

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

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

B E T W E E N:

WESTLB AG, TORONTO BRANCH

Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**MOTION RECORD
(Motion returnable August 28, 2009)**

August 21, 2009

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INDEX

INDEX

<u>DOCUMENT</u>	<u>TAB</u>
Notice of Motion	1
Draft Order	A
Sixth Report to Court of the Receiver dated August 21, 2009 – Filed Separately	2

TAB 1

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

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

B E T W E E N:

WESTLB AG, TORONTO BRANCH

Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**NOTICE OF MOTION
(returnable August 28, 2009)**

Miller Thomson LLP as appointed as representative counsel pursuant to the Order of the Honourable Madam Justice Pepall dated August 20, 2009 (“**Representative Counsel**”) and 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 McIntosh & Morawetz Inc., in its capacity as interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, of the undertaking, assets and property of The Rosseau Resort Developments Inc. (“**RRDI**”) (jointly and collectively, the “**RRDI Receiver**” and together with Representative Counsel, the “**Moving Parties**”) will make a joint motion to a judge of the Commercial List on Friday, August 28, 2009 at 10:00 a.m. or as soon after that time as the motion can be heard, at the courthouse at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard: orally.

THE MOTION IS FOR AN ORDER:

- (a) appointing Alvarez & Marsal Canada ULC as receiver (in such capacity as “**RRMSI Receiver**”) without security, of all right, title and interest of The Rosseau Resort Management Services Inc. (“**RRMSI**”) in and to:

i) The Amended and Restated Hotel Management Agreement between RRDI, RRMSI, and Marriot Hotels of Canada, Ltd. ("**Marriot**") dated October 6, 2006 (the "**Current HMA**") relating to the operation of the 221 unit condominium hotel located on property on Lake Rosseau, Muskoka, Ontario (the "**Hotel**");

ii) all existing Rental Pool Management Agreements (the "**Current RPMAs**") between RRMSI and current owners (the "**Unit Owners**") of certain condominium units at the Hotel (the "**Units**") and existing purchasers of Units who have not closed outstanding agreements of purchase of sale with RRDI (the "**Existing Unit Purchasers**") (together the "**Unitholders**");

iii) an International Services Agreement between RRDI, RRMSI and International Hotel Licensing Company S.a.r.l, an affiliate of Marriot ("**IHLC**") dated October 6, 2006, a Royalty and Licensing Agreement between RRDI, RRMSI and IHLC dated October 6, 2006, and any other related agreements, if any, between RRMSI and Marriot or its affiliates (collectively the "**Other Marriot Agreements**"); and

iv) any other arrangements or agreements verbal or otherwise between RRMSI and any of RRDI, Unit Owners or Existing Unit Purchasers in respect of the Hotel, including without limitation, the delegation by RRDI to RRMSI of the role of rental pool manager in respect of the Units, (collectively the "**Related Hotel Agreements**");

on the terms in a draft order filed herewith;

(b) approving the Sixth Report of the RRDI Receiver to the Court dated August 21, 2009 (the "**Sixth Report**") and the conduct and activities of the RRDI Receiver described therein;

(c) if necessary, an Order abridging the time for bringing this motion and dispensing with any further service of this Motion Record; and

(d) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. On August 18, 2009 an Order was made in these proceedings (the “**August 18 Order**”) whereby, among other things, the Court authorised the RRDI Receiver to repudiate the Current HMA and the delegation of the role of rental pool manager to RRMSI, and approved a new form of Rental Pool Management Agreement for execution by all Unitholders, as well as new purchasers of Units, which are necessary for the effective management of the Hotel, the sale of the unsold Units of the Hotel, and the sale of the residual interest of RRDI in the Hotel;
2. As noted in the Sixth Report and prior reports to the Court, it is necessary to address RRMSI’s role in the affairs of the Hotel in order to properly administer the estate of RRDI;
3. To date RRMSI has refused to agree to either assign its rights in the Current RPMAs to RRDI or consent to the termination of the Current RPMAs;
4. The receivership of RRMSI would provide a means, under the supervision of the Court, to deal with the consequences of the Court-authorized repudiation by the RRDI Receiver of the delegation to RRMSI of the role of rental pool manager, and the Court-authorized repudiation by the RRDI Receiver of the Current HMA;
5. For the reasons described in the Sixth Report, it is just and convenient to appoint a receiver of RRMSI who can be directed by the Court to repudiate the Current RPMAs, to release all Unitholders from any claims associated with those agreements, and to repudiate the Current HMA with Marriot;
6. section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended; and
7. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Sixth Report;
2. the Second Report of the RRDI Receiver dated July 3, 2009 and the Supplementary Report to the Second Report of the RRDI Receiver dated July 7, 2009;

3. the Fourth Report of the RRDI Receiver dated August 12, 2009 and the Supplementary Report to the Fourth Report dated August 14, 2009; and
4. such further and other material as counsel may advise and this Honourable Court permit.

August 21, 2009

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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

WestLB AG, Toronto Branch v. The Rosseau Resort Developments Inc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**NOTICE OF MOTION
(RETURNABLE August 28, 2009)**

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TAB A

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE MADAM) FRIDAY, THE 28th DAY
JUSTICE PEPALL) OF AUGUST, 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**

B E T W E E N:

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Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

ORDER

THIS MOTION, made jointly by Miller Thomson LLP as representative counsel appointed pursuant to the Order of the Honourable Madam Justice Pepall dated August 20, 2009 (“**Representative Counsel**”) and Alvarez & Marsal Canada ULC, in its capacity as Court-appointed receiver and manager pursuant to section 101 of the *Courts of Justice Act* (Ontario) (“**CJA**”) and trustee and receiver and manager under the *Construction Lien Act* (Ontario), and McIntosh & Morawetz Inc., in its capacity as interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), of the undertaking, assets and property (the “**Assets**”) of The Rosseau Resort Developments Inc. (“**RRDI**”) (jointly and collectively, the “**RRDI Receiver**” and together with Representative Counsel, the “**Moving Parties**”), for an Order pursuant to section 101 of the CJA appointing Alvarez & Marsal Canada ULC as receiver (the “**RRMSI Receiver**”) without security, of all of the rights, titles and interests of The Rosseau

Resort Management Services Inc. (“**RRMSI**”) in and to (i) the Amended and Restated Hotel Management Agreement between RRDI, RRMSI and Marriott Hotels of Canada, Ltd. (“**Marriott**”) dated October 6, 2006 (the “**Current HMA**”), relating to the operation of the 221 unit condominium hotel located on property on Lake Rosseau, Muskoka, Ontario (the “**Hotel**”) and (ii) all existing Rental Pool Management Agreements (the “**Current RPMAs**”) between RRMSI and current owners (the “**Unit Owners**”) of condominium units at the Hotel (“**Units**”) and existing purchasers of Units who have not yet closed outstanding agreements of purchase and sale with RRDI (the “**Existing Unit Purchasers**”); (iii) an International Services Agreement between RRDI, RRMSI and International Hotel Licensing Company S.a.r.l, an affiliate of Marriott (“**IHLC**”) dated October 6, 2006, a Royalty and Licensing Agreement between RRDI, RRMSI and IHLC dated October 6, 2006, and any other related agreements, if any between RRMSI and Marriott or its affiliates (collectively, the “**Other Marriott Agreements**”); (iv) any other arrangements or agreements verbal or otherwise between RRMSI and any of RRDI, Unit Owners or Existing Unit Purchasers in respect of the Hotel including, without limitation, the delegation by RRDI to RRMSI of the role of rental pool manager in respect of the Units (collectively, the “**Related Hotel Agreements**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Moving Parties’ Motion Record, the Sixth Report to Court of the RRDI Receiver dated August 21, 2009, the Second Report to Court of the RRDI Receiver dated July 3, 2009, the Supplementary Report to the Second Report of the RRDI Receiver dated July 7, 2009, the Fourth Report of the RRDI Receiver dated August 12, 2009, the Supplementary Report to the Fourth Report of the RRDI Receiver dated August 14, 2009, and \diamond and on hearing the submissions of Representative Counsel, counsel for Alvarez & Marsal Canada ULC as proposed RRMSI Receiver and independent counsel to the RRDI Receiver, counsel for WestLB AG, Toronto Branch and the RRDI Receiver, counsel for the Ad Hoc Committee of Unit Owners, counsel for Marriott, counsel for Colin Davies, counsel for certain Existing Unit Purchasers, counsel for Fortress Credit Corp., counsel for RRMSI, and no one appearing for any other person on the service list, and on reading the consent of Alvarez & Marsal Canada ULC to act as the RRMSI Receiver,

SERVICE

1. THIS COURT ORDERS that the time and manner of service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, Alvarez & Marsal Canada ULC is hereby appointed RRMSI Receiver, without security, of all of the rights, titles and interests of RRMSI in and to the Current HMA, the Current RPMAs, the Other Marriott Agreements and the Related Hotel Agreements, including all proceeds and claims in respect thereof (the “**Property**”).

RECEIVER’S POWERS

3. THIS COURT ORDERS that, subject to the overriding provisions of paragraph 4, the RRMSI Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the RRMSI Receiver is hereby expressly empowered and authorized to do any of the following where the RRMSI Receiver considers it necessary or desirable:

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (c) to receive and collect all monies and accounts now owed or hereafter owing to RRMSI and to exercise all remedies of RRMSI in collecting such monies, including, without limitation, to enforce any security held by RRMSI in connection with the Property;
- (d) to settle, extend or compromise any indebtedness owing to RRMSI;

- (e) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the RRMSI Receiver's name or in the name and on behalf of RRMSI, for any purpose pursuant to this Order;
- (f) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property or the RRMSI Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the RRMSI Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the RRMSI Receiver deems advisable;
- (h) that prior to the Effective Time (as defined below) to alter, modify, amend, or change the terms, conditions and provisions of the Property or to accept any surrender, repudiation, cancellation or termination of same; and
- (i) to take any steps reasonably incidental to the exercise of these powers; and

and in each case where the RRMSI Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including RRMSI, and without interference from any other Person.

4. THIS COURT ORDERS that the RRMSI Receiver be and is hereby authorized and directed to repudiate the Current HMA, the Current RPMAs, the Other Marriott Agreements and the Related Hotel Agreements upon written notice by the RRMSI Receiver to the respective counter-parties to be effective as of a date and time as set out in such written notice (the “**Effective Time**”) and to grant full and absolute releases to all Unit Owners and Existing Unit

Purchasers with respect to any and all claims of any nature whatsoever which RRMSI now has or could have with respect to any agreements as described above in this paragraph 4.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) RRMSI, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the RRMSI Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the RRMSI Receiver, and shall deliver all such Property to the RRMSI Receiver upon the RRMSI Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the RRMSI Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of RRMSI related to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the RRMSI Receiver or permit the RRMSI Receiver to make, retain and take away copies thereof and grant to the RRMSI Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the RRMSI Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the RRMSI Receiver for the purpose of allowing the RRMSI Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving

and copying the information as the RRMSI Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the RRMSI Receiver. Further, for the purposes of this paragraph, all Persons shall provide the RRMSI Receiver with all such assistance in gaining immediate access to the information in the Records as the RRMSI Receiver may in its discretion require including providing the RRMSI Receiver with instructions on the use of any computer or other system and providing the RRMSI Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the RRMSI Receiver except with the written consent of the RRMSI Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Property shall be commenced or continued except with the written consent of the RRMSI Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Property are hereby stayed and suspended pending further Order of this Court, provided that nothing in this Order stays or effects the Amended Order of the Honourable Madam Justice Pepall made on August 18, 2009 in these proceedings.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the RRMSI Receiver, or affecting or in respect of the Property, are hereby stayed and suspended except with the written consent of the RRMSI Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the RRMSI Receiver or RRMSI to carry on any business which RRMSI is not lawfully entitled to carry on, (ii) exempt the RRMSI Receiver or RRMSI from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or related to or in respect of the Property, without written consent of the RRMSI Receiver or leave of this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the RRMSI Receiver in respect of the Property from and after the making of this Order from any source whatsoever, including without limitation the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the RRMSI Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the RRMSI Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that this Order has no application to employees of RRMSI, if any, who shall remain the employees of RRMSI and the RRMSI Receiver shall have no authority or liability in respect of such, employees, if any.

LIMITATION ON THE RECEIVER'S LIABILITY

14. THIS COURT ORDERS that the RRMSI Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the RRMSI Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

15. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the RRMSI Receiver, including the fees of the RRMSI Receiver and the fees and

disbursements of its legal counsel, incurred at the standard rates and charges of the RRMSI Receiver and its counsel, shall be allowed to it in passing its accounts and RRMSI Receiver shall be entitled to the benefit of the Receiver's Charge over the assets of RRDI created by the Order of the Honourable Madam Justice Pepall made on June 2, 2009 in these proceedings, *pari passu* with the RRDI Receiver.

16. THIS COURT ORDERS that the RRMSI Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the RRMSI Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. THIS COURT ORDERS that prior to the passing of its accounts, the RRMSI Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the RRMSI Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

GENERAL

18. THIS COURT ORDERS that the RRMSI Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

19. THIS COURT ORDERS that nothing in this Order shall prevent the RRMSI Receiver from acting as a trustee in bankruptcy of RRMSI.

20. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the RRMSI Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the RRMSI Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the RRMSI Receiver and its agents in carrying out the terms of this Order.

21. THIS COURT ORDERS that the RRMSI Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

22. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the RRMSI Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Court File No. CV-09-8201-00CL
WESTLB AG, TORONTO BRANCH
Applicant

V. THE ROSSEAU RESORT DEVELOPMENTS INC.
Respondent

ONTARIO

SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

ORDER

(August 21, 2009)

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TAB 2

SIXTH REPORT OF THE RECEIVER TO BE SERVED SEPARATELY

ONTARIO

SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

(Motion returnable August 28, 2009)

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