

**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

**MOTION RECORD
(Returnable December 16, 2010)**

December 13, 2010

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**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

MOTION RECORD

I N D E X

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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 December 16, 2010)**

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 of The Rosseau Resort Developments Inc. (“**RRDI**”), will make a motion to a Judge of the Commercial List at 9:30 a.m. on Thursday the 16th day of December, 2010, 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 the Receiver to pay to Fasken Martineau DuMoulin LLP ("**Faskens**") the amount of \$145,953.17 (the "**RRDI Payment**") in satisfaction of 60% of the amount invoiced by Faskens to Muskoka Condominium Corporation No. 62 (the "**Condominium Corporation**") in respect of legal fees and disbursements incurred for the period April 13, 2010 to November 5, 2010 (the "**Fees**") in respect of negotiations undertaken by the Ad Hoc Committee of Unit Owners (the "**Ad Hoc Committee**") and the independent directors of the Condominium Corporation (the "**Independent Directors**") with the Receiver regarding the potential acquisition by the Condominium Corporation of certain commercial assets of RRDI;
- (c) declaring that in the event that the Condominium Corporation becomes liable for the Fees, the remittance of the RRDI Payment to Faskens by the Receiver satisfies and discharges any liability of the condominium units ("**Units**") owned by RRDI (the "**RRDI Units**") to the Condominium Corporation in respect of the Fees, and that no further amounts shall be payable by RRDI or the Receiver, or any subsequent owner of any of the RRDI Units, in respect of the Fees; and
- (d) such further and other relief as counsel may request and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- (a) As described in the Receiver's Eleventh Report dated May 12, 2010 and the Receiver's Twelfth Report dated November 5, 2010, the Receiver has been engaged since April, 2010 in discussions with the Ad Hoc Committee and the

Independent Directors regarding the potential acquisition by the Condominium Corporation of certain commercial assets of RRDI;

- (b) To assist with the negotiations, the Independent Directors and the Ad Hoc Committee have obtained legal advice from Faskens, though no retainer of Faskens has yet been undertaken by the Condominium Corporation;
- (c) The RRDI Units account for approximately 60% of all Units;
- (d) The Receiver has agreed, subject to court approval, to fund 60% of the Fees;
- (e) The Receiver considers the amount of Fees to be reasonable;
- (f) The grounds as more particularly set out in the Fourteenth Report of the Receiver dated December 13, 2010 (the “**Fourteenth Report**”); and
- (g) 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 Fourteenth Report; and
- (c) such further and other material as counsel may advise and this Honourable Court permit.

Date: December 13, 2010

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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 December 16, 2010)**

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TAB 2

**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, 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

**FOURTEENTH REPORT OF
ALVAREZ & MARSAL CANADA ULC,
AS RECEIVER AND MANAGER AND CONSTRUCTION LIEN ACT TRUSTEE, AND
ALVAREZ & MARSAL CANADA INC., AS INTERIM RECEIVER
OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.**

DECEMBER 13, 2010

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1.0 Introduction

1.1 This fourteenth report of the Receiver (the “Fourteenth Report”) is filed in support of a motion for an Order:

- (a) authorizing the Receiver (defined below) to pay to Fasken Martineau DuMoulin LLP (“Faskens”) the amount of \$145,953.17 (the “RRDI Payment”) in satisfaction of 60% of the amount invoiced by Faskens to Muskoka Condominium Corporation No. 62 (the “Condominium Corporation”) in respect of legal fees and disbursements incurred for the period April 13, 2010 to November 5, 2010 (the “Fees”) in respect of negotiations undertaken by the Ad Hoc Committee of Unit Owners (the “Ad Hoc Committee”) and the independent directors of the Condominium Corporation (the “Independent Directors”) with the Receiver regarding the potential acquisition by the Condominium Corporation of certain commercial assets of The Rosseau Resort Developments Inc. (“RRDI” or the “Company”); and
- (b) declaring that in the event that the Condominium Corporation becomes liable for the Fees, the remittance of the RRDI Payment to Faskens by the Receiver satisfies and discharges any liability of the condominium units (“Units”) owned by RRDI (the “RRDI Units”) to the Condominium Corporation in respect of the Fees, and that no further amounts shall be payable by RRDI or the Receiver, or any subsequent owner of any of the RRDI Units, in respect of the Fees.

2.0 *Background to Motion*

- 2.1 On May 22, 2009, the Ontario Superior Court of Justice (the “Court”) issued an order appointing Alvarez & Marsal Canada ULC (“A&M”) and McIntosh & Morawetz Inc. (now Alvarez & Marsal Canada Inc.) as trustee and interim receiver, respectively (collectively the “Interim Receiver”), pursuant to Section 68 of the *Construction Lien Act* (Ontario) (“CLA”) and Section 47(1) of the *Bankruptcy and Insolvency Act* (Canada) (“BIA”) of all the property, assets and undertakings (the “Assets”) of RRDI. On June 2, 2009, the Court issued an Amended and Restated Appointment Order (the “Appointment Order”) continuing the appointment of the Interim Receiver and appointing A&M as receiver and manager (the “Receiver and Manager”) pursuant to Section 101 of the *Courts of Justice Act* (Ontario) (“CJA”) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager collectively defined as the “Receiver”).
- 2.2 All background materials in respect of these proceedings, including, among other things, the Receiver’s past reports to the Court and orders of the Court, can be found on the Receiver’s website at www.alvarezandmarsal.com/rosseau.

3.0 *Terms of Reference*

3.1 In preparing this Fourteenth Report, the Receiver has relied on unaudited financial information prepared by the Company and the Company's consultants and advisors, the Company's books and records and discussions with certain remaining employees of the Company. The Receiver has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the Canadian Institute of Chartered Accountants Handbook has not been performed. Future oriented financial information relied on in this Fourteenth Report is based on assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Fourteenth Report, or relied upon by the Receiver in preparing the Fourteenth Report. All references to dollar figures contained in the Fourteenth Report are in Canadian currency unless otherwise specified.

4.0 *Payment of Fasken Fees*

The Hotel

- 4.1 The Assets of RRDI are generally comprised of all of the commercial operations of a condominium hotel known as The Rosseau, a J.W. Marriott Hotel and Spa, located on Lake Rosseau, in Muskoka, Ontario (the “Hotel”), as well as 132 RRDI Units of the Hotel, and certain vacant development lands. Another 89 Units of the Hotel are owned by individual Unit Owners. The commercial operations of the Hotel include restaurants, a spa, a pool area, meeting and convention facilities, a sewage treatment plant and water treatment facilities, as well as the entitlements and obligations under a Hotel Management Agreement and related agreements with Marriott Hotels of Canada Ltd., and a rental pool structure governed by rental pool management agreements between RRDI and Unit Owners (the “New RPMA”).

The Dispute

- 4.2 As described in detail in the Receiver’s Eleventh Report dated May 12, 2010 (the “Eleventh Report”), a dispute regarding the interpretation of the New RPMAs was initiated in March, 2010 by approximately 63 of the 89 Unit Owners of the Hotel (the “Unit Owner Dispute”).

The Unit Owner Proposal

- 4.3 As reported in the Eleventh Report, in April, 2010, the Ad Hoc Committee and the Independent Directors approached the Receiver with a proposal to resolve the Unit

Owner Dispute which would include a proposed acquisition of the commercial operations of the Hotel from RRDI by the Condominium Corporation (the “Acquisition Proposal”).

4.4 By Order dated May 19, 2010 (the “May 19 Order”), Madam Justice Pepall authorized the Receiver to suspend its Institutional Sales Process in order, among other things, to continue discussions with the Ad Hoc Committee and Independent Directors regarding the Acquisition Proposal, and to make further recommendations to the Court.

4.5 The Receiver has been engaged in discussions with the Ad Hoc Committee and the Independent Directors regarding the Acquisition Proposal since approximately April 13, 2010.

The Legal Fees incurred by the Ad Hoc Committee and the Independent Directors

4.6 Upon commencing negotiations, the Ad Hoc Committee and the Independent Directors sought and obtained legal assistance from Faskens.

4.7 As noted by the Receiver in its Twelfth Report, the Receiver continues to consider and discuss with WestLB AG, New York Branch, the secured creditor with the primary economic interest in the Assets, the various options for realization on the Assets, including the Acquisition Proposal. No determination has yet been made for recommendation to the Court. If the Acquisition Proposal proceeds, the Condominium Corporation would have to take steps to formally retain Faskens to represent it on the Acquisition Proposal. One of the necessary steps would be a motion to the Court, on notice to all Unit Owners, for the appropriate authorizations of the Receiver relating to such a retainer. This has not yet occurred.

- 4.8 Faskens has provided an invoice addressed to the Condominium Corporation, although its retainer and the Condominium Corporation's liability for that invoice will be addressed at a subsequent stage.
- 4.9 RRDI is the owner of 132 of the 221 Units that comprise the Hotel, and therefore accounts for approximately 60% of the total ownership of Units. The Receiver has agreed with the Ad Hoc Committee and Independent Directors, subject to obtaining Court approval, that it is appropriate and fair for it to pay 60% of the Fees incurred by Faskens in respect of the acquisition discussions that have taken place to date. Such discussions were important for the Receiver to be able to consider the Acquisition Proposal in light of other alternatives. Further, the May 19 Order directed such discussions to be undertaken.
- 4.10 The Receiver considers the Fees to be reasonable. The Receiver has reviewed the rates and time entries outlined on the invoice rendered in respect of the Fees, and considers the amount invoiced to be reasonable.
- 4.11 The negotiations that have been undertaken to date have been conducted on a privileged and confidential basis. As such, the Receiver is not in a position to disclose a copy of the invoice rendered to the Condominium Corporation by Faskens. However, a copy of the invoice will be made available to the Court for review on a sealed basis if requested.
- 4.12 To the extent that the Condominium Corporation may become liable to Faskens for the Fees, the RRDI Payment accounts for that share of the obligation for which the RRDI Units would be liable to the Condominium Corporation. The Receiver therefore seeks a declaration that any such liability of the RRDI Units has been discharged upon payment

to Faskens of the RRDI Payment, and that no further amounts shall be payable by RRDI or the Receiver or any subsequent owner of the RRDI Units, in respect of the Fees.

- 4.13 In the event that the Receiver determines that it intends to continue discussions with the Independent Directors and the Ad Hoc Committee regarding the Acquisition Proposal, the Receiver will return to Court for further directions regarding any future legal costs of the Condominium Corporation in respect of such an acquisition.

5.0 Conclusions and Recommendations

5.1 For the reasons outlined herein, the Receiver respectfully recommends that this Honourable Court grant the Order as requested herein:

- (a) authorizing the Receiver to pay to Faskens the RRDI Payment in satisfaction of 60% of the Fees; and
- (b) declaring that in the event that the Condominium Corporation becomes liable for the Fees, the remittance of the RRDI Payment to Faskens by the Receiver satisfies and discharges any liability of the RRDI Units to the Condominium Corporation in respect of the Fees, and that no further amounts shall be payable by RRDI or the Receiver, or any subsequent owner of any of the RRDI Units, in respect of the Fees.

* * *

All of which is respectfully submitted, this 15 day of December, 2010.

**ALVAREZ & MARSAL CANADA ULC &
ALVAREZ & MARSAL CANADA INC. IN THEIR CAPACITIES AS
CONSTRUCTION LIEN ACT TRUSTEE AND RECEIVER AND MANAGER,
AND INTERIM RECEIVER, RESPECTIVELY, OF THE ASSETS OF
THE ROSSEAU RESORT DEVELOPMENTS INC.**

Per:



Richard A. Morawetz

TAB 3

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

THE HONOURABLE MR.) WEDNESDAY, THE 16TH DAY
)
JUSTICE CAMPBELL) OF DECEMBER, 2010

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 the Receiver to pay to Fasken Martineau DuMoulin LLP ("**Faskens**") the amount of \$145,953.17 (the "**RRDI Payment**") in satisfaction of 60% of the amount invoiced by Faskens to Muskoka Condominium Corporation No. 62 (the "**Condominium Corporation**") in respect of legal fees and disbursements incurred for the period April 13, 2010 to November 5, 2010 (the "**Fees**") in respect of negotiations undertaken by the Ad Hoc Committee of Unit Owners (the "**Ad Hoc Committee**") and the independent directors of the Condominium Corporation (the "**Independent Directors**") with the Receiver regarding the potential acquisition by the Condominium Corporation of certain commercial assets of RRDI;
- (c) declaring that in the event that the Condominium Corporation becomes liable for the Fees, the remittance of the RRDI Payment to Faskens by the Receiver satisfies and discharges any liability of the condominium units ("**Units**") owned by RRDI (the "**RRDI Units**") to the Condominium Corporation in respect of the Fees, and that no further amounts shall be payable by RRDI or the Receiver, or any subsequent owner of any of the RRDI Units, in respect of the Fees; and
- (d) 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 Fourteenth Report, the affidavits of service filed, and on hearing the submissions of counsel for WestLB and the Receiver, independent counsel for the Receiver, counsel for the Ad Hoc Committee and Independent Directors, no one else appearing,

1. **THIS COURT ORDERS** that service of the Notice of Motion and the Motion Record in accordance with the Affidavit of Service of Christina DeLuca. filed, including the method and timing of notice, 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.

2. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to pay the RRDI Payment to Faskens, in satisfaction of 60% of the Fees.

3. **THIS COURT ORDERS AND DECLARES** that in the event that the Condominium Corporation becomes liable for the Fees, the remittance of the RRDI Payment to Faskens satisfies and discharges any liability of the RRDI Units to the Condominium Corporation or otherwise in respect of the Fees, and no further amounts shall be payable by RRDI, the Receiver, or any subsequent owner of any of the RRDI Units, in respect of the Fees.

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.

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as Court-appointed Receiver and Manager, Trustee, and
Interim Receiver

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

<p>ONTARIO</p> <p>SUPERIOR COURT OF JUSTICE</p> <p>COMMERCIAL LIST</p> <p>Proceeding commenced at Toronto</p>	
<p>MOTION RECORD</p> <p>(Returnable December 16, 2010)</p>	
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