

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff

v.

**ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC**

Defendants, and

**JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC.**

Relief Defendants.

**NOTICE OF FILING EXHIBITS TO
MOTION FOR RELIEF FROM STAY OF LITIGATION [DN 121]**

NOW COMES Blanc & Bailey Construction, Inc. (“Blanc & Bailey”), by and through its undersigned attorneys, and files its Notice of Filing the attached Exhibits to Motion for Relief from Stay filed in the instant case at Docket Number 121.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was electronically filed on May 18, 2016 with the CM/ECF filing portal, which will send a notice of electronic filing to all counsel of record.

Respectfully submitted, this 18th day of May, 2016.

GURLEY ■ VITALE

/s/ J. Ben Vitale

David E. Gurley

Florida Bar No. 0402214

J. Ben Vitale

Florida Bar No. 0088304

GURLEY ■ VITALE

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Attorneys for Blanc & Bailey Construction, Inc.

CONTRACTOR'S CLAIM OF LIEN

NOW COMES Blanc & Bailey Construction, Inc. of 18 Depot Street, Charlestown, NH 03603 ("Lienor"), pursuant to 9 V.S.A. §§ 1921 et seq., hereby claims and asserts a lien against the real property and improvements located at 4600 Mountain Road, Town of Burke, County of Caledonia, State of Vermont, also known as Parcel No. 07070002.001 and SPAN No. 11103411243 (the "Property").

1. The Property is all and the same lands and premises conveyed to Burke 2000, LLC by the limited warranty deed of B&I Lending, LLC, recorded at Book 80, Page 540 of the Town of Burke Land Records on November 1, 2000.

2. The owner of the real property is Burke 2000, LLC ("Owner"). Owner's address according to the Grand List of the Town of Burke is P.O. Box 247, East Burke, VT 05832.

3. Pursuant to agreements and written contracts with Owner, Lienor improved and repaired the Property and performed labor and supplied materials to improve the Property by conducting, among other things, wood panelization of exterior walls, interior walls and the roof systems including framing, all hardware installation, hold downs and cleanup of work areas referred to as the "West Wing", "East Wing" and the "Link", and reworking certain heavy timber construction.

4. As of the date hereof, the unpaid amount due and owing to the Lienor for said labor performed and materials furnished, is \$241,501.47, and additional interest continuing to accrue on the unpaid amounts. The last date of labor and services provided and materials furnished was September 18, 2015. All sums are due, together with interest and attorney's fees, as provided for under 9 V.S.A. §§ 4002 and 4007 and the contract.

5. The name and address of Lienor's attorneys is Kenlan, Schwiebert, Facey & Goss, P.C., 71 Allen Street, Suite 401, Rutland, Vermont 05702.

IN WITNESS WHEREOF, Blanc & Bailey Construction, Inc. has caused this Contractor's Claim of Lien to be executed by its duly authorized agent this 30th day of November, 2015.

Blanc & Bailey Construction, Inc.

By: [Signature]
Matthew E. Blanc, President and Owner

Received for recording
Burke Town Clerk's Office
Date: December 6, 2015
Recorded in Burke Land
Records Book 140
Page 137 Time: 10:30 AM
Attest: [Signature]
Town Clerk

STATE OF NEW HAMPSHIRE)
SULLIVAN COUNTY)ss

At Charlestown, NH, this 30th day of November, 2015, personally appeared Matthew E. Blanc, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Blanc & Bailey Construction, Inc.

Before me, Traci J. Billesimo
Notary Public

My Commission Expires: July 11, 2017



Exhibit "A"

SUPERIOR COURT
CALEDONIA UNIT

CIVIL DIVISION
DOCKET NO. _____

Blanc & Bailey Construction, Inc.,)
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Plaintiff)
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 v.)
)
 PeakCM, LLC and Burke 2000, LLC)
Defendants.)
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COMPLAINT

COMPLAINT

NOW COMES Plaintiff Blanc & Bailey Construction, Inc., by and through its attorney, A. Jay Kenlan, Esq., as and for its Complaint against the Defendants alleges as follows:

PRELIMINARY STATEMENT

1. This is an action seeking damages and, upon approval of this action by the United States District Court for the Southern District of Florida, perfection of a duly recorded Contractor's Lien in the form of a Writ of Attachment. The Lien arises out of Defendant PeakCM's failure to pay Plaintiff for work performed under a Standard Form of Agreement between Contractor and Subcontractor (the "Subcontract"; Exhibit 1) between Plaintiff and Defendant PeakCM, dated May 9, 2014, for "Rough Carpentry" for the construction of the Q Burke Mountain Resort Hotel & Conference Center (Project # 012-1014 - 02) constructed on certain real property owned by Defendant Burke 2000, LLC located at 4600 Mountain Road in Burke, Caledonia County, Vermont (the "Property"; Exhibit 2).

Exhibit "B"

2. On November 30, 2015, Plaintiff filed a contractor's lien (the "Lien") on the Property pursuant to 9 V.S.A. §§ 1921 *et seq.* with the Town Clerk of the Town of Burke. See Exhibit 3.

3. On December 3, 2015, Plaintiff sent Defendant Burke 2000 a letter via certified mail requesting payment of the amount owed to Plaintiff and informing the Defendant that a lien was placed on the Property, which letter was, upon information and belief, received by Defendant Burke 2000. Exhibit 4.

4. The memorandum of Lien was recorded in the Town of Burke Land Records on December 6, 2015, as required by 9 V.S.A. §1923. See Exhibit 3.

5. Under 9 V.S.A. § 1924, if the amounts due have not been paid, Plaintiff is required to commence an action against Defendants and cause the Property of Defendant Burke 2000 to be attached within 180 days from the time of filing of the memorandum of Lien in the Burke Land Records.

6. Based upon the recording of the memorandum of Lien on December 6, 2015, the 180th day will occur on or about June 5, 2016.

7. The Subcontract contains the following provision:

12.7.2 With respect to the claims identified in Subparagraph 12.7.1, if neither party requests mediation, or if mediation does not resolve the dispute, Contractor may elect at any time to arbitrate or to litigate the dispute, and Subcontractor hereby agrees to arbitrate if so elected by Contractor. . . If arbitration is selected by Contractor, the award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitrator(s) shall issue a reasoned explanation of the award.

8. On February 17, 2016, Plaintiff and Defendant PeakCM participated in mediation at the offices of Marks & Powers in Middlebury Vermont. The mediation was recessed until May

26, 2016, when the parties intend to resume the mediation in an effort to resolve Plaintiff's claims and Defendant PeakCM's counterclaims.

9. Upon conclusion of the mediation, if Plaintiff's claims or Defendant PeakCM's counterclaims have not been resolved, Defendant PeakCM may seek to elect arbitration under section 12.7.2 of the Subcontract.

10. If Defendant PeakCM seeks to arbitrate this matter, and if an arbitration award is made by an arbitrator in accordance with Section 12.7.2 of the Subcontract, such award would be entered as a judgment in these proceedings.

11. On April 13, 2016, the United States District Court for the Southern District of Florida issued an Order Granting Plaintiff Securities and Exchange Commission Motion for Appointment of Receiver (the "Order") in the matter of Securities and Exchange Commission v. Ariel Quiros, Williams Stenger, et al., Case No. 16-CV-21301-GAYLES (the "Federal Court Action"). The Order contains the following restriction and limitation on actions by third parties:

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets of the Corporate Defendants and Relief Defendants to the Receiver's control without the permission of this Court;

12. Defendant Burke 2000 is a wholly owned subsidiary of Q Burke Mountain Resort, LLC.

13. Q Burke Mountain Resort, LLC is a Relief Defendant Corporate Defendant in the Federal Court Action.

14. Plaintiff must seek permission from the Florida federal court to pursue an attachment against property owned by Defendant Burke 2000.

15. Plaintiff has filed an action in the Florida federal court seeking permission of the Florida federal court to proceed with perfection of its Lien against the Property; however, Paragraph 21 of the Order and the docketing requirements of the Florida federal court will effectively prevent Plaintiff from obtaining permission from the Florida federal court to seek and obtain an attachment from this court within the 180-day limitation of 9 V.S.A. § 1924.

PARTIES AND VENUE

16. Plaintiff Blanc & Bailey Construction, Inc. is, and was at all times relevant to the matter, a New Hampshire corporation duly organized and created under the laws of the State of New Hampshire, with a principal business address of 18 Depot Street, Charlestown, New Hampshire, 03603.

17. Plaintiff is registered to do business in the State of Vermont as a foreign corporation.

18. Defendant PeakCM, LLC, upon information and belief, is registered to do business in the State of Vermont as a foreign limited liability company.

19. Defendant Burke 2000, LLC is, upon information and belief, a duly registered Vermont limited liability company.

20. Defendant Burke 2000, LLC is, upon information and belief, the owner of the Property.

21. Venue is proper in Caledonia County, the locus of the Property. 12 V.S.A. § 402(a).

GENERAL ALLEGATIONS

The Contracts

22. Upon information and belief, Defendant PeakCM has entered into a general contract with Defendant Burke 2000 for the construction of the Q Burke Mountain Resort Hotel & Conference Center on the Property owned by Defendant Burke 2000.

23. Under the Subcontract with Defendant PeakCM as General Contractor for Defendant Burke 2000, LLC, Plaintiff agreed to perform "Rough Carpentry" (the "Work") for the "Q Burke Mountain Resort Hotel & Conference Center" (the "Project") to be constructed on the Property by Defendant PeakCM.

24. Plaintiff HAS performed and completed the Work in substantial conformance with the Subcontract, including and subject to modifications, change orders, and instructions received from Defendant PeakCM.

Defendant PeakCM's Failure to Pay

25. Plaintiff has filed with Defendant PeakCM requisition for payment with supporting documents in accordance with the terms of the Subcontract, and has demanded of defendant PeakCM that adjustments be made to be cost of the work to reflect changes in the work required by defendant PeakCM, and costs and expenses caused by defendant PeakCM's deviations from and failure to perform in accordance with the Subcontract.

26. Notwithstanding Plaintiff's requisitions and demands for payment, Defendant PeakCM has failed, neglected, and refused to pay Plaintiff for amounts due Plaintiff under the terms of the Subcontract and in accordance with Chapter 102 of Title 9 of the Vermont Statutes Annotated.

27. Plaintiff is currently owed no less than \$401,501.47 by Defendant PeakCM for work performed by Plaintiff pursuant to the Subcontract and for costs and expenses incurred by Plaintiff as a result of Defendant PeakCM's changes in the scope of the work, and failure to perform in accordance with the Subcontract.

Contractor's Lien

28. Plaintiff repeats and re-alleges paragraphs 1 – 27 as if fully set forth herein.

29. Defendant PeakCM has not paid Plaintiff for the total amount due under the Subcontract.

30. Defendant PeakCM's breaches resulted in damage to Plaintiff.

31. Defendant PeakCM's breaches deprived Plaintiff of the essential benefit of the bargain that it contracted for in the Subcontract Phase II Contract.

32. As a direct and proximate result of Defendant PeakCM's breach, Plaintiff has suffered damages and continues to suffer damages.

FIRST CAUSE OF ACTION
Breach of Covenant of Good Faith and Fair Dealing

33. Plaintiff repeats and re-alleges paragraphs 1 – 32 as if fully set forth herein.

34. The Subcontract contained an implied covenant of good faith and fair dealing.

35. By their conduct, alleged herein, the Defendants violated the implied covenant of good faith and fair dealing.

36. As a direct and proximate result of the Defendants' breach of the covenant of good faith and fair dealing, Plaintiff has suffered damages, including lost profits, and has and will incur attorneys' fees and costs in connection with the commencement and prosecution of this action.

37. Damages analogous to tort damages, including without limitation exemplary and punitive damages, are appropriate for Defendant's breach of this implied covenant. Ainsworth v. Franklin County Cheese Corp., 156 Vt. 325, 331–32 (1991).

SECOND CAUSE OF ACTION

Violation of Contractor Prompt Pay Act – 9 V.S.A. § 4001 *et seq.*

38. Plaintiff repeats and re-alleges paragraphs 1 – 37 of the Complaint as if fully set forth herein.

39. Plaintiff is a “contractor” pursuant to 9 V.S.A. § 4001(1).

40. Defendant Burke 2000 is an “owner” pursuant to 9 V.S.A. § 4001(3).

41. Defendant PeakCM is the agent of defendant Burke 2000 as the general contractor for the Project

42. Plaintiff performed work on Defendant Burke 2000's real property pursuant to a construction contract as defined by 9 V.S.A. § 4001(5).

43. Title 9 V.S.A. Chapter 102 applies to the Subcontract between the Plaintiff and Defendant PeakCM and the general contract between Defendant PeakCM and Defendant Burke 2000.

44. Title 9 V.S.A. § 4002 requires that Defendant PeakCM pay Plaintiff strictly in accordance with the terms of the Subcontract.

45. Plaintiff completed the work on or about April 30, 2015.

46. Plaintiff made application for payment by sending invoices to Defendant PeakCM.

47. Defendants have not paid the total amount due.

48. Plaintiff is entitled to one percent (1%) interest per month on the outstanding balance owed by Defendant PeakCM pursuant to 9 V.S.A. § 4002(d).

49. Plaintiff is also entitled to a one percent (1%) interest penalty per month on the outstanding balance owed by Defendant PeakCM pursuant to 9 V.S.A. § 4007(b).

50. Plaintiff is entitled to attorneys' fees and the cost of collection from Defendant PeakCM pursuant to 9 V.S.A. § 4007(c).

THIRD CAUSE OF ACTION
Unjust Enrichment

51. Plaintiff repeats and re-alleges paragraphs 1 – 50 of the Complaint as if fully set forth herein.

52. Defendants accepted the work, labor and materials furnished by Plaintiff.

53. Defendants have received the benefit of Plaintiff's work on the Project.

54. The value of Defendant Burke 2000's Property was enhanced as a result of Plaintiff's work, labor and materials.

55. The increase in value of the Defendant Burke 2000's Property is equal to or greater than the cost of such work, labor and materials.

56. As a result of Defendant PeakCM's failure to pay for the work, labor and materials supplied by Plaintiff, Defendants PeakCM and Burke 2000 have been unjustly enriched.

FOURTH CAUSE OF ACTION
Enforcement of Contractor's Lien

57. Plaintiff repeats and re-alleges paragraphs 1 – 56 of the Complaint as if fully set forth herein.

58. Pursuant to 9 V.S.A. § 1923, Plaintiff filed a notice of contractor's lien with the Town Clerk of the Town of Burke, which lien was recorded on December 6, 2015 at Book 140, Page 237 of the Burke Land Records.

59. Plaintiff notified Defendant Burke 2000 by certified mail of its assertion of its lien and provided them with a copy of the Notice of Lien.

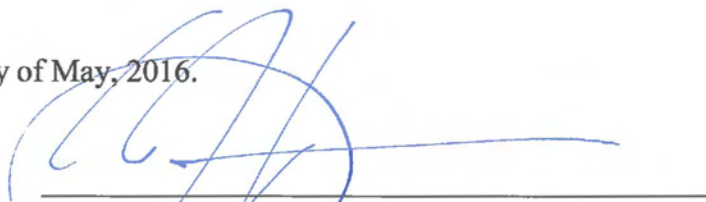
60. As of the date of this Complaint, the lien has not been satisfied.

61. Title 9 V.S.A. § 1924 provides for the enforcement of Plaintiff's Lien by causing the Property to become attached where said Lien has not been satisfied.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- a. Stay the present proceeding, and extend the time for issuance of an attachment under 9 V.S.A. § 1924, pending a decision by the Florida District Court approving Plaintiff's request to proceed with this action and obtain an attachment of defendant Burke 2000's Property.
- b. Upon approval of this action by the Florida District Court, order that not less than \$401,501.47 of the aforementioned damages, together with the attorney fees, costs and interest awarded by this Court, be adjudged to be a lien against the Property pursuant to 9 V.S.A. § 1924, senior and superior to any claim of right, title or interest of any Defendant in or to the Property, and that the Property be ordered sold by the Sheriff of Caledonia County, Vermont, according to law, and that all proceeds of the sale be applied to Plaintiff's claim and to the cost of these proceedings and the sale of the Property;
- c. Stay the present proceeding pending a decision by defendant PeakCM concerning arbitration and, if arbitration is elected, order that the award of the arbitrator be reported to this Court;
- d. If Defendant PeakCM does not elect to seek arbitration of Plaintiff's claims under Section 12.7.2 of the Subcontract, proceed with trial of this case and:
 - i. Award to Plaintiff damages incurred as a result of Defendant PeakCM's breach of the Subcontract, according to proof;
 - ii. Award to Plaintiff all payment amounts due plus contractual interest and late fees to which Plaintiff is entitled pursuant to the Subcontract or otherwise;
 - iii. Award to Plaintiff interest as set forth under 9 V.S.A. § 4002 on all amounts due, including prejudgment interest; and
 - iv. Award to Plaintiff penalties as set forth under 9 V.S.A. § 4007(b) on all amounts due;
 - v. Award to Plaintiff reasonable attorneys' fees, disbursements and costs of this action pursuant to the Phase II Contract and 9 V.S.A. § 4007(c);
- e. Award to Plaintiff such other and further relief as this court deems just, equitable and proper.

Dated at Rutland, Vermont this 5th day of May, 2016.



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SUPERIOR COURT
CALEDONIA UNIT

CIVIL DIVISION
DOCKET NO. _____

Blanc & Bailey Construction, Inc.,)
Plaintiff)
v.)
PeakCM, LLC and Burke 2000, LLC,)
Defendant.)

MOTION FOR WRIT OF ATTACHMENT

MOTION FOR WRIT OF ATTACHMENT

NOW COMES Plaintiff Blanc & Bailey Construction, Inc., by and through its attorney, A. Jay Kenlan, Esq. and pursuant to V.R.C.P. 4.1 respectfully requests an Order of Approval from this Court granting Plaintiff a Writ of Attachment. In support of this motion, Plaintiff submits the attached Affidavit of Mathew E. Blanc (“Blanc Affidavit”) and the following:

1. This Motion is made in concert with a statutory action seeking perfection of a duly recorded Contractor’s Lien in the form of a Writ of Attachment. The lien arises out of alleged breaches of and nonpayment under a construction subcontract (the “Subcontract”) entered into between Plaintiff and PeakCM, LLC (“ PeakCM”), the prime contractor on a construction project known as the Q Burke Hotel & Conference Center (the “Project”) that is located on real property owned by Defendant Burke 2000, LLC.

2. Defendant Burke 2000, LLC owns that certain real property located at 4600 Mountain Road, Town of Burke, County of Caledonia, State of Vermont, also known as Parcel No. 07070002.001 and SPAN No. 11103411243 (the “Property”) being all and the same lands and premises conveyed to Burke 2000, LLC by the limited warranty deed of B&I Lending, LLC, recorded at Book 80, Page 540 of the Town of Burke Land Records on November 1, 2000. Exhibit 1.

Exhibit "C"

3. Upon information and belief, PeakCM entered into a contract with Defendant or one of its related entities, for construction of the Project on the Property.

4. On or about May 9, 2014, Plaintiff and PeakCM entered into the Contract whereby Plaintiff would, as a subcontractor to PeakCM, perform certain construction activities and provide materials relating to the same on the Project, thereby improving the Property. (See Exhibit 1 of the Complaint.)

5. The Contract contains provisions relating to, *inter alia*, payments, change orders, and other related matters.

6. Plaintiff performed under the Contract but has not received payment from PeakCM.

7. On December 3, 2015, after unsuccessfully attempting to obtain payment from PeakCM, pursuant to 9 V.S.A. § 1923, Plaintiff's contractor's lien on was recorded on December 6, 2015 at Book 205, Page 144 of the Town of Burke Land Records. (See Exhibit 3 of the Complaint.) The last day Plaintiff worked on the Project was September 18, 2015.

8. Upon information and belief, PeakCM has not been paid by the entity that contracted for construction of the Project on the Property.

9. The Contract contains provisions requiring arbitration, and prohibiting litigation between Plaintiff and PeakCM prior to engaging in mediation.

10. Plaintiff and PeakCM are currently engaged in mediation with regard to the disputes relating to the Contract including, *inter alia*, payment.

Vermont's Contractor Lien Statute

11. 9 V.S.A. § 1924 provides for the enforcement of Plaintiff's lien by causing the Property to become attached where said lien has not been satisfied.

12. As of the date of this Motion, the lien has not been satisfied.

13. A Complaint against the Defendant has been filed by Plaintiff simultaneously herewith.

14. Plaintiff seeks an attachment of the aforementioned Property.

15. Per the Vermont Supreme Court, “By giving suppliers and others who benefit from the project an in rem right against the owner, the statute overcomes the lack of privity between the suppliers and the owner, since the suppliers typically deal with the general contractor or the subcontractors.” Newport Sand & Gravel Co. v. Miller Concrete Const., Inc., 159 Vt. 66, 69, 614 A.2d 395, 397 (1992) (internal citations omitted). PeakCM is therefore not a required party to this action.

16. A lienor under 9 V.S.A. § 1924 has 180 days following the filing of the mechanic’s lien in the land records to “commence his or her action ... and cause such real estate or other property to be attached.” 9 V.S.A. § 1924. See also In re Cusson, 412 B.R. 646, 654-55 (D.Vt. 2009) (setting forth summary of steps for attaching property). V.R.C.P. 4.1 provides the procedure for attaching property by writ.

17. The writ is to be obtained within 180 days of recording. See Filter Equip. Co. v. Int’l Bus. Machines Corp., 142 Vt. 499, 502, 458 A.2d 1091, 1092 (1983) (“We have consistently held, before the 1979 amendment to V.R.C.P. 4.1 and the 1978 addition of 12 V.S.A. § 3295, that the property involved must be actually attached within the [then-existing] three-month period, and that it is not enough that the suit be merely commenced.”); In re Rainbow Trust, 216 B.R. 77, 83 (B.A.P. 2d Cir. 1997). See also 1979 Reporter’s Notes to VRCP 4.1 (referenced in Filter Equip.) where the Reporter makes the following statement: “[T]he real estate attachment required under 9 V.S.A. § 1924 to perfect a mechanic's lien must now, like other real estate attachments, be on motion and notice under the rule. Attorneys should take care to commence action on such liens in

ample time to permit completion of the attachment within the [then-effective] three-month period provided by the statute after the filing of notice of the lien. Otherwise, under the statute the lien will be lost.”

18. The 180-day period under 9 V.S.A. § 1924 expires on or about June 6, 2016.

19. Though Plaintiff and PeakCM are pursuing alternative dispute resolution as required by the Contract, that process will almost certainly not be completed by June 3, 2016.

20. A lien under 9 V.S.A. § 1921, *et seq.*, “may not be waived in advance of the time such labor is performed or materials are furnished, and any provision calling for such advance waiver shall not be enforceable.” 9 V.S.A. § 1921(f). Therefore, despite the prohibition of filing a lawsuit against PeakCM prior to exhausting the other required forms of alternative dispute resolution, this action for attachment is permissible.

21. In furtherance of the rights provided to Plaintiff under 9 V.S.A. § 1921, *et seq.*, Plaintiff has filed with the Complaint an Order to Show Cause/Notice of Hearing and Motion For a Writ of Attachment.

22. Plaintiff states that it is currently owed no less than \$401,504.51, as set forth in the Affidavit of Matthew Blanc, plus contractual interest, statutory interest, and attorneys’ fees, all of which continue to accrue.

23. Due to the fact that Plaintiff entered into a valid contract with PeakCM, which Plaintiff performed, and for which Plaintiff has not been paid, there is a reasonable likelihood that Plaintiff will recover judgment including interest and costs and attorneys’ fees in an amount equal to or greater than the amount of the attachment over and above any liability insurance, bond or other security known or reasonably believed to be available to satisfy the judgment.

24. Plaintiff incorporates the attached Affidavit of Mathew E. Blanc.

The Florida Receivership

25. On April, 12, 2016, the United States Securities and Exchange Commission (“SEC”) filed an emergency action (the “Florida Action”) in the United States District Court for the Southern District of Florida against certain Corporate Defendants and Relief Defendants.

26. Burke Mountain Resort, LLC. is a Relief Defendant in the Florida Action.

27. Defendant Burke 2000 is a wholly owned subsidiary of Burke Mountain Resort, LLC.

28. On April 13, 2016, the United States District Court for the Southern District of Florida issued an Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver (the “Florida Order”).

29. The Florida Order included the following limitation on parties seeking to attach property owned by the Corporate Defendants or the Relief Defendants:

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets of the Corporate Defendants and Relief Defendants to the Receiver's control without the permission of this Court;

30. Plaintiff has initiated action to request permission from the United States District Court for the Southern District of Florida to obtain an attachment on the property of defendant Burke 2000; however, it is not anticipated that the Florida court will act on Plaintiff’s request within the 180-day period provided under 9 V.S.A. § 1924.

WHEREFORE, Plaintiff respectfully requests this court to grant its motion and issue an Order of Approval and Writ of Attachment in the form attached hereto.

1. Stay the present proceeding, and extend the time for issuance of an attachment under 9 V.S.A. § 1924, pending a decision by the United States District Court for the Southern

District of Florida Court approving Plaintiff's request to proceed with this action and obtain an attachment of Defendant Burke 2000's Property.

2. Upon approval of this action by the United States District Court for the Southern District of Florida, order that not less than \$401,504.51 of the aforementioned damages, together with the attorney fees, costs and interest awarded by this Court, be adjudged to be a lien against the Property pursuant to 9 V.S.A. § 1924, senior and superior to any claim of right, title or interest of any Defendant in or to the Property, and that the Property be ordered sold by the Sheriff of Caledonia County, Vermont, according to law, and that all proceeds of the sale be applied to Plaintiff's claim and to the cost of these proceedings and the sale of the Property.

Dated this 4th day of May, 2016, Rutland, Vermont.

Blanc & Bailey Construction, Inc.

By: 

A. Jay Kenlan, Esq.
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Rutland, VT 05701
Attorney for Plaintiff
(802) 772-4440 (main)
jkenlan@kenlanlawvt.com