

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.,
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.

**DEFENDANT ARIEL QUIROS' MEMORANDUM IN REPLY TO RECEIVER'S
RESPONSE AND LIMITED OBJECTION TO MOTION FOR ORDER PERMITTING
PAYMENT OF ATTORNEY'S FEES AND COSTS**

In his Response and Limited objection to Defendant Ariel Quiros' Motion for Release of Funds to Pay Fees ("Resp."), the Receiver suggests that Mr. Quiros be forced to sell or mortgage his home to pay his fees and costs. The Receiver also asserts that the Court should defer ruling on the Motion until an unspecified time in the future. The Receiver's Response and Objection is without merit, and indeed, the Receiver has overstepped his authority.

First, the Response and Objection asserts that Quiros' legal fees should not come from receivership estate assets. Resp. ¶¶1-4. However, Quiros seeks relief from properties that are not part of the receivership estate. *See* Exhibit I to Quiros' Declaration in Support of Motion to Unfreeze Assets, listing numerous properties that are not part of the receivership estate. The Setai condominium is one example. For this reason alone, the Receiver's Response and Objection is irrelevant – he has no interest in how the Court treats non-receivership estate assets.¹

Nevertheless, in an archetypal example of officious intermeddling, the Receiver takes a position on how *non*-receivership estate assets should be disposed of and suggests that Mr. Quiros should be forced to sell or mortgage his home. Resp. ¶8. He brazenly justifies this position by arguing that if fees and costs are satisfied through the sale of other assets, Mr. Quiros might later argue that his homestead is exempt from creditor execution. Like the Securities and Exchange Commission ("SEC") does in its opposition, the Receiver ignores a critical fact: the maximum hypothetical disgorgement claim in this case is one-fourth the value of the Jay Peak resort, such that sale of the resort – valued at approximately \$100 million -- could satisfy any hypothetical recovery. So, there is simply no danger that investors and others would

¹ The Receiver vaguely justifies his position by noting that contractors on certain projects are allegedly owed money. However, the freeze order is intended to ensure that potential funds are available in the event of an order requiring disgorgement to investors, *not* to compensate contractors in the ordinary course of business. Thus, the Receiver's reference to amounts owed these contractors is a red herring.

not be compensated if Quiros disposes of other assets to pay fees. Moreover, though Quiros herein takes no position on whether or not he would claim a homestead exemption, it is unseemly for the Receiver to seek to deprive Quiros – and his spouse – of a right granted to them by the legislature.²

Finally, the Receiver argues that “it is more appropriate to defer ruling on the Fee Motion until such time as the Court determines Mr. Quiros’ entitlement to fees.” Resp. ¶6. The assertion makes no sense: by virtue of this Motion, it has become appropriate for the Court to determine Mr. Quiros’ entitlement to fees. As the pleadings demonstrate, he is unequivocally entitled to a modification of the freeze so that he can pay his reasonable fees and costs. Neither does the Court need to defer ruling until the Receiver provides further financial information, as the Receiver suggests (*see id.*). Rather, to reiterate, the evidence at the hearings on the preliminary injunction and motion to unfreeze assets established that the Jay Peak resort alone is sufficient to satisfy any hypothetical disgorgement, and that there would be no prejudice in permitting payment from reasonable fees and costs from other properties.

In short, the Receiver disregards the evidence and oversteps his jurisdiction. For that reason, the Court should overrule his objection.

WHEREFORE, Mr. Quiros respectfully requests that this Honorable Court enter an Order awarding him the requested fees and costs.

² The Receiver also refers to an insurance policy that covers fees and costs. Not only is the gratuitous reference irrelevant to Quiros’ motion, but it also ignores the fact that the insurance carrier has wrongfully denied coverage and that Quiros is pursuing its rights under applicable policies.

GRAYROBINSON, P.A.
333 S.E. Second Avenue, Suite 3200
Miami, FL 33131
Phone: 305.416.6880
Fax: 305.416.6887
Attorneys for Defendant

By: /s/ Karen L. Stetson
Karen L. Stetson
Florida Bar. No. 742937
karen.stetson@gray-robinson.com
Jonathan L. Gaines
Florida Bar. No. 330361
jonathan.gaines@gray-robinson.com

and

David B. Gordon
(*Pro Hac Vice*)
12 East 49th Street, 30th Floor
New York, NY 10017
Telephone: (212) 509-3900
Facsimile: (212) 509-7239
dbg@msk.com

Mark T. Hiraide
(*Pro Hac Vice*)
11377 West Olympic Boulevard
Los Angeles, CA 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100
mth@msk.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Clerk of the Court and furnished via CM/ECF to all participating recipients, on this 23rd day of May, 2016.

By: /s/Karen L. Stetson