

## **BONDS, BETRAYALS, AND BROKEN DEALS**

*By Claude Amar*

Hotels Real Estate ("HRE") is a troubled Paris-based listed company. HRE owns (i) an old 5-star hotel in New York, the Sycamore, (ii) a small chain of luxury resorts (10), Serene Resorts, mostly located in South-East Asia, (iii) a large plot of land in Saint Tropez, France and (iv) a chain of duty-free stores, Perfume & Tobacco Stores ("PTS"), located throughout Europe.

HRE has managed to survive the 1990 real estate and bank crises, mainly by issuing a €40 million convertible debenture through bonds with a 5% annual coupon.

HRE had to (i) reimburse several bank debts, on a short-term basis, and (ii) finance both the expansion and working capital of its luxury resorts as well as the development of the St Tropez land, which had not yet received proper zoning nor a planning permission.

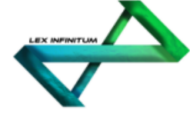
As a result, HRE has lost all potential financing with its historical financiers.

Pension Capital ("PC") is a New York-based opportunistic investment fund. PC must invest large amounts of capital in real estate, with a five-year investment life. PC is made aware that HRE's bonds are trading at a 23% IRR (internal rate of return). PC has identified the luxury hospitality industry as a strong sector of development.

In 2019, PC decides to meet with HRE executives to discuss a potential buy-out of a large stake of HRE bonds, which are up for sale.

The discussions have been very good. To such extent that PC has now insider knowledge and that leads its counsels to advise PC not to buy the bonds. Besides, PC's counsels want PC to be as remote as possible from any potential claim against HRE, because of its troubled past and current difficulties.





PC is very interested by HRE's four assets referred to above, seeing HRE as a platform for PC's luxury hospitality development (HRE has the know-how, whereas PC has the dollars!).

Thus, PC and HRE work out a very sophisticated transaction:

- HRE will move all four assets into HRH Island ("HRHI"), a British Virgin Islands ("BVI") holding company that is wholly owned by HRH. HRH is HRE's wholly owned British subsidiary.
- PC will buy 35% of HRHI's shares for €100 million, the "purchase price».
- PC will get two out of the five seats on HRHI's board.
- PC's shares in HRHI will have a guaranteed 18% preferred dividend.
- HRE undertakes to procure that HRHI immediately embarks on the NY Sycamore's renovation into a modern 5-star boutique hotel and to endeavour to get a building permit on the St Tropez land.
- There will be a "put & call" option that each party can exercise, at any time after five years, at (i) purchase price plus interests (18%) for HRE, (ii) fair market value, as estimated by VHS, a reputable hospitality valuation firm, for PC.

Closing takes place on April 15, 2019.

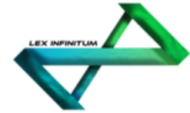
Alas, the partnership is not "as smooth as silk"!

PC's executives are very demanding as far as reporting is concerned and are very frustrated by the behaviour of Mr. Sharp, HRE's CEO, as well as by that of Mr. Sharp's longtime friend, Mr. Li, Serene Resorts' founder and CEO.

Mr. Sharp regularly cancels board meetings with very little notice, if any...

Mr. Li does not report on any of his ongoing developments and does not produce any financial statements...





On December 15, 2020, Mr. Sharp asks Mr. Bright, the very successful, high-flying, high ego CEO of PC, for a meeting overnight:

If Mr. Bright does not bail out Mr. Sharp's HRE group by December 25th, HRE will be forced to file for bankruptcy before the end of the year, since HRE must make a €20 million payment by such time.

Mr. Bright accepts, with the following conditions:

- A €20 million debenture will be issued with an 18% annual interest rate payable on March 31, 2022.
- Interest will not be paid, but will accrue until maturity (March 31, 2022);
- The loan will be fully reimbursed in one amount, including accrued interest, by March 31, 2022, at the latest.
- The loan documents will include a clause stating that, in case of default on the March 31st, 2022, due date, PC will immediately take control of all HRE's subsidiaries and operate them until such time as PC's loan is fully reimbursed, but no later than October 1, 2022, at which time control will return to HRE.
- In case of default on the March 31, 2022, due date, PC will then have the right to exercise its put option at any time, at purchase price plus interests (18%) as at that date (see annex), without having to perform a portfolio valuation.

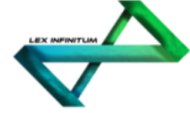
Documents are signed by all parties to the transaction and the €20 million are paid to HRE, which is now able to meet its December 31, 2020, payment obligation.

Business continues as usual, increasing PC's board and executives' frustration, as there is no reporting whatsoever neither from HRE, HRH, HRHI nor from Serene Resorts, despite PC's repeated requests.

In late 2021, Mr. Sharp (HRE's CEO), at Mr. Li's request, is introduced to SMREF, a New York based real estate fund, actively engaged in luxury hospitality investments.

Mr. Li, who is aware of Mr. Bright's (PC's CEO) plans to make him redundant, has been actively looking for a "White Knight" who could take over HRHI's stake





in Serene Resorts. SMREF's Managing Director, Mr. Brown, is willing to make a swift transaction.

The meeting between Mr. Sharp and Mr. Brown, in Mr. Li's presence, went very well and ended with a letter of intent for the sale and purchase of Serene Resorts, the transaction to take place no later than March 31, 2022.

In early March 2022, Mr. Sharp convinces Mr. Brown to also buy the St Tropez land from HRHI, representing that the land will be granted planning permission to build 20,000 square meters of mixed-use development (luxury hotel and villas).

On March 31, 2022, at 11:00am New York City time, 5:00pm Paris time, SMREF sends HRE a binding offer to purchase from HRHI's Serene Resorts as well as the St Tropez land €150 million (€125 million for Serene Resorts, €25 million for St Tropez), the offer being valid only until midnight that day, New York City time.

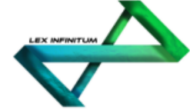
At 5:30pm Paris time, 11:30pm Hong Kong time, Mr. Sharp sends a copy of the letter to Mr. Bright, who is in Hong Kong, to show Mr. Bright that HRE, will be able to fully reimburse the loan as well as partially reimburse PC's preferred investment.

Mr. Bright, a former lawyer, replies, the next morning, to Mr. Sharp that the offer, as written, is not binding and suggests to Mr. Sharp to ask to SMREF to change one word, which will make the offer binding.

A few hours later, at 9:00am Paris time, Mr. Sharp sends a fax, from Paris, to Mr. Brown asking him to change the word and confirms that he will execute the offer upon receipt of the revised one.

On April 1, 2022, at 12:00 noon, New York City time, 6:00pm Paris time, Mr. Sharp receives a fax from Mr. Stern, SMREF's Chairman and CEO informing him that (i) Mr. Brown is no longer with SMREF and (ii) SMREF withdraws its offer. One week later, PC takes control of HRHI, and Mr. Li, Mr. Sharp's 20-year friend, is fired the same day.





On September 10, 2022, PC calls for an HRHI board meeting to be held on September 30, 2022. The purpose of the meeting is for the Board to approve the sale of three of HRHI's assets, as follows:

- The New York Sycamore Hotel, which has been completely refurbished and is now one of New York's fanciest hotels, for €50 million.
- Serene Resorts for €90 million.
- The St Tropez land for €10 million.
- Before the meeting, Mr. Bright hands Mr. Sharp an interest computation showing that (i) the April 15, 2019, €100 million and (ii) the December 25, 2020, €20 million loans, have increased, at 18% per annum, to a total of €204 million (see annex I).

HRE holds three board seats, PC holds two. The above sales are not approved. The Board surrenders control to HRH. As a result, PC informs HRE that it will engage in legal proceedings as early as the next day. The next day, Mr. Li is back at the helm of Serene Resorts.

On February 1, 2023, PC's lawyers send HRE's lawyers their petition for HRHI's liquidation before the Court of Tortola, BVI, (where HRHI is registered).

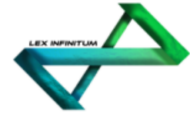
The trial starts on May 10, 2023, and continue to take place every day, all day, in Tortola, BVI.

In attendance are:

- On PC's side: one BVI Queen's Counsel ("QC"), four BVI lawyers, two Canadian lawyers, three American lawyers and their juniors. All together fifteen lawyers.
- On HRE's side: one BVI QC, one British QC and their juniors. All together six lawyers, as well as HRE's number 2, Mr. Palmer.

Six weeks later, on a Saturday, after lunch and while there was no hearing, Mr. Palmer is watching the sailboats when Mr. McDonald, PC's Canadian chief litigator, comes and sits next to him.





After watching a superb sailboat together, Mr. McDonald asks Mr. Palmer his opinion about the trial. Mr. Palmer says that both parties will probably lose and expresses his surprise that PC never acknowledged receipt of HRE's May 5th amicable proposal, let alone discuss or accept it.

Mr. McDonald is extremely surprised and appalled. In addition to never receiving the proposal, Mr. McDonald is even more astounded when he realises that it was made in full compliance with his requirements. The proposal contained a swap of the three assets of particular interest to PC (Serene Resorts, the St Tropez land and the New York Sycamore Hotel) against PC's receivable, i.e. €225 million, as of May 5, 2023.

Following this conversation, HRE and PC's lawyers ask the Tortola Judge for a six-week stay, to allow the parties to engage in amicable talks. The stay is granted.

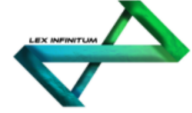
The parties organise a meeting, on July 2nd, in New York City, between Mr. Bright accompanied by one of his New York lawyers, named Mr. Wells, and Mr. Sharp accompanied by his London QC, named Mr. Saville.

The purpose of the meeting is to try to find an agreement, which needs to be fully implemented before August 15th, as, after that date, the Tortola Judge may issue a decision at any time.

Despite all the turmoil, Mr. Bright and Mr. Sharp have managed to always maintain their friendly relationship, which might not be the case for most of their executives!

\* \* \*





## Annex I

		Apr-15-2019	Dec-25-2020	Mar-31-2022	Sept-30-2022	May-05-2023	Jul-02-2023
Paid to HRE	(1)	100 000 000		100 000 000	100 000 000	100 000 000	100 000 000
Paid to HRE	(2)		20 000 000	20 000 000	20 000 000	20 000 000	20 000 000
Principal & Interest on	(1)			163 173 992	177 252 326	195 668 752	200 864 317
Principal & Interest on	(2)			24 653 630	26 780 69	29 563 197	30 348 185
Due to PC				187 827 621	204 033 022	225 231 949	231 212 502

## Annex II

### PC

Mr. Bright  
Mr. McDonald  
Mr. Wells

CEO  
Canadian Litigator  
New York Lawyer

### HRE

Mr. Sharp  
Mr. Palmer  
Mr. Saville

CEO  
Director of Development  
London Queen's Counsel

### Serene Resorts

Mr. Li

CEO

### SMREF

Mr. Brown  
Mr. Stern

Managing Director  
Chairman & CEO

\* \* \*

