

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM

)

MONDAY, THE 21st DAY

)

JUSTICE PEPALL

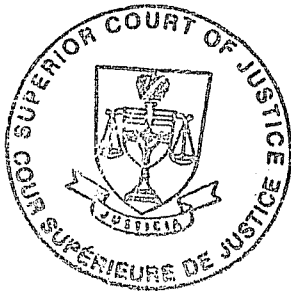
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OF DECEMBER, 2009

**IN THE MATTER OF SECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, C. B-3, AS AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE*
ACT, R.S.O. 1990, C. C. 43, AS AMENDED, AND SECTION 68 OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, C. C. 30, AS AMENDED**

BETWEEN:

WESTLB AG, TORONTO BRANCH



Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

COMMISSION CLAIMS PROCESS ORDER

THIS MOTION, made by Alvarez & Marsal Canada ULC ("A&M"), in its capacity as Court-appointed receiver and manager pursuant to section 101 of the *Courts of Justice Act* and trustee and receiver and manager under the *Construction Lien Act* (Ontario), and Alvarez & Marsal Canada Inc., (formerly McIntosh & Morawetz Inc.) in its capacity as interim receiver (the "Interim Receiver") pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (jointly and collectively, the "Receiver") of the undertaking, property and assets of The Rosseau Resort Developments Inc. ("RRDI"), for, *inter alia*, approval of a claims process (the "Commissions

Claims Process”) for the determination of the entitlements of Persons (as defined below) to the payment of unpaid real estate agency and brokerage commissions in order to enable the Receiver to carry out the distribution of Commission Funds as authorized by the Order of Justice Cumming dated July 8, 2009 (the “July 8 Order”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Eighth Report of the Receiver dated December 14, 2009 (the “Eighth Report) and the Affidavits of Service, filed; and on hearing the submissions of counsel for WestLB AG, Toronto Branch and the Receiver, independent counsel for the Receiver, counsel for the Ad Hoc Committee of Unit Owners and Representative Counsel, counsel for Marriott Hotels of Canada, Ltd., and counsel for CIT Financial Ltd., no one appearing for any other person on the service list,

SERVICE

1. THIS COURT ORDERS that the service of the Notice of Motion and the Motion Record in accordance with the Affidavits of Service of Wendy Robinson sworn December 17, 2009, and of Charlene Griffin sworn December 17, 2009 and December 18, 2009, filed, including the method and timing of notice, including to certain Unit Owners (as defined in the Eighth Report) by letter dated December 11, 2009 delivered by way of email and mail and/or courier, is hereby validated, and that service on any interested person other than those served is hereby dispensed with.

DEFINITIONS

2. THIS COURT ORDERS that for purposes of this Order the following terms shall have the following meanings:

- (i) “Amended and Restated Appointment Order” means the Order of the Court in this matter dated June 2, 2009;
- (ii) “Appointment Order” means the Order of the Court in this matter dated May 22, 2009;

- (iii) “Business Day” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (iv) “Commission Claim” means any right or claim of any Person for the payment by RRDI of unpaid real estate agency or brokerage commissions for agency or brokerage services rendered to RRDI by such Person prior to the Appointment Order in respect of the sale by RRDI of certain condominium units, to be distributed from the Commission Funds by the Receiver as authorised by paragraph 10 of the July 8 Order;
- (v) “Commission Claims Bar Date” means 4:00 p.m. (Toronto time) on February 28, 2010 or such later date as may be ordered by the Court;
- (vi) “Commission Claims Process” means the procedures outlined in this Order, including the Schedules;
- (vii) “Commission Creditor” means any Person having a Commission Claim;
- (viii) “Commission Funds” means those funds described as Commission Funds in the July 8 Order that have been paid to the Receiver by McCarthy Tetrault LLP in accordance with the July 8 Order, for distribution by the Receiver to Commission Creditors, upon the Receiver being satisfied that all Commission Claims to the Commission Funds have been proven;
- (ix) “Court” means the Ontario Superior Court of Justice (Commercial List);
- (x) “Known Commission Creditor” means a Person who the Receiver has notice or knowledge may have a Commission Claim either as may be disclosed to the Receiver by the books and records of RRDI, or otherwise become known to the Receiver;
- (xi) “Receiver’s Website” means www.alvarezandmarsal.com/rosseau;

- (xii) "Notice and Instruction Letter to Commission Creditors" means a notice and instruction letter informing Commission Creditors of this Commission Claims Process, substantially in the form attached hereto as Schedule "A";
- (xiii) "Notice of Dispute" means a notice delivered to the Receiver by a Commission Creditor disputing a Notice of Revision or Disallowance, which notice shall be substantially in the form attached hereto as Schedule "D" and shall set out the reasons for the dispute;
- (xiv) "Notice of Revision or Disallowance" means a notice informing a Commission Creditor that the Receiver has revised or disallowed such Commission Creditor's Commission Claim, which notice shall be substantially in the form attached hereto as Schedule "C" and shall set out the reasons for revision or rejection;
- (xv) "Person" means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, employee or other association, or similar entity, howsoever designated or constituted;
- (xvi) "Proof of Commission Claim" means a proof of claim filed by a Commission Creditor, substantially in the form attached as Schedule "B";
- (xvii) "Proven Commission Claim" means the amount and entitlement to a Commission Claim as defined at paragraph 17 below.

COMMISSION CLAIMS PROCESS

3. THIS COURT ORDERS AND DECLARES that the Commission Claims Process as set out herein is hereby approved.

THIS COURT ORDERS that the Receiver is hereby authorized and directed to implement and administer the Commission Claims Process, including the acceptance, revision, disallowance and/or settlement of any Commission Claims, and the Receiver may take any steps which it believes are incidental or necessary for the implementation of the Commission Claims Process.

The Receiver may seek advice and directions from the Court in respect of any aspect of this Commission Claims Process.

SOLICITATION OF COMMISSION CLAIMS

Notice to Commission Creditors

4. THIS COURT ORDERS that the Receiver shall send a copy of this Order, a Notice and Instruction Letter to Commission Creditors, and a Proof of Commission Claim, to all Known Commission Creditors on or before January 15, 2010.

5. THIS COURT ORDERS that the Receiver shall cause a notice of the Commission Claims Process substantially in the form of the Notice and Instruction Letter to Commission Creditors to be published in the *Globe and Mail (National Edition)* on or prior to January 15, 2010, and shall cause a copy of the Notice and Instruction Letter to Commission Creditors to be posted on the Receiver's Website from the date of this Commission Claims Order until the Claims Bar Date.

Commission Claims Bar

6. THIS COURT ORDERS that any Commission Creditor that wishes to assert a Commission Claim must file a Proof of Commission Claim, together with all relevant supporting documentation in respect of such Commission Claim, so that such Proof of Commission Claim is received by the Receiver by no later than the Commission Claims Bar Date.

7. THIS COURT ORDERS AND DIRECTS that in filing a Commission Claim with the Receiver, all Commission Creditors shall include:

- (a) a copy of any brokerage contract, listing agreement, or other form of agreement relating to the Commission Claim providing the basis on which such Commission Claim is asserted;
- (b) a copy of any invoice or statement of account in respect of such Commission Claim;

- (c) copies of any correspondence with RRDI or its affiliates related to such Commission Claim;
- (d) any other documents or information as the Receiver may reasonably request for the purpose of assessing and determining any Commission Claims in accordance with this Commission Claims Process Order.

8. THIS COURT ORDERS that any Commission Creditor who does not deliver a Proof of Commission Claim in respect of a Commission Claim to the Receiver by the Commission Claims Bar Date, shall be forever barred, estopped and enjoined from asserting such Commission Claim against RRDI, WestLB, Fortress, McCarthy Tetrault LLP or the Receiver and none of RRDI, WestLB, Fortress, McCarthy Tetrault LLP or the Receiver shall have any liability whatsoever in respect of such Commission Claim, and such Commission Claim shall be forever barred and extinguished.

DETERMINATION OF CLAIMS

9. THIS COURT ORDERS that the Receiver shall review each Proof of Commission Claim received by the Commission Claims Bar Date and may accept, revise or disallow the Commission Claim.

10. THIS COURT ORDERS that the Receiver is authorized to use reasonable discretion as to adequacy of compliance with respect to the manner in which Proofs of Commission Claim, Notices of Dispute, and other notices are completed and executed and may, where it is satisfied that a Commission Claim has been adequately filed or proven, waive strict compliance with the requirements of this Commission Claims Process as to completion and execution of Proofs of Commission Claim, Notices of Dispute, and other notices to be provided herein.

11. THIS COURT ORDERS that the Receiver may attempt to consensually resolve the entitlement to and the amount of any Commission Claim with the Commission Creditor prior to accepting, revising or disallowing such Commission Claim.

12. THIS COURT ORDERS that if the Receiver determines to revise or disallow a Commission Claim, the Receiver shall send a Notice of Revision or Disallowance to the Commission Creditor.

13. THIS COURT ORDERS that if a Commission Creditor disputes the determination of its Commission Claim by the Receiver as set forth in a Notice of Revision or Disallowance and such Commission Creditor intends to contest the Notice of Revision or Disallowance then such Commission Creditor shall deliver a Notice of Dispute so that such Notice of Dispute is received by the Receiver by no later than 5:00 p.m. (Toronto time) on the day which is ten (10) Business Days after the date of the Notice of Revision or Disallowance.

14. THIS COURT ORDERS that any Commission Creditor who fails to deliver a Notice of Dispute to the Receiver by the deadline set forth in paragraph 13 above shall be deemed to accept the determination of its Commission Claim by the Receiver as set out in the Notice of Revision or Disallowance and any revised Commission Claim as set out in the Notice of Revision or Disallowance shall constitute a Proven Claim.

15. THIS COURT ORDERS that upon receipt of a Notice of Dispute, the Receiver may:

- (i) attempt to consensually resolve the amount of the Commission Claim with the Commission Creditor; and/or
- (ii) schedule a motion to the Court to establish a process for resolving the Notice of Dispute, together with any other Notices of Dispute received by the Receiver in accordance with this Commission Claims Process Order as the Receiver may deem appropriate.

16. THIS COURT ORDERS that the amount and status of every Commission Claim of a Commission Creditor finally determined in accordance with the forms and procedures hereby authorized (a "Proven Claim"), including any determination as to nature, amount, value, priority or validity of any Commission Claim shall be final for all purposes.

NOTICES AND COMMUNICATION

17. THIS COURT ORDERS that any notice or communication required to be delivered pursuant to the terms of this Commission Claims Process Order shall be in writing and may be delivered by facsimile, digital or electronic transmission, personal delivery, courier or, as necessary, by prepaid mail addressed to the respective party.

18. THIS COURT ORDERS that in the event of any strike, lock-out or other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be delivered by facsimile, digital or electronic transmission, personal delivery or courier and any notice or other communication given or made by prepaid mail within the seven (7) day period immediately preceding the commencement of such interruption, unless actually received, shall be deemed not to have been delivered. All such notices and communications shall be deemed to have been received, in the case of notice by facsimile, digital or electronic transmission, personal delivery or courier prior to 5:00 p.m. (local time) on a Business Day, when received, if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day, and in the case of a notice mailed as aforesaid, on the second Business Day following the date on which such notice or other communication is mailed.

19. THIS COURT ORDERS that any document, notification or notice required to be delivered to the Monitor under this Commission Claims Process shall be delivered to:

Alvarez & Marsal Canada ULC as
Court-Appointed Receiver of the
Rosseau Resort Developments Inc.
Attention: Greg Karpel
Royal Bank Plaza, Suite 2900
Toronto, ON M5J 2J1
Tel: 416 -847-5170

Fax: 416-847- 5201

Email: gkarpel@alvarezandmarsal.com

GENERAL PROVISIONS

20. THIS COURT ORDERS that the Receiver, in addition to its prescribed rights and obligations under the Amended and Restated Appointment Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Order.

21. THIS COURT ORDERS that for the purposes of the Commission Claims Process, all Commission Claims which are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging the currency to Canadian dollars on the date of the Appointment Order.

22. THIS COURT ORDERS that the fees and expenses of the Receiver in administering this Commission Claims Process shall be payable out of the Commission Funds. This Court Orders that any interested party may apply to this Court to vary or amend this paragraph on no less than 5 days' notice to the Receiver and to any other party likely to be affected by the order sought.

23. THIS COURT ORDERS that references to the singular include the plural and to the plural include the singular.

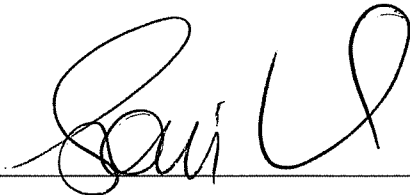
AID AND ASSISTANCE OF OTHER COURTS

24. THIS COURT HEREBY REQUESTS the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 21 2009

PER / PAR: 



SCHEDULE "A"

NOTICE AND INSTRUCTION LETTER TO COMMISSION CREDITORS of THE ROSSEAU RESORT DEVELOPMENTS INC (hereinafter referred to as "RRDI")

RE: NOTICE OF COMMISSION CLAIMS PROCESS FOR RRDI

PLEASE TAKE NOTICE that this Notice and Instruction Letter is being delivered pursuant to an Order of the Ontario Superior Court of Justice made December 21, 2009 (the "**Commission Claims Process Order**"). Defined terms not defined within this Notice and Instruction Letter have the meaning ascribed thereto in the Commission Claims Process Order.

By the Commission Claims Process Order, the Receiver has been authorized by the Ontario Superior Court of Justice to conduct a claims procedure to determine the Commission Claims of Commission Creditors.

Those Persons with claims against RRDI for unpaid real estate or brokerage commissions (a "**Commission Claim**") should have received Proof of Commission Claim packages, if those Commission Creditors are known to Alvarez & Marsal Canada ULC, receiver and manager of RRDI (the "**Receiver**"), as a result of a review of the books and records of RRDI, and if the Receiver has identified a current address in the books and records of RRDI. Commission Creditors may also obtain the Commission Claims Process Order and a Proof Commission of Claim package from the website of the Receiver at www.alvarezandmarsal.com/rosseau or by contacting the Receiver at the contact information noted below.

Proofs of Commission Claim must be submitted to the Receiver for any Commission Claim against RRDI, in each case where the Commission Claim arose on or prior to **May 22, 2009**. Please consult the Proof of Claim package for more details.

If you have any questions regarding the Commission Claims Process, please consult the website of the Receiver, or contact the Receiver at the address provided below.

All notices and enquiries with respect to the Commission Claims Process should be addressed to:

Alvarez & Marsal Canada ULC as
Court-Appointed Receiver of the
Rosseau Resort Developments Inc.
Attention: Greg Karpel
Royal Bank Plaza, Suite 2900
Toronto, ON M5J 2J1
Tel: 416-847-5170

Fax: 416-847-5201
Email: gkarpel@alvarezandmarsal.com

If you believe that you have a Commission Claim against RRDI, you will have to file a Proof of Claim with the Receiver. **The Proof of Commission Claim must be received by 4:00 p.m. (Toronto Time) on February 28, 2010, the Claims Bar Date.**

It is your responsibility to ensure that the Receiver receives your Proof of Commission Claim by the above-noted time and date.

**CLAIMS WHICH ARE NOT RECEIVED BY THE COMMISSION CLAIMS BAR DATE
WILL BE BARRED AND EXTINGUISHED FOREVER.**

DATED at Toronto this _____ day of December, 2009.

Alvarez and Marsal Canada ULC

In its capacity as Receiver and Manager of The Rosseau Resort Developments Inc., and not in its personal capacity.

SCHEDULE "B"

**PROOF OF COMMISSION CLAIM RELATING TO THE ROSSEAU RESORT
DEVELOPMENTS INC.**
(hereinafter referred to as the "RRDI")

Please read carefully the enclosed Notice and Instruction Letter for completing this Proof of Commission Claim.

A. PARTICULARS OF COMMISSION CREDITOR:

1. Full Legal Name of Commission Creditor:

(the "Commission Creditor").

2. Full Mailing Address of the Commission Creditor:

3. Telephone Number: _____

4. E-Mail Address: _____

5. Facsimile Number: _____

6. Attention (Contact Person): _____

B. PROOF OF COMMISSION CLAIM:

I, _____
[name of Commission Creditor or Representative of the Commission Creditor], of

_____ do hereby certify:
(city and province)

(a) that I [check (✓) one]

☐ am the Commission Creditor of RRDI; OR

☐ am _____ (state position or title) of

(name of creditor)

(b) that I have knowledge of all the circumstances connected with the Commission Claim referred to below;

(c) RRDI was and still is indebted to the Commission Creditor as follows:

(i) COMMISSION CLAIM ARISING ON OR PRIOR TO May 22, 2009:

\$ _____ [insert \$ value of claim] CAD.

(Commission Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as at May 22, 2009.)

C. PARTICULARS OF CLAIM:

Other than as already set out herein the particulars of the undersigned's total Claim are attached. (Please provide all particulars of the Commission Claim and all necessary supporting documentation, including:

(a) a copy of any brokerage contract, listing agreement, or other form of agreement relating to the Commission Claim providing the basis on which such Commission Claim is asserted;

(b) a copy of any invoice or statement of account in respect of such Commission Claim, and

- (c) copies of any correspondence with RRDI or its affiliates related to such Commission Claim.

You may be requested by the Receiver to provide any other documents or information as the Receiver may reasonably require for the purpose of assessing and determining any Commission Claims in accordance with the Commission Claims Process Order.)

This Proof of Commission Claim must be received by the Receiver by no later than 4:00 p.m. (Eastern Standard/Daylight Time) on February 28, 2010, by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission at the following address:

Alvarez & Marsal Canada ULC as
Court-Appointed Receiver of the
Rosseau Resort Developments Inc.
Attention: Greg Karpel
Royal Bank Plaza, Suite 2900
Toronto, ON M5J 2J1
Tel: 416 -847-5170

Fax: 416-847- 5201
Email: gkarpel@alvarezandmarsal.com

D. FILING OF CLAIM

Failure to file your Proof of Commission Claim as directed by 4:00 p.m., on February 28, 2010 (Toronto time) will result in your Commission Claim being barred and in you being prevented from making or enforcing a Commission Claim against RRDI, WestLB AG, Toronto Branch, Fortress Credit Corp., McCarthy Tetrault LLP, or the Receiver. In addition, you shall not be entitled to further notice in, and shall not be entitled to participate as a Commission Creditor in these proceedings.

Dated at _____ this _____ day of _____, 20 .

Signature of Commission Creditor

SCHEDULE "C"

REFERENCE NUMBER [●]

NOTICE OF REVISION OR DISALLOWANCE

TO: [insert name of Commission Creditor]

The Receiver hereby gives you notice that it has reviewed your Commission Claim and has revised or rejected your Claim as follows:

	The Proof of Commission Claim as Submitted	The Commission Claim as Accepted
A. Commission Claim relating to facts existing on or prior to May 22, 2009		

D. Reasons for Disallowance or Revision:

[insert explanation]

If you do not agree with this Notice of Revision or Disallowance, please take notice of the following:

If you dispute this Notice of Revision or Disallowance, you must, no later than 4:00 p.m. (Toronto time) on [INSERT DATE, being ten (10) days after the Notice of Disallowance is sent by the Receiver], notify the Receiver by delivery of a Dispute Notice in the form enclosed herewith.

If you do not deliver a Dispute Notice, your Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

SCHEDULE "D"

DISPUTE NOTICE

We hereby give you notice of our intention to dispute the Notice of Disallowance bearing Reference Number _____ and dated _____ issued in respect of our Commission Claim.

Reasons for Dispute (attach additional sheet and copies of all supporting documentation if necessary):

Name of Commission

Creditor _____

(Signature of individual completing this Dispute)

Date

(Please print name)

Telephone Number: () _____

E-mail Address: _____

Facsimile Number: () _____

Full Mailing Address _____

THIS FORM TO BE RETURNED BY PREPAID ORDINARY MAIL, COURIER, PERSONAL DELIVERY OR ELECTRONIC OR DIGITAL TRANSMISSION AND BE RECEIVED NO LATER THAN 4:00 P.M. (TORONTO TIME) ON [DATE] TO:

Alvarez & Marsal Canada ULC as
Court-Appointed Receiver of the
Rosseau Resort Developments Inc.

Attention: Greg Karpel
Royal Bank Plaza, Suite 2900
Toronto, ON M5J 2J1
Tel: 416 -847-5170

Fax: 416-847- 5201

Email: gkarpel@alvarezandmarsal.com

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**COMMISSION CLAIMS
PROCESS ORDER**

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Toronto, Ontario M5L 1A9

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Tel: (416) 863-2566
Fax: (416) 863-2653

Lawyers for WestLB, AG, Toronto Branch
and Alvarez & Marsal Canada ULC,
and Alvarez & Marsal Canada Inc. in their respective
capacities as Court-appointed receiver and manager,
trustee, and interim receiver