

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

**ORDER GRANTING RECEIVER'S MOTION TO MODIFY THE
PRELIMINARY INJUNCTION AND/OR RECEIVERSHIP ORDER
TO AUTHORIZE A STIPULATED WRIT OF ATTACHMENT
FOR THE BURKE CONTRACTORS AND SUBCONTRACTORS
TO PRESERVE THEIR LIEN RIGHTS**

¹ See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].

THIS MATTER comes before the Court upon receiver, Michael I. Goldberg's (the "Receiver") Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the Burke Contractors and Subcontractors to Preserve Their Lien Rights [D.E. 160] (the "Motion");

WHEREAS, by Orders of this Court ("District Court") filed April 13, 2016 and April 22, 2016, the District Court appointed Michael Goldberg as receiver to take possession of, *inter alia*, all real property of Q Mountain Resort LLC; Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC (collectively, with their subsidiaries, the "Burke Entities"), with title to such property being vested by operation of law in the Receiver.

WHEREAS, under 28 U.S.C. § 754, the Receiver is vested with complete jurisdiction and control over the real and personal property of the Burke Entities.

WHEREAS, Q Burke Mountain Resort, LLC, contracted with PeakCM, LLC ("PeakCM") to supply labor and materials for construction of a hotel and other facilities on Burke mountain, located at 4600 Mountain Road, Burke Vermont ("Project Parcel") owned by its subsidiary Burke 2000, LLC and more particularly described as:

223 Sherburne Lodge Road a/k/a 4600 Mountain Road, Town of Burke, County of Caledonia, State of Vermont, also known as Parcel No. 07070002.001 and SPAN No. 11103411243

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

WHEREAS, PeakCM retained the subcontractors and suppliers (together "Subcontractors") listed on Schedule A attached to the Stipulated Writ of Attachment to supply labor and materials to the Project Parcel per the Contract, the terms of which were incorporated into their subcontracts.

WHEREAS, under Vermont's contractor's lien statute, 9 V.S.A. § 1921 *et seq.*, a contract that is made to improve real property, furnish labor, or provide materials creates a contractor's lien upon the property.

WHEREAS, PeakCM and the Subcontractors may have construction liens for the labor and materials supplied to the Project Parcel (“Contractor Liens”), which may expire if not perfected by recording a memorandum of lien followed by a Writ of Attachment recorded in the land records for the Town of Burke, Vermont.

WHEREAS the Receiver has agreed to waive the requirement that a lienor record a memorandum of lien to perfect its contractor’s lien and has stipulated that there is a reasonable likelihood that the PeakCM and the Subcontractors would recover judgment on their respective contractor’s liens in an amount equal to or greater than the amounts shown on Exhibits A and B attached to the Stipulated Writ of Attachment because they have not been paid in full for labor and materials furnished to erect and alter improvements on Project and that there is no liability insurance, bond or other security available to satisfy any such judgment.

WHEREAS, the Receiver believes it is necessary for the Court to modify the Preliminary Injunction [D.E. 52] and/or the Receivership Order [D.E. 13] to the extent necessary to permit contractors and Subcontractors to perfect their lien rights under 9 V.S.A. § 1921 *et seq.*, subject to the Receiver’s confirmation of the validity and extent of the amounts owed to PeakCM and the Subcontractors and/or object to the claims, amounts, validity, timeliness, priority and any other objection.

WHEREAS, the Court has been advised that the Securities and Exchange Commission and Defendants Ariel Quiros and William Stenger have no opposition to the Motion and the relief requested therein; and

WHEREAS, the Court finds that the Receiver has made a sufficient and proper showing in support of the relief requested;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

1. The Motion is **GRANTED**.
2. The Preliminary Injunction and the Receivership Order are modified to in order to preserve the lien rights of the Subcontractors under 9 V.S.A. § 1921 et seq. and to allow for the non-possessory attachment of Project Parcel in the form of the Stipulated Writ of Attachment, a copy of which is attached to the Motion as Exhibit 1, and the Clerk of the Court is directed to execute the same.
3. This attachment is intended to preserve any Contractor Liens held by the Subcontractors listed in Schedules A and B to the Stipulated Writ of Attachment, pending a final judgment or other resolution of their claims. PeakCM and the Subcontractors shall have the right to assert additional amounts owed by contract and/or under the Prompt Payment Act, 9 V.S.A. § 4001 *et seq.*, including, but not limited to, interest, penalties, attorney's fees, and damages. The Receiver retains the right to object to claims, amounts, validity, timeliness, priority and any other objection to the claims of PeakCM and the Subcontractors.
4. The Receiver is authorized to waive and has waived the requirement that PeakCM and the Subcontractors record a memorandum of lien to preserve its lien rights.
5. PeakCM and the Subcontractors are not authorized to obtain a final judgment, enforce or in any other respect act upon their liens absent further Order of this Court.
6. Except as provided in Paragraph 4 above, the Receiver is not waiving any rights by agreeing to this procedure, but rather is seeking to preserve the status quo. The Receiver's right to object to claims, amounts, validity, timeliness, priority and any other objection to PeakCM and the Subcontractors claims are reserved.

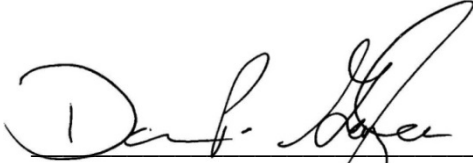
7. Accordingly, the entry of this Order does not ratify the amounts owed to PeakCM and the Subcontractors as listed in the Schedules attached to the Stipulated Writ of Attachment, or their right to receive payment of interest, penalties, attorney's fees or damages.

8. Upon the Court approving the amounts of PeakCM and of the Subcontractors' claims, PeakCM and the Subcontractors shall release all claims on past due amounts other than the approved amounts and warrant the work they provided, as appropriate.

9. Other than as set forth herein, the Receivership Order shall remain in full force and effect.

10. This Court shall retain jurisdiction of this matter for all purposes, including but not limited to determining the validity of claims and liens and priority thereof as well as authorize payment plan in the event an agreement cannot be reached.

DONE AND ORDERED in Chambers at Miami, Florida this 10th day of June, 2016.



Honorable Darrin P. Gayles
United States District Judge