

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

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| THE HONOURABLE MADAM |) | TUESDAY, THE 1st DAY |
| JUSTICE PEPALL |) | OF SEPTEMBER, 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:

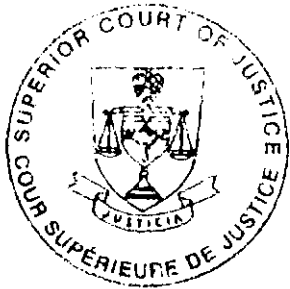
WESTLB AG, TORONTO BRANCH

Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent



ORDER

THIS MOTION, made jointly by Miller Thomson LLP as representative counsel appointed pursuant to the Order of the Honourable Madam Justice Pepall dated August 20, 2009 (“**Representative Counsel**”) and 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), and 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 (the “**Assets**”) of The Rosseau Resort Developments Inc. (“**RRDI**”) (jointly and collectively, the “**RRDI Receiver**” and together with Representative Counsel, the “**Moving Parties**”), for an Order pursuant to section 101 of the CJA appointing Alvarez & Marsal Canada ULC as receiver (the “**RRMSI Receiver**”) without security, of all of the rights, titles and interests of The Rosseau

Resort Management Services Inc. ("**RRMSI**") in and to (i) the Amended and Restated Hotel Management Agreement between RRDI, RRMSI and Marriott Hotels of Canada, Ltd. ("**Marriott**") dated October 6, 2006 (the "**Current HMA**"), relating to the operation of the 221 unit condominium hotel located on property on Lake Rosseau, Muskoka, Ontario (the "**Hotel**") and (ii) all existing Rental Pool Management Agreements (the "**Current RPMAs**") between RRMSI and current owners (the "**Unit Owners**") of condominium units at the Hotel ("**Units**") and existing purchasers of Units who have not yet closed outstanding agreements of purchase and sale with RRDI (the "**Existing Unit Purchasers**"); (iii) an International Services Agreement between RRDI, RRMSI and International Hotel Licensing Company S.a.r.l, an affiliate of Marriott ("**IHLC**") dated October 6, 2006, a Royalty and Licensing Agreement between RRDI, RRMSI and IHLC dated October 6, 2006, and any other related agreements, if any between RRMSI and Marriott or its affiliates (collectively, the "**Other Marriott Agreements**"); (iv) any other arrangements or agreements verbal or otherwise between RRMSI and any of RRDI, Unit Owners or Existing Unit Purchasers in respect of the Hotel including, without limitation, the delegation by RRDI to RRMSI of the role of rental pool manager in respect of the Units (collectively, the "**Related Hotel Agreements**") was heard the 28th day of August, 2009 at 330 University Avenue, Toronto, Ontario.

ON READING the Moving Parties' Motion Record, the Sixth Report to Court of the RRDI Receiver dated August 21, 2009 (the "**Sixth Report**"), the Supplementary Report to the Sixth Report dated August 25, 2009, the Second Report to Court of the RRDI Receiver dated July 3, 2009, the Supplementary Report to the Second Report of the RRDI Receiver dated July 7, 2009, the Fourth Report of the RRDI Receiver dated August 12, 2009, the Supplementary Report to the Fourth Report of the RRDI Receiver dated August 14, 2009, the Affidavit of Ken Fowler dated August 24, 2009, the Supplementary Motion Record of RRMSI dated August 27, 2009 and the letter dated November 5, 2008 from Red Leaves to Gordon and Judy Jacobs, and on hearing the submissions of Representative Counsel, counsel for Alvarez & Marsal Canada ULC as proposed RRMSI Receiver and independent counsel to the RRDI Receiver, counsel for WestLB AG, Toronto Branch and the RRDI Receiver, counsel for Marriott, counsel for Fortress Credit Corp. and counsel for RRMSI no one appearing for any other person on the service list, and on reading the consent of Alvarez & Marsal Canada ULC to act as the RRMSI Receiver,

SERVICE

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.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, Alvarez & Marsal Canada ULC is hereby appointed RRMSI Receiver, without security, of all of the rights, titles and interests of RRMSI in and to the Current HMA, the Current RPMAs, the Other Marriott Agreements and the Related Hotel Agreements, including all proceeds and claims in respect thereof (the “**Property**”).

RECEIVER’S POWERS

3. THIS COURT ORDERS that, subject to the overriding provisions of paragraph 4, the RRMSI Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the RRMSI Receiver is hereby expressly empowered and authorized to do any of the following where the RRMSI Receiver considers it necessary or desirable:

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (c) to receive and collect all monies and accounts now owed or hereafter owing to RRMSI and to exercise all remedies of RRMSI in collecting such monies, including, without limitation, to enforce any security held by RRMSI in connection with the Property;

- (d) to settle, extend or compromise any indebtedness owing to RRMSI;
- (e) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the RRMSI Receiver's name or in the name and on behalf of RRMSI, for any purpose pursuant to this Order;
- (f) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property or the RRMSI Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the RRMSI Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the RRMSI Receiver deems advisable;
- (h) that prior to the Effective Time (as defined below) to alter, modify, amend, or change the terms, conditions and provisions of the Property or to accept any surrender, repudiation, cancellation or termination of same; and
- (i) to take any steps reasonably incidental to the exercise of these powers; and

and in each case where the RRMSI Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including RRMSI, and without interference from any other Person.

4. THIS COURT ORDERS that the RRMSI Receiver be and is hereby authorized and directed to repudiate the Current HMA, the Current RPMAs, the Other Marriott Agreements and the Related Hotel Agreements upon written notice by the RRMSI Receiver to the respective

counter-parties to be effective as of a date and time as set out in such written notice (the "**Effective Time**") and to grant full and absolute releases to all Unit Owners and Existing Unit Purchasers with respect to any and all claims of any nature whatsoever which RRMSI now has or could have with respect to any agreements as described above in this paragraph 4.

5. THIS COURT ORDERS that the RRMSI Receiver shall record all fees, if any, that would have been received by RRMSI pursuant to the Current RPMAs, if the Current RPMAs had not been repudiated by the RRMSI Receiver as has been authorized by paragraph 4 of this Order, for the period commencing on September 1, 2009 and ending on February 28, 2010 and report to this Court regarding same. Such report and record may be considered by the Court with respect to any proposed distributions in the RRDI or RRMSI receiverships.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. THIS COURT ORDERS that (i) RRMSI, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the RRMSI Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the RRMSI Receiver, and shall deliver all such Property to the RRMSI Receiver upon the RRMSI Receiver's request.

7. THIS COURT ORDERS that all Persons shall forthwith advise the RRMSI Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of RRMSI related to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the RRMSI Receiver or permit the RRMSI Receiver to make, retain and take away copies thereof and grant to the RRMSI Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may

not be disclosed or provided to the RRMSI Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the RRMSI Receiver for the purpose of allowing the RRMSI Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the RRMSI Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the RRMSI Receiver. Further, for the purposes of this paragraph, all Persons shall provide the RRMSI Receiver with all such assistance in gaining immediate access to the information in the Records as the RRMSI Receiver may in its discretion require including providing the RRMSI Receiver with instructions on the use of any computer or other system and providing the RRMSI Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the RRMSI Receiver except with the written consent of the RRMSI Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding against or in respect of the Property shall be commenced or continued except with the written consent of the RRMSI Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Property are hereby stayed and suspended pending further Order of this Court, provided that nothing in this Order stays or effects the Amended Order of the Honourable Madam Justice Pepall made on August 18, 2009 in these proceedings.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the RRMSI Receiver, or affecting or in respect of the Property, are hereby stayed and suspended except with the written consent of the RRMSI Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the RRMSI Receiver or RRMSI to carry on any business which RRMSI is not lawfully entitled to carry on, (ii) exempt the RRMSI Receiver or RRMSI from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or related to or in respect of the Property, without written consent of the RRMSI Receiver or leave of this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the RRMSI Receiver in respect of the Property from and after the making of this Order from any source whatsoever, including without limitation the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the RRMSI Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the RRMSI Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that this Order has no application to employees of RRMSI, if any, who shall remain the employees of RRMSI and the RRMSI Receiver shall have no authority or liability in respect of such, employees, if any.

LIMITATION ON THE RECEIVER'S LIABILITY

15. THIS COURT ORDERS that the RRMSI Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the RRMSI Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

16. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the RRMSI Receiver, including the fees of the RRMSI Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the RRMSI Receiver and its counsel, shall be allowed to it in passing its accounts and RRMSI Receiver shall be entitled to the benefit of the Receiver's Charge over the assets of RRDI created by the Order of the Honourable Madam Justice Pepall made on June 2, 2009 in these proceedings, *pari passu* with the RRDI Receiver.

17. THIS COURT ORDERS that the RRMSI Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the RRMSI Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

18. THIS COURT ORDERS that prior to the passing of its accounts, the RRMSI Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the RRMSI Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

GENERAL


19. THIS COURT ORDERS that the RRMSI Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

20. THIS COURT ORDERS that nothing in this Order shall prevent the RRMSI Receiver from acting as a trustee in bankruptcy of RRMSI.

21. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the RRMSI Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the RRMSI Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the RRMSI Receiver and its agents in carrying out the terms of this Order.

22. THIS COURT ORDERS that the RRMSI Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

23. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the RRMSI Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in cursive script, appearing to read "Saul", is written over a horizontal line.

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

SEP 08 2009

PER / PAR: 

ONTARIO

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

ORDER

(September 1, 2009)

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

Lawyer: R. Shayne Kukulowicz
LSUC: 30729S
Email: shayne.kukulowicz@fmc-law.com
Telephone: 416 863-4740
Facsimile: 416 863-4592

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

MILLER THOMSON LLP
Scotia Plaza, 40 King Street West, Suite 5800
Toronto, Ontario, M5H 3S1

Lawyer: Jeffrey Carhart
LSUC:
Email: jcarhart@millerthomson.com
Telephone: 416 595-8615
Facsimile: 416 595-8695

Representative Counsel