

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 Defendants¹

**RECEIVER'S UNOPPOSED MOTION TO PAY OFF THE SETAI MORTGAGE LOAN
NO LATER THAN AUGUST 9, 2017 USING SETAI LOAN PROCEEDS AND OTHER
RECEIVERSHIP FUNDS**

Michael I. Goldberg, as the court-appointed receiver in this action (the "Receiver")²,
hereby files this Unopposed Motion to Pay Off The Setai Mortgage No Later than August 9, 2017

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

² On April 13, 2016, pursuant to the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver (the "Order of Appointment") [ECF Nos. 13], Mr. Goldberg was appointed as the Receiver for 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 (collectively, the "Defendants") and Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (the "Relief

Using Setai Loan Proceeds and Other Receivership Funds. The equity in the Setai Condominium is worth millions of dollars and should ultimately go to benefit the Receivership Estate; however, if the Receiver does not pay off the Setai Mortgage by August 9, 2017, the equity in the Setai Condominium will be dissipated to cover unnecessary penalties and interest. Hence, the Court should allow the Receiver to pay off the Setai Condominium mortgage on or before it comes due to preserve the remaining equity in the Setai Condominium. In support of this motion, the Receiver states as follows:

PROCEDURAL HISTORY

I. The Court Permits Quiros to Use the Proceeds from the Setai Condominium Loan to Pay Quiros \$15,000 a Month for Living Expenses

1. On May 6, 2016, Quiros filed the Motion of Ariel Quiros Permitting Payment of Attorney's Fees and Costs and Supporting Memorandum of Law [ECF No. 109]. By order dated May 27, 2016 [ECF No. 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 "Setai Condominium") in order to use the proceeds from that mortgage to pay Quiros' living expenses of \$15,000 per month and any reasonable attorney's fees subsequently awarded by the Court.

2. The Fee Order specifically ordered Quiros to place all proceeds from the Setai Condominium in the Receiver's trust account to be held pending further order of the Court as to the amount of any such fees to be paid.

3. Thereafter, on or about August 13, 2016, Quiros borrowed \$1.5 million from Estreno, LLC (the "Mortgagee") and placed a first mortgage on the property (the "Mortgage"). The loan bears interest at 9.5% (well above current market rates for fully secured residential

Defendants"). The Defendants, Relief Defendants, and Additional Receivership Defendants (*See* fn.1) shall collectively be referred to as the "Receivership Entities."

mortgages) and matures on or about August 9, 2017. The Mortgagee is not a typical institutional lender such as a commercial bank.

4. From these proceeds, Quiros forwarded approximately \$1,184,000 to the Receiver on August 13, 2016. The more than \$300,000 difference between the dollar value of the Mortgage and the funds that Quiros forwarded to the Receiver is due to the kind of mortgage Quiros obtained. As discussed, the Mortgagee is not a typical institutional lender nor was the loan a typical mortgage loan. As a condition for obtaining the Mortgage, Quiros was required to create an interest reserve with proceeds from the Mortgage along with paying significant upfront fees and closing costs. As a result, the expenses and interest charges associated with simply obtaining the Mortgage amounted to approximately \$316,000 before any funds were placed in trust with the Receiver to cover Quiros' living expenses and attorneys' fees.

5. In addition to upfront costs and fees, the Receiver has paid a total of \$180,000 to cover Quiros' living expenses (twelve months x \$15,000) and has also paid his former counsel, Mitchell Silberberg & Knupp, LLP, \$80,000 in attorneys' fees as ordered by this Court. Accordingly, the Receiver currently holds approximately \$924,227.09 in funds left over from the Mortgage proceeds.

II. The Receiver's Risk-Benefit Analysis of Paying Off the Mortgage Debt

6. On June 14, 2017, this Court modified the asset freeze based on an agreed motion filed by Quiros and the Receiver to, among other things, effect a complete turnover of the Setai Condominium to the Receiver. [ECF No. 346]. As a result of Quiros's agreement to turn over the Setai Condominium to the Receiver, the Receiver now holds title to the Setai Condominium and is obligated to repay the Mortgage or risk foreclosure.

7. The Mortgage comes due on or about August 9, 2017. It is the Receiver's judgment that the appropriate course of action would be to pay off the Mortgage using the remainder of the proceeds from the Mortgage, \$924,227.09, along with additional funds held in trust by the Receiver that belong to the Receivership Estate. To satisfy the balance of the Mortgage, the Receiver would need to use \$575,772.91 from the Receivership Estate's general fund.

8. If the Receiver does not pay off the Mortgage when the loan matures, there is a substantial likelihood that the Mortgagee will commence foreclosure proceedings immediately impairing the ability for the creditors and investors in the Receivership Estate to recover the full value of the Setai Condominium's equity. Moreover, under the terms of the Mortgage the Mortgagee will be entitled to default interest at 16% per annum along with any additional fees that may accrue as a result of foreclosure proceedings, including attorneys' fees, further depleting the equity in the Setai Condominium. On the other hand, if the Receiver pays off the Mortgage and subsequently lists the Setai Condominium for sale, several million dollars in proceeds from the sale of the property is estimated to be available for the benefit of the Receivership Estate's creditors and investors.

9. The Court must also consider the implications of the Mortgagee's nontraditional status. The Receiver cannot ensure that in the event of a foreclosure the normal protocol will be followed with respect to any surplus proceeds. Moreover, the Receiver fully expects that the additional penalties and interest that are likely to accrue as a result of a foreclosure will be substantial even as compared to foreclosure in a traditional mortgage setting. Court-ordered repayment is, therefore, the most desirable means of preserving the value of the Setai Condominium's equity.

10. As a result, the Receiver, in the exercise of his duties and with the agreement of Quiros, respectfully seeks the entry of an Order permitting the Receiver to pay off the Mortgage at maturity using the remaining proceeds of the mortgage and other receivership funds.

MEMORANDUM OF LAW

One of the Receiver's primary duties is to maximize distributions to 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). That duty necessarily involves marshaling the assets of the receivership estate so that they are put to their most beneficial use. For this reason, Federal courts have broad powers and wide discretion to fashion relief in an equity receivership. *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992).

As discussed, the Setai Condominium is valuable and an orderly sale of the property by the Receiver would provide a significant benefit to the Receivership Estate. Therefore, repayment of the Mortgage is an appropriate exercise of the Receiver's duties on behalf of the Receivership Estate. And this Court's inherent powers permit the entry of an Order authorizing the Receiver to pay the Mortgage for the benefit of the Receivership Estate. *Id.*

WHEREFORE, Michael I. Goldberg, as the court-appointed Receiver in this action, respectfully requests the entry of an expedited order permitting the Receiver to pay off the \$1,500,000 principal balance of the Mortgage using \$924,227.09 in left over proceeds from the Mortgage and an additional \$575,772.91 from the Receivership Estate's general funds. A proposed order is submitted herewith.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with counsel for the Securities and Exchange Commission and there is no objection to the relief sought herein. The Receiver has also conferred with counsel for Defendants Ariel Quiros and William Stenger who also have no objection to the relief requested herein.

Dated: July 29, 2017

Respectfully submitted,

AKERMAN LLP

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Counsel for Michael I. Goldberg, Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this July 29, 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/ Naim S. Surgeon

Naim S. Surgeon, Esq.

SERVICE LIST

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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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.

**ORDER GRANTING RECEIVER'S UNOPPOSED MOTION TO PAY OFF SETAI
MORTGAGE LOAN BY NO LATER THAN AUGUST 9, 2017 USING SETAI LOAN
PROCEEDS AND OTHER RECEIVERSHIP FUNDS**

THIS MATTER comes before the Court upon the receiver, Michael I. Goldberg's (the "Receiver") Unopposed Motion to Pay Off Setai Mortgage Loan By No Later Than August 9, 2017 Using Setai Loan Proceeds and Other Receivership Funds ("Motion") [ECF No. ____].

WHEREAS, the Mortgage obtained by Defendant Ariel Quiros on the Setai Condominium matures on August 9, 2017; and

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WHEREAS, an event of default will result in the unnecessary accumulation of additional interest and penalties, including the possibility of foreclosure;

IT IS HEREBY ORDERED AND ADJUDGED as follows:

The Receiver shall pay the Mortgage in full by no later than August 9, 2017. The funds allocated for payment of the Mortgage in full shall consist of the remainder of the Mortgage proceeds held in trust by the Receiver, \$924,227.09, and an additional \$575,771.91 from the Receivership Estate's general funds for a total amount of \$1,500,000.

DONE AND ORDERED in Chambers at Miami, Florida this ____ day of July, 2017.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:

Counsel of Record