORATION(S) (owner(s) and/or operator(s) of the “Atlantis” resort located at Paradise Island, Bahamas), is included to represent the owner(s) and or operator(s) of the subject hotel, insofar as such entity has a different name than the named defendants herein. XYZ CORPORATION(S) is (are) also used in a plural form. In the event that discovery reveals that additional entities, other than the named Defendants herein, contributed to the ownership, operation, and/or management of the subject hotel, the legal names of the entities will be substituted for XYZ CORPORATION(S).

5. Defendant, KERZNER INTERNATIONAL LIMITED (hereinafter “KERZNER”) was formerly known as “Sun International Hotels Limited.”

6. At all times material hereto, Defendant, KERZNER, was a Bahamian holding company that was and is publicly traded on the New York Stock Exchange. It functions as the parent company to multiple, wholly-owned subsidiaries. KERZNER and its subsidiaries own and operate the Atlantis Resort located in Paradise Island, Bahamas (hereinafter referred to as “The Atlantis” or “The Resort”).

7. The Atlantis has been doing business continuously since it opened in 1994.

8. Defendant, KERZNER INTERNATIONAL BAHAMAS LIMITED is a wholly-owned subsidiary of KERZNER, and the two entities operate as one as it related to The Resort.

9. KERZNER is the holding and parent company of KERZNER INTERNATIONAL BAHAMAS LIMITED, (hereinafter “KERZNER BAHAMAS”), which was formerly known as “Sun International Bahamas Limited.”

10. Although the corporate names have changed, KERZNER and KERZNER BAHAMAS are one and the same as corporations formerly known as “Sun International Hotels Limited” and “Sun International Bahamas Limited.”

11. At all times material hereto, KERZNER (and its subsidiary KERZNER BAHAMAS), was a Bahamian company doing continuous and systematic business in the Southern

District of Florida with its principal place of business located at 1000 South Pine Island Road, Plantation Florida, 33324.

12. Defendant, KERZNER, is the holding and parent company of Kerzner International Resorts, Inc., a Florida Corporation, located at 1000 South Pine Island Road, Plantation, Florida, 33324, which primarily functions as a marketing, sales, advertising, reservation, wholesale tour service and travel business for The Atlantis Resort in the Bahamas.

13. Additional corporations, all subsidiaries of KERZNER, are registered with the State of Florida as having businesses which operate from the same office located at 1000 South Pine Island Road, Plantation, Florida, 33324. These corporations include, but are not limited to: Kerzner International Management Services, Inc.; Kerzner International Development Services, Inc.; and Kerzner International North America, Inc.

14. At all times material hereto, Defendant, ISLAND HOTEL COMPANY LIMITED (hereinafter "ISLAND HOTEL"), was a Bahamian Company that is also a subsidiary of Defendants, KERZNER and KERZNER BAHAMAS.

15. Defendant ISLAND HOTEL, as a subsidiary of Defendant, KERZNER, is involved in the operations, management, maintenance, supervision, and business practices of The Atlantis Resort.

16. At all times material hereto, Defendant, PARADISE ISLAND LIMITED (hereinafter "PIL"), was a Bahamian Company and is a subsidiary of Defendant, KERZNER (as well as its subsidiary KERZNER BAHAMAS).

17. Defendant PIL, as a subsidiary of Defendant, KERZNER, is involved in the operations, maintenance, supervision, and business practices of The Atlantis Resort.

18. At all times material, Defendants, KERZNER, KERZNER BAHAMAS, ISLAND HOTEL, and PIL, (collectively referred to as the "KERZNER DEFENDANTS") are subject to the personal jurisdiction of this Court as they have the following contacts with the United States and the State of Florida:

- a. KERZNER DEFENDANTS, either personally or through an agent, e.g., Kerzner International Resorts, Inc., a Florida Corporation, and/or KERZNER BAHAMAS, a

Bahamian Corporation, operated, conducted, engaged in, or carried on a business or business ventures in Florida.

b. KERZNER DEFENDANTS have an office or an agency in Florida, to wit: 1000 South Pine Island Road, Plantation, Florida 33324. Therefore, jurisdiction exists pursuant to Fla. Stat. § 48.193(1)(a).

c. KERZNER DEFENDANTS were and are at all times engaged in substantial and not isolated interstate and intrastate activity in Florida and, therefore, are subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(2).

d. KERZNER DEFENDANTS purchase, sell and/or lease tangible and intangible personal property through brokers, jobbers, wholesalers or distributors to persons, firms and corporations in Florida and, therefore, are conclusively presumed to be both engaged in substantial and not isolated activities in Florida and operating, conducting, engaging in, or carrying on a business or business venture in Florida pursuant to Fla. Stat. § 48.181(3).

e. Further, KERZNER DEFENDANTS (and their former entities, Sun International) have used both the Miami-Dade Circuit Court and the United States District Court for their collections, casino endeavors and breach of contract disputes, among others.

f. In multiple instances of litigation, KERZNER DEFENDANTS (and its former entities, Sun International) have used both the Miami-Dade Circuit Court and the United States District Court for their collections, casino endeavors and breach of contract disputes, among others.

g. KERZNER DEFENDANTS' national sales office is based in Plantation, Florida, at the above-referenced South Florida address. The sales office accepts payment for, and on behalf of, the KERZNER DEFENDANTS for bookings and travel arrangements, such as the Plaintiffs' from the United States in full satisfaction of all monies owed on vacation packages through telephone and electronic bookings.

h. KERZNER DEFENDANTS' addresses in France, Germany, Japan, Mauritius, the United Kingdom, and the Republic of South Africa are listed on the back of its marketing

brochure, along with its sole United States address identified as 1000 South Pine Island Road, Plantation, Florida 33324.

i. KERZNER DEFENDANTS, primarily acting through Kerzner International Resorts, Inc., a Florida Corporation, advertise and otherwise extensively market the Atlantis Resort in Florida, and throughout the United States in specific markets such as Colorado, via radio, television, billboards, and direct mailings originating from its Plantation office.

j. KERZNER DEFENDANTS have a website, to wit: www.atlantis.com which contains multiple local, Florida contacts for Kerzner properties. All have telephones which are handled from the Plantation, Florida office.

k. KERZNER DEFENDANTS regularly receive mail and correspondence at the Plantation office.

l. KERZNER DEFENDANTS' officers, employees, agents, and supervisors, who regularly work at the Atlantis Resort in Paradise Island, Bahamas, regularly attend meetings at the Plantation, Florida address.

m. KERZNER DEFENDANTS direct potential investors to contact them at the Plantation address.

19. At all times material, KERZNER dictates the standards and practices for the operation of the Atlantis Resort, and the KERZNER DEFENDANTS monitor and oversee the implementation of these standards of operation by Defendant, KERZNER, and its subsidiaries.

20. In turn, KERZNER BAHAMAS monitors and oversees the implementation of KERZNER'S standards of operation on a daily basis by employees of its subsidiaries.

21. The KERZNER DEFENDANTS, either personally or through Kerzner International Resorts, Inc., sell entertainment/travel and vacation packages to persons within the United States specifically targeted at residents within Florida and Colorado, as well as other states.

22. The KERZNER DEFENDANTS have bank accounts in the State of Florida in their name from which the direct employees of Defendant, Kerzner International Resorts, Inc., are able to make deposits and write checks against and in payment of various vendors in the United States

and Florida for items purchased for use at the Atlantis Resorts, e.g., food, china, linens, bedding, etc.

23. The KERZNER DEFENDANTS have had bank accounts at the Miami, Florida, branch of City National Bank.

24. As such, because all the KERZNER DEFENDANTS are subsidiaries of Defendant, KERZNER, and all share the same operations scheme, location, office, and management location, they share the same contacts with the United States, and specifically the State of Florida.

25. Further, in multiple instances, this Court has held jurisdiction and venue are proper in personal injury and tort related claims. For example:

a. KERZNER DEFENDANTS had a final judgment entered against it after a trial in Miami-Dade County Circuit Court in the case of *Wagner v. Sun Int'l Hotels Ltd., et al.*, Case No. 95-19988 (Judge Goldman), which involved a Dade County resident who sued KERZNER for using his modeling photograph without his permission and in sending brochures using his photographs to travel agencies in Florida.

b. KERZNER DEFENDANTS were successfully sued in the Circuit Court of the Eleventh Judicial Circuit in and four Miami-Dade County, Florida, in the cases of *Postell v. Sun Int'l Resorts, Inc.*, Case No. 99-11601 CA 05, and *Emery v. Sun Int'l Resorts, et al.*, Case No. 99-10892 CA 01. In each of these cases, it was alleged that KERZNER DEFENDANTS used the plaintiffs' modeling photographs without their permission. In each of these cases, KERZNER DEFENDANTS contested personal jurisdiction over them by the Dade County Court, but later withdrew the objection as memorialized in an Agreed Order dated June 13, 2000, in the Emery case. The KERZNER DEFENDANTS proceeded to file answers and affirmative defenses in both *Emery* and *Postell*.

c. KERZNER has been sued for using models' photographs without their consent in the cases of *Delvecchio v. Sun Int'l Resorts, Inc.*, et al., Case No. 95-19989 CA 05; *Muenzner v. Sun Int'l Resorts, Inc.*, et al., Case No. 99-11742 CA 04; and *Wilder v. Sun Int'l Resorts, Inc.*, et al., Case No. 99-11716 CA 27. All of these actions were filed in the Circuit Court

of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, and in none of these cases was the “absence” of personal jurisdiction raised as a defense.

d. The KERZNER DEFENDANTS were specifically found to be doing business in the Southern District of Florida in *Doe v. Sun Int’l Hotels, Ltd., et al.*, Case No. 97-3359-CivGOLD; *Meier v. Sun Int’l Hotels, Ltd., et al.*, United States Court of Appeals for the 11th Circuit, No. 01-14431; *Sun Trust Bank, Miami, et al. v. Sun Int’l Hotels, Ltd., et al.*, Case No. 00-3741-Civ-HUCK; and *Ward v. Kerzner Int’l Hotels, Ltd., et al.*, Case No. 03-23087-Civ-JORDAN.

e. KERZNER was sued in the United States District Court for the Southern District of Florida for personal injury by guests of the Atlantis Hotel in the following negligent security cases for sexual assault: *Doe v. Sun Int’l Hotels Ltd., et al.*, Case No. 97-3359-Civ-GOLD (defendant’s motion to dismiss for lack of personal jurisdiction and forum non-conveniens denied); *Bostrom v. Kerzner, et al.*, Case No. 07-21217-Civ-HUCK (settled); and *Larsen v. Kerzner, et al.*, Case No. 08-22031-CIV-MORENO/TORRES (settled). In none of these cases did KERZNER contest the Court’s personal jurisdiction over it.

26. Defendant BROOKFIELD ASSET MANAGEMENT, INC. ("Brookfield") was and is a Canadian company located at Brookfield Place, Suite 300, 181 Bay Street, Toronto, Ontario, M5J 2T3. BROOKFIELD has corporate offices in New York City as well as Plantation, Florida.

27. BROOKFIELD conducts business and has an office in Florida. BROOKFIELD is carrying on substantial and not isolated business in Florida, specifically through its reservation offices in Florida. Therefore, jurisdiction is proper under Fla. Stat. § 48.193(1)(a)(1) and Fla. Stat. § 48.193(2).

28. The KERZNER DEFENDANTS and BROOKFIELD have also purposefully availed themselves of the benefits and protections of the State of Florida by conducting the activities outlined herein, and others.

29. This Court has subject matter jurisdiction over this matter.

GENERAL ALLEGATIONS

30. On or about January 17, 2016, Plaintiff, CINDI AVILA, was a paying guest at the Atlantis Resort.

31. On or about January 17, 2016, Plaintiff was injured due to a hidden hazardous condition at the Atlantis Resort. While sleeping in her hotel room, Plaintiff was bitten by “bed bugs,” sustaining numerous painful lesions, many of which have scarred. Plaintiff suffered physical and emotional injuries as a result of the bed bug infestation in her hotel room at the Atlantis Resort.



32. After the bites were discovered, and the bed was inspected, it was clear that the above shown bed skirt had not been changed in months because it had bed bugs and bed bug excrement that was dried and looked like it had been there for an eternity. Even the most basic requirements of hotel sanitation dictate that a bed skirt be changed after each guest.
33. Punitive damages are sought in this action because there have been numerous prior “bed bug” incidents at the Atlantis Resort, yet Defendants have done nothing to remedy the dangerous and unhygienic conditions within Atlantis Resort. Defendants’ misconduct is wholly intentional and calculated, in an attempt to decrease their costs and increase their profits, and thus subjects Defendants to punitive damages.

COUNT I – NEGLIGENCE
AGAINST DEFENDANTS

Plaintiff re-alleges, adopts, and incorporates by reference the allegations in paragraphs 1 through 33 as though alleged originally herein.

34. It was the duty of Defendants to provide Plaintiff with reasonable care under the circumstances.

35. On or about January 17, 2016, Defendants and/or its agents, servants, and/or employees breached its duty to provide Plaintiff with reasonable care under the circumstances.

36. Plaintiff was injured due to the fault and/or negligence of Defendants, and/or its agents, servants, and/or employees as follows:

- a. Failure to provide a safe and clean hotel room; and/or
- b. Failure to have a sanitary bed in the hotel room; and/or
- c. Failure to provide hygienic sheets for bedding; and/or
- d. Failure to inspect the bed and/or room for “bed-bugs”; and/or
- e. Failure to warn of dangers of “bed-bugs” in the room; and/or
- f. Failure to determine hazards in the room; and/or
- g. Failure to warn of dangers presented by the “bed-bugs” in the room and/or bed; and/or

- h. Failure to provide adequate decontaminators and/or sterilizers in the room; and/or
- i. Failure to sterilize the bed and sheets in the room; and/or
- j. Failure to daily inspect rooms and/or beds to ensure the safety of hotel guests, including Plaintiff; and/or
- k. Failure to exterminate the “bed-bugs” utilizing recommended treatment and chemicals; and/or
- l. Failure to promulgate and/or enforce adequate policies and/or procedures so as to maintain reasonably safe conditions in the hotel room and/or bed including but not limited to maintaining clean and safe beds and rooms and adequately marking and/or warning of hazards; and/or
- m. Failure to take corrective measures despite prior similar incidents.

37. At all material times, Defendants had exclusive custody and control of the Atlantis

Resort.

38. The Defendants are vicariously liable for all acts of negligence committed by any of their staff, agents, employees and/or other persons which caused or contributed to this incident.

39. As a result, all of the above caused and/or contributed to Plaintiff being injured when she sustained numerous “bed bug” bites.

40. Defendants knew of the foregoing conditions causing Plaintiff’s accident and did not correct them, or the conditions existed for a sufficient length of time so that Defendants in the exercise of reasonable care under the circumstances should have learned of them and corrected them.

41. As a result of the negligence of Defendants, Plaintiff was injured about Plaintiff’s body and extremities, suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, physical handicap, post-traumatic stress and other mental and/or nervous disorders, suffered the aggravation of any previously existing conditions and incurred medical expenses in the care and treatment of Plaintiff’s injuries. Plaintiff also lost the benefit of her vacation. Further, the injuries resulting from the “bed bug” bites are permanent or continuing in nature and Plaintiff will suffer these losses and impairments into the future.

Wherefore, the Plaintiff demands judgment for all damages recoverable under the law, including punitive damages, against the Defendants and demands trial by jury.

DATED January 13, 2017

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