

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:16-CV-21301-GAYLES

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

**RECEIVER'S UNOPPOSED MOTION TO RELEASE AND DISBURSE FUNDS FROM
CITIBANK PLEDGED ACCOUNT, WITHOUT PREJUDICE**

Michael I. Goldberg, in his capacity as receiver (the "Receiver") of Defendants 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 Townhouse

L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., AnC Bio Vermont GP Services LLC, and Relief Defendants Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc. and Q Burke Mountain Resort LLC, by and through undersigned counsel, moves for entry of the annexed Order authorizing the release and disbursement of certain funds contained in the account of Relief Defendant Jay Construction Management, Inc. (“JCM”) pledged as collateral to Citibank N.A (the “JCM Pledged Account”). In support of the requested relief, and without opposition from the Securities and Exchange Commission or Citibank N.A. (“Citibank”), the Receiver represents to the Court as follows:

1. In March 2015, Defendant Ariel Quiros (“Quiros”) obtained a \$15 million personal line of credit from Citibank.

2. As collateral for the \$15 million line of credit, Quiros caused Defendant Q Resorts Inc. (“QRI”), and Relief Defendants Jay Construction Management, Inc. (“JCM”) and GSI of Dade County, Inc. (“GSI”), to pledge to Citibank certain accounts maintained by QRI and JCM at Pershing LLC which hold the aggregate sum of \$17 million (the “Pledged Accounts”).¹

3. QRI, JCM and GSI are each receivership entities.

4. Quiros thereafter drew approximately \$14.5 million from the line of credit.

5. Citibank asserts a security interest in the Pledged Accounts, which remain frozen pursuant to this Court’s Order entered on April 13, 2016 [D.E. 11].

6. The Receiver maintains that the funds in the Pledged Accounts are receivership property, and should be placed under the Receiver’s control immediately. [D.E. 13]. The

¹ The funds are held as cash in securities accounts at Pershing LLC, which operates as a securities intermediary pursuant to agreements with Citibank. Of the \$17 million total, \$15 million is maintained in the JCM Pledged Account.

Receiver also maintains that, at the very least, the line of credit is over-collateralized by \$2.5 million, and that the “excess” funds must be disbursed to the Receiver immediately. Citibank asserts that it has a valid and perfected security interest in the Pledged Accounts, and denies that the full \$2.5 million amount constitutes “excess collateral” as asserted by the Receiver.

7. The Receiver and Citibank are proceeding in good faith, and have negotiated an interim resolution of this issue in order to assist the Receiver in funding the immediate and acute cash needs of the Receivership entities. Pursuant to that agreement the Receiver seeks, and Citibank agrees to release and disburse to the Receiver immediately upon entry of an Order in substantially the form annexed hereto, the sum of \$1,800,000 from the JCM Pledged Account. The funds will be transferred to an account in the name of JCM that is under the Receiver’s control. All of the remaining funds will be maintained in the Pledged Accounts pending further negotiations by the parties and/or order of the Court.

8. The Receiver and Citibank recognize and agree that approval of this interim agreement and entry of an Order on this Motion shall operate without prejudice to the rights and interests asserted in the remaining funds in the Pledged Accounts and the claims and defenses of each such party with respect thereto; provided, however, that except as otherwise agreed by the parties and approved by the Court, Citibank agrees to relinquish any right to repayment of the amount to be released and disbursed to the Receiver pursuant to this interim agreement.²

WHEREFORE, the Receiver, Michael I. Goldberg, respectfully requests that this Court enter an Order directing Citibank to cause Pershing LLC immediately to release and disburse to the Receiver the sum of \$1,800,000 from the JCM Pledged Account, without prejudice to the

² The only two parties with an arguable interest in the JCM Pledged Account are the Receiver and Citibank, the parties that have negotiated this interim resolution and that agree to the relief requested herein. Nevertheless, the Receiver and Citibank shared a draft of this Motion with counsel for Quiros, who indicated that Quiros opposes this Motion.

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rights, interests, claims and defenses of both the Receiver and Citibank as provided in this Motion.

Dated: May 20, 2016

Respectfully submitted,

AKERMAN LLP

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2016, the foregoing document is being served this day on all counsel of record identified on the attached Service List via electronic mail and to all *pro se* parties identified on the attached Service List via U.S. Mail.

By: /s/ Jeffrey C. Schneider, P.A.
 Jeffrey C. Schneider, P.A.

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SERVICE LIST

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<p>Jean Pierre Nagues, Esq. Mark T. Hiraide, Esq. <i>Counsel for Defendant, Ariel Quiros</i> MITCHELL SILBERBERG & KNUPP LLP 11377 W. Olympic Blvd. Los Angeles, CA 90064 Telephone: 310-312-2000 Email: jpn@msk.com mth@msk.com</p>	<p>Roberto Martinez, Esq. Stephanie Anne Casey, Esq. <i>Counsel for Defendant, William Stenger</i> COLSON HICKS EIDSON 255 Alhambra Circle, PH Coral Gables, Florida 33134 Telephone: 305-476-7400 Facsimile: 305-476-7444 Email: bob@colson.com Email: scasey@colson.com</p>
<p>Haas A. Hatic, Esq. <i>Counsel for Defenant, North East Contract Services, Inc.</i> GREENSPOON MARDER, P.A. 200 East Broward Blvd., Suite 1500 Fort Lauderdale, Florida 33301 Telephone: 954-491-1120 Facsimile: 954-343-6956 Email: Hass.hatic@gmlaw.com</p>	

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Defendants, and

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

Relief Defendants

**ORDER AUTHORIZING RELEASE AND DISBURSEMENT OF FUNDS IN CITIBANK
PLEGDED ACCOUNT TO RECEIVER, WITHOUT PREJUDICE**

THIS MATTER, having come before the Court upon the Unopposed Motion to Release and Disburse Funds From Citibank Pledged Account, Without Prejudice (the “Unopposed Motion”), filed by Michael I. Goldberg, in his capacity as receiver (the “Receiver”) of Defendants 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 Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., AnC Bio Vermont GP Services LLC, and Relief Defendants Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc. and Q Burke Mountain Resort LLC., The Court having reviewed the Unopposed Motion and being otherwise fully advised, and upon the agreement of Citibank N.A. to the relief requested upon the terms and conditions set forth therein, it is hereby¹:

ORDERED and ADJUDGED that the Unopposed Motion is GRANTED.

Upon receipt of this Order as entered by the Court, Intervenor Citibank N.A. ("Citibank") shall direct Pershing LLC immediately to release and disburse to the Receiver the sum of \$1,800,000 from the account of Jay Construction Management, Inc. held by Pershing LLC as securities intermediary for Citibank, upon the terms and conditions set forth in the Unopposed Motion. The funds will be transferred to an account in the name of Jay Construction Management, Inc. that is under the Receiver's control. The transfer will be effectuated by wire transfer pursuant to written instructions to be provided by the Receiver to Citibank.

The entry of this Order and release and disbursement of the funds as provided herein shall operate without prejudice to the rights and interests asserted by the Receiver and Citibank in and to the remaining funds in the Pledged Accounts and the claims and defenses of each such party with respect thereto; provided, however, that except as otherwise agreed by the parties and approved by the Court, Citibank agrees to relinquish any right to repayment of the amount to be

¹ Capitalized terms not otherwise defined in this Order shall have the meaning set forth in the Motion.

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released and disbursed to the Receiver pursuant to the interim agreement approved by this Order.

DONE AND ORDERED in Chambers in Miami, Southern District of Florida, on this
____ day of _____ 2016.

HON. DARRIN GAYLES
UNITED STATES DISTRICT COURT

Copies provided to:
All Counsel of Record