

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

**RECEIVER'S UNOPPOSED MOTION TO APPROVE
TEMPORARY AND PARTIAL USE OF FUNDS FROM SETTLEMENT
BETWEEN RAYMOND JAMES & ASSOCIATES, INC. AND THE STATE
OF VERMONT FOR OPERATION OF RECEIVERSHIP ESTATE**

Michael I. Goldberg, not individually, but solely in his capacity as receiver (the

“Receiver”) for 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, Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC, and Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively, the “Receivership Entities”), files this Unopposed Motion to Approve Temporary and Partial Use of Funds from Settlement Between Raymond James & Associates, Inc. and the State of Vermont for Operation of Receivership Estate (the “Motion”). In support, the Receiver states as follows:

Requested Relief

The Receiver seeks authorization to use up to \$1.5 million of the Funds described in paragraph 6 below for payroll expenses of the Receivership Entities, to the extent such funds are needed. Without the ability to use the Funds, if needed, the value of the assets of the Receivership Entities could be severely diminished, causing harm to the Receivership Estates. It is, therefore, advisable for the Receiver to enter into this transaction to provide a safety net.

Factual Background

1. As this Court is aware from the evidence presented at the Preliminary Injunction hearing, and from the Receiver’s Motion to Extend the Deadline to File Quarterly Applications for Professional Compensation [D.E. 189], the Receivership Entities are suffering from a severe shortage of capital available to fund the Receivership Estate’s operations (namely, the day-to-day

operations of the Jay Peak hotel and ski resort located in the state of Vermont).

2. The Receiver was appointed during the beginning of the off-season, when the ski slopes are no longer operational and when the ski resort operates at a loss. The slopes are not expected to open until the end of November at the earliest, so the Receiver does not expect to post profits until at least December 2016. The situation is further compounded by the fact that the Receiver was unexpectedly forced to repair the tram at a cost in excess of \$5 million.

3. To ensure the Receivership Estate's value as a going concern and an operating business, the Receiver must continue funding the expenses of the resort through these difficult summer months. Unfortunately, the Receivership Estate lacked sufficient funds in their bank accounts at the commencement of this receivership to fund their operations through the off-season. Failure to obtain the additional funds necessary to operate the resort could result in having to shut down operations, which in turn would drastically affect the value of the hotel and resort as a going concern.

4. To deal with this lack of liquidity, the Receiver is currently working towards obtaining a line of credit and will file a motion to obtain approval to incur such debt when it is finalized. Moreover, the Receiver is currently involved in settlement negotiations with a party which, if ultimately consummated and approved by the Court, will provide the Receiver with additional liquidity. The Receiver is also exploring the potential sale of certain cell tower leases in an effort to raise additional funds. However, it may take several weeks or, perhaps, months to finalize the terms with the lender, finalize the potential settlement, and/or consummate a sale of the cell tower leases. Accordingly, to be safe and to avoid a potential cessation of operations, the Receiver has explored other potential funding sources.

5. Unrelatedly, Raymond James & Associates, Inc. ("Raymond James") reached a

settlement with the Securities Division of the State of Vermont Department of Financial Regulation (“DFR”) pursuant to which an Administrative Consent Order was issued (“Administrative Consent Order”). A copy of the Administrative Consent Order was filed with this Court. [D.E. 191].

6. Under the terms of the settlement between Raymond James and the DFR, Raymond James paid the sum of \$4.5 million (the “Funds”) to the Receiver to be held to satisfy any valid claims of EB-5 investors and to be distributed in accordance with further orders of this Court. See decretal 5 of the Administrative Consent Order. [D.E. 191]. The Receiver currently holds the Funds in Akerman LLP’s trust account (the “Akerman Trust Account”).

Specific Requested Relief and Authorization

7. Pursuant to paragraph 8 of the Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver [D.E. 13] (the “Receivership Order”), the Receiver is authorized to “make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver’s duties.” Given the Receivership Entities’ dire monetary situation, Raymond James and the Receiver reached an interim agreement to ensure that the resort remains operational and to maximize the value to investors and creditors – including contractors, trade creditors, and employees of the resort. Pursuant to the agreement, Raymond James and the Receiver have agreed to the following:

- a. The Receiver may use up to \$1.5 million of the Funds to pay expenses associated with the Receivership Estate’s operations (the “Borrowed Amount”). To be clear, the Borrowed Amount will only be used for payroll expenses incurred in the

ordinary course for day-to-day operations. No portion of the Borrowed Amount will be used for any other purpose associated with the administration of the Receivership Estate including, but not limited to, the Receiver's fees or the Receiver's professionals' fees.¹

- b.** The Receiver will repay the Borrowed Amount on or before April 1, 2017 by replenishing the Trust Account in the amount of the Borrowed Amount.
- c.** In the event the Receiver fails to replenish the Trust Account, the Borrowed Amount will be afforded priority over all claims of investors and pre-receivership trade creditors. Moreover, the Borrowed Amount will be superior to all administrative claims, including but not limited to, those of the Receiver and any professionals and will be repaid before any funds are distributed to investors or used to satisfy any pre-receivership debts. The Borrowed Amount will not be superior to the claims of any secured creditors.
- d.** The Borrowed Amount will be repaid into the Akerman Trust Account from the first available funds generated in the Receivership Estate (either by settlement, profitable operations of the Receivership Estate, sale of cell tower leases, or otherwise).²
- e.** In the event the Receiver is unable to repay the Borrowed Amount for any reason, Raymond James will still receive a credit for the full amount of the Funds against any judgment entered against Raymond James in the action the Receiver has brought against Raymond James, without prejudice to any and all set off rights to

¹ At the insistence of the State of Vermont, no portion of the Borrowed Amount will be used to pay any salary to William Stenger.

² The Borrowed Amount cannot, however, be repaid from the loan proceeds of the secured line of credit referred to in paragraph 4 above.

which it may be entitled. Under no circumstances will Raymond James be required to replenish the Funds in the Akerman Trust Account in the amount of the Borrowed Amount or otherwise. By this Motion, the Receiver seeks permission of this Court to expressly modify Paragraph 21 of the Receivership Order to include Raymond James' rights to a credit or setoff against any judgment entered against it in favor of the Receiver as provided for herein.

- f. In the event that any of the Receivership Entities go into bankruptcy, Raymond James and the Receiver have agreed that any priority this Court affords the Borrowed Amount shall apply in bankruptcy court as well.

8. Raymond James approves of this arrangement and has been exceptionally cooperative with the Receiver to ensure the interests of the investors are protected by maximizing the value of the Receivership Estate.

9. The Receiver has contacted officials at the SEC and they consent to the relief requested herein.

10. The Receiver has contacted officials at the DFR, who have also expressed approval of the Receiver's request herein and have sought, or will seek, the necessary approvals to modify the terms of the Administrative Consent Order to allow for the advancement of the Borrowed Funds as provided for herein.

11. The Receiver has also contacted defendants Ariel Quiros and William Stenger and they, too, consent to the relief requested herein.

12. The Receiver, in his business judgment and pursuant to the authority granted to him under the Receivership Order, asserts that this interim agreement is in the best interests of the Receivership Entities and, indeed, necessary to preserve the value of the Receivership Estate.

13. None of the advances of funds contemplated hereunder can be made unless (i) the Receiver and Raymond James receive a letter from DFR which acknowledges that such advances shall not be deemed to constitute a breach or violation of the Administrative Consent Order, and (ii) the necessary approvals to modify the Administrative Consent Order as described in paragraph 10 above have been obtained and the Administrative Consent Order has been modified to allow for the advancement of the Borrowed Funds as provided for herein.

WHEREFORE, the Receiver respectfully requests that this Court enter an order, substantially in the form as the proposed Order attached as **Exhibit A**, approving the Receiver's use of the Funds in accordance with the conditions set forth above, along with such other relief the Court deems just and proper.

Dated: August 8, 2016

Respectfully submitted,

**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP**
Co-counsel for the Receiver
201 South Biscayne Boulevard
Miami Center, 22nd Floor
Miami, FL 33131
Telephone: (305) 403-8788
Facsimile: (305) 403-8789

By: /s/ Jeffrey C. Schneider
JEFFREY C. SCHNEIDER, P.A.
Florida Bar No. 933244
Primary: jcs@lklsg.com
Secondary: lv@lklsg.com
MARCELO DIAZ-CORTES, ESQ.
Florida Bar No. 118166
Primary: md@lklsg.com
Secondary: cod@lklsg.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this August 8, 2016 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Jeffrey C. Schneider
Jeffrey C. Schneider, P.A.

SERVICE LIST

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,
jacqmeinv@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

Co-Counsel for Receiver

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

Co-Counsel for Receiver

Scott B. Cosgrove, Esq.

Email: scosgrove@leoncosgrove.com

James R. Bryan, Esq.

Email: jbryan@leoncosgrove.com

Leon Cosgrove, LLC

255 Alhambra Circle

Suite 800

Coral Gables, Florida 33133

Telephone: (305) 740-1975

Facsimile: (305) 437-8158

Attorney for Ariel Quiros

David B. Gordon, Esq.

Email: dbg@msk.com

Jaclyn H. Grodin, Esq.

Email: jhg@msk.com

MITCHELL SILBERBERG & KNOPP, LLP

12 East 49th Street — 30th Floor

New York, New York 10017

Telephone: (212) 509-3900

Jean Pierre Nagues, 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

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
Attorney for Intervenor, Citibank NA.

J. Ben Vitale
Email: bvitale@gurleyvitale.com
David E. Gurley
Email: dgurley@gurleyvitale.com
GURLEY VITALE
601 S. Osprey Avenue
Sarasota, Florida 32436
Telephone: (941) 365-4501
Attorney for Blanc & Bailey Construction, Inc.

Stanley Howard Wakshlag
Email: swakshlag@knpa.com
KENNY NACHWALTER, P.A.
Four Seasons Tower
1441 Brickell Avenue
Suite 1100
Miami, FL 33131-4327
Telephone: (305) 373-1000
*Attorney for Raymond James & Associates,
Inc.*