

Portman seeks fees from partners in Shanghai project

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Portman Holdings L.P. is battling with itself. Well, sort of.

The Atlanta developer is suing Shanghai, China-based Seaclyff Ltd. for failure to pay asset management fees and wrongful termination of an asset management agreement.

Portman is seeking at least \$200,000 in lost fees and an undetermined sum connected to the alleged wrongful termination.

The project in question is Shanghai Centre, a \$200 million, 2 million-square-foot mixed-use development in Shanghai that is owned by Seaclyff. It was developed in the late 1980s/early 1990s.

This is where the story gets more interesting.

Seaclyff Ltd. is a joint venture of insurance giant American International Group Inc. (NYSE: AIG), Japanese construction firm Kajima Corp., hotelier Shangri-La Asia Ltd. and Portman Holdings -- the same Portman Holdings that filed the lawsuit against Seaclyff in the U.S. District Court for Georgia's Northern District.

A.J. Robinson, president of Portman Holdings, would not comment on the specifics of the lawsuit, but he did point out that Portman continues to serve as property manager for the complex and that the suit addresses "one small piece of the management puzzle."

Property management is mostly handling the day-to-day operations of a building: maintenance, tenant requests, security and the like.

Asset management is a more financial function where the asset manager reviews lease agreements and makes other capital spending decisions.

One possible explanation as to why Portman would have to sue its own partnership for the lost fees is the size of its stake in Seaclyff.

Its stake may be too small to influence the partnership to pay the asset management fees, said Bob Moot, a managing director at brokerage firm Julien J. Studley Inc. Prior to joining Studley, Moot was a real estate lawyer at King & Spalding.

"Usually, decision-making power is in accordance with equity," Moot said.

Seacliff Ltd. could not be reached by press time.

The dispute

The asset management agreement was entered into in February 1998, according to the lawsuit.

Seacliff agreed to pay Portman \$300,000 per year (\$25,000 a month) for two years and agreed to negotiate fees on a yearly basis afterward. The agreement was to run through October 2020.

In the lawsuit, Portman states that Seacliff paid fees "timely and fully" until March of last year.

Around that time, an independent audit of Shanghai Centre revealed that the project's chief financial officer, Michael McNett, "apparently and allegedly had engaged in some financial abuses," the lawsuit states.

The lawsuit states the losses are still "unidentified and unquantified today."

McNett is identified as a Seacliff employee in the lawsuit.

Portman then alleges that Seacliff began withholding the asset management fees "with the expressed intention of offsetting the alleged undefined and unqualified loss from Mr. McNett's activities," states the lawsuit.

In November, according to the lawsuit, Portman notified Seacliff of its default on its obligation to pay the asset management fees.

Seacliff didn't respond, the lawsuit states, until Dec. 22, when it declared an "event of default" and terminated the asset management agreement.

The dispute may hinge on which party, Portman or Seacliff, takes responsibility for McNett's alleged "financial abuses."

In the lawsuit, Portman excerpts an indemnification clause in the asset management agreement that it claims protects the company from liability for actions of the owner or its agents, including McNett.

Asset management agreements are fairly standard contracts, said Charlie Sharbaugh, a real estate lawyer in the Atlanta office of Paul, Hastings, Janofsky & Walker LLP.

Termination provisions are usually three-pronged -- termination by either party with 30 days' notice, a capital event such as a property sale, or a "for cause" termination by the owner, Sharbaugh said.

Busy overseas

The legal dispute comes as Portman continues to increase its international workload.

Portman Holdings, along with architectural and design firm John Portman & Associates, has made a name for itself in Europe and Asia over the past decade.

In the past few years, the design firm has worked on the 4 million-square-foot Shanghai Daewoo Business Center for Korean conglomerate Daewoo Corp. and the 45-story The Bund Financial Center in Shanghai.

Portman Holdings also is developing a 360-room, four-star hotel in Warsaw, Poland, and the company has taken on a redevelopment project at the Spa and Park Hotel Kurhaus in St. Moritz, Switzerland.

As for Shanghai Centre, Portman's Robinson said the project is doing "extremely well" staying almost "fully leased at the highest [rental] rates in Shanghai."

Shanghai Centre is the first mixed-use project in Shanghai with 200,000 square feet of office space, 472 luxury apartments, a 605-room Ritz-Carlton hotel, a tri-level retail plaza, exhibition space and a theater.