

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE MADAM)
JUSTICE PEPALL) WEDNESDAY, THE 14th DAY
) OF OCTOBER, 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

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) (“CJA”) and trustee and receiver and manager under the *Construction Lien Act* (Ontario) (“CLA”), and Alvarez & Marsal Canada Inc. (formerly known as McIntosh & Morawetz Inc.), in its capacity as interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the “BIA”), of the undertaking, assets and property of The Rosseau Resort Developments Inc. (“RRDI”) (jointly and collectively, the “Receiver”) for an Order, among other things: (i) abridging and validating the timing and manner of service of this motion; (ii) directing that all capitalized terms not otherwise defined herein have the same meaning as in the Construction Lien Claims Process Order of the Honourable Mr. Justice Campbell dated July 24, 2009 (the “Construction Lien Claims Process Order”); (iii) approving the Seventh Report to Court of

the Receiver dated October 7, 2009 (the “**Seventh Report**”) and the activities of the Receiver as described therein; (iv) directing a reference to a Construction Lien Master in Toronto for the determination of, among other things, the relationship between RRDI and the Lien Claimants having valid Lien Actions (the “**Perfectured Lien Claimants**”); (v) amending the date in the Construction Lien Claims Process Order by which a Notice of Determination shall be delivered by the Receiver and posted on the Receiver’s website to a date to be determined by this Court following a final determination of the Reference (defined below); and (vi) validating service of a Claim pursuant to the CLA and, in particular, on the Receiver, was heard the 14th day of October, 2009 at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver including the Seventh Report, all filed, and on hearing the submissions of independent counsel to the Receiver, counsel for WestLB AG, Toronto Branch and the Receiver, counsel for Fortress Credit Corp. and no one appearing for any other person on the service list, though properly served,

*- counsel for
Ayrfield Holdings
cob do marel
contractors, a lien
claimant - sop*

SERVICE & TERMS

1. THIS COURT ORDERS that the time and manner of service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that all capitalized terms not otherwise defined herein have the same meaning as in the Construction Lien Claims Process Order.

APPROVAL OF RECEIVER’S ACTIVITIES

3. THIS COURT ORDERS that the Seventh Report and the activities of the Receiver as described therein be and are hereby approved.

REFERENCE

4. THIS COURT ORDERS that the following issues relating to the Lien Actions shall be referred to a ~~Construction Lien~~ Master at Toronto for trial (the “**Reference**”):

- (a) are each of the Perfectured Lien Claimants a “contractor” as defined in the CLA for the purposes of their respective Claims?

- (b) if the answer to the question in paragraph 4(a) is negative, is Rock Ridge Contractors Inc. a "contractor" as defined in the CLA with respect to the Claims?

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The ~~Construction Lien~~ Master shall take all accounts, make all inquiries, give all directions and do all things necessary to finally determine the above issue, and any associated issues, and the findings of the ~~Construction Lien~~ Master shall be effective on the confirmation of the report by this Court. The ~~Construction Lien~~ Master may also determine the question of costs in the Reference, except that the ~~Construction Lien~~ Master shall not make any award of costs against the Receiver.

5. THIS COURT ORDERS that the determination of the issues in the Reference shall not affect the determination of the validity of the Claims by the Receiver as provided for in the Construction Lien Claims Process Order.

6. THIS COURT ORDERS that the Receiver is hereby authorized, if necessary, to bring a motion to fix a date for the trial of the Reference and give any directions related thereto in accordance with the provisions of the CLA and that service of the Notice of Trial by facsimile, mail, courier or email on each of the Perfected Lien Claimants or their counsel, and anyone else on the service list in these proceedings, shall constitute valid and effective service for the purpose of section 60(4) of the CLA.

CONSTRUCTION LIEN CLAIMS PROCESS AMENDMENT

7. THIS COURT ORDERS that the date of October 15, 2009 as provided for in paragraph 10 of the Construction Lien Claims Process Order be and is hereby amended to a date to be determined by this Court following a final determination of the Reference, including all appeals therefrom, or, if before such determination, by further order of this Court.

SERVICE OF CONSTRUCTION LIEN CLAIMS

8. THIS COURT ORDERS that service of a Claim (i) upon any party to a Lien Action in accordance with section 87 of the CLA, and (ii) in the case of a Claim against Muskoka Standard Condominium Corporation No. 62, by sending a copy by facsimile, registered mail or courier to

the Receiver, is hereby deemed to be valid and effective service for the purpose of paragraph 6 of the Construction Lien Claims Process Order.

Sam Repall, J.

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OCT 14 2009

PER / PAR: *TV*

ONTARIO

**SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

**ORDER
(October 14, 2009)**

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