

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

THE HONOURABLE MADAM) THURSDAY, THE 21ST DAY
)
JUSTICE MESBUR) OF JULY, 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
(Ancillary to Approval and Vesting 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, supplementary to an approval and vesting order granted on this date (the “**Approval and Vesting Order**”) approving the sale transaction (the “**Transaction**”) contemplated by an

agreement of purchase and sale between RRDI by its Receiver and Canadian Niagara Hotels Inc. ("**Canadian Niagara**") dated as of June 30, 2011 and accepted by the Receiver on July 4, 2011 (the "**Purchase Agreement**"):

- (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) granting certain releases to the Receiver in connection with certain Assumed Liabilities and other obligations;
- (c) confirming certain payments to the Condominium Corporation as directed by the relevant Unit Owners and releasing the Receiver from any further obligation related thereto;
- (d) directing payment in respect of certain potential tax refunds that may be received;
- (e) authorizing Unit Owners with Leases with RRDI to give notice of termination of such Leases;
- (f) authorizing distribution of net proceeds in repayment of Receiver's Borrowings;
- (g) confirming the waiver by Marriott of introduction fees on the sale of the Purchased Assets to 2253100 Ontario Inc. (the "**Purchaser**"), an affiliate of Canadian Niagara, pursuant to the Purchase Agreement;
- (h) sealing Confidential Appendices "I", "II" and "III" to the Report pending further Order of this Court;
- (i) adjourning the trial date that was set by the Order of Justice Campbell dated December 7, 2010 (the "**December 7 Order**") for certain Undetermined Lien Claims, as defined in the December 7 Order, for purposes of complying with section 37 of the *Construction Lien Act*; and
- (j) 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 Twenty-First Report of the Receiver dated July 11, 2011 (the “**Report**”), the Supplementary Report of the Receiver dated July 19, 2011, (the “**Supplementary Report**”), the affidavits of service of Christina DeLuca, sworn July 15, 19, and 20, 2011; Natalina Arvaj, sworn July 13 and 20, 2011; Tim Lenehan sworn July 13 and 19, 2011; John Gallant, sworn July 13, 2011; Barry Atwood, sworn July 13, 2011; Leslie Pelling, sworn July 13, 2011; Daniel Webster, sworn July 20, 2011; and Wondimu Feleke, sworn July 19, 2011, all filed (the “**Affidavits of Service**”), filed, and on hearing the submissions of counsel for WestLB AG, New York Branch (“**WestLB AG**”) and the Receiver, independent counsel for the Receiver, counsel for Marriott Hotels of Canada Ltd., counsel for CIT Financial Ltd., counsel for Canadian Niagara, and Gordon Jacobs, 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 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, service to the service list by way of email and courier, and service on each individual Unit Owner by way of email 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 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.

Release

3. **THIS COURT ORDERS AND DECLARES** that as the Purchase Agreement requires the purchaser thereunder to assume the Assumed Liabilities (as defined and described in the Purchase Agreement) on the terms and conditions of the Purchase Agreement, upon closing of the Purchase Agreement, the Receiver and RRDI, and their respective officers, directors, employees and agents, including RRDI’s representatives on the Board of Directors of the Condominium Corporation (the “**Releasees**”) shall be and are hereby released and discharged from any and all claims in respect of any such Assumed Liabilities to which the Releasees are

now, or may hereafter be subject, including any and all obligations, claims, liabilities, losses or damages relating to matters that were raised, or which could have been raised in the within receivership proceedings, or otherwise, in respect of the Assumed Liabilities.

4. THIS COURT ORDERS AND DECLARES that, in addition to and without limiting the foregoing, upon Closing the Releasees shall have no further liability (a) under the RPMAs; and (b) in respect of those matters relating to the Condominium Corporation described in paragraphs 2.15 and 2.16 of the Purchase Agreement. Neither the Receiver or RRDI shall be required to call a turn-over meeting under the *Condominium Act* on the Closing of the Transaction.

Trust Funds held by the Receiver on Behalf of Unit Owners

5. THIS COURT ORDERS that the funds held by the Receiver in trust on behalf of certain Unit Owners in respect of Indulgence Card and other Common Expense Subsidies shall be paid to the Condominium Corporation as directed by the relevant Unit Owners, and the Receiver shall be released and discharged from and of any and all obligations and claims in respect of such funds upon such payment.

Tax Refund

6. THIS COURT ORDERS AND DIRECTS the Township of Muskoka Lakes to remit to the Receiver, on behalf of RRDI, any refunds of realty taxes that may be payable in respect of the Purchased Assets attributable to the years prior to 2011 and to the portion of 2011 attributable to the period prior to July 16, 2011, notwithstanding the sale and vesting of the Purchased Assets to and in the Purchaser in accordance with the Approval and Vesting Order, and notwithstanding any subsequent sale of any such Purchased Assets to any subsequent purchaser that may be made.

Leases

7. THIS COURT ORDERS AND DECLARES that Sale/Leaseback Unit Owners who have executed Leases with RRDI, by its Receiver, are hereby authorized to give notice of termination of such Leases to RRDI in accordance with the terms of such Leases and that their rights of usage under the RPMAs to which they are parties continue after Closing unamended by such Leases.

Distribution of Proceeds of Transaction

8. THIS COURT ORDERS that the net proceeds of sale received by the Receiver on Closing shall be remitted as soon as practicable thereafter to WestLB AG as Agent for the Syndicate to be applied to the amounts outstanding under the Receiver's Borrowings subject to an appropriate reserve in favour of the Receiver for the completion of the administration of the estate.

9. THIS COURT ORDERS AND DECLARES that the remittance of the net proceeds of sale by the Receiver to WestLB AG as provided at paragraph 8 is not a "distribution" for purposes of section 159 of the Income Tax Act (Canada), section 270 of the Excise Tax Act (Canada), section 107 of the Corporations Tax Act (Ontario) and section 117(1) of the Taxation Act, 2007 (Ontario), and that the Receiver, in making the payments and remittances ordered herein is not "distributing", or considered to have "distributed" the net sale proceeds, and shall have no obligation to obtain a clearance certificate in respect of such payments or remittances. The Receiver shall incur no personal liability for or obligation to remit amounts payable to the Canada Revenue Agency in respect of amounts owing by RRDI for taxes under such Acts for making the payments and remittances ordered.

Introduction Fees

10. THIS COURT ORDERS AND DECLARES that no Introduction Fees are payable by RRDI or the Receiver to Marriott under or pursuant to a Marketing and License Agreement dated as of July 23, 2009 in respect of the Purchase Agreement.

Sealing of Confidential Appendices

11. THIS COURT ORDERS that Confidential Appendices "I", "II" and "III" to the Report be and are hereby sealed pending further order of the Court.

Other Relief

12. THIS COURT ORDERS that the Report and the Supplementary Report, and the activities of the Receiver as described therein, be and are hereby approved.

13. THIS COURT ORDERS that the Receiver shall apply for its discharge on or about 60 days following Closing of the Transaction.

14. THIS COURT ORDERS that the trial date for certain Undetermined Lien Claims, as set by the Court in the December 7 Order for purposes of complying with section 37 of the *Construction Lien Act*, is adjourned to a date to be scheduled at a 9:30 scheduling hearing on the Commercial List.

15. THIS COURT ORDERS that pursuant to the BIA, section 195, this Order is subject to provisional execution notwithstanding any appeal therefrom.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 21 2011

PER/PAR:



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Proceeding commenced at Toronto

**ORDER
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BLAKE, CASSELS & GRAYDON LLP
P.O. Box 25, Commerce Court West
199 Bay Street, Suite 2800
Toronto, Ontario M5L 1A9

Pamela L.J. Huff - LSUC#: 27344V
Tel: 416-863-2958
Fax: 416-863-2653

Katherine McEachern - LSUC#: 38345M
Tel: 416-863-2566
Fax: 416-863-2653

Lawyers for WestLB AG, New York Branch and Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Inc. in their respective capacities as Court-appointed Receiver and Manager, Trustee, and Interim Receiver

FRASER MILNER CASGRAIN LLP
1 First Canadian Place
39th Floor, 100 King Street West
Toronto, Ontario M5X 1B2

R. Shayne Kukulowicz LSUC#: 30729S
Jane Dietrich LSUC # 49302U
Tel: 416-863 4467
Fax: 416-863 4592

Independent Lawyers for Alvarez & Marsal Canada ULC, and Alvarez & Marsal Canada Inc., in their respective capacities as Court-appointed Receiver and Manager, Trustee, and Interim Receiver