

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 [D.E. 60].

**RECEIVER'S AGREED AMENDED MOTION
FOR AUTHORIZATION TO LIST SETAI CONDOMINIUM
FOR SALE AND SUPPORTING MEMORANDUM OF LAW**

Michael I. Goldberg (the "Receiver"), through undersigned counsel, hereby files this Agreed Amended Motion for Authorization to List Setai Condominium for Sale and Supporting Memorandum of Law.² In support of this motion, the Receiver states as follows:

1. On May 6, 2016, Defendant, Ariel Quiros ("Quiros") filed the Motion of Ariel Quiros Permitting Payment of Attorney's Fees and Costs And Supporting Memorandum of Law [D.E. 109]. By order dated May 27, 2016 [D.E. 148] (the "Fee Order"), the Court permitted Quiros to sell or mortgage a condominium in New York located at 400 Fifth Avenue, Unit 39F (the "Condominium") in order to use the proceeds of such transaction to pay living expenses of \$15,000 per month and any reasonable attorney's fees subsequently awarded by the Court. The Fee Order specifically required that Quiros place the proceeds of any such transaction in the Receiver's trust account to be held pending further hearing of the Court as to the amount of any such fees to be paid.

2. Thereafter, on or about August 13, 2016, Quiros borrowed \$1.5 million from Estreno, LLC (the "Mortgagee") and secured the loan with a first mortgage on the Condominium (the "Mortgage"). The loan bears interest at 9.5% (well above current market rates for fully secured residential mortgages) and matures on or about August 12, 2017. From these proceeds, Quiros forwarded \$1,184,000 to the Receiver on August 13, 2016.³ To date, the Receiver has paid Quiros a total of \$60,000 in living expenses (four months x \$15,000) and has also paid his

² The Receiver filed and withdrew the Motion on January 6, 2017. *See* D.E. 262 and 263. The Motion and proposed Order have since been updated.

³ The proceeds forwarded to the Receiver were less than the borrowed amount because the lender insisted on maintaining an interest reserve of \$146,260 as well as charged Quiros a \$22,000 commitment fee and other closing expenses. The Receiver has asked for the closing statement in order to properly account for all closing fees, however, the Receiver has not yet received a copy.

counsel \$80,000 as ordered by the Court. Accordingly, the Receiver currently holds approximately \$1,045,000 in trust.

3. The Mortgage matures on or about August 12, 2017. In the event the Mortgage is not timely satisfied, there is a substantial risk that the Mortgagee will commence foreclosure proceedings and the creditors will be unable to recover the full value of the Condominium. This makes sale of the Condominium imperative as soon as is practical to pay off the Mortgage and preserve the remainder of the Condominium's value.

4. Initially, Quiros listed the Condominium for sale for \$7.2 million. However, sometime around September 1, 2016, Quiros terminated the listing agreement and the Condominium is currently not listed for sale and has not been listed for sale for almost three months.

5. The Receiver has conferred with Quiros' counsel regarding his interest in re-listing the Condominium for sale. Quiros has agreed to actively re-list the Condominium, commencing this week.

6. Moreover, Quiros has agreed that the Receiver shall have the ability to speak with the real estate broker and receive updates on the broker's actions, progress of the sale, and Quiros will give the Receiver notice at least 14 calendar days before the closing date of the proposed sales price and identify the proposed purchaser.

7. The Receiver and Quiros have also agreed that the Condominium should be sold for its highest possible value and the proceeds held in trust pending further order of the Court.

8. Furthermore, the Receiver and Quiros have agreed that Quiros, in both of his individual capacity and as a trustee⁴ will reasonably cooperate in the sale process (i.e., showing the condominium or not unreasonably withholding his signature from any required documents).

9. Additionally, in accordance with the Court's prior orders, Quiros will work to sell the Condominium and will further work with Mrs. Quiros, as co-trustee and the beneficiaries, to obtain all necessary additional signatures to facilitate the closing of sale of the Condominium. Moreover, all sale proceeds will be delivered to the Receiver to hold in his possession pending further order of the Court.

Memorandum of Law

One of the Receiver's primary duties is to maximize distributions to defrauded investors and other claimants. See *Scholes v. Lehman*, 56 F.3d 750, 755 (7th Cir. 1995)(receiver's "object is to maximize the value of the [Receivership assets] for the benefit of their investors and any creditors.") *SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1042 (C.D. Cal. 2001); *SEC v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 669 (D. Kan. 2004). Federal courts have broad powers and wide discretion to determine relief in an equity receivership, including the authority to authorize the sale or transfer of real estate within a receivership. *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992). In the event the Condominium is not actively listed for sale, there is a significant risk that the Condominium may be ultimately lost to the Mortgagee or, at the very least, the equity in the Condominium may be eaten up by default interest and other potential fees due under the Mortgage. Accordingly, the Receiver believes that it is in the investors' best

⁴ Quiros and his wife originally purchased the Condominium in on or about December 6, 2011. The Condominium remained in their names until on or about December 10, 2014, when they transferred the Condominium to a trust in which they are co-trustees. A corrective deed was filed on October 4, 2016 with the New York City Department of Finance.

interest that the Condominium be immediately listed for sale in order to preserve and maximize its value for the benefit of the estate.

WHEREFORE, the Receiver respectfully requests the Court to enter an order in the form attached hereto as Exhibit A, permitting the re-listing of the Condominium for sale in order to preserve its value and to grant such further relief as is just and proper.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with to the Securities and Exchange Commission and to counsel for Defendants Ariel Quiros and William Stenger, all of whom have no objection to this Motion or the relief requested in this Motion.

Respectfully submitted,

AKERMAN LLP
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By: /s/Michael I. Goldberg
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Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this January 17, 2017, 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 A

UNITED STATES DISTRICT COURT
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SECURITIES AND EXCHANGE COMMISSION,

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Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants¹

**ORDER GRANTING RECEIVER'S AGREED AMENDED MOTION FOR
AUTHORIZATION TO LIST SETAI CONDOMINIUM FOR SALE**

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

THIS MATTER is before the Court upon the receiver, Michael I. Goldberg's (the "Receiver") Agreed Amended Motion for Authorization to List Setai Condominium for Sale (the "Motion") [D.E. ____]. The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission and Defendants Ariel Quiros and William Sanger have no objection to the relief requested in the Motion, and finding that the Receiver has made a sufficient and proper showing in support of the relief requested,

IT IS ORDERED, ADJUDGED AND DECREED, as follows:

1. The Motion is **GRANTED**.
2. Defendant Ariel Quiros is authorized and directed to list the condominium located at 400 Fifth Avenue, Unit 39F, New York City, New York (the "Condominium") for sale at, to the best of his knowledge, its highest possible value.
3. Quiros shall advise the Receiver of the listing price and if the Receiver disagrees, the parties shall attempt to resolve their differences, or seek further direction from the Court.
4. The Receiver shall have the ability to speak with the real estate broker and receive updates on the broker's actions and progress of the sale.
5. Prior to entering into any contract for the sale of the Condominium, Mr. Quiros shall provide the Receiver with the proposed sale price and identity of the proposed purchaser.
6. Mr. Quiros, in both his individual capacity and as a trustee² shall reasonably cooperate in the sale process (i.e., by authorizing access for showing the condominium or not unreasonably withholding his signature from any required documents necessary to effectuate a

² Quiros and his wife originally purchased the Condominium in on or about December 6, 2011. The Condominium remained in their names until on or about December 10, 2014, when they transferred the Condominium to a trust in which they are co-trustees. A corrective deed was filed on October 4, 2016 with the New York City Department of Finance.

CASE NO.: 16-cv-21301-GAYLES

sale) and will further request that Mrs. Quiros, as co-trustee, and the beneficiaries provide all necessary additional signatures to facilitate the closing of the sale of the Condominium.

7. All sale proceeds shall be delivered to the Receiver to hold in trust pending further order of the Court.

DONE AND ORDERED in Chambers at Miami, Florida this ___ day of January 2017.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:
Counsel of Record