

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

**CASE NO. 16-CV-21301-GAYLES**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

v.

**ARIEL QUIROS, et al.,**

**Defendants, and**

**JAY CONSTRUCTION MANAGEMENT, INC., et al.,**

**Relief Defendants.**

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**PLAINTIFF'S (UNOPPOSED) MOTION FOR COURT TO ISSUE LETTER ROGATORY**

Plaintiff Securities and Exchange Commission moves the Court to issue the attached letter rogatory, requesting the Superior Court of Quebec, in the province of Quebec, Canada to compel the deposition testimony of two Canadian citizens who have information relevant to this case. In support, the Commission states as follows:

The Commission filed this action in April 2016, alleging, among other things, that Defendants Ariel Quiros and William Stenger and numerous corporate defendants perpetrated a fraud on hundreds of foreign investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program by misusing large amounts of the \$350 million raised from investors to create jobs and build and operate a Vermont ski resort. The Amended Complaint (DE 120) alleges numerous violations of the anti-fraud provisions of the federal securities laws, including Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"). The Court has already granted significant emergency relief, including temporary restraining orders, asset freezes, a

preliminary injunction and the appointment of a receiver over the Jay Peak entities.

The allegations of the Amended Complaint most relevant to this motion are that Quiros improperly used EB-5 investor funds to finance his purchase of the Jay Peak resort in June 2008 from its former owner, Mont Saint-Sauveur International, Inc. (“MSSI”). DE 120 at ¶¶57-77. MSSI is a Canadian firm headquartered in Quebec (now known as Saint-Sauveur Valley Resorts, Inc.) whose president is (and was in 2008) Louis Philippe Hebert. *Id.* at ¶57 and DE 4 at Ex. 58. Its chairman and chief executive officer is (and was in 2008) Louis Dufour. DE 4 at Ex. 58. Both men reside in Quebec. *Id.* MSSI oversaw the Phase I securities offering that is one of the subjects of the Amended Complaint. DE 120 at ¶¶57 and 59. Phase I raised \$17.5 million from 35 investors from December 2006 through May 2008. *Id.* at ¶57.

The Amended Complaint further alleges that from January through June 2008, Quiros negotiated and finalized a stock transfer agreement between MSSI and Q Resorts, also a defendant in this case, in which MSSI agreed to transfer the real estate and other assets of Jay Peak to Q Resorts. *Id.* at ¶58. The sale closed on June 23, 2008 for a price of \$25.7 million. *Id.* In March 2008 – when MSSI still owned Jay Peak but Quiros was involved in operations – Jay Peak began raising money from EB-5 investors for the Phase II securities offering. *Id.* at ¶60.

The Amended Complaint also alleges that, in preparation for the closing, Quiros asked MSSI representatives to open brokerage accounts at Raymond James & Associates, Inc., in Coral Gables, Florida, with his former son-in-law as the broker overseeing the accounts. DE 120 at ¶¶34 and 62. The Amended Complaint describes how on June 18, 2008, MSSI representatives wrote Quiros and his former son-in-law a letter in which they expressly stated that the funds being transferred into the MSSI accounts at Raymond James in the name of the Phase I and Phase II limited partnerships were EB-5 investor funds that could not be used in any way to pay

for or collateralize Q Resorts' purchase of Jay Peak. *Id.* at ¶¶65 and 66. Despite that letter, Quiros over the next two months assumed control of the Phase I and Phase II investor money at Raymond James and orchestrated a series of transfers of EB-5 investor money into and out of his Raymond James accounts to pay for his purchase of Jay Peak. *Id.* at ¶¶67-77. The Amended Complaint alleges that these actions violated the anti-fraud provisions of the federal securities laws as well as the terms of the limited partnership agreements each EB-5 investor signed.

Because of their role in negotiating MSSSI's sale of Jay Peak to Quiros and Q Resorts in 2008, and their knowledge of the Phase I EB-5 offering and its terms and conditions, Dufour and Hebert have relevant information about Quiros' actions in purchasing Jay Peak and whether he used EB-5 investor funds improperly that is necessary for the trial of this case. The Commission therefore has an interest in securing their testimony and it is in the interests of justice that their testimony be secured. As both are Canadian citizens residing in Quebec, they are beyond the jurisdiction of this or any American Court. Thus, the Commission will not be able to compel the testimony of Hebert and Dufour at trial. To ensure the Commission can take their depositions and preserve their testimony for trial, the Commission asks the Court to issue the attached letter rogatory, requesting the assistance of the Superior Court of Quebec to compel the testimony of Hebert and Dufour at depositions in Quebec.

If the Court signs the Letter Rogatory, the Commission will then through local counsel in Quebec present the letter to the Quebec Superior Court and ask it to compel the depositions of Hebert and Dufour. Local Quebec counsel and the Commission will then confer with attorneys for Dufour and Hebert to attempt to arrange a convenient day and time to take the depositions.

#### **Conferral**

Pursuant to Local Rule 7.1(a)(3), the Commission conferred with attorneys for Quiros, Stenger, and the Receiver. All three represented that they do not oppose this motion.

May 5, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on May 5, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Robert K. Levenson  
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**SERVICE LIST**

*SEC v. Ariel Quiros, et al.*  
Case No. 16-CV-21301-GAYLES

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