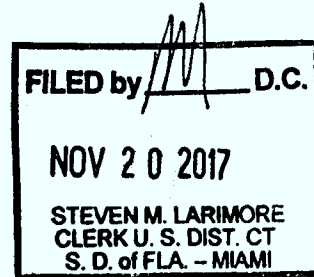


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-cv-21301-Gayles



SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

ARIEL QUIROS, ET AL.
Defendants

**UNOPPOSED SECOND 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 request that this Court 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 Saver Valley Resorts, Inc (“SSVR”). **Both the Receiver, Goldberg, and Counsel for the Plaintiff, Securities Exchange Commission, have reviewed this motion and the proposed Order, and have indicated that they do not intend to oppose this Motion or the relief requested in this Motion.**

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.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, the undersigned counsel hereby certify that they have conferred with the Receiver and Counsel for the SEC, who have indicated that they do not intend to oppose this Motion and have approved the language of the Order on this motion.

For the forenamed,
By their Attorneys,

/s/Joshua L. Simonds
Joshua L. Simonds, Esq
The Burlington Law Practice, PLLC
2 Church St. Suite 2G
Burlington VT 05401
jls@burlingtonlawpractice.com

/s/Keith L. Miller
Keith L. Miller
Admitted Pro Hac Vice
Mass. Bar Reg. No. 347280
Fifty-Eight Winter Street, 4th Floor
Boston, MA 02108
klm4law@aol.com
(617) 523-5803

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 20, 2017, and has been served electronically via email to all ECF registered participants.

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

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

ORDER GRANTING SECOND 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

THIS MATTER comes before the Court upon the Second 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 (the "Motion") [ECF No. ____], filed by certain limited partners of Defendants, Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., and Jay Peak Lodge and Townhouses L.P. (the "Movants"), as plaintiffs in a case pending in the United States District Court for the District of Vermont, Civil Action No. 2:17-CV-00061,¹ (the "Vermont Action"). The Court, having reviewed the Motion, being advised that Michael I. Goldberg, the court-appointed receiver (the "Receiver") over the Movants, and counsel for the Securities and Exchange Commission, have no objection to the relief requested in the Motion, subject to the conditions set forth below,

¹ The defendant in the Vermont Action is Saint Saveur Valley Resorts, Inc., the entity which sold Jay Peak Resorts, Inc. to Q Resorts, Inc., when it was controlled by Ariel Quiros.

CASE NO.: 16-cv-21301-GAYLES

IT IS ORDERED AND ADJUDGED, as follows:

1. The Motion is **GRANTED**.
2. The Movants are permitted to join the Receiver as an indispensable party plaintiff in the Vermont Action. However, absent the Receiver's consent, the extent of the Receiver's involvement in the Vermont Action shall be limited to cooperating on discovery matters.
3. Due to the fact that the Receiver is being joined as an indispensable plaintiff in the Vermont Action, the Receiver and the receivership estate shall have no liability for any costs or fees incurred in the Vermont Action and shall not be subject to any fee or cost awards against the Movants that may be awarded in the Vermont Action.
4. Any settlement of the Receiver's claims in the Vermont Action shall be subject to approval of this Court.
5. All proceeds of the Vermont Action or any settlement in connection with the Vermont Action shall be deemed property of the receivership estate to be distributed in accordance with further orders of this Court.
6. All fees and costs to be awarded from any recovery in the Vermont Action shall be subject to the approval of this Court.

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

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:
Counsel of Record