

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-cv-21301-Gayles

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

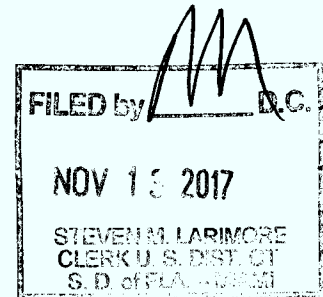
v.

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.

[SUBSTITUTED] MOTION OF DEFENDANTS, JAY PEAK HOTEL SUITES L.P., JAY PEAK HOTEL SUITES PHASE II L.P., AND JAY PEAK LODGE AND TOWNHOUSES L.P., BY CERTAIN LIMITED PARTNERS, FOR AN ORDER PERMITTING RECEIVER TO INTERVENE AS INDISPENSABLE PARTY IN ACTION PENDING IN U.S. DISTRICT COURT FOR DISTRICT OF VERMONT

Now come Anthony Sutton, Glyn Moser and Patrick Tawil, in their respective capacities as limited partners of Jay Peak Hotel Suites LP, Jay Peak Hotel Suites Phase II LP, and Jay Peak



Lodge and Townhouses LP, and hereby seek leave of this Court to issue an Order, permitting the duly appointed Receiver in this case, Michael I. Goldberg (“Goldberg”), to intervene as an indispensable party in a case now pending in the United States District Court for the District of Vermont, Civil Action No. 2:17-CV-00061 (“Vermont Action”), in which they are the named plaintiffs and the Defendant is Saint Saveur Valley Resorts, Inc. (“SSVR”).

I. Background

Plaintiffs in the Vermont Action are individuals who invested in the Jay Peak U.S. Immigration Department EB-5 investor program. They assert claims, derivative of the limited partnerships, against SSVR, who sold Jay Peak Resort to Q Resorts, Inc., controlled by Ariel Quiros (“Quiros”).

Plaintiffs claim that SSVR knowingly transferred Phase I and Phase II escrowed investor funds, totaling over \$25 million, to Quiros so that he could use the funds to pay them for the resort. The Vermont Action includes counts for Aiding and Abetting Fraud, Conversion, Breach of Fiduciary Duty, Unjust Enrichment and Violation of 9 V.S.A. § 2288, Vermont’s Fraudulent Transfer Statute.

II. The Derivative Action under 11 V.S.A § 3491

The Plaintiffs in the Vermont Action premised their claim on 11 V.S.A § 3491, which permits limited partners to file a derivative action to preserve rights when the general partner in a limited partnership has been requested, but has failed or refused to do so. Given the filing of the SEC Action, and this Court’s Order granting the SEC’s Motion for Appointment of Receiver (Doc. No. 13), Goldberg has assumed the duties and responsibilities of the subject limited

partnerships. At the time of filing, he had elected not to proceed as a Plaintiff in the Vermont Action, but did not object to these Vermont Plaintiffs proceeding with the claim.

III. The Order Appointing the Receiver

This Court issued its Order appointing Goldberg as Receiver on April 14, 2016 (“Receivership Order”). By its terms, the limited partnerships named in the SEC Action cannot be named in a separate action without the express consent of the Receiver (par. 12). Moreover, the Receiver cannot be named as a party in a separate action without the express consent of this Court (Par. 15).

IV. The Relief Requested of this Court

Consequently, and consistent with the Receivership Order, these Plaintiffs now seek an Order from this Court, authorizing the Receiver to be joined as an indispensable party in the Vermont Action. Not only will his presence in the action fulfill the statutory requirements of 11 V.S.A § 3491, but Goldberg is the appropriate person to take possession of any monies recovered upon a successful resolution of the Vermont Action in order to assure an equitable distribution of such funds.

WHEREFORE, the Plaintiffs in the Vermont Action, on behalf of the Defendant limited partnerships in this action, move this Court to issue an Order authorizing the Receiver to be joined as an indispensable party in the Vermont Action.

For the forenamed,
By their Attorneys,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed in hand in the U.S. District Court of South Florida in Miami, Florida on November 10, 2017, and has been served electronically via email to all ECF registered participants.

By: /s/ Keith L. Miller
Keith L. Miller