

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 L.P.,
JAY PEAK GP SERVICES, 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

RECEIVER'S MOTION FOR ENTRY OF ORDER CLARIFYING
THE SCOPE OF THE ORDER [D.E. 162] MODIFYING THE
PRELIMINARY INJUNCTION AND/OR RECEIVERSHIP ORDER

¹See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [DE 60].

TO AUTHORIZE A STIPULATED WRIT OF ATTACHMENT FOR THE BURKE CONTRACTORS AND SUBCONTRACTORS INCORPORATES TRANE US INC.

Michael I. Goldberg (the “Receiver”), in his capacity as the court-appointed Receiver for 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 Townhouses L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites, L.P., Jay Peak GP Services, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC (collectively, “Receivership Defendants”) and Relief Defendants Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively, “Relief Defendants”) and Additional Receivership Defendants Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC, (collectively “Q Burke Entities” and with the Receivership Defendants and the Relief Defendants, the “Receivership Entities”) files this Motion for Entry of an Order Clarifying the Scope of the Order [D.E. 162] Modifying the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the Burke Contractors and Subcontractors Incorporates Trane US Inc. (the “Motion”).

BACKGROUND

The Receivership Case

1. On April 12, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint [D.E. 1] (“Complaint”) in the United States District Court for the Southern District of Florida (the “Court”) against the Receivership Defendants, the Relief Defendants, William Stenger (“Stenger”) and Ariel Quiros (“Quiros” and with the Receivership Defendants, Relief Defendants and Stenger, the “Defendants”), the principal of the Receivership Defendants,

alleging that the Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by making false or materially misleading representations to investors.

2. On April 13, 2016, upon the SEC's Motion for Appointment of Receiver [D.E. 7], the Court entered an Order [D.E. 13] appointing Michael Goldberg as the Receiver over the Receivership Defendants and the Relief Defendants (the "Receivership Order").

Preserving Contractor and Subcontractor Lien Rights

3. In response to demands for payment of pre-receivership services by contractors and subcontractors who supplied labor and material for construction of a hotel and other facilities on Burke mountain (the "Burke Project"), the Receiver agreed to seek modification of the Preliminary Injunction and/or Receivership Order to allow the contractors and subcontractors to take action under Vermont's mechanics lien statutes to preserve their lien rights, subject to further review and confirmation by the Receiver of the validity, priority, scope and amount of their claims.

4. On June 10, 2016, upon the Receiver's motion (the "Burke Motion") [D.E. 160], the Court entered an Order Granting Receiver's Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the Burke Contractors and Subcontractors to Preserve Their Lien Rights [D.E. 162] (the "Burke Order").

5. The Receiver has been contacted by counsel for Trane US Inc. ("Trane") who provided heating, ventilating and air conditioning equipment to VHV Company, d/b/a Vermont Heating & Ventilating ("VHV"). VHV is a subcontractor to Peak CM, LLC, the general contractor for the Burke Project.

6. According to Trane's counsel, Trane is owed a balance of \$110,455.40 for the labor and materials provided to VHV. Prior to the appointment of the Receiver, Trane filed a

Notice of Mechanic's Lien and an amendment to Notice of Mechanic's Lien with the Town Clerk for the Town of Burke, Vermont.

7. Counsel for Trane is concerned that the Burke Order was limited only to the contractors and subcontractors listed on the exhibits attached to the Writs of Attachment, and therefore Trane's lien rights may not be preserved under Vermont law.

8. The Receiver believes that Trane is protected by the Burke Order and the Stipulated Writ of Attachment by virtue of Trane's claim being incorporated within VHV's claim. However, the Receiver agrees to seek clarification that the scope of the Burke Order explicitly incorporates Trane. Such relief shall be subject to further review and confirmation of the validity, priority, scope and amount of Trane's claim.

LEGAL ARGUMENT

The Burke Motion provides detailed explanations of Vermont's contractor's lien statute, 9 V.S.A. § 1921 *et seq.*, and legal argument supporting the power of a district court to impose a receivership or grant other forms of ancillary relief. For the purpose of brevity and judicial economy, the Receiver incorporates those arguments into this Motion.

The Receiver is not waiving any rights by agreeing to this procedure, but rather agrees to preserve the status quo. Trane is not authorized to enforce or in any other respect act upon its lien absent further Order of the Court. The modification will preserve all rights of the Receiver to object to claims, amounts, validity, timeliness, priority and any other objections to all subcontractor and supplier claims, including Trane. The Receiver recommends that all liens filed should be treated *pari passu* to avoid a race to the courthouse. Finally, the Court should reserve jurisdiction to determine the validity of claims and liens and priority thereof as well as

authorize a payment plan in the event an agreement cannot be reached. A proposed Order is attached hereto as Exhibit 1.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), on August 30, 2016, the Receiver circulated by e-mail a copy of the Motion and proposed order to counsel for the SEC and counsel for Defendants Quiros and Stenger. The SEC and Stenger have no objection to the relief requested.

On August 31, 2016, Quiros' counsel requested additional time to review the Motion with his client. On September 6, 2016, Receiver's counsel followed up with Quiros' counsel on Quiros' position on the Motion. Quiros counsel requested an additional day to confer with his client. On September 8, 2016, Quiros' counsel requested a copy of Trane's invoices, which were provided on September 9, 2016. As of 5:00 p.m. on September 12, 2016, Receiver's counsel has not received a response from Quiros' counsel. Counsel for Trane has requested the motion be filed without further delay because the 180 day statutory deadline for Trane to file a lawsuit to foreclose it's lien expires on October 15, 2016. In the event Trane receives confirmation that it's lien is covered by the June 10, 2016 Order, it will not need to file a state court lien foreclosure action.

WHEREFORE, the Receiver requests the Court expand the scope of the Burke Order to include lower-tier subcontractor and supplier Trane US Inc., and grant such other relief as is just

and equitable.

Respectfully submitted,

AKERMAN LLP

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By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.
Florida Bar No.: 886602
Email: michael.goldberg@akerman.com
Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on September 12, 2016 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/ Michael I. Goldberg
Michael I. Goldberg, Esq.

SERVICE LIST

1:16-cv-21301-DPG Notice will be electronically mailed via CM/ECF to the following:

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EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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SECURITIES AND EXCHANGE COMMISSION,

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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

**ORDER GRANTING RECEIVER'S MOTION FOR ENTRY
OF ORDER CLARIFYING THE SCOPE OF THE ORDER [D.E. 162]
MODIFYING THE PRELIMINARY INJUNCTION AND/OR**

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

**RECEIVERSHIP ORDER TO AUTHORIZE A STIPULATED
WRIT OF ATTACHMENT FOR THE BURKE CONTRACTORS
AND SUBCONTRACTORS INCORPORATES TRANE US INC.**

THIS MATTER comes before the Court upon the receiver, Michael I. Goldberg's (the "Receiver") Motion for Entry of an Order Clarifying the Scope of the Order [D.E. 162] Modifying the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the Burke Contractors and Subcontractors Incorporates Trane US Inc. (the "Motion") [D.E. No. ___];

WHEREAS, by Orders of this Court ("District Court") filed April 13, 2016 and April 22, 2016, the District Court appointed Michael Goldberg as receiver to take possession of, *inter alia*, all real property of the Receivership Entities,² with title to such property being vested by operation of law in the Receiver.

WHEREAS, On June 10, 2016, the Court entered an Order Granting Receiver's Motion [D.E. 160] to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the Burke Contractors and Subcontractors to Preserve Their Lien Rights [D.E. 162] (the "Burke Order").

WHEREAS, Trane US Inc. who provided heating, ventilating and air conditioning equipment to VHV Company, d/b/a Vermont Heating & Ventilating ("VHV"), a subcontractor to Peak CM, LLC, the general contractor for the construction of a hotel and other facilities on Burke mountain, believes it is necessary for the Court to expand the Burke Order for Trane US Inc. to preserve its lien rights under 9 V.S.A. § 1921 *et seq.*

² The "Receivership Entities are 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 Townhouses L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites, L.P., Jay Peak GP Services, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC, Relief Defendants Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC, and Additional Receivership Defendants Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC.

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WHEREAS, the Court has been advised that all parties consent to the Motion and the relief requested therein; and

WHEREAS, the Court finds that the Receiver has made a sufficient and proper showing in support of the relief requested;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

1. The Motion is **GRANTED**.
2. The scope of the Burke Order includes Trane US Inc.
3. All terms in the Burke Order apply to Trane US Inc., including but not limited to the Receiver's right to object to claims, amounts, validity, timeliness, priority and any other objection to Trane US Inc.'s claim.
4. This Court shall retain jurisdiction of this matter for all purposes, including but not limited to determining the validity of claims and liens and priority thereof as well as to authorize payment in the event an agreement cannot be reached.

DONE AND ORDERED in Chambers at Miami, Florida this ____ day of August, 2016.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:
Counsel of Record