

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

**ORDER GRANTING RECEIVER'S MOTION FOR AUTHORIZATION TO
SELL 400 FIFTH AVENUE, UNIT 39F (F/K/A THE SETAI CONDOMINIUM)**

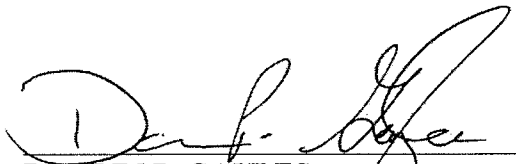
¹ See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No. 60].

THIS MATTER comes before the Court without hearing upon the Motion for Authorization to Sell 400 Fifth Avenue, Unit 39F (f/k/a the Setai Condominium) (the “Motion”) [ECF No. 490] filed by the Court-appointed receiver, Michael I. Goldberg (the “Receiver”). The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission has 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. The Receiver is authorized to sell 400 Fifth Avenue, Unit 39F,² New York, New York (the “Condominium”) to King Ting Leung and King Ho (Eric) Leung (the “Buyers”) pursuant to the Purchase and Sale Contract (the “Contract”), “As Is”. A copy of the Contract is attached to the Motion as Composite Exhibit “A”. The legal description of the Condominium is attached hereto as Exhibit “1”.
3. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.
4. Upon receipt of the consideration set forth in the Contract, and delivery of the deed and other documents called for in the Contract by the Receiver, the sale shall stand as confirmed, without further Order of the Court.

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of August, 2018.


DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

² Unit 39F is also referred to as Unit 39FGH because Units F, G and H were combined into one large unit. The sale also includes Storage Bins Nos. 28 and 51.

EXHIBIT 1

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT A
DESCRIPTION

The land referred to in this Certificate of Title is described as follows:

The Condominium Unit (hereinafter called the "Unit") in the condominium known as The Setal Fifth Avenue Hotel and Residences, a Condominium (the "Condominium") in the Building (hereinafter called the "Building") known as The Setal Fifth Avenue Hotel and Residences, a Condominium and by the street address 400 Fifth Avenue, New York, New York 10018, Borough of Manhattan, City, County and State of New York, said Unit being designated and described as Unit 39F in that certain Declaration, dated as of November 10, 2010, made by Grantor pursuant to Article 8-B of the Real Property Law of the State of New York (hereinafter called the "Condominium Act") establishing condominium ownership of the Building and the land (hereinafter called the "Land") upon which the Building is situate (which Land is more particularly described in Schedule A annexed hereto and by this reference made a part hereof, which declaration was recorded in the New York County Office of the Register of the City of New York (the "City Register's Office") on November 28, 2010, as CRFN 201000097894, as amended by First Amendment to the Declaration of The Setal Fifth Avenue Hotel and Residences dated October 27, 2011 and recorded November 17, 2011 in CRFN 2011000401804 as amended by the Eighth Amendment to the Declaration dated 02/20/2013 and recorded 7/23/2013 as CRFN 201300288480 (which declaration, and any amendments thereto, are hereinafter collectively called the "Declaration"). The Unit is also designated as Tax Lot 1058 (formerly 1058, 1067 and 1068, respectively) in Block 838 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Bureau of The City of New York and on the Floor Plans of the Building outlined by Robert Laudenschlager, Registered Architect on November 18, 2010, and filed with the Real Property Assessment Bureau of The City of New York on November 18, 2010 as Condominium Plan No. 2219 and also filed in the City Register's Office on November 23, 2010, as CRFN 2010000307806; and Amended Map No. 2219-A and also filed in the City Register's Office on November 17, 2011 as CRFN 20110001805 and Amended Map No. 2219-A and also filed in the City Register's Office on November 17, 2011 as CRFN 20110001805 (formerly Units 39F, 39G and 39H, Block 838, Lots 1058, 1067 and 1068. See Schedule A2 attached).

Together with an undivided 0.6722% interest in the Common Elements (as such term is defined in the Declaration) of The Setal Fifth Avenue Hotel and Residences, a Condominium;

Parcel A (For Information Only: Block 838, Lot 42)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of 36th Street;

RUNNING THENCE westerly along the northerly side of 36th Street, 128 feet;

THENCE northerly, parallel with Fifth Avenue, 78 feet 11 inches;

THENCE easterly, parallel with 36th Street, 25 feet;

THENCE southerly, parallel with Fifth Avenue, 27 feet 7 inches;

THENCE easterly, parallel with 36th Street, 100 feet to the westerly side of Fifth Avenue;

THENCE southerly along the westerly side of Fifth Avenue, 48 feet 4 inches to the point or place of BEGINNING.

L. Description
(Continued)

Parcel B (For Information Only: Block 838, Lot 46)

ALL that certain plot, place or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue, distant 49 feet 4 inches northerly from the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of 38th Street;

RUNNING THENCE westerly parallel with 38th Street, 100 feet;

THENCE northerly parallel with Fifth Avenue, 27 feet 7 inches;

THENCE easterly parallel with 38th Street, 100 feet to the westerly side of Fifth Avenue;

THENCE southerly along the westerly side of Fifth Avenue, 27 feet 7 inches to the point of place of BEGINNING;

Parcel C (For Information Only: Block 838, Lot 46)

ALL that certain plot, place or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue distant 76 feet 11 inches northerly from the corner formed by the intersection of the westerly side of Fifth Avenue and the northerly side of 38th Street;

RUNNING THENCE northerly along the westerly side of Fifth Avenue, 27 feet 7-1/2 inches;

THENCE westerly parallel with 38th Street, 120 feet;

THENCE southerly parallel with Fifth Avenue, 5 feet 0-12 inches to the center line of the block;

THENCE westerly parallel with 38th Street and along the center line of the block, 6 feet;

THENCE southerly parallel with Fifth Avenue, 21 feet 10 inches;

THENCE easterly parallel with 38th Street, 125 to the westerly side of Fifth Avenue, at the point of place of BEGINNING;

Parcel P (For Information Only: Block 838, Lot 47)

ALL that certain plot, place or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue distant 85 feet 4-1/4 inches southerly from the corner formed by the intersection of the said westerly side of Fifth Avenue with the southerly side of 37th Street;

RUNNING THENCE westerly parallel to the southerly side of 37th Street, 120 feet;

THENCE southerly parallel with the westerly side of Fifth Avenue, 27 feet 7-1/4 inches;

DESCRIPTION
(Continued)

THENCE easterly again parallel with the southerly side of 37th Street, 120 feet to the westerly side of Fifth Avenue;

THENCE northerly along said westerly side of Fifth Avenue, 27 feet 7-1/2 inches to the point of place of BEGINNING;

Blanket Description of Parcels A, B, D and D above:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of West 38th Street;

RUNNING THENCE northerly along said westerly side of Fifth Avenue, 132 feet 1-3/4 inches;

THENCE westerly parallel with the northerly side of West 36th Street, 120 feet;

THENCE southerly parallel with the westerly side of Fifth Avenue, 33 feet 4-3/4 inches;

THENCE westerly parallel with the northerly side of West 36th Street, 6 feet;

THENCE southerly parallel with the westerly side of Fifth Avenue, 98 feet 0 inches;

THENCE easterly along the northerly side of West 36th Street, 125 feet to the point of place of BEGINNING;

Parcel E (For Information Only: Air Rights - Block 838, Lot 49)

TOGETHER WITH the benefits of the easements for light and air created by that certain Zoning Lot Agreement and Grant of Easements dated as of May 2, 1988 by and between Manhattan Realty Acquisition Fund and Tower Fifth Avenue Limited and recorded in the Office of the New York City Register, New York County, on May 18, 1988 in File 1492 page 1669; as amended by Corrective Amendment to Zoning Lot Agreement and Grant of Easements and Zoning Lot Description and Ownership Statement by Building Department Applicant dated July 25, 1988 and recorded in the Office of the New York City Register, New York County, on August 11, 1988 in File 1448 page 1884, as amended by Second Amendment to Zoning Lot Agreement and Grant of Easements dated as of November 1, 2005 between 404 Fifth LLC and 400 Fifth Avenue Holdings LLC and recorded in the Office of the New York City Register, New York County, on December 23, 2005 under CRFN 2005000707128;

Parcel F (For Information Only: Air Rights - Block 888 Lot 3)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Fifth Avenue, distant 38 feet 9 inches northerly from the corner formed by the intersection of the northerly side of 38th Street and the easterly side of 37th Street;

RUNNING THENCE easterly parallel with the northerly side of 38th Street, 111 feet 8 inches;

THENCE northerly parallel with the easterly side of Fifth Avenue, 41 feet 8 inches;

DESCRIPTION
(Continued)

THENCE westerly parallel with the northerly side of 37th Street, 111 feet 8 inches to the easterly side of Fifth Avenue;

THENCE southerly along the easterly side of Fifth Avenue, 41 feet 8 inches to the point or place of BEGINNING.

Parcel G (For Information Only; Air Rights - Block 888 Lot 76):

ALL that certain volume of air rights, lying and being in the Borough of Manhattan, City, County and State of New York, at and below a horizontal plane drawn at an elevation of 278.76 feet above the Manhattan Datum, bounded and described as follows:

BEGINNING at a corner formed by the intersection of the southerly side of East 37th Street with the easterly side of Fifth Avenue;

RUNNING THENCE easterly along the southerly side of 37th Street, 162 feet;

THENCE southerly and parallel with Fifth Avenue and part of the distance through a party wall, 88 feet 8 inches to the center line of the block;

THENCE westerly along said center line of the block and parallel with East 37th Street, 40 feet 4 inches;

THENCE southerly and parallel with Fifth Avenue, 18 feet 4 inches;

THENCE westerly again parallel with the southerly side of East 37th Street, 111 feet 8 inches to the easterly side of Fifth Avenue;

THENCE northerly along the easterly side of Fifth Avenue, 117 feet 1 inch to the point or place of BEGINNING.

Parcel H (For Information Only; Fee and Air Rights - Block 888 Lot 907B):

ALL that certain volume of air rights, lying and being in the Borough of Manhattan, City, County and State of New York, at and above a horizontal plane drawn at an elevation of 278.76 feet above the Manhattan Datum, bounded and described as follows:

BEGINNING at a corner formed by the intersection of the southerly side of East 37th Street with the easterly side of Fifth Avenue;

RUNNING THENCE easterly along the southerly side of 37th Street, 162 feet;

THENCE southerly and parallel with Fifth Avenue and part of the distance through a party wall, 88 feet 8 inches to the center line of the block;

THENCE westerly along said center line of the block and parallel with East 37th Street, 40 feet 4 inches;

THENCE southerly and parallel with Fifth Avenue, 18 feet 4 inches;

THENCE westerly again parallel with the southerly side of East 37th Street, 111 feet 8 inches to the easterly side of Fifth Avenue; and

THENCE northerly along the easterly side of Fifth Avenue 117 feet 1 inch to the point or place of BEGINNING.