

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, et al.,

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 Defendants

**ORDER GRANTING RECEIVER'S MOTION TO AUTHORIZE
THE REFUND OF PHASE VII INVESTOR FUNDS HELD IN ESCROW**

THIS cause comes before the Court on the Receiver's Motion to Authorize the Refund of Phase VII Investor Funds Held in Escrow ("Motion") [ECF No. 268]. The Court, having reviewed the Motion and being otherwise fully advised in the premises, it is hereby

ORDERED and ADJUDGED that the Motion is **GRANTED**. Based on the Receiver's representation, the Court finds that the Jay Peak Biomedical Project will not be completed in a manner that is consistent with the underlying subscription agreements (Motion Ex. C [ECF No. 268-4]) and the initial representations that were made to the Phase VII Investors. In addition, despite his best efforts, the Receiver cannot guarantee that any remedy pursued on behalf of the


Phase VII Investors will be timely realized, if at all. Although the subject escrow and subscription agreements are silent as to whether the Receivership Estate or the investor who placed the funds in escrow is entitled to the funds still held in escrow under the circumstances, the Receiver has advised the Court that he believes that the investors who placed the funds in escrow are more properly entitled to the funds, and that he is waiving any claim to the escrowed funds based on each of the investors who receive escrow refunds assigning the proceeds of any and all claims against third parties to the Receivership Estate and covenanting not to sue or assert a claim against the Receivership Estate. Therefore, the Court **RESCINDS** each of the Escrow and Subscription Agreements concerning the 36 named Phase VII Investors set forth in Exhibit B to the Motion [ECF No. 268-3] consistent with paragraph 2 of the Order appointing the Receiver [ECF No. 13] and subject to the following conditions:

1. To receive a refund of the escrow deposit, each Phase VII Investor set forth in Exhibit B to the Motion [ECF No. 268-3] must first execute an assignment of proceeds of any and all claims he or she may have against any third party to the Receiver. Any proceeds recovered by the Phase VII investor from any third parties based on or arising out of their dealings with Jay Peak shall be immediately turned over to the Receiver for the benefit of the Receivership Estate, if and when received.

2. Further, as a condition of receiving the funds held in escrow, each Phase VII Investor set forth in Exhibit B to the Motion [ECF No. 268-3] that receives escrow refunds covenants not to sue or file a claim against the Receivership Estate for claims or actions that are in any way connected with, related to, or arising out of such Phase VII Investors' participation in the Jay Peak Biomedical Project.

3. Thereafter, the Receiver is authorized to enter into agreements with each Phase VII Investor to refund the amounts held in the escrow account at People's United Bank, Burlington Square, Burlington, Vermont 05401, Account No. [REDACTED] in the amounts set forth on Exhibit B to the Motion for each of the above-referenced investors.

DONE AND ORDERED in Chambers at Miami, Florida, this 9th day of February, 2017.



DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE