

**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,

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

Relief Defendants, and

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

Additional Defendants

**RECEIVER'S RESPONSE TO SAINT-SAUVEUR VALLEY
RESORTS, INC.'S OPPOSITION TO APPROVAL OF
IRONSHORE SETTLEMENT AND ENTRY OF BAR ORDER**

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Pursuant to Section 5 of this Court’s Order Preliminarily Approving Settlement Between Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc. [D.E. 530] (the “Preliminary Approval Order”), Michael I. Goldberg (the “Receiver”), as the court-appointed receiver, responds to the Opposition [D.E. 540] (the “Objection”) of Saint-Sauveur Valley Resorts, Inc.’s (“SSVR”) to the Receiver’s Motion for (I) Approval of Settlement Between Receiver, Ariel Quiros, William Stenger and Ironshore Indemnity, Inc.; (II) Entry of a Bar Order; and (III) Approval of Form, Content and Manner of Notice and Settlement in Bar Order (the “Motion”).

INTRODUCTION

The Objection is patently frivolous and based on SSVR’s misreading of the Motion and the proposed bar order in favor of Ironshore. Instead of articulating a coherent objection that states why the settlement with Ironshore is unreasonable or otherwise improper, SSVR uses the Objection as a soapbox to air its displeasure with having been sued for its involvement in the events preceding this SEC enforcement action and to make empty threats of claims it intends to bring against the Receiver and others. The Court should overrule SSVR’s Objection.

ARGUMENT

A. Background

SSVR is the prior owner of the Jay Peak Resort and sold the resort to Defendant Ariel Quiros (“Quiros”) in 2008. SSVR sold the resort to Quiros after it had raised money from the first phase of EB-5 investors and as it was raising money from the second phase of investors. After commencement of this action, certain investors of those phases filed a derivative action on behalf of their respective limited partnership against SSVR for its role in the sale of the resort to Quiros

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(the “Vermont Action”). The Receiver was then joined as an indispensable party plaintiff. The Vermont Action is pending.

As explained in the Motion, Ironshore Indemnity, Inc. (“Ironshore”) issued a series of directors, officers, and private company liability policies which insured Q Resorts, Inc., Quiros, and Defendant William Stenger (“Stenger”) *from 2011 to 2016*, several years after SSVR sold the resort. Ironshore did not issue the policies to SSVR. SSVR was not an insured under any of the policies. The Receiver’s settlement with Ironshore, and the underlying litigation, relates only to the policies issued by Ironshore. This is clear from the Motion and its attachments.

B. The proposed bar order only bars claims against the “Ironshore Released Parties”

According to the Objection, SSVR claims that its concern with the proposed bar order is that it “could adversely affect the ability of SSVR to defend the Vermont Action, to assert counterclaims and request sanctions against the Receiver in that action, and to assert third-party claims.” (Objection ¶ 1). SSVR then threatens counterclaims against the Receiver and third-party claims against Quiros, Stenger, and Raymond James & Associates, Inc. (“Raymond James”).

One can only think that SSVR did not read the Motion and the proposed bar order. Either that, or SSVR wanted to create a platform to express its displeasure with having been sued in the Vermont Action. We say this because SSVR focuses on the breadth of the types of claims and actions being barred, but purposely omits the most important part of the bar order, which are the persons and entities against whom such claims are barred. Just so there is no misunderstanding, the bar order bars claims against the “Ironshore Released Parties,” and the definition of “Ironshore Released Parties” is:

Ironshore, its parent, affiliate, and subsidiary companies, all current, former and future employees, agents, attorneys, officers and directors, and consultants, and

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each of its members, managers, principals, associates, representatives, distributors, attorneys, trustees, and general and limited partners and each of their respective administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest.

SSVR does not attempt to explain how either the Receiver, Quiros, Stenger, or Raymond James fall into the definition of “Ironshore Released Parties.” They do not. As it turns out, claims against Quiros and Raymond James are already barred by other bar orders previously entered by this Court.¹ [D.E. 353, 527]. The claims against the Receiver are addressed by this Court’s Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver [D.E. 13]. The *Barton* doctrine would similarly preclude such counterclaims without leave of this Court. See *Rosetto v. Murphy*, 733 Fed. Appx. 517, 519 (11th Cir. 2018). But those are issues for another day, should SSVR bring any of the threatened claims. The Motion pertains only to the settlement with Ironshore and the proposed bar order in favor of Ironshore, and nowhere in the Objection does SSVR argue that it has any claims against Ironshore or rights to the underlying insurance policies.

C. The relief requested by SSVR is inappropriate and off-topic

To conclude its tirade, SSVR asks this Court to include self-serving language that has nothing to do with the Ironshore settlement or the bar order. SSVR asks this Court—again, under the guise of ruling on the Ironshore settlement—to summarily make venue and jurisdictional determinations, along with premature collateral estoppel and res judicata findings regarding its purported counterclaims against the Receiver and third-party claims against third parties. (See Objection ¶¶ 35–36). These issues have nothing to do with the Ironshore settlement or the Motion.

¹ SSVR was provided notice of those settlement proceedings and entry of their respective bar orders and raised no objections.

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This Court should reject these proposed additions to the bar order. Those issues will be addressed if and when SSVR attempts to bring any of the claims it threatens to bring.

CONCLUSION

SSVR's Objection is nothing more than an expression of frustration. It fails to demonstrate that the proposed settlement *with Ironshore* is unreasonable. It fails to articulate any legal basis to support the Objection. The Court should respectfully overrule SSVR's Objection, grant the Motion, approve the settlement, and enter the proposed bar order in favor of Ironshore.

Dated: March 18, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this March 18, 2019 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
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