

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-cv-21301-DPG

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, WILLIAM STENGER,
JAY PEAK, INC., Q RESORTS, INC., et al.

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,
et al.

Relief Defendants.

DEFENDANT QUIROS' VERIFIED MOTION TO CONTINUE SHOW CAUSE HEARING

Defendant Ariel Quiros (“Quiros”), through his undersigned counsel, moves this Court to continue the “Show Cause” hearing, presently scheduled for April 25, 2016, and states:

1. On April 12, 2016, the Plaintiff Securities and Exchange Commission (“SEC”) filed its ex parte, under seal Emergency Motion and Memorandum of Law for Temporary Restraining Order, Asset Freeze, And Other Relief (“Motion for TRO”) [D.E. 4].
2. On April 13, 2016, this Court entered an Order Granting Plaintiff Securities and Exchange Commission’s Motion for Temporary Restraining Order (“Order Granting the Motion for TRO”), Asset Freeze (“Freeze Order”), And Other Emergency Relief [D.E. 11].
3. Pursuant to the Order Granting the Motion for TRO, this Court ordered Quiros to appear before the Court on April 25, 2016 for a Show Cause Hearing with respect to the preliminary injunction sought by the SEC.

4. On April 19, 2016, Quiros filed his Emergency Motion to Modify Asset Freeze Order (ECF No. 39) (“Motion to Modify Freeze Order”). That motion details and seeks necessary emergency relief, given the SEC acting *ex-parte* and contrary to due process, in obtaining a facially overbroad Freeze Order.

5. Pursuant to S.D. Fla. L.R. 7.6, “upon written notice served and filed at the earliest practical date prior to the trial, pretrial conference, or other hearing, and supported by affidavit setting forth a full showing of good cause, a continuance may be granted by the Court.”

6. As pointed out in the Motion to Modify Freeze Order, Quiros had been cooperatively communicating with the SEC for about three years concerning the projects and investments in issue in this proceeding. The result was, without notice, the SEC filed its very detailed 81-page Complaint (ECF #1), and its equally detailed 60-page Motion for Temporary Restraining Order (ECF #11).

7. Charles Lichtman, undersigned counsel for Quiros, was retained on this matter a week ago. Undoubtedly, the time necessary to diligently prepare for a substantive and case crucial Show Cause Hearing, is monumental for Lichtman and Quiros’ other counsel who will be filing motions to appear *pro hac vice* shortly. But respectfully, counsel’s ability to prepare for the hearing has been substantially hindered by the significant time necessary to prepare the Motion to Modify Freeze Order, given the extraordinarily drastic result of the Freeze Order.

8. A 14 day continuance of the TRO Show Cause Hearing would provide counsel and Quiros a chance to properly defend against the SEC’s allegations. Moreover, a continuance at this stage would result in little to no inconvenience to the Court or the opposing party. Certainly, the SEC can claim no prejudice since the TRO would *remain in effect* until the next

hearing date. On the other hand, a denial of Quiros' request for continuance would cause severe actual prejudice to Quiros in defending against the SEC's allegations at the Show Cause Hearing.

9. "The decision whether to grant a continuance is within the sound discretion of the trial court." *Gastaldi v. Sunvest Resort Communities, LC*, 709 F. Supp. 2d 1284, 1291 (S.D. Fla. 2010). "Yet such discretion is not without its limits; in this district a court may grant a continuance of a trial 'only on exceptional circumstances.'" *Id.* (citing S.D. Fla. L.R. 7.6). "Nor may a court deny a continuance when the need for one is warranted." *Id.* "The U.S. Court of Appeals for the Eleventh Circuit considers the following factors when reviewing whether a trial court abused its discretion in denying a motion to continue:"

(1) the moving party's diligence in its efforts to ready its case prior to the date set for hearing; (2) the likelihood that the need for a continuance would have been remedied had the continuance been granted; (3) the extent to which granting the continuance would have inconvenienced the court and the opposing party; (4) the extent to which the moving party might have suffered harm as a result of the district court's denial.

Id. (citing *Romero v. Drummond Co.*, 552 F.3d 1303, 1320 (11th Cir.2008)). Quiros has met this standard.

10. On April 20, 2016, Lichtman spoke on the telephone with Robert Levenson, Esq., lead counsel for the SEC, to confer about obtaining a stipulation for a 14 day continuance of the hearing. Mr. Levinson declined to so stipulate. Thus, in practical terms, the SEC took three years to build its case and file substantial papers making very serious allegations, yet it takes the position that Quiros should have effectively only 14 days to fully refute those charges. As a result, Quiros requests that this Court continue the Show Cause Hearing currently scheduled for April 25, 2016 for an additional fourteen (14) days and instead, use the time available to the parties on April 25 to address Defendant's Emergency Motion to Lift.

WHEREFORE, Defendant Ariel Quiros, respectfully requests this Court to enter an Order granting the instant motion, continuing the Show Cause Hearing for an additional fourteen (14) days, scheduling a hearing on Defendant Quiros' Emergency Motion to Lift on April 25, 2016, and for such other and additional relief that the Court deems just and proper.

Certification Pursuant to S.D. Fla. L.R. 7.1.(a)(3)

Pursuant to Local Rule 7.1(a)(3), the undersigned certifies that he conferred with Plaintiff Securities and Exchange Commission in a good faith effort to resolve the issues raised in this motion and the Securities Exchange Commission was vague as to its willingness to agree to the relief requested herein.

Additionally, Charles Lichtman certifies under penalties of perjury that the facts and positons stated above are true and correct in all material respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of April, 2016, 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 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 Notices of Electronic Filing electronically.

By: /s/ Charles H. Lichtman
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