

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

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

**RECEIVER'S RESPONSE AND LIMITED OBJECTION TO
MOTION OF ARIEL QUIROS PERMITTING
FOR PAYMENT OF ATTORNEY'S FEES AND MEMORANDUM OF LAW**

Michael I. Goldberg (the "Receiver"), through undersigned counsel, hereby files his Response and Limited Objection to the Motion of Ariel Quiros Permitting Payment of Attorney's Fees and Costs And Supporting Memorandum of Law [D.E. 109]. The receivership estates are not in a financial position to pay such fees at this time or to have receivership estate assets liquidated to pay such fees. Instead, if the Court is inclined to permit Mr. Quiros to pay his attorneys fees, the Court should require him to utilize the equity in his homestead.

In support of this Response and Limited Objection, the Receiver states as follows:

1. On May 6, 2016, Mr. Quiros filed his Motion of Ariel Quiros Permitting Payment of Attorney's Fees and Costs And Supporting Memorandum of Law [D.E. 109] (the "Fee Motion"). In the Fee Motion, Mr. Quiros seeks authorization to pay \$204,852 to the law firm of Mitchell Silberberg & Knupp LLP ("MSK") (for services provided through April 30, 2016); \$50,000 to retain an accounting expert; \$25,000 to retain substitute Florida counsel, Gray Robinson; and an undisclosed amount sufficient to permit retention of Vermont counsel.²

2. The receivership estate is in a precarious financial position. In fact, the Receiver has spent most of his time since the inception of the receivership attempting to locate funds to keep the Jay Peak hotel fully operational. Moreover, the receivership was commenced right at the start of the off-season during which the hotel is expected to suffer significant operating losses. Given these financial circumstances, the Receiver does not believe that payment of any

² The Receiver has learned that the receivership entities maintains a directors and officers liability insurance policy with a \$10 million limit of liability. However, for some unknown reason, it appears that Quiros' counsel did not notify the insurance carrier when he was first retained by Quiros in this matter. Although the Receiver does not concede this fact, the failure to notify may have waived any claims to the very insurance which might have paid Quiros' defense costs.

fees are justified from receivership estate assets and does not believe that payment should be made at this time.

3. These dire financial circumstances are directly attributable directly to Mr. Quiros. The Court heard and received evidence and testimony at the hearing (the "Preliminary Injunction Hearing") on SEC's Motion for Preliminary Injunction and Quiros' Emergency Motion to Lift or Modify Asset Freeze Order [DE 39] of Quiros' systematic looting of the receivership entities account for his personal benefit which left the receivership entities in an extremely illiquid state and that the Receiver needs all available cash to satisfy the necessary expenses of the receivership. In fact, due to the current state of the receivership entities' financial affairs, the Receiver may be forced to mortgage receivership assets or issue receivership certificates to generate sufficient cash to be able to continue to operate the receivership entities' hotels.

4. In fact, with respect to those financial difficulties, the Receiver is currently unable to pay for the expenses of his own professionals and, based on preliminary cash budgets, will not be able to do so for at least a few months. Accordingly, the Receiver believes that it would jeopardize the viability of the receivership entities' operations and be inequitable to his own professionals to authorize payment of Mr. Quiros' attorneys' fees at this time.

5. Further compounding the receivership entities' illiquidity is the fact that the receivership entities owe at least \$5 million to the contractors that worked on the Q Burke hotel, the Stateside Project and the AnC Biomedical project. Many of these contractors are small mom and pop operations who in turn are experiencing their own financial crisis caused by Quiros' diversion of funds from the receivership entities.

6. The Receiver believes it is more appropriate to defer ruling on the Fee Motion until such time as the Court determines Mr. Quiros' entitlement to fees, and furthermore, to a

time when the receivership estates may be in a better financial position to afford them. The Receiver is required to provide the Court regular periodic updates, which will provide the Court with the necessary information to make such a determination on the receivership estates' financial position.

7. At the Preliminary Injunction Hearing, Mr. Quiros' counsel requested authorization to allow Quiros to sell the Setai condominium, which the SEC alleged was purchased with funds wrongfully diverted from investors and to utilize the proceeds thereof to pay his various professionals.

8. If the Court is considering allowing Mr. Quiros to liquidate any assets to pay his professionals (which it should not), the Court should require that Mr. Quiros sell or mortgage his homestead located on Key Biscayne to pay his professionals rather than the non-exempt condominium purchased with funds traceable to investors. Otherwise, Mr. Quiros will receive a windfall in the event it is ultimately determined that the SEC is correct that Mr. Quiros wrongfully diverted investors' funds to buy the Setai condominium. More specifically, Mr. Quiros' homestead is arguably exempt from creditor execution.³ Based on the available evidence, the Setai condominium is not homestead exempt, and moreover, is traceable to investors' funds. Thus, if Mr. Quiros is allowed to sell the Setai condominium and preserve his possible homestead protected residence, he would essentially be allowed to utilize funds that belong to investors and still be left with his homestead intact -- thereby obtaining a windfall at the investors' expense.

9. With respect to the reasonableness of any fees charged, the Receiver does not currently take a position and reserves all rights in that regard.

³ The Receiver does not concede this point, but merely anticipates that Mr. Quiros will raise this argument.

WHEREFORE, the Receiver respectfully requests the Court to deny the Fee Motion at this time and to grant such further relief as is just and proper.

Dated: May 20, 2016.

Respectfully submitted,

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