

TAB 3

Court File No. CV-09-8201-00CL

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

THE HONOURABLE MR.)	MONDAY, THE 30 TH DAY
)	
JUSTICE CAMPBELL)	OF MAY, 2011

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

ORDER

THIS MOTION, made by Alvarez & Marsal Canada ULC, in its capacity as Court-appointed receiver and manager pursuant to section 101 of the *Courts of Justice Act* (Ontario) and trustee and receiver and manager under the *Construction Lien Act* (Ontario), and Alvarez & Marsal Canada Inc., in its capacity as interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (jointly and collectively, the “**Receiver**”), of the undertaking, property and assets (the “**Assets**”) of The Rosseau Resort Developments Inc. (“**RRDI**”), for an Order:

- (a) abridging the time for service of this Notice of Motion and Motion Record, if necessary, validating service of the Notice of Motion and Motion Record, and dispensing with further service thereof;
- (b) authorizing and approving the execution and delivery of an amended and restated settlement agreement (the “**Settlement Agreement**”) by the Receiver, on behalf of RRDI, in substantially the form attached as Appendix “B” to the Nineteenth Report of the Receiver dated May 25, 2011 (the “**Nineteenth Report**”);
- (c) authorizing the Receiver to consent, on behalf of RRDI, in its capacities as both a unit owner (“**Unit Owner**”) and Declarant of the Muskoka Standard Condominium Corporation No. 62 (the “**Condominium Corporation**”), to an amendment to the Condominium Corporation’s declaration (the “**Declaration**”), in substantially the form attached as **Appendix “C”** to the Nineteenth Report, for purposes of implementing the Fresh Start Approach (as such term is defined in the Nineteenth Report);
- (d) authorizing the Receiver, on behalf of RRDI, to agree to amendments to the new forms of Rental Pool Management Agreements (the “**New RPMA**”) substantially as set out in the Settlement Agreement, for purposes of implementing the RPMA Resolution (as defined in the Nineteenth Report), conditional on the closing of an agreement of purchase and sale with a purchaser approved by the Court who wishes to implement the RPMA Resolution;
- (e) authorizing the Receiver to consent, on behalf of RRDI, in its capacities as both Unit Owner and Declarant of the Condominium Corporation, to an amendment to the Declaration of the Condominium Corporation, in substantially the form attached as **Appendix “D”** to the Nineteenth Report, for purposes of implementing the RPMA Resolution, conditional on the closing of an agreement of purchase and sale with a purchaser approved by the Court who wishes to implement the RPMA Resolution;
- (f) sealing Confidential Exhibit “1” to the Nineteenth Report;

- (g) approving the Nineteenth Report and the conduct and activities of the Receiver as described therein; and
- (h) such further and other relief as counsel may request and this Honourable Court deems just,

was heard this day, at 330 University Avenue, Toronto, Ontario.

ON READING the Nineteenth Report, the affidavit[s] of service of [name(s)], sworn May ●, 2011, (the “**Affidavit[s] of Service**”), filed, and on hearing the submissions of counsel for WestLB AG, New York Branch and the Receiver, and independent counsel for the Receiver, no one else appearing,

1. **THIS COURT ORDERS AND DECLARES** that capitalized terms not otherwise defined in this Order have the same meaning as in the Nineteenth Report.
2. **THIS COURT ORDERS AND DECLARES** that service of the Notice of Motion and the Motion Record in accordance with the Affidavits of Service, including the method and timing of notice, and service to the service list by way of email and courier, shall be and is hereby abridged and validated, so that this Motion is properly returnable today and any further service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.
3. **THIS COURT ORDERS** that the Settlement Agreement and the execution and delivery thereof by the Receiver, on behalf of RRDI, in substantially the form attached as Appendix “B” to the Nineteenth Report is hereby authorized and approved.
4. **THIS COURT ORDERS** that the Receiver is authorized to consent, on behalf of RRDI, in its capacities as both Unit Owner and Declarant of the Condominium Corporation, to an amendment to the Declaration of the Condominium Corporation, in substantially the form attached to the Nineteenth Report as Appendix “C”, for purposes of implementing the Fresh Start Approach.
5. **THIS COURT ORDERS** that the Receiver, on behalf of RRDI, is authorized to agree to amendments to the New RPMA substantially as set out in the Settlement Agreement, for

purposes of implementing the RPMA Resolution, conditional on the closing of an agreement of purchase and sale with a purchaser approved by the Court who wishes to implement the RPMA Resolution.

6. **THIS COURT ORDERS** that the Receiver is authorized to consent, on behalf of RRDI, in its capacities as both Unit Owner and Declarant of the Condominium Corporation, to an amendment to the Declaration of the Condominium Corporation, in substantially the form attached as Appendix "D" to the Nineteenth Report, for purposes of implementing the RPMA Resolution, conditional on the closing of an agreement of purchase and sale with a purchaser approved by the Court who wishes to implement the RPMA Resolution.

7. **THIS COURT ORDERS** that the Releases (as defined in the Settlement Agreement) are hereby approved, and declared to be binding upon each of the parties and effective on the date that the Releases are released from escrow in accordance with the Settlement Agreement.

8. **THIS COURT ORDERS** that Confidential Exhibit "1" to the Nineteenth Report be and is hereby sealed pending further order of the Court.

9. **THIS COURT ORDERS AND CONFIRMS** that the Set-Off Motion shall be deemed to be settled and withdrawn on the date of satisfaction of the conditions in paragraph 10 of the Settlement Agreement. If the conditions in paragraph 10 of the Settlement Agreement are not satisfied, the Set-Off Motion may be brought on again for hearing on 30 days notice to the Condominium Corporation and the Non-RRDI Directors.

10. **THIS COURT ORDERS** that the Nineteenth Report and the conduct and activities of the Receiver as described therein are hereby approved.

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.C. 1990, C. C. 43, AS AMENDED, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, C. C. 30, AS AMENDED
WESTLB AG, TORONTO BRANCH V. THE ROSSEAU RESORT DEVELOPMENTS INC.

Applicant

Respondent

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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