UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

VINCENT SANDONATO Plaintiff, v. DAYS INN WORLDWIDE, INC. and CENDANT HOTEL GROUP, INC. Defendants.	)	C.A. No. 07-451-M

ORDER

JOHN J. MCCONNELL, JR., United States District Judge.

Before the Court is Plaintiff Vincent Sandonato's Motion for Leave to File Amended Complaint (ECF No. 82) and Defendant Days Inn Worldwide, Inc.'s ("DIW") Objection (ECF No. 84). As an initial matter, it is clear from the Court's previous Order that the only Count that remains in this case is Count IV for breach of contract against DIW based on non-use of DIW's Central Reservation System. (ECF No. 78.) In that Order, the Court gave Mr. Sandonato leave to file a Motion to Amend his Complaint, subject to DIW's objection. *Id.* at 3. Mr. Sandonato filed the instant Motion, seeking to add SAVI International Corporation ("SAVI") as a plaintiff and to include counts dismissed by the Court or by agreement from the original Complaint.[1] The Court is mindful of the guidance from Rule 15 of the Federal Rules of Civil Procedure that leave

[1] DWI also argues that Mr. Sandonato "purports to sue Defendant WHG [Wyndham Hotel Group, LLC], even though Sandonato agreed to dismiss WHG as a Defendant on June 2, 2010." (ECF No. 84 at 3.) Cendant Hotel Group, the parent of DWI now known as WHG, is not named in Count IV of the proposed Amended Complaint, but appears in the caption and factual allegations. Although Mr. Sandonato does not address this point in his reply, in light his representations to the Court that Cendant would be dropped from the lawsuit, the Court presumes it to be done.

to amend should be freely given "when justice so requires." The Court is also aware that "[w]here an amendment would be futile or would serve no legitimate purpose, the district court should not needlessly prolong matters." *Correa–Martinez v. Arrillaga–Belendez*, 903 F.2d 49, 59 (1st Cir. 1990). After reviewing the memoranda and case law in light of this standard, the Court DENIES Plaintiff's Motion.

The dispute in this case arises out of a License Agreement between Mr. Sandonato and DIW. The terms of that Agreement governed the operation of a Days Inn franchise hotel in Middletown, Rhode Island.[2] There is no dispute in this case that SAVI is not a party to the License Agreement at issue in this case; Mr. Sandonato and DIW are the sole signatories. Because SAVI is not a party to the Agreement, it would generally have no right to recover for a breach of that Agreement. The question then becomes whether SAVI is a third-party beneficiary of the contract such that it may maintain an action for breach. The general rule in Rhode Island is that only intended, and not incidental, third party beneficiaries can maintain an action for damages resulting from a breach of a contract between two other contracting parties." *Forcier v. Cardello*, 173 B.R. 973, 985 (D.R.I. 1994) (citing *Davis v. New England Pest Control Co.*, 576 A.2d 1240, 1242 (R.I. 1990); *Finch v. Rhode Island Grocers Ass'n*, 175 A.2d 177, 184 (1961)).

Rhode Island follows the third party beneficiary test of the *Restatement (Second) of Contracts* § 302 (1981), *see Finch*, 175 A.2d at 184, which is accepting to third-party beneficiary claims - except in cases where the direct parties to the contract have "otherwise agreed." Section 302(1) states:

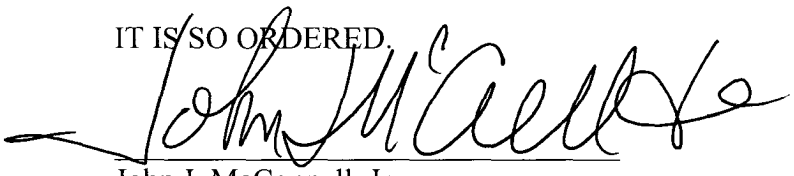
> Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the

[2] The details of this Agreement and the alleged breach leading to this litigation are set forth in the Court's previous decision and Magistrate Judge Lincoln Almond's Report and Recommendation. (*See* ECF Nos. 70, 78.)

> beneficiary is appropriate to effectuate the intention of the parties and ... the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

"The *Restatement* test essentially requires that the parties directly and unequivocally intend to benefit a third party in order for that third party to be considered an intended beneficiary." *Forcier*, 173 B.R. at 985. The parties to the License Agreement in this case clearly have "otherwise agreed." Section 17.5 of the Agreement between Sandonato and DIW provides: "This Agreement is exclusively for the benefit of the parties. There are no third party beneficiaries." (ECF No. 55-2 at 20.) There is nothing ambiguous about this Agreement – the parties clearly intended that it was exclusive as to Mr. Sandonato and DIW. Because SAVI was not a party to the Agreement and the Court finds that it was not an intended third party beneficiary of the Agreement, SAVI does not have the right to recover for breach of contract on that Agreement.[3] *In re TJX Companies Retail Sec. Breach Litigation*, 564 F.3d 489, 499 (1st Cir. 2009). Amending the Complaint to add SAVI would be futile and therefore, the Court denies Plaintiff's motion to amend the complaint.

IT IS SO ORDERED.



John J. McConnell, Jr.
United States District Judge

September 5, 2012

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[3] Mr. Sandonato's motion could be denied on two additional grounds. First, the Rhode Island Secretary of State revoked SAVI's status as a corporation in November 2010, calling into doubt whether it could properly be a plaintiff in this case. The second ground is based on the prejudice Defendants would suffer if an additional plaintiff was added. Mr. Sandonato filed this lawsuit on his own behalf (without SAVI) on December 10, 2007, almost five years ago and has known since the summary judgment stage in 2010 that Defendants were arguing that he lacked standing because SAVI incurred the alleged damages. Adding a plaintiff at this stage that is most certainly not even viable would delay a case that, for the sake of both sides, should be resolved at settlement or trial post haste as justice so requires.