

# 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**

BETWEEN:

**WESTLB AG, TORONTO BRANCH**

Applicant

and

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

**NOTICE OF MOTION  
(Returnable September 30, 2011)**

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* (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**”), and A&M in its capacity as Court-appointed receiver of certain assets of The Rosseau Resort Management Services Inc. (the

**“RRMSI Receiver”**) will make a motion to a Judge of the Commercial List at 10:00 a.m. on September 30, 2011, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

All terms not otherwise defined herein shall have the meanings given to them in the Twenty-Third Report of the Receiver and the Second Report of the RRMSI Receiver dated September 16, 2011 (the **“Report”**).

**PROPOSED METHOD OF HEARING:** The motion will be heard orally.

**THE MOTION IS FOR AN ORDER** substantially in the form attached hereto as Schedule “A”:

- (a) validating service of the Notice of Motion and Motion Record, and dispensing with further service thereof;
- (b) authorizing and directing Blakes to pay over to Sullivan Mahoney LLP, in trust, the sum of \$11,410.26 currently held in trust by Blakes in respect of fees relating to the Resort Association collected from purchasers who purchased units in the One-Day Sale, to be held pending the determination of entitlement to such funds, whether pursuant to an agreement between the Purchaser and the Resort Association with respect to such funds, or Court order;
- (c) authorizing and directing the Receiver to pay over to Sullivan Mahoney LLP, in trust, the sum of \$3,263.58 currently held in trust by the Receiver, pursuant to paragraph 8(e) of the December 21 Order, on account of certain entry fees payable by certain Unit Owners in respect of the Resort Association, to be held

pending the determination of entitlement to such funds, whether pursuant to an agreement between the Purchaser and the Resort Association with respect to such funds, or Court order;

- (d) authorizing and directing the Receiver to pay over to the Condominium Corporation the Common Expense Subsidies in the amount of \$20,551.13 currently held in trust by the Receiver pursuant to paragraph 8(c) of the December 21 Order that it is holding for the benefit of one Unit Owner from whom no direction with respect to such funds has been received by the Receiver, to be held in trust by the Condominium Corporation on behalf of that Unit Owner in respect of and to be applied by the Condominium Corporation to that Unit Owner's future common expense obligations as incurred;
- (e) authorizing the Receiver to pay over to the Modified Sale/Leaseback Unit Owners, in accordance with their entitlements, the aggregate amount of \$14,019.42 currently held in trust by the Receiver pursuant to paragraph 8(d) of the December 21 Order in respect of future realty taxes, telecommunications services and entry fees for those Units;
- (f) directing the payment out of Court of the sum of \$87,428 which had been paid into Court by RRDI pursuant to the Order of the Honourable Mr. Justice T.M. Wood dated April 9, 2009 in respect of a construction lien claim which had been registered by Rock Solid, by way of (i) payment to Rock Solid of \$20,000, and (ii) payment of the balance to the Receiver for distribution to WestLB, subject to

a reserve of \$7,500; and dismissing without costs the action in Court File No. CV-09-48-00 commenced at Bracebridge;

- (g) authorizing the Receiver to pay to MT the sum of \$47,000 on account of fees and disbursements and taxes incurred in its respective capacities as Representative Counsel for certain Unit Owners and counsel to the Ad Hoc Committee;
- (h) authorizing the Receiver to deliver the Contact List to the Purchaser, subject to restrictions on the use of such information by the Purchaser;
- (i) confirming, *nunc pro tunc*, the Master's Report dated May 16, 2011 in respect of the Reference directed by the Court by Orders dated October 14, 2009 and April 21, 2010;
- (j) approving the distribution of the remaining proceeds available in the estate of RRDI in accordance with the Receiver's Distribution Summary appended at Appendix "B" to the Report, subject to a Professional Fees Holdback in the amount of \$350,000 and a Reserve in the amount of \$241,686 to pay the Remaining Disbursements of the receivership proceedings, particularly in respect of certain remaining duties as set out in the draft discharge Order;
- (k) approving the activities of the Receiver as set out in the Report;
- (l) approving the activities of the RRMSI Receiver as set out in the Report;
- (m) discharging the Receiver in its respective capacities as Receiver and Manager, Interim Receiver, and Trustee of the Assets of RRDI, upon the filing of a

certificate by the Receiver with the Court, subject to certain remaining duties as set out in the draft discharge Order;

- (n) discharging the RRMSI Receiver effective immediately upon the Court granting the discharge Order;
- (o) releasing the Receiver, the RRMSI Receiver and other parties from any and all liability upon the granting of the discharger Order;
- (p) other relief related and ancillary to the above; and
- (q) such further and other relief as counsel may request and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) The sale of the Purchased Assets closed on August 23, 2011;
- (b) As described in the Report, the Receiver has been engaged in finalizing or resolving various matters in the receivership in order to be in a position to apply for its discharge. The relief sought will facilitate the completion of matters and the granting of the requested discharges of the Receiver and the RRMSI Receiver;

*Funds in Trust*

- (c) The Receiver and Blakes are holding a variety of funds in trust as a result of certain transactions and various steps that were taken in the receivership. As the Receiver is seeking its discharge and will no longer be in a position to administer

these funds, the Receiver proposes that these amounts be distributed to the various appropriate parties as outlined in the Report;

*Rock Solid Settlement*

- (d) The respective claims of Rock Solid and WestLB to funds paid into Court in respect of Rock Solid's construction lien claim have been resolved by the parties, and the requested Order is required in order to facilitate the settlement;

*Fees of MT*

- (e) The Receiver has resolved a claim by MT to the payment by the Receiver of fees and disbursements and applicable taxes incurred by MT in respect of retainers that were authorized by the Court, for which the Receiver requires the Court's further authorization;

*Contact List*

- (f) The Purchaser has requested the Contact List from the Receiver, which the Receiver is prepared to deliver, subject to an Order authorizing its delivery and restricting its use to comply with the *Personal Information Protection and Electronic Documents Act*;

*Master's Report*

- (g) The Master's Report was issued by Master Short and entered prior to its confirmation by the Court, as required by the *Rules of Civil Procedure*. The

Receiver requests its confirmation by the Court *nunc pro tunc* in order to comply with the Rules;

*Distribution*

- (h) The Receiver has filed a Distribution Summary disclosing the final amounts available for distribution to WestLB, subject to the Professional Fees Holdback and the Reserve. It is appropriate that these funds be distributed to WestLB;

*Discharge*

- (i) Upon completing the matters for which relief is requested herein, including the distribution of proceeds in the estate, the Receiver will have substantially completed all matters in the receivership, subject to certain remaining duties for which specific authority has been provided in the draft Order filed. It is appropriate at this stage to grant the Receiver's discharge;
- (j) The RRMSI Receiver has completed all matters in the RRMSI receivership, and it is appropriate at this stage to grant the RRMSI Receiver's discharge;

*Release*

- (k) It is appropriate to grant the requested releases in order to provide certainty and finality in the receivership;
- (l) the grounds as more particularly set out in the Report; and



- (m) 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:

- (a) The Pleadings and proceedings herein;
- (b) The Report; and
- (c) such further and other material as counsel may advise and this Honourable Court permit.

Date: September 16, 2011

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Receiver of The Rosseau Resort Developments  
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Receiver of The Rosseau Resort Developments  
Inc. and Receiver of certain assets of The  
Rosseau Resort Management Services Inc.

**TO: THE ATTACHED SERVICE LIST**

**AND TO: INDIVIDUAL UNIT OWNERS OF EIGHTY-NINE CONDOMINIUM  
UNITS AT THE EMAIL ADDRESS FOR EACH UNIT OWNER  
MAINTAINED BY THE RECEIVER IN ITS RECORDS FROM TIME TO  
TIME, PURSUANT TO THE ORDER OF THE HONOURABLE MR.  
JUSTICE CAMPBELL DATED JULY 5, 2011**

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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.

Applicant

Respondent

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Returnable September 30, 2011)**

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## **TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) FRIDAY, THE 30<sup>th</sup> DAY  
 )  
JUSTICE CAMPBELL ) OF SEPTEMBER, 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**

B E T W E E N:

**WESTLB AG, TORONTO BRANCH**

Applicant

and

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

**DISCHARGE 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* (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**”) and by A&M in its capacity as receiver of certain assets of The Rosseau Resort Management Services Inc. (“**RRMSI**”) (the “**RRMSI Receiver**”) for an Order in respect of the discharge of the Receiver and the RRMSI Receiver, and various matters ancillary thereto, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Twenty-Third Report of the Receiver and the Second Report of the RRMSI Receiver (the “**Report**”), and on hearing the submissions of counsel for the Receiver and the RRMSI Receiver and counsel for WestLB AG, New York Branch (“**WestLB**”), independent counsel for the Receiver and the RRMSI Receiver, and counsel for [], no one appearing for any other person on the service list, although served as evidenced by the Affidavit(s) of [NAME] sworn [DATE] (the “**Affidavits of Service**”), filed;

1. **THIS COURT ORDERS** that all capitalized terms in this Order not otherwise defined herein shall have the meaning ascribed to them in the Report.
2. **THIS COURT ORDERS AND DECLARES** that service of the Notice of Motion and the Motion Record on the service list by way of email and courier in accordance with the Affidavits of Service, including the method and timing of notice, shall be and is hereby validated, and that service of the motion on each individual Unit Owner by way of email of a copy of the Notice of Motion to the email address for each Unit Owner maintained by the Receiver in its records from time to time pursuant to the Order of Mr. Justice Campbell dated July 5, 2011, shall be and is hereby validated, so

that this Motion is properly returnable today and any further service thereof upon any interested party other than the persons served is hereby dispensed with.

**Resort Association Fees**

3. **THIS COURT ORDERS** that Blakes is authorized and directed to pay over to counsel for the Purchaser, Sullivan Mahoney LLP, in trust, the funds currently held in trust by Blakes in the amount of \$11,410.26 in respect of fees relating to the Resort Association collected from purchasers who purchased Units in the One-Day Sale, to be held pending the determination of entitlement to such funds, whether pursuant to an agreement between the Purchaser and the Resort Association with respect to such funds or Court order. Upon such payment, Blakes and the Receiver shall be released and discharged from any and all obligations and claims in respect of such funds.

4. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay over to Sullivan Mahoney LLP, in trust, the sum of \$3,263.58 currently held in trust by the Receiver in accordance with paragraph 8(e) of the December 21 Order on account of entry fees payable by certain Unit Owners to the Resort Association, to be held pending the determination of entitlement to such funds, whether pursuant to an agreement between the Purchaser and the Resort Association or Court order. Upon such payment, the Receiver shall be released and discharged from any and all obligations and claims in respect of such funds.



**Common Expense Subsidies Trust Funds**

5. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay over to the Condominium Corporation the Common Expense Subsidies in the amount of \$20,551.13 currently held in trust by the Receiver pursuant to paragraph 8(a) of the December 21 Order, for the benefit of one Unit Owner, to be held in trust by the Condominium Corporation on behalf of such Unit Owner and to be applied by the Condominium Corporation to such Unit Owner's future common expense obligations to the Condominium Corporation as incurred. Upon such payment, the Receiver shall be released and discharged from any and all obligations and claims in respect of such funds.

**Modified Sale/Leaseback Trust Funds**

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay to two Modified Sale/Leaseback Unit Owners in accordance with their entitlements the aggregate amount of \$14,019.42 currently held in trust by the Receiver pursuant to paragraph 8(d) of the December 21 Order in respect of future realty taxes, telecommunications services, and entry fees payable by such Modified Sale/Leaseback Unit Owners in respect of their respective Units. Upon such payments, the Receiver shall be released and discharged from any and all obligations and claims in respect of such funds.

**Rock Solid Lien Settlement**

7. **THIS COURT ORDERS AND DIRECTS** the Accountant of the Superior Court of Justice for Ontario to pay out of Court the sum of \$87,428.00 which had been

paid by RRDI into Court in Court File No. CV-09-48-00, commenced at Bracebridge (the “**Rock Solid Action**”) pursuant to the Order of the Honourable Mr. Justice T.M. Wood dated April 9, 2009 in respect of a construction lien claim by 1569243 Ontario Inc. carrying on business as Rock Solid Granite Tops, plus any accrued interest, as follows:

- (i) payment of the sum of \$20,000 to Daniel J. Wyjad in trust, and
- (ii) payment of the balance plus any accrued interest to the Receiver.

The Receiver shall reserve from the amount paid to it the sum of \$7,500, pending the determination of entitlement to such amount as between WestLB and Parry Sound Glass Limited, carrying on business as Ross Windows and Doors, either by way of agreement or Order in the Construction Lien Claims Process. The Rock Solid Action is hereby dismissed without costs.

#### **Miller Thomson LLP Fees and Discharge as Representative Counsel**

8. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay out of the proceeds of the estate of RRDI to Miller Thomson LLP (“**MT**”) the sum of \$47,000 on account of certain fees and disbursements, inclusive of GST/HST, incurred by MT in its capacity as Representative Counsel and as counsel to the Ad Hoc Committee in respect of matters identified at paragraph 12 of the August 18 Order and paragraph 4 of the August 20 Order (the “**Unit Owner Matters**”). Such payment shall be in full and final settlement of all claims by MT and or any Unit Owner for payment to MT by the Receiver of the fees and disbursements in respect of the Unit Owner Matters,

and upon such payment the Receiver and RRDI shall have no further obligation with respect thereto.

9. **THIS COURT ORDERS** that MT is hereby discharged as Representative Counsel.

#### **Contact List**

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser the personal information contained in the Contact List. The Purchaser shall maintain and protect the privacy of such information and shall only be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Receiver and/or RRDI, namely, the identification and solicitation of potential purchasers of Units.

#### **Reference Proceedings**

11. **THIS COURT ORDERS** that the Master's Report arising from the Reference directed by Orders of Madam Justice Pepall dated October 14, 2009 and April 21, 2010, is hereby confirmed *nunc pro tunc* as of May 16, 2011.

#### **Distribution**

12. **THIS COURT ORDERS** that subject to the Professional Fees Holdback and the Reserve, the Receiver is authorized and directed to distribute to WestLB, in

repayment of the Receiver's Borrowings, all remaining proceeds in accordance with the Distribution Summary attached as Appendix "B" to the Report.

13. **THIS COURT ORDERS** that the Receiver is hereby authorized to release amounts held in the Professional Fees Holdback and the Reserve to WestLB at such time as the Receiver deems appropriate after applying any amounts that may be payable out of the Professional Fees Holdback and the Reserve for Remaining Disbursements, and that any surplus in the Professional Fees Holdback and the Reserve that may exist after full and final payment of the Remaining Disbursements shall be distributed to WestLB.

#### **Approval of Activities**

14. **THIS COURT ORDERS** that the Report of the Receiver and the RRMSI Receiver and the activities of the Receiver and the RRMSI Receiver described therein are hereby approved.

#### **Discharge of Receiver**

15. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraphs 3, 4, 5, 6, 8, and 12 hereof and upon the Receiver filing a certificate certifying that all such payments have been made, the Receiver shall be discharged in its respective capacities as Receiver, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the following limited purposes: (i) the payment of any Remaining Disbursements and the distribution of any remaining surplus in the Professional Fees Holdback and the Reserve to WestLB; (ii) the completion of any outstanding financial statements, tax returns and filings; (iii) the obtaining of an

accounting from Travelers with respect to any amounts that may be payable to RRDI; and (vi) the collection and receipt of such residual monies as may be payable to RRDI, including in respect of any refunds of realty taxes or GST/HST, and the remittance of such funds, as and when received, to WestLB, or to any successor or assign of WestLB; and (b) the Receiver shall continue to have the benefit of all of the releases and protections in its favour as provided for in the Appointment Order, this Order and such other Orders as have been issued in these proceedings, including all approvals, protections and stays of proceedings in favour of the Receiver in all of its capacities, and including the Receiver's Charge as established by the Appointment Order, as amended from time to time.

#### **Discharge of RRMSI Receiver**

16. **THIS COURT ORDERS** that, immediately upon the issuance of this Order, the RRMSI Receiver shall be discharged as receiver of certain assets of RRMSI, provided however that the RRMSI Receiver shall continue to have the benefit of all of the releases and protections in its favour as provided for in the September 1 Order, this Order and such other Orders as have been issued in these proceedings, including all approvals, protections and stays of proceedings in favour of the RRMSI Receiver.

#### **Release**

17. **THIS COURT ORDERS AND DECLARES** that the Receiver and the RRMSI Receiver have duly and properly discharged their respective duties, responsibilities, and obligations as Receiver and RRMSI Receiver respectively. The Receiver in all of its capacities and in its personal capacity, the RRMSI Receiver in its

capacity as RRMSI Receiver and in its personal capacity, WestLB, CIT Financial Ltd., Raiffeisen Bank International AG, Erste Abwicklungsanstalt, the RRDI Director Appointees, and each of their respective present and former shareholders, partners, affiliates, subsidiaries, directors, officers, legal counsel, employees, agents, and other representatives and their successors and assigns (the “**Releasees**”) are hereby released and discharged from any and all claims and liabilities relating to, in any way arising out of, or in connection with the appointments of the Receiver and/or the RRMSI Receiver, the conduct of the receivership proceedings in respect of RRDI and/or RRMSI and the conduct of the affairs of the Condominium Corporation, including, without limiting the generality of the foregoing, the acts or omissions of the Releasees in relation thereto, the conduct, acts and omissions of the Receiver or the RRMSI Receiver while acting in their various capacities as Receiver and Manager, Interim Receiver, Trustee and RRMSI Receiver herein, save and except for any gross negligence or wilful misconduct on the Releasees’ parts respectively. Without limiting the generality of the foregoing, the Releasees are hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Releasees’ parts respectively.

18. **THIS COURT ORDERS** that no claims against the Releasees in respect of these proceedings shall be commenced without leave of the Court.

**Receiver's Borrowings Charge**

19. **THIS COURT ORDERS** that notwithstanding the discharge of the Receiver herein, the Receiver's Borrowings Charge (as defined in the Appointment Order) and the priority with respect thereto established by the Appointment Order, as amended from time to time, shall continue in favour of WestLB as against the Assets of RRDI and any proceeds arising from such Assets, or otherwise payable to RRDI.

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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.

Applicant

Respondent

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**DISCHARGE ORDER**

**BLAKE, CASSELS & GRAYDON LLP**

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