

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

**ORDER GRANTING RECEIVER'S MOTION TO MODIFY THE
PRELIMINARY INJUNCTION AND/OR RECEIVERSHIP ORDER
TO AUTHORIZE A STIPULATED WRIT OF ATTACHMENT
FOR THE ANC BIO CONTRACTORS AND SUBCONTRACTORS
TO PRESERVE THEIR LIEN RIGHTS**

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

THIS MATTER comes before the Court upon receiver, Michael I. Goldberg's (the "Receiver") Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the AnC Bio Contractors and Subcontractors to Preserve Their Lien Rights [D.E. 213] (the "Motion");

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 GSI of Dade County, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC (collectively, with their subsidiaries, the "AnC Entities"), with title to such property being vested by operation of law in the Receiver.

WHEREAS, under 28 U.S.C. § 754, the Receiver is vested with complete jurisdiction and control over the real and personal property of the AnC Entities.

WHEREAS, AnC Bio VT, LLC, an agent of the AnC Entities, contracted with PeakCM, LLC ("PeakCM") to supply design services, labor and materials for construction of a biomedical research facility located at 172 Bogner Drive, Newport, Vermont ("Project Parcel") owned by GSI of Dade County, Inc. and more particularly described as:

172 Bogner Drive, City of Newport, County of Orleans, State of Vermont, also known as Parcel No. 124044 and SPAN No. 435-136-14425,

Being all and the same lands and premises conveyed to GSI of Dade County, Inc. by the warranty deed of James Mulkin, Mary Ann Mulkin and Fredric Oeschger, recorded at Book 209, Pages 132-134 of the City of Newport land records on September 16, 2011

WHEREAS, PeakCM retained the subcontractors and suppliers (together "Subcontractors") listed on Schedule A attached to the Stipulated Writ of Attachment to supply labor and materials to the Project Parcel per the Contract, the terms of which were incorporated into their subcontracts.

WHEREAS, under Vermont's contractor's lien statute, 9 V.S.A. § 1921 *et seq.*, a contract that is made to improve real property, furnish labor, or provide materials creates a contractor's lien upon the property.

WHEREAS, PeakCM and the Subcontractors may have construction liens for the labor and materials supplied to the Project Parcel (“Contractor Liens”), which may expire if not perfected by recording a memorandum of lien followed by a Writ of Attachment recorded in the land records for the City of Newport, Vermont.

WHEREAS, the Receiver has agreed to waive the requirement that a lienor record a memorandum of lien to perfect its contractor’s lien and has stipulated that there is a reasonable likelihood that PeakCM and the Subcontractors would recover judgment on their respective contractor’s liens in an amount equal to or greater than the amounts shown on Exhibits A and B attached to the Stipulated Writ of Attachment because they have not been paid in full for labor and materials furnished to erect and alter improvements on the Project Parcel and that there is no liability insurance, bond or other security available to satisfy any such judgment.

WHEREAS, the Receiver believes it is necessary for the Court to modify the Preliminary Injunction [D.E. 52] and/or the Receivership Order [D.E. 13] to the extent necessary to permit contractors and Subcontractors to perfect their lien rights under 9 V.S.A. § 1921 *et seq.*, subject to the Receiver’s confirmation of the validity and extent of the amounts owed to PeakCM and the Subcontractors and/or objection to the claims, amounts, validity, timeliness, priority and any other objection.

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 Preliminary Injunction and the Receivership Order are modified in order to preserve the lien rights of PeakCM and the Subcontractors under 9 V.S.A. § 1921 *et seq.* and to allow for the non-possessory attachment of Project Parcel in the form of the Stipulated Writ of Attachment, a copy of which is attached hereto as Exhibit 1, and the Clerk of the Court is directed to execute the same.
3. This Attachment is intended to preserve any Contractor Liens held by PeakCM or the Subcontractors listed in Schedules A and B to the Stipulated Writ of Attachment, pending a final judgment or other resolution of their claims. PeakCM and the Subcontractors shall have the right to assert additional amounts owed by contract and/or under the Prompt Payment Act, 9 V.S.A. § 4001 *et seq.*, including, but not limited to, interest, penalties, attorney's fees, and damages. The Receiver retains the right to object to claims, amounts, validity, timeliness, priority and any other objection to the claims of PeakCM and the Subcontractors.
4. The Receiver is authorized to waive and has waived the requirement that PeakCM and the Subcontractors record a memorandum of lien to preserve its lien rights.
5. PeakCM and the Subcontractors are not authorized to obtain a final judgment, enforce or in any other respect act upon their liens absent further Order of this Court.
6. Except as provided in Paragraph 4 above, the Receiver is not waiving any rights by agreeing to this procedure, but rather is seeking to preserve the status quo. The Receiver's right to object to claims, amounts, validity, timeliness, priority and any other objection to PeakCM and the Subcontractors claims are reserved.

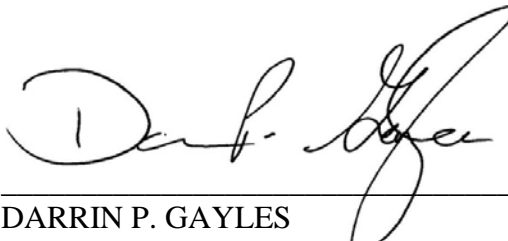
7. Accordingly, the entry of this Order does not ratify the amounts owed to PeakCM and the Subcontractors as listed in the Schedules attached to the Stipulated Writ of Attachment, or their right to receive payment of interest, penalties, attorney's fees or damages.

8. Upon the Court approving the amounts of PeakCM and of the Subcontractors' claims, PeakCM and the Subcontractors shall release all claims on past due amounts other than the approved amounts and warrant the work they provided, as appropriate.

9. Other than as set forth herein, the Receivership Order shall remain in full force and effect.

10. 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 authorize payment plan in the event an agreement cannot be reached.

DONE AND ORDERED in Chambers at Miami, Florida, this 22nd day of September, 2016.



DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE