

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.

Q BURKE MOUNTAIN RESORT, HOTEL
AND CONFERENCE CENTER, L.P.
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants¹

RECEIVER'S RESPONSE TO
BLANC & BAILEY CONSTRUCTION, INC.'S
MOTION FOR RELIEF FROM STAY OF LITIGATION

¹See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [DE 60].

Michael I. Goldberg (the “Receiver”), through undersigned counsel, hereby files his Response to the Motion for Relief From Stay of Litigation [D.E. 121] (the “Response”) filed by Blanc & Bailey Construction, Inc. (“Blanc & Bailey”).

1. On May 17, 2016, Blanc & Bailey filed a Motion for Relief from Stay of Litigation (the “Motion”). In the Motion, Blanc & Bailey seeks to preserve its lien rights under Vermont law in accordance with Chapter 102 of Title 9 of the Vermont Statutes for the work it performed as a subcontractor to PeakCM, LLC (“PeakCM”) for construction of the Q Burke Mountain Resort Hotel & Conference Center (the “Burke Hotel”).

2. The Receiver is familiar with Vermont’s contractor’s lien statute, 9 V.S.A. § 1921 *et seq.* and has been in contact with other contractors and subcontractors who have provided work on various projects. Simultaneously with filing this response, the Receiver filed a Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the Stateside Contractor and Subcontractors and to Preserve their Lien Rights [D.E. 133], subject to further review and confirmation by the Receiver of the validity, priority, scope and amount of their claims.

3. The Receiver has had conversations with Peak CM, the General Contractor on the Burke Hotel regarding filing a similar motion to permit subcontractors on the Burke Hotel² to preserve alleged lien rights through one omnibus motion, subject to further review and confirmation by the Receiver of the validity, priority, scope and amount of their claims. This will relieve the Court from ruling on dozens of separate motions filed by subcontractors.

² The Receiver will seek the same relief from the subcontractors who provided materials or labor for the biomedical research park.

CASE NO.: 16-cv-21301-GAYLES

4. As a subcontractor on the Burke Hotel, Blanc & Bailey will be included in such a motion, so the Receiver respectfully suggests that the Court defer ruling on this Motion, as Blanc & Bailey will receive the same relief as party to an omnibus motion.

5. Accordingly, the Receiver does not object to the Court entering an Order lifting the automatic stay to allow Blanc & Bailey to preserve its lien rights before they expire, but not to enforce or in any other respect act upon any such lien absent further Order of the Court. These are the same limitations the Receiver is agreeing to for other contractors and subcontractors.

6. Moreover, based on his discussions with representatives of PeakCM, the Receiver understands that PeakCM disputes Blanc & Bailey's claim, and in fact, PeakCM and Blanc & Bailey are mediating the dispute. It is therefore important that any Order lifting the automatic stay to allow Blanc & Bailey to preserve its lien rights, is subject to a complete reservation of rights to confirm the validity, priority, scope and amount of Blanc & Bailey's claim.

Respectfully submitted,

AKERMAN LLP

350 E. Las Olas Boulevard

Suite 1600

Ft. Lauderdale, Florida 33301

Telephone: (954) 46-2700

Facsimile: (954) 463-2224

By: /s/ Michael I. Goldberg

Michael I. Goldberg, Esq.

Florida Bar No.: 886602

Email: michael.goldberg@akerman.com

Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this May 24, 2016 via the Court's notice of electronic filing on Gurley Vitale, Counsel for Blanc & Bailey Construction, Inc. and all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.

SERVICE LIST

1:16-cv-21301-DPG Notice will be electronically mailed via CM/ECF to the following:

Robert K. Levenson, Esq.
Senior Trial Counsel
Florida Bar No. 0089771
Direct Dial: (305) 982-6341
Email: levensonr@sec.gov
almonte@sec.gov, gonzalezlm@sec.gov,
jacmeinv@sec.gov

Christopher E. Martin, Esq.
Senior Trial Counsel
SD Florida Bar No.: A5500747
Direct Dial: (305) 982-6386
Email: martinc@sec.gov
almonte@sec.gov, benitez-perelladaj@sec.gov

SECURITIES AND EXCHANGE
COMMISSION

801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

Attorneys for Plaintiff

Roberto Martinez, Esq.
Email: bob@colson.com
Stephanie A. Casey, Esq.
Email: scasey@colson.com
COLSON HICKS EIDSON, P.A.
255 Alhambra Circle, Penthouse
Coral Gables, Florida 33134
Telephone: (305) 476-7400
Facsimile: (305) 476-7444
Attorneys for William Stenger

Jeffrey C. Schneider, Esq.
Email: jcs@lklsg.com
LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN
Miami Center, 22nd Floor
201 South Biscayne Blvd.
Miami, Florida 33131
Telephone: (305) 403-8788
Co-Counsel for Receiver

Jonathan S. Robbins, Esq.
jonathan.robbins@akerman.com
AKERMAN LLP
350 E. Las Olas Blvd., Suite 1600
Ft. Lauderdale, Florida 33301
Telephone: (954) 463-2700
Facsimile: (954) 463-2224

Naim Surgeon, Esq.
naim.surgeon@akerman.com
AKERMAN LLP
Three Brickell City Centre
98 Southeast Seventh Street, Suite 1100
Miami, Florida 33131
Telephone: (305) 374-5600
Facsimile: (305) 349-4654
Attorney for Court-Appointed Receiver

Karen L. Stetson, Esq.
Email: karen.stetson@gray-robinson.com
Jonathan L. Gaines, Esq.
Email: jonathan.gaines@gray-robinson.com
GRAY ROBINSON, P.A.
333 S.E. Second Avenue
Suite 3200
Miami, Florida 33131
Telephone: (305) 416-6880
Attorney for Ariel Quiros

David B. Gordon, Esq.
Email: dbg@msk.com
MITCHELL SILBERBERG & KNOPP, LLP
12 East 49th Street – 30th Floor
New York, New York 10017
Telephone: (212) 509-3900
Co-Counsel for Ariel Quiros

Jean Pierre Nogues, Esq.
Email: jpn@msk.com
Mark T. Hiraide, Esq.
Email: mth@msk.com
MITCHELL SILBERBERG & KNOPP, LLP
11377 West Olympic Blvd.
Los Angeles, CA 90064-1683
Telephone (310) 312-2000
Co-Counsel for Ariel Quiros

CASE NO.: 16-cv-21301-GAYLES

Mark P. Schnapp, Esq.

Email: schnapp@gtlaw.com

Mark D. Bloom, Esq.

Email: bloomm@gtlaw.com

Danielle N. Garno

E-Mail: garnod@gtlaw.com

GREENBERG TRAUERIG, P.A.

333 SE 2nd Avenue, Suite 4400

Miami, Florida 33131

Telephone: (305) 579-0500

Counsel for Intervenor, Citibank N.A.