

**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, LLC¹
AnC BIO VT, LLC,²

Additional Receivership Defendants

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

²See Order Granting Receiver's Motion for Entry of an Order Clarifying that AnC Bio VT, LLC is included in the Receivership or in the Alternative to Expand the Receivership to include AnC Bio VT, LLC, *Nunc Pro Tunc*, dated September 7, 2018 [ECF No. 493].

ORDER APPROVING SALE OF BURKE MOUNTAIN RESORT

THIS MATTER came before the Court without a hearing upon the Receiver’s Motion for Entry of Order Approving Sale of Burke Mountain Resort and Granting Related Relief (the “Motion”), [ECF No. 770], 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 takes no position with respect to the relief requested in the Motion, and finding that the Receiver has made a sufficient and proper showing in support of the relief sought, does hereby,

FIND and CONCLUDE as follows:

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.³

B. Due and adequate notice of the Motion and the relief requested therein has been given and no other or further notice of the Motion is or shall be required. Such notice is evidenced in the certificate of service attached to the Motion.

C. The Agreement of Purchase and Sale (the “Purchase Agreement”) by and between the Receiver and Bear Den Partners LLC (the “Buyer”) for the purchase of the Assets⁴ defined therein for the gross cash price of \$11,500,000.00 (the “Purchase Price”) was the result of arm’s-length, good-faith negotiations. [ECF No. 700, Ex. A].

D. The Assets, including the Owned Real Property and the Asset-Related Property, are property of the receivership estate and the Receiver has the requisite authority to convey the Assets.

³ To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such.

⁴ Capitalized terms not otherwise defined herein shall take on the meaning ascribed to them in the Motion and the Purchase Agreement.

E. The Receiver and the Buyer are proceeding in good faith, and the sale contemplated in the Purchase Agreement is being proposed in good faith.

F. The Buyer is unrelated to the Seller Entities and its current management, agents, representatives, or professionals. The Buyer is also unrelated to the Seller Entities' past principals and owners.

G. The Buyer is neither a successor nor a continuation of the Receivership Defendants or the Relief Defendants.

H. There is a sound business justification for the sale of the Assets, and the Purchase Price is fair and reasonable as more fully set forth by the Receiver in the Motion.

I. A private sale to the Buyer is the only current viable alternative for preserving and capturing the value of the Assets for the benefit of the receivership estate.

J. The Purchase Price constitutes the highest offer price received by the Receiver for the Assets.

K. The Purchase Agreement and the transactions thereunder or in connection therewith, including, without limitation, any assumption and assignment of executory contracts or unexpired leases, are not being entered into to escape liability for the receivership estate's debts.

L. Accordingly, the sale of the Assets free and clear of all liens, claims, interests, and encumbrances is appropriate.

M. The Ground Lease between Burke Mountain Resort and the State of Vermont is in full force and effect with all option periods to expire on December 1, 2054. The State of Vermont has already approved and executed an assignment to the Buyer which has eliminated an extremely important condition to close.

N. Except as otherwise provided herein, all of the Seller Entities' title and interests in the Assets to be acquired by the Buyer under the Purchase Agreement shall be, as of the closing of the sale of the Assets, transferred to and vested in the Buyer. Upon the occurrence of the closing and except as otherwise provided herein, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of title to the Assets acquired by the Buyer under the Purchase Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Assets to the Buyer.

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Motion, [ECF No. 770], is **GRANTED**.
2. The Receiver is authorized to sell the Assets, including, but not limited to the Owned Real Property and the Asset-Related Property, to the Buyer for the Purchase Price (the "Sale") pursuant to the Purchase Agreement.
3. The Purchase Agreement is **APPROVED**, and the parties thereto are authorized to immediately execute any documents and take any actions reasonably necessary to consummate the Sale.
4. The Assets being sold pursuant to the Purchase Agreement are as described in the Purchase Agreement and referenced herein.
5. The Buyer entered into the proposed sale without collusion, in good faith, and from an arm's length bargaining position.
6. Upon entry of this Order and compliance with the requirements to close set forth in the Purchase Agreement, the transfer of the Seller Entities' right, title, and interests in the Assets to the Buyer is in all respects a valid, legal and effective transfer of Assets to the Buyer, free and clear of all liens, claims, interests or encumbrances of any kind or nature whatsoever. Any liens, claims, interests, or encumbrances which may exist shall attach to the net proceeds of the sale of

the Assets in the order of their priority, with the validity, force, and effect that they now have, if any, against the Assets, subject to the rights, claims, defenses, and objections of the Receiver and all interested parties with respect to such liens, claims, interests, or encumbrances, and further subject to the terms of any order of this Court. Specifically, any rights and claims of interest by any investor are hereby terminated and extinguished and any investor claims shall be solely against the proceeds of the sale to be determined by future orders of the Court.

7. The sale of the Assets to the Buyer shall also be free and clear of any claims of successor liability. The Buyer, as the result of any action taken in connection with the purchase of the Assets, shall not be deemed to (a) be the successor of the Seller Entities; (b) have, *de facto* or otherwise, merged with or into the Seller Entities; (c) be a mere continuation or a substantial continuation of the Seller Entities or for payment of any benefit(s) accruing to the Seller Entities; (d) be a successor in interest to the Seller Entities under any theory of successor liability for employee-related claims against the Seller Entities and/or its principal brought under the Fair Labor Standards Act; or (e) be a successor of or to the Seller Entities for any other type of claims, interests or causes of action against the Seller Entities or the Assets of any kind whatsoever.

8. The sale and transactions contemplated by the Purchase Agreement are undertaken by the Buyer in good faith, and accordingly, the reversal or modification on appeal of the authorization for the Receiver and the Buyer to consummate the sale and any transactions related to the sale shall not affect the validity of the sale of the Assets to the Buyer or its assigns.

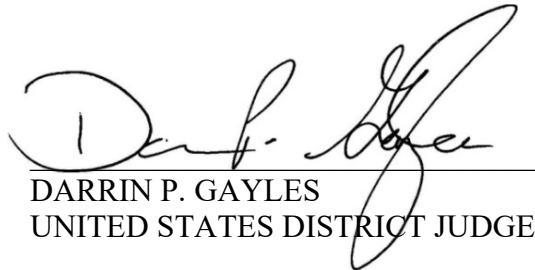
9. All other terms and conditions set forth in the Purchase Agreement are incorporated herein by reference. The failure to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety, as if fully set

forth herein. Notwithstanding the foregoing, in the event of any inconsistency or conflict between the terms of the Purchase Agreement and this Order, this Order shall control in all respects.

10. The Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments and modifications thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to: a) subject to the terms and conditions of the Purchase Agreement and this Order, compel delivery of the Assets to the Buyer or its assigns; b) compel delivery of the Purchase Price by the Buyer, or its assigns, or performance of other obligations of the Buyer, or its assigns, contained in the Purchase Agreement or agreements executed by the Receiver in connection therewith; c) compel performance of all obligations of the parties as identified in the Purchase Agreement; d) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein; e) interpret, implement, and enforce the provisions of this Order; and f) any such other relief as the Court deems just and proper.

11. The provisions of this Order shall be binding upon and inure to the benefit of the Buyer and the Receiver and their respective successors and assigns.

DONE AND ORDERED in Chambers at Miami, Florida, this 24th day of April, 2025.


DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record