

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 May 30, 2011)

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) (the “**Receiver and Manager**”), and Alvarez & Marsal Canada Inc. in its capacity as interim receiver pursuant to Section 47(1) of the *Bankruptcy and Insolvency Act* (the “**Interim Receiver**”), (jointly and collectively, the “**Receiver**”), of the undertaking, property and assets (the “**Assets**”) of The Rosseau Resort Developments Inc. (“**RRDI**”), will make a motion to a Judge of the Commercial List at 9:30 a.m. on Monday, May 30, 2011, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS 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 below), 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, 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.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) On March 4, 2011, the Receiver filed its sixteenth report (the “**Sixteenth Report**”) in support of a motion for advice and directions with respect to RRDI’s obligation to pay condominium fees to the Condominium Corporation on account of common expenses, and the obligation of the Condominium Corporation to reimburse RRDI for shared common expenses;
- (b) The Sixteenth Report outlines the basis for the assertion by the Receiver, on behalf of RRDI, that any obligation of RRDI to pay condominium fees to the Condominium Corporation was satisfied by setting that liability off against obligations owed by the Condominium Corporation to RRDI (the “**Set-off Motion**”). No hearing date in respect of the Set-off Motion has been set as the Receiver has been pursuing resolution of the Set-off Motion as well as the RPMA Dispute (defined below);
- (c) In its previous reports, the Receiver reported that 64 Unit Owners had delivered “Notices of Dispute” in respect of the interpretation of the New RPMA agreed upon by the Ad Hoc Committee of Unit Owners, and approved by the Court, which brought into question the cash flow distribution that would be available to the rental pool manager under the New RPMAs (the “**RPMA Dispute**”);

- (d) In its Eighteenth Report dated May 2, 2011, the Receiver advised that an agreement had been reached which provided a structure for the resolution of the RPMA Dispute and the dispute described in the Set-off Motion;
- (e) The Settlement Agreement contains a resolution of the Set-Off Motion and the option to resolve the RPMA Dispute at the option of a purchaser of the assets of RRDI, if and when such a purchaser is identified pursuant to the sales process, and approved by the Court;

Resolution of the Set-off Motion

- (f) The Fresh Start Approach is the basis on which the parties have agreed to resolve the issues with respect to common expenses raised in the Set-off Motion. The Fresh Start Approach is, in effect, an agreement to “restart the clock” with respect to the obligations of Unit Owners to remit condominium fees to the Condominium Corporation for the period up to the Fresh Start Date (as defined in the Nineteenth Report);

Optional Resolution of the RPMA Dispute

- (g) The Receiver has agreed to implement a settlement of the RPMA Dispute by way of certain amendments to the New RPMA (the “**RPMA Resolution**”), and certain corresponding amendments to the Condominium Corporation’s declaration, which settlement is conditional upon and shall only be implemented at the option of a purchaser of the assets of RRDI, if and when such a purchaser is identified pursuant to the sales process, and approved by the Court;

Sealing Order

- (h) Schedule “1” to the Settlement Agreement contains information that is private to individual Unit Owners and is therefore subject to confidentiality concerns. The Receiver is requesting an Order sealing the contents of same;

- (i) The grounds as more particularly set out in the Nineteenth Report; and
- (j) 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:

- (i) The Pleadings and proceedings herein;
- (ii) The Nineteenth Report; and
- (iii) such further and other material as counsel may advise and this Honourable Court permit.

Date: May 25, 2011

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ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
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