

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

WESTGATE RESORTS, LTD.,

Plaintiff,

v.

Case No: 6:12-cv-35-Orl-22GJK

**LAUREN GREENFIELD, FRANK
EVERS and GREENFIELD/EVERS
LLC,**

Defendants.

ORDER

This cause comes before the Court to determine whether Richard Siegel, the signatory on the release at issue, had the authority to bind Plaintiff Westgate Resorts, Ltd. and thus subject Westgate Resorts, Ltd. to arbitration under the release. (*See* Doc. No. 48). To facilitate the Court's resolution of this issue, the Court held an evidentiary hearing on December 3, 2012. (Doc. No. 75). After the hearing, Westgate Resorts, Ltd. and Defendants Lauren Greenfield, Frank Evers, and Greenfield/Evers LLC ("Defendants") filed post-hearing memoranda. (*See* Doc. Nos. 78 & 79).

I. BACKGROUND¹

The underlying action arises out of the filming of "The Queen of Versailles," which Defendant Greenfield directed. Presently, Westgate Resorts, Ltd. is suing the Defendants for defamation and defamation-false light and is also seeking declaratory relief. (Doc. No. 27). In

¹ Although the Court previously noted that the parties failed to move depositions and related exhibits into evidence (Doc. No. 77), the Court, out of an abundance of caution, may consider the depositions identified at the hearing as both parties still cited to them in their post-hearing memoranda despite the Court's order.

response, Defendants claim that Westgate Resorts, Ltd., through Richard Siegel's signature, executed a release, under which Westgate Resorts, Ltd. expressly waived any and all claims for defamation and agreed that any disputes under the release would be settled pursuant to binding arbitration. (Doc. No. 30 at pp. 7-8). Westgate Resorts, Ltd. counters that Richard Siegel did not have the authority to bind Westgate Resorts, Ltd., and thus, no agreement to arbitrate exists. (Doc. No. 43 at pp. 8-9).

A. The Backdrop for the Film

In 2007, Defendant Greenfield met Jackie Siegel while photographing Donatella Versace for *ELLE* magazine. (Hr'g Trans. (Doc. No. 75 at p. 38)). Jackie told Defendant Greenfield that Jackie and her husband David Siegel were building the biggest house in America, aptly named *Versailles*, and invited Defendant Greenfield to photograph her there. (*Id.*). Defendant Greenfield photographed Jackie in March 2009 and after the photo shoot, proposed to the Siegels the idea of a film. (*Id.* at pp. 38-39). Thus, the filming of the movie began unofficially in March 2009 and officially, with the permission of Jackie and her husband David Siegel, in August 2009 and continued until the end of 2011. (*Id.* at pp. 25 & 38-39).

David Siegel is the founder and CEO of Westgate Resorts, one of the largest privately owned timeshare companies in the world. (Movie Transcript at 01:03:33.29).² Westgate Resorts is a large company composed of various limited liability companies, which has caused much confusion in this litigation as the Siegels often refer to the business and its various components by the common brand name "Westgate Resorts" without any corporate identification. David Siegel's son, Richard Siegel, is a vice-president within the Westgate Resorts brand. Richard

² For references to "The Queen of Versailles" film, the Court will refer to the time stamp shown on the movie's transcript.

Siegel claims that he is the Vice-President of Westgate Marketing, LLC; however, his employment records appear to show that Westgate Resorts, Ltd. employs him.³

The film explored the lives of Jackie and David Siegel and their family as they constructed the largest home in America and eventually showcased David Siegel's Westgate Resorts, a family business, which was in the process of opening "one of the icon properties in Las Vegas," the PH Towers by Westgate. (Movie Transcript at 01:12:31.12); (Doc. No. 75 at p. 67 (Defendant Greenfield testified that originally, Defendants did not know that Westgate Resorts, Ltd. was going to be a part of the film.)). During the filming, the United States economy suffered what some economists have referred to as "The Great Recession." (*See, e.g.*, Movie Transcript at 1:29:39.13). As a result, the PH Towers by Westgate began to have issues with its lenders. At that time, the film shifted its focus towards how the Siegel family and David Siegel's company Westgate Resorts responded to the economic crisis, as David Siegel himself described the situation, "So uh, this is kind of like a reverse of a rags to riches story, this almost like a riches to rags story." (*Id.* at 01:23:04.20).

With respect to the Westgate Resorts-related scenes involving company activities, the film shows:

1. Richard Siegel giving a motivational speech to his sales force at the PH Towers by Westgate in Las Vegas ("PH Towers") (*id.* at 01:24:21.12);
2. A Westgate Resorts' sales employee making a pitch to a couple at the PH Towers and a separate clip of David Siegel explaining his philosophy for timeshare sales (*id.* at 01:13:28.08);
3. The opening gala for the PH Towers (*id.* at 01:25:59.11);

³ The parties dispute for which entity Richard Siegel works. The Court need not resolve this matter for purposes of resolving the issue before the Court.

4. Richard Siegel explaining Westgate Resorts' sales approach while showing various sales pitches and closings of sales deals at the PH Towers (*id.* at 00:27:43.19);
5. A vacant Westgate Resorts' Sales Center in Ocoee, Florida (*id.* at 01:31:16.13);
6. Richard Siegel conducting a Westgate Resorts' Call Center Management Meeting in which he discusses the company's financial situation (*id.* at 01:45:32.00);
7. Richard Siegel discussing Westgate Resorts' relationship with its lenders and who Westgate Resorts targets as customers (*id.* at 01:47:14.09; 01:47:38.09);
8. Westgate Resorts' employees calling to collect past due payments from customers (*id.* at 01:47:57.02);
9. Richard Siegel discussing how the lights were shut off in his Las Vegas office, why David Siegel refuses to abandon the PH Towers, and how there is a possible foreclosure of the PH Towers (*id.* at 02:06:36.28);
10. Richard Siegel discussing his father's option to place the PH Towers in bankruptcy and the risks and benefits of doing so, as well as the internal family strife over the decision (*id.* at 02:21:52.29); and
11. The Westgate sign atop the PH Towers being turned off when David Siegel sold Westgate Resorts' controlling interests in the PH Towers to Resorts Finance America on November 21, 2011 (*id.* at 02:37:19:21).

B. The Disputed Release

In this short-lived lawsuit, both parties have spent an inordinate amount of time launching *ad hominem* attacks at each other, engaging in numerous delays, and inundating the Court with irrelevant or superfluous evidence. With that said, the pertinent issue before this Court is whether Richard Siegel had the authority to bind Westgate Resorts, Ltd. to arbitration of any dispute arising out of the filming of company-related activities when he signed a release on November 26, 2011. (*See* Def. Ex. No. 25).⁴ According to the Defendants, their sole basis for arguing that the Court should grant their motion to compel arbitration is the November 26, 2011 catchall release (the “November Release”). (Doc. No. 75 at p. 105).

During the week of Thanksgiving 2011, Richard Siegel and his wife traveled to New York City. During this visit, Richard Siegel met with Defendant Greenfield for a filmed interview in a New York City hotel room. During this interview, Defendant Greenfield presented Richard Siegel with the November Release.⁵ No one disputes that Richard Siegel signed the Release on November 26, 2011; however, the circumstances and the validity of the November Release are in dispute.

Defendants claim that during the interview, Richard Siegel read the November Release in front of three witnesses and discussed the terms with Defendant Greenfield prior to signing it.

⁴ The November Release specifically provides that “Westgate Resorts (“Company”) grants to Greenfield/Evers LLP dba Evergreen Pictures (“Producer”) the right to exhibit, record sound from and to photograph (the “Photography”) the meetings, presentations and other company-related events described below (the “Company Activities”) on the currently untitled documentary motion picture about the Siegels (the “Picture”).” (Def. Ex. No. 25). However, the section titled “Company Activities” remained blank. Various releases presented during the hearing were not filled out completely.

⁵ The November Release provides, *inter alia*, that: (1) “Company represents and warrants that it has the right to enter into this Release”; (2) “Company releases and discharges Producer, its employees, agents, licensees, successors, and assigns from any and all claims, demands or causes of actions that Company may have for libel, defamation, invasion of privacy . . .”; and (3) that all disputes arising under the November Release “shall be settled pursuant to binding arbitration under the rules of the Independent Film and Television Alliance.”

As well, Defendants claim that when Richard Siegel signed the November Release, he did so on behalf of Westgate Resorts, Ltd.

In contrast, Westgate Resorts, Ltd. argues that Richard Siegel signed the November Release in his personal capacity and that he lacked the authority to sign a contract on behalf of the Westgate Resorts, Ltd. Further, Westgate Resorts, Ltd. argues that the underlined portions of the November Release (i.e., the portions for written assertions) were blank when Richard Siegel signed the November Release. Specifically, Plaintiff claims that after Richard Siegel signed the document, Defendant wrote in “Westgate Resorts” beside the short citation “Company.” Additionally, the November Release does not provide a description for the blank space titled “Company Activities” or the print name for the blank line titled “Name of Authorized Representative.”

According to Westgate Resorts, Ltd. and Richard Siegel, Defendant Greenfield never informed Richard Siegel that he was signing on behalf of Westgate Resorts, Ltd. However, in light of the November Release’s language and Richard Siegel’s incredible testimony at the evidentiary hearing, it seems disingenuous for Westgate Resorts, Ltd. to argue that Richard Siegel thought he was signing in his personal capacity when the document itself repeatedly states the word “company” at least eleven times. *See supra* note 5. Regardless, Westgate Resorts, Ltd. argues that Richard Siegel lacked the authority to bind Westgate Resorts, Ltd. because Richard Siegel is a vice president of Westgate Marketing, LLC,⁶ a company legally distinct from Westgate Resorts, Ltd., and because Richard Siegel was neither an officer, director, employee, nor authorized agent of Westgate Resorts, Ltd.

⁶ According to Westgate Resorts, Ltd., Westgate Marketing, LLC is “a company engaged in the marketing and sale of timeshare interests and like products.” (Doc. No. 43-2 at p. 3).

Defendants counter that the November Release always showed “Westgate Resorts” in the blank space and that prior to November 2011, Richard Siegel executed a location release and a property release on behalf of Westgate Resorts and did so with David Siegel’s full knowledge.

Therefore, the issue turns on whether Richard Siegel was Westgate Resorts, Ltd.’s agent for purposes of the filming of Westgate Resorts-related scenes and with the power incidental thereto.

II. LEGAL STANDARD AND ANALYSIS FOR ACTUAL AGENCY

A. *Legal Standard*

An agent’s authority may be actual or apparent. To create an actual agency relationship, the party asserting the agency relationship must show: “(1) acknowledgement by the principal that the agent will act for him, (2) acceptance by the agent of the undertaking, and (3) control by the principal over the agent’s actions.” *Amstar Ins. Co. v. Cadet*, 862 So. 2d 736, 741 (Fla. 5th DCA 2003); 2 Fla. Jur. 2d: Agency & Employment § 13 (“Even where an alleged principal and agent both deny the existence of an agency relationship, the jury is entitled to infer the existence of an agency.”). If proven, the principal generally may be held liable for the acts of his agent committed within the scope of the agent’s real authority.

The scope of an agent’s authority may be inferred from acts, conduct, and other circumstances. *See Bradley v. Waldrop*, 611 So. 2d 31, 32 (Fla. 1st DCA 1992). The scope of an agent’s express authority implies the power “to do acts that are incidental to it, usually accompany it, or are reasonably necessary to accomplish it.” *See Bd. of Trs. of the City of Delray Beach Police and Firefighters Ret. Sys. v. Citigroup Global Mkts., Inc.*, 622 F.3d 1335, 1342-43 (11th Cir. 2010) (citing 2 Fla. Jur. 2d: Agency & Employment § 47). This doctrine of implied, actual authority “focuses on whether the agent reasonably believes, because of the principal’s

conduct, that the principal desires the agent so to act; thus, an agent who does not believe that he or she had such authority has no implied authority.” 2 Fla. Jur. 2d: Agency & Employment § 47.

B. Acknowledgement of Agency Relationship

David Siegel describes his authority at Westgate Resorts, Ltd. as making all the decisions. (*See, e.g.*, Doc. No. 75 at p. 215). Therefore, it is clear that David Siegel has the authority to appoint agents for Westgate Resorts, Ltd.’s activities.

According to Defendant Greenfield, she filmed at various Westgate Resorts locations, including twice in Las Vegas at the PH Towers in January 2010 for the opening gala and in April 2011, (*id.* at p. 71), and at Westgate Vacation Villas in Orlando, (*id.* at pp. 61-62).⁷ Defendant Greenfield further testified that David authorized the trip to the gala, the Westgate Vacation Villas tours, and filming at Westgate Resorts, Ltd.’s offices in Orlando, and that David knew about every single trip. (*Id.* at pp. 61-62 & 69). With respect to the April 2011 trip to the PH Towers, Defendant Greenfield explained that she planned to film the location with David Siegel and Richard Siegel but that David Siegel told her he was not going to be in Las Vegas and that she “should just go ahead and film with Richard.” (*Id.* at p. 64). This April 2011 shoot is the one shoot where Defendants predominately filmed at a Westgate Resorts location. (*Id.* at pp. 66-67).

Defendant Greenfield explicated that she made a second visit to the PH Towers in April 2011 because David Siegel in March 2010 told her about the PH Towers and “how it was the most important property that he had ever built and how that was his legacy, and if he saved it, it was going to be his greatest legacy.” (*Id.* at p. 69). According to Defendant Greenfield, David Siegel

⁷ Defendant Greenfield testified that she filmed a small amount of Westgate Resorts-related shots in May 2010 and did the big Westgate Resorts-related shots in March, April, and August of 2011. (Doc. No. 75 at p. 75).

even said, “And if I save it, you can film it. If I don’t save it, you can film it. If I blow it up, you’ll be there.” (*Id.*). After explaining to David Siegel that another trip to the PH Towers was important, David Siegel told Defendant Greenfield to go with Richard Siegel and that Richard Siegel would handle everything. (*Id.* at p. 79). Moreover, Defendant Greenfield elaborated, “[B]oth David [Siegel] and Richard [Siegel] knew about the direction of the film because we talked about that every trip before [Defendant Greenfield] went. Either [Defendant Greenfield] or [her] producer would get permission from David to come. And usually once on a trip he would ask [Defendant Greenfield] or [the producer] Rebecca, ‘What’s this move about? Where is it going?’” (*Id.* at p. 74). Richard Siegel’s deposition testimony is consistent with Defendant Greenfield’s hearing testimony that film representatives initially contacted David Siegel for film and company-related activities. (Richard Siegel Dep. at 153:4-160:11 (Richard Siegel testified that he assumed he asked his father for permission before the filming of the PH Towers’ sales floor and that his father did give him permission for the filming of the sales meeting at the PH Towers)).

For purposes of the filming, Defendant Greenfield testified that Richard Siegel guided the film crew through the whole company and David Siegel was well aware that Richard Siegel was doing that. (*Id.* at p. 107). David Siegel rebutted this testimony, claiming he was unaware until he saw the film at a festival that Richard Siegel allowed Defendant Greenfield to film sales meetings and pitches to prospective purchasers. (*Id.* at p. 224). However, David Siegel admitted that he told Defendant Greenfield that she could go to the PH Towers and that Richard Siegel would show her around and did the same with respect to his son Steve Siegel showing Defendant Greenfield around the Kissimmee resort. (*Id.* at p. 225). Inconsistent with Defendant Greenfield’s testimony, David Siegel further claims that he only authorized Defendant

Greenfield to visit the Westgate Resorts' locations in Orlando and Las Vegas and speak to his sons but not to interview anyone, including his sons. (*Id.* at pp. 231-32).

Upon observing David Siegel's demeanor and listening to the substance of his testimony, the Court finds David Siegel's testimony to be inconsistent and incredible and thus lacking weight. Considering David Siegel described his management style as dictatorial and one ruled with an iron fist, it seems quite bizarre that for two years, without David Siegel's knowledge, the Defendants would visit Westgate Resorts' locations and would film meetings with directors, vice-presidents, and customers and interview his son Richard, who had an accompanying office in Orlando. (*See id.* at pp. 53, 209-10).⁸ Thus, Defendants have shown that David Siegel appointed Richard Siegel as Westgate Resorts, Ltd.'s agent for purposes of filming Westgate Resorts-related shoots. *See Amstar Ins. Co.*, 862 So. 2d at 741.

C. *Richard Siegel's Acceptance of the Undertaking*

It is quite evident that Richard Siegel accepted his role as Westgate Resorts, Ltd.'s agent for the shooting of Westgate Resorts-related scenes. Defendant Greenfield testified that Richard Siegel "was primarily involved in the Westgate locations" and "was supervising and authorizing all—pretty much all of the scenes where we interface with lots of employees, so he was the one who often gave me the idea to film there. . . . [H]e oversaw those shoots. " (Doc. No. 75 at pp.

⁸ In "The Queen of Versailles", the film shows billionaire David Siegel complaining to his family about leaving the front door open and leaving lights on in their mansion and shows a sign above the air conditioner control that reads, "Do not touch air conditioner thermostat, thank you, David Siegel." (*See* Film Transcript 02:27:24.06 & 02:28:46.14-02:29:18.18); (*see also* Film Transcript 01:16:37.26 (The Siegel family nanny stated, "Mr. David is real disciplined man. He's my idol. He exactly knows what's going on in this house. Every corner of this house. He monitors our bills for water and electric. Even if he earns a billion some dollars. He knows exactly what, where his money goes.")). Therefore, it seems quite remarkable that a business person, self-described as a dictator, would rule his business and his house with an iron fist and be unaware of what filming is done with respect to his company when he appoints his son as the contact person and the son's office is next to his own.

39 & 55). As well, Defendant Greenfield goes into great detail of how Richard Siegel explained what he wanted filmed and suggested times and locations. In fact, Defendant Greenfield testified that Richard Siegel told employees on film, “My father felt like we would get deals in the [sales] room because of the excitement of the movie crew, kind of like Miss America walked through the sales room, creates a lot of buzz.” (*Id.* at p. 59). As well, Defendant Greenfield testified,

Richard [Siegel] often suggested employees for us to film. He explained some of the details in the pitch that he wanted us to film. And then also talked about filming his motivational sales meeting the following day. . . . And he talk[ed] about how [Defendant Greenfield] previously filmed his board of directors meeting⁹ and how it related to that and how maybe it will be part of the documentary.

(*Id.* at p. 60). In sum, Defendant Greenfield concluded, “[F]or purposes of the film, Richard Siegel guided us through the whole company and David Siegel was very aware that Richard Siegel was doing that.” (*Id.* at p. 107).

Richard Siegel countered Defendant Greenfield’s testimony by claiming he has never served in any capacity for Westgate Resorts, Ltd. (*Id.* at p. 153). From observing Richard Siegel’s demeanor and self-contradicting testimony, the Court does not find Richard Siegel to be a credible witness. Moreover, the film itself contradicts Richard Siegel’s argument as to his authority. Therefore, the Court concludes that Richard Siegel accepted the undertaking of the agency with respect to the filming of Westgate Resorts-related scenes. *See Amstar Ins. Co.*, 862 So. 2d at 741.

D. Westgate Resorts’ Control Over Richard Siegel’s Actions

⁹ It was clarified at the hearing that what Richard Siegel referred to as a board of directors meeting was in actuality a meeting of department heads that reported to him. (Doc. No. 75 at p. 61).

As previously set forth above, it is evident that David Siegel had complete control over Richard Siegel's actions as David Siegel himself proclaimed, he was a dictator who ran his company with his iron fist. The Court finds incredible David Siegel's testimony to the contrary. Therefore, the Court finds that Defendants satisfied the third element as well. *See Amstar Ins. Co.*, 862 So. 2d at 741.

E. *The Scope of Richard Siegel's Authority and the Authority to Sign the November Release*

Assuming *arguendo* that Richard Siegel was Westgate Resorts, Ltd.'s agent for filmmaking purposes, the issue remains whether the signing of the November Release was an action incidental to his filmmaking authority, an action that usually accompanies filmmaking authority, or an action reasonably necessary to accomplish the filming of Westgate Resorts-related scenes. *See Bd. of Trs. of the City of Delray Beach Police and Firefighters Ret. Sys.*, 622 F.3d at 1342-43.

Richard Siegel testified that he never discussed with David Siegel the releases he signed for the film prior to signing them. (Doc. No. 75 at p. 148). However, Richard Siegel strangely testifies that he does not sign anything without asking David Siegel first and that David Siegel has never granted him authority to enter into contracts beyond those involving sales and marketing. (*Id.* at 149-50). It strains credulity to maintain that after decades of working with his father in a large multi-million dollar company, Richard Siegel, an executive, never signs a contract without getting approval from his father David Siegel. Moreover, if such a condition precedent existed, Richard Siegel fails to explain why he did not follow protocol in this situation.

When evaluating Richard Siegel's testimony in context, it seems even more incredible. Richard Siegel testified that he did not read the November Release and that the Defendants inserted the words "Westgate Resorts" after he signed the release. (*Id.* at p. 139). Richard Siegel

also claims that other releases that he purportedly signed on behalf of Westgate Resorts, Ltd. (which are not at issue) were also blank when he signed them. (*Id.* at pp. 145-47). When cross-examined about unrelated contracts involving Westgate Marketing, LLC in which Richard Siegel signed the contracts as Vice President of Westgate Resorts, Richard Siegel claimed that his assistant or someone else must have filled in incorrectly the blank requiring his title (*i.e.*, used a Westgate Resorts title) after he signed the documents. (*Id.* at p. 163). Finally, Richard Siegel responded in the affirmative to the question, “So there’s a lot of people out there like Lauren [Greenfield] who are having you sign documents and putting in the name ‘Westgate Resorts’ after you sign it; is that right?” (*Id.* at p. 190).

Despite Richard Siegel claiming that he never read the November Release and that he signed contracts with blank spaces routinely, he submitted a declaration attesting, “I would not have signed anything without reading it first and would expect to remember what a ‘location release’ is if I had read and signed an agreement to that effect.” (Richard Siegel Dec. (Doc. No. 43-2 at ¶ 11)). Therefore, based on the foregoing, the Court finds Richard Siegel’s testimony lacking credibility. It rips the fibers of the imagination to stretch it so far as to believe that a sophisticated business executive within the tightly run organization of a self-proclaimed dictator would sign an agreement without reading it and without ever discussing it with his iron-fisted boss and father until after litigation commenced.

Defendant Greenfield testified that she gave Richard Siegel the November Release because she had worked with Richard Siegel on all of the Westgate filming. (Doc. No. 75 at p. 125). Moreover, Defendant Greenfield clarified that in response to Richard Siegel’s inquiry as to the purpose of the November Release, she told Richard Siegel that “it was to cover all the filming we had done at Westgate including Las Vegas where he was supervising.” (*Id.* at p. 33).

The Court finds Defendant Greenfield's testimony credible. Moreover, previously Richard Siegel signed a property release for Westgate Resorts and a location release for the PH Towers. (*See* Def. Ex. Nos. 18 & 21).

Further, obtaining the November Release from Richard Siegel is consistent with the Defendants' practice of obtaining a release from the Westgate representatives with whom they worked. For example, the Defendant obtained a release from Westgate Resorts' head of Creative Services Jon Kleckner for all of the material such as articles and photos Westgate Resorts provided the Defendants. (Doc. No. 75 at pp. 30 & 111).

Therefore, the Court finds that the act of Richard Siegel signing the November Release was incidental to his filmmaking authority, was an act that usually accompanies filmmaking authority, or was an act reasonably necessary to accomplish the filming of Westgate Resorts-related scenes as Richard Siegel was the "one who knew all and had supervised all the shooting in Las Vegas." *See Bd. of Trs. of the City of Delray Beach Police and Firefighters Ret. Sys.*, 622 F.3d at 1342-43; (Doc. No. 75 at p. 111).¹⁰ Therefore, the Court finds that an agreement to arbitrate exists between the parties.

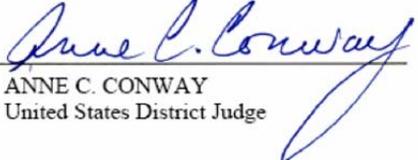
¹⁰ Westgate Resorts, Ltd. further argues that "a contract which on its face appears to be that of a corporation, but signed only with the name of an individual is not binding on the corporation in the absence of evidence to the contrary." (Doc. No. 79 at p. 18). To support its argument, Westgate Resorts, Ltd. relies on *Bellaire Securities Corporation v. Brown*; however, *Brown* discusses a contract executed by an agent under his own seal and relies on the principle that agency cannot be created by the agent's own declarations to a third party, in the absence of the principal. *Brown*, 168 So. 625, 636 (Fla. 1936). The present case is factually distinguishable, and the November Release clearly states "Company" throughout as the party to the agreement. *Cf. Blount v. Tomlinson*, 48 So. 751, 753 (Fla. 1909) ("If the contract be unsealed and the meaning clear, it matters not how it is phrased, nor how it is signed, whether by the agent for the principal or with the name of the principal by the agent or otherwise. The intent developed is alone material, and, when that is ascertained, it is conclusive."). Therefore, the Court finds this argument to be without merit.

III. CONCLUSION

Based on the foregoing, it is **ORDERED** as follows:

1. The present action is **STAYED** pending arbitration.
2. All pending motions are **DENIED as moot**.
3. The Clerk is **DIRECTED TO ADMINISTRATIVELY CLOSE** this case.
4. Defendants are **DIRECTED to FILE AND SERVE** on or before May 1, 2013, and every three (3) months thereafter a status report regarding the arbitration proceedings.

DONE and **ORDERED** in Orlando, Florida on January 24, 2013.


ANNE C. CONWAY
United States District Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties

As well, for the first time in its post-evidentiary hearing memorandum, Westgate Resorts, Ltd. raises the argument that Defendant failed to show that the November Release was supported by any consideration, claiming Westgate Resorts, Ltd. received nothing in value. (Doc. No. 79 at pp. 16-17). The Court finds this argument to be untimely and, in any event, without merit. After reviewing the docket and the testimonies of the parties, the Court finds there was sufficient consideration supporting the release. As well, the Court notes that Westgate Resorts, Ltd. dedicated only one page of its twenty-four page memorandum to this argument.