



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

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

THE HONOURABLE MADAM
JUSTICE PEPALL

) THURSDAY, THE 20TH
) DAY 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:

WESTLB AG, TORONTO BRANCH

Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

O R D E R

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) (the "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"), (jointly and collectively, the "**Receiver**"), of the undertaking, property and assets of The Rosseau Resort Developments Inc. ("**RRDI**") for an Order: (i) approving and ratifying the retention of Miller Thomson LLP as representative counsel ("**Representative Counsel**") to represent those persons (the "**Represented Unit Owners**") who have entered into a rental pool management agreement with The Rosseau Resort Management Services Inc. ("**RRMSI**") and are either current owners (the "**Unit Owners**") of the condominium units at the Hotel or existing purchasers of Units who have not closed outstanding

agreements of purchase of sale with RRDI (the “**Existing Unit Purchasers**”) unless a Represented Unit Owner provides written notice to Representative Counsel that they do not wish to be included as a Represented Unit Owner in these proceedings and (ii), an Order abridging the time for bringing this motion and dispensing with any further service of this Motion Record; was heard this day, at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver dated August 19, 2009 containing the Fifth Report to Court of the Receiver dated August 19, 2009, the Second Report to Court of the Receiver dated July 3, 2009 and the Fourth Report to Court of the Receiver dated August 12, 2009 (“**Fourth Report**”), filed and on hearing the submissions of independent counsel for the Receiver, counsel for WestLB AG, Toronto Branch and the Receiver, counsel for the Ad Hoc Committee of Unit Owners, counsel for Marriott Hotels of Canada Ltd., and counsel for Fortress Credit Corp. not opposing, no one appearing for any other person on the service list,

1. **THIS COURT ORDERS** that the timing and method of service of the motion record is hereby abridged and validated such that service on effected on the parties served with notice of this motion shall be good and sufficient notice of this motion record.

2. **THIS COURT ORDERS** that Miller Thomson LLP (“**Representative Counsel**”) is appointed in these proceedings to represent the Represented Unit Owners, unless and until written notice is provided by a particular Represented Unit Owner to Representative Counsel that such Represented Unit Owner does not wish to be a Represented Unit Owner, and that, subject to further order of the Court, the mandate of Representative Counsel pursuant to this Order shall be limited to (i) responding to the motion brought by RRMSI to vary or amend paragraph 6 of the Order of the Honourable Madam Justice Pepall made in these proceedings on August 18, 2009; and (ii) to bring or participate in a motion to be brought to appoint a receiver over certain assets of RRMSI. For greater certainty and without limitation, Representative Counsel shall not be charged with the responsibility for dealing with any individual Unit Owner or Existing Unit Purchaser’s purchase of or agreement to purchase a unit or units in the Hotel (as defined in the Fourth Report).

3. **THIS COURT ORDERS** that the Receiver of RRDI shall provide the last known e-mail addresses for each Represented Unit Owner to Representative Counsel who shall then provide to all Represented Unit Owners, within seven (7) days of the date of this Order, a copy of this Order, and that no further notice is required to be sent to the Represented Unit Owners in respect of the granting of this Order and the appointment of Representative Counsel.

4. **THIS COURT ORDERS** that the fees and disbursements of Representative Counsel are not to exceed \$50,000, absent further order of this Court approving additional fees and disbursements.

5. **THIS COURT ORDERS** that Representative Counsel shall be paid its reasonable fees and disbursements by the Receiver out of the RRDI assets in a timely manner for fulfilling its mandate in accordance with this Order, on the provision of invoices by the Representative Counsel, to the Receiver. Representative Counsel shall have the benefit of the Receiver's Charge, established pursuant to the Amended and Restated Appointment Order of the Honourable Madam Justice Pepall dated June 2, 2009 in these proceedings in respect of its fees and disbursements. Upon the request of the Receiver, or any other party, Representative Counsel shall seek the approval of its fees and disbursements by this Honourable Court.

6. **THIS COURT ORDERS** that the Representative Counsel may from time to time apply to this Court for advice and directions in respect of its appointment or the fulfilment of its duties in carrying out the provisions of this Order or variation of the powers and duties of Representative Counsel, upon notice to the Receiver and to other interested parties, unless otherwise ordered by the Court.

7. **THIS COURT ORDERS** that, the Representative Counsel shall not be liable for any act or omission in respect of its appointment or the fulfilment of its duties in carrying out the provisions of this Order and that no action or other proceedings shall be commenced against Representative Counsel relating to its acting as such, except with prior leave of this Court, on at least seven (7) day's notice to the Representative Counsel and upon further order in respect of security for costs, on a substantial indemnity basis, of Representative Counsel in connection with any such action or proceeding.

8. **THIS COURT ORDERS** that the Representative Counsel shall be given notice of all motions relating to the matters identified in paragraph 2, to which Unit Owners or Existing Unit Purchasers are entitled in these proceedings and that Representative Counsel shall be entitled to represent those on whose behalf it is hereby appointed in all such proceedings.



Joanne Nicoara
Registrar, Superior Court of Justice

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

AUG 20 2009

PER / PAR: 

V.

WESTLB AG, TORONTO BRANCH
Applicant

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

ORDER

(August 20, 2009)

FRASER MILNER CASGRAIN LLP

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