

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

APPLICATION UNDER 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

SUPPLEMENTARY REPORT OF ALVAREZ & MARSAL CANADA ULC,
AS PROPOSED RECEIVER AND MANAGER AND TRUSTEE
OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.

MAY 20, 2009

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1.0 Introduction

- 1.1 WestLB AG, Toronto Branch, as agent for the Lender Syndicate of WestLB AG, Toronto Branch, and CIT Financial Ltd. (the “Syndicate”) has brought an application before this Honourable Court seeking the appointment of a receiver and manager, pursuant to Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended, and trustee pursuant to Section 68 of the *Construction Lien Act*, R.S.O. 1990 c. C. 30 (collectively, the “Receiver”) of all the property, assets and undertaking (the “Assets”) of The Rosseau Resort Developments Inc. (“RRDI” or the “Company”).
- 1.2 This supplementary report (the “Supplementary Report”) has been prepared by Alvarez & Marsal Canada ULC (“A&M”) in its capacity as the proposed Receiver of the assets of the Company, to assist this Honourable Court in considering the Syndicate’s application for the appointment of a Receiver.
- 1.3 The purpose of the Supplementary Report is to provide this Honourable Court with an update as to the status of the Company and the Non-RRDI Red Leaves Entities since the preparation of A&M’s Report to this Honourable Court dated May 19, 2009 (the “First Report”). All capitalized terms referred to in the Supplementary Report shall have the meanings ascribed to them in the First Report unless otherwise defined herein.

2.0 Terms of Reference

- 2.1 In preparing this Supplementary Report, A&M has relied upon unaudited financial information prepared by the Company's management and the Company's consultants and advisors, the Company's books and records and discussions with its management. A&M 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 upon in this Supplementary Report is based on management's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. A&M expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Supplementary Report, or relied upon by A&M in preparing this Supplementary Report. All references to dollar figures contained in this Supplementary Report are in Canadian currency unless otherwise specified.

3.0 Current Status of the Company and the Hotel

- 3.1 Pursuant to A&M's engagement as consultant to the Syndicate, on May 19, 2009, A&M attended at the Company and held various discussions with certain key employees. A&M also met with Altus' on site representative to discuss the current issues impacting construction of the Hotel and the status of the Company's trade creditors.
- 3.2 A&M obtained confirmation from the Company that on May 15, 2009 the RRCI Subcontract Employees were not paid amounts owing to them (approximately \$30,000) in connection with their contractor fees for the two-week period ended May 15, 2009. The RRCI Subcontract Employees were advised on the evening of May 14, 2009, that they would not be paid the following day. The RRCI Subcontract Employees did not report to work on May 15, 2009; however, on May 19, 2009 the majority did report to work. Altus has had discussions with the site foremen who have advised that it is their understanding that if the RRCI Subcontract Employees are not paid amounts owing to them by this Friday, May 22, 2009, then these individuals will likely withdraw their services, notwithstanding RRCI being an affiliate of RRDI. Amounts owing to the RRCI Subcontract Employees continue to accrue at the rate of approximately \$15,000 per week. The RRCI Subcontract Employees provide both the majority of the site supervisory functions (over the subcontractors) and skilled labour services, including carpentry, in connection with construction of the Hotel. A&M understands from both the Company's employees as well as from Altus, that the RRCI Subcontract Employees are critical to completing construction of the Hotel, on-going site maintenance and ensuring compliance with various building and construction code requirements.

- 3.3 As set out in the First Report, A&M confirmed that on May 15, 2009 the Company was unable to make payments owing to certain trade creditors in connection with construction holdback amounts (approximately \$900,000) to be made pursuant to letter agreements entered into between those trade creditors and the Company. Throughout the day on May 19, 2009, the Company received several calls and emails from trade creditors enquiring as to the timing of when such amounts will be paid. A&M has been advised by an employee of the Company that Company employees do not know how to respond to such enquiries as no direction or guidance has been provided from either KFE or DevCon (as defined below).
- 3.4 A&M was advised on May 15, 2009 that, the Company was advised by Fowler Construction Inc. ("Fowler Construction"), one of the Company's significant trade creditors, that one of Fowler Construction's sub-contractors, which is owed approximately \$200,000, was intending to register a lien against the Assets due to a failure by the Company to pay amounts owing to Fowler Construction (who would in turn pay the sub-contractor). On May 19, 2009, legal counsel to the Syndicate conducted a lien search mid-day to determine whether any liens had been registered against the Assets. While no liens were registered, neither the Company's employees nor A&M are certain when and if such a lien will be registered. In addition, the Company's employees have advised that over the past several weeks, the volume of phone calls and discussions with trade creditors who have threatened to and/or indicated a desire to lien the Assets, has substantially increased.
- 3.5 The Company's most recent payroll was due on May 15, 2009. While the majority of the payroll obligations were met last Friday, a certain portion of the Company's payroll,

amounting to approximately \$20,000, relating to two individuals, was not paid by the Company. In addition to current payroll amounts outstanding. In addition to current payroll amounts outstanding, A&M understands that certain employees have not received reimbursement of out-of-pocket expenses owing to them, amounting to approximately \$30,000. Furthermore, A&M understands that the Company currently has no funds available to it to meet its payroll obligations due on May 29, 2009 - approximately \$85,000.

- 3.6 As detailed in the First Report, only one employee remains at the Company who has a position of financial accountability and control (The Company's CFO, Director of Finance and Administration and Controller have previously resigned). This individual has advised A&M that this individual is under significant stress and does not believe is receiving sufficient or appropriate direction in order to complete day-to-day job responsibilities. A&M is extremely concerned as it is believed that this individual does not intend to continue to remain in the employ of the Company. A&M is of the view that this individual is critical to the Company's finance function, and if appointed Receiver, A&M would immediately take steps to ensure this individual's continued employment by the Company.
- 3.7 As a result of the diminished workforce, A&M understands that representatives from Dev-Con International LLC ("DevCon"), a project manager engaged by KFE in or about January 2009, have taken on increased responsibilities with respect to the Company, including, as of May 15, 2009, the treasury functions of the Company and the Non-RRDI Red Leaves Entities.

- 3.8 Altus has advised A&M that in certain instances, trade creditors have indicated a general increase in their levels of business outside of the Red Leaves project and accordingly, have begun to re-direct resources to other projects which are believed to have a greater certainty of payment. As a result, further construction delays are being incurred at the Hotel which will have a further negative impact on the timing of completion of the Hotel and ultimate unit sales closings.
- 3.9 Notwithstanding that construction progress has slowed considerably and there is currently no funding available from any source that A&M is aware of, A&M understands that the recent direction provided by KFE to RRDI's employees was to continue working and "assume that funding will be available".
- 3.10 Certain aspects of construction relating to outdoor bathroom facilities and guest change rooms have not proceeded due to a lack of funding. Life safety and construction codes as well as liquor license requirements (as it relates to bathroom facilities) require that these facilities be constructed prior to: (a) permitting the operation of the Hotel's swimming pools (note that the Hotel's 'upper pools' are currently operating in accordance with requirements, but that its 'lower pools', which are still under construction, are not); and (b) permitting the service of alcohol on the Hotel's outdoor areas including its patios, terraces and pool decks. A&M understands that completion of these facilities could take up to six weeks. Given the relatively short summer season in Muskoka, completion of these facilities is critical to the revenue generating aspects of the Hotel as well as to guest satisfaction. In particular, as at May 8, 2009, Marriott had booked 28 weddings to occur throughout the 2009 summer season. The inability to consume alcohol on the grounds outside of the Hotel will be seen by guests to be a significant inconvenience and

inconsistent with the expectations one would have for a resort of this caliber. A&M has further been advised by the Company that this has most recently become a very significant issue to Marriott as Hotel operator.

Appendix

1. The Company has not provided any information regarding the status of the litigation with the State of Florida regarding the alleged violation of the Florida Consumer Protection Act.	100%
2. The Company has not provided any information regarding the status of the litigation with the State of Florida regarding the alleged violation of the Florida Consumer Protection Act.	100%
3. The Company has not provided any information regarding the status of the litigation with the State of Florida regarding the alleged violation of the Florida Consumer Protection Act.	100%
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Notes

Notes to the Financial Statements

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3.14 Notwithstanding that the Company has no funding available to fund a sales and marketing program, A&M understands that Sotheby's International ("Sotheby's"), a Toronto Area real estate brokerage, was in attendance at the Hotel over the Victoria Day holiday weekend to meet with potential unit purchasers and discuss with Hotel staff, procedures to deal with enquiries from guests interested in purchasing units. As a result, the Company has indicated that it generated nine new "leads" from this past weekend, which if managed appropriately, could result in unit sales. Notwithstanding the engagement of Sotheby's, the Company has no financial resources available to fund a sales and marketing program. In discussions with key Company employees prior to the Victoria Day holiday weekend, A&M was advised that the Company had run out of sales and marketing materials and was unable to procure replacement materials. As the summer selling season is now underway, it is critical that a robust sales and marketing program, that is sufficiently funded, be implemented to convert "leads" to sales and generate proceeds for the benefit of the stakeholders. On several occasions A&M has requested to be provided with Sotheby's detailed sales and marketing plan with respect to the Hotel; however, such a document has not been provided either from the Company or Sotheby's. .

3.15 As detailed in paragraph 4.5 of the First Report, pursuant to the LRA, Marriott Hotels is entitled to be paid certain amounts, capped at \$1.2 million, as a royalty fee with respect to the assistance provided in the marketing for sale of Hotel units (the "Marriott Royalty Fee"). In paragraph 13 of the affidavit of Ken Fowler sworn May 19, 2009 (the "Fowler Affidavit"), it was indicated that no such payment pursuant to the Marriott Royalty Fee was due until May 20, 2009. Attached as **Appendix "A"** is a copy of an email

correspondence wherein Mr. John Kennedy, Vice President, Development Asset Management of Marriott Hotels advised both the Company and WestLB AG, Toronto Branch, that the portion of the Marriott Royalty Fee (estimated to be \$85,000) relating to units which closed during March 2009 was due for payment on April 20, 2009.

4.0 Current Status of the Non-RRDI Red Leaves Entities

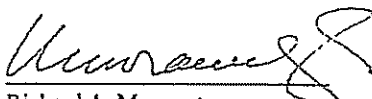
- 4.1 A&M was advised by the Company's employees that on May 14, 2009, an equity injection was received by certain of the Non-RRDI Red Leaves Entities from the Company's ultimate shareholders in the amount of approximately \$102,000. A&M understands that these funds were used to pay: (a) mortgage payments due on May 15, 2009 in respect of Lakeside Lodge and Wallace (to lenders which are not associated with the Syndicate); (b) the bi-weekly employee payroll for Cleveland House which was due on May 15, 2009; and (c) other minor payroll amounts for Non-RRDI Red Leaves Entities. None of the funds received with respect to this equity injection were used by and/or made available to the Company to fund its costs and expenses.
- 4.2 A&M has confirmed that The Rock (golf course) is currently closed and has not yet opened for the 2009 golfing season. There has been no indication provided as to the potential timing of when The Rock may re-open and A&M understands that the majority of all employees at The Rock have either been terminated or laid off. A&M also understands that Marriott is of the view that this will have a significant negative impact on both the Hotel's occupancy levels and profitability. Furthermore, A&M has been advised by the Company that room cancellations as a result of The Rock being closed have already begun to occur at the Hotel.
- 4.3 Historically, The Rock has been operated by an affiliate of Marriott Hotels ("Marriott Golf"); however, due to unpaid amounts owing to Marriott Golf, A&M has been advised by the Company that Marriott Golf has terminated its operating agreement and accordingly, is withdrawing all of its services provided to The Rock on or around May 20, 2009.

- 4.4 A&M understands from Company employees that Cleveland's House opened for the summer season on May 15, 2009 and was fully operational during the Victoria Day holiday weekend. Notwithstanding that Cleveland's House is substantially fully booked for the upcoming summer weekends with both conference and holiday guests, it is forecast to operate, at best, on a cash flow neutral basis throughout 2009.
- 4.5 Traditionally, parties attending Cleveland's House provide a substantial deposit at the time a booking is made. The majority of these deposit funds were received by Cleveland's House over the fall and winter months of 2008/2009 (the "Deposit Funds"). A total of approximately \$700,000 in Deposit Funds was received by Cleveland's House during that period and would have been used to fund the on-going working capital requirements and net operating losses (if any) of Cleveland's House. However, A&M understands that substantially all of the Deposit Funds received were reallocated by Red Leaves to meet various other funding requirements in connection with either the Company or the other Non-RRDI Red Leaves Entities. Accordingly, A&M has been advised by the Company that while Cleveland's House is currently fully operational, it has no available cash to fund its required and forecast working capital needs as well as, any net operating losses over the summer season.

* * *

All of which is respectfully submitted, this 20th day of May, 2009

**ALVAREZ & MARSAL CANADA ULC AS PROPOSED
RECEIVER AND MANAGER AND TRUSTEE OF
THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.**

Per: 
Richard A. Morawetz

Appendix "A"

From: robert_dyck@westlb.com [mailto:robert_dyck@westlb.com]
Sent: Tuesday, April 28, 2009 5:12 PM
To: michael_sasnos@westlb.com
Cc: tal_perl@westlb.com; george_raddatz@westlb.com; Zalev, Adam; carlos.serra@altusgroup.com
Subject: Fw: JW Rousseau - Introduction Fee to MI

Michael,

Could you please follow up with John. Maybe Adam can confirm if the amounts in question appeared on the company's reports?

Regards,

Robert Dyck

Executive Director, Principal Officer
WestLB AG, Toronto Branch
Suite 2301, Box 41
Royal Bank Plaza, North Tower
200 Bay Street
Toronto, Ontario M5J 2J1
Tel: 416-216-5005 Fax: 416-216-5020
Email: robert_dyck@westlb.com

WestLB AG
Managing Board:
Heinz Hilgert (Chairman),
Hubert Beckmann (Vice Chairman),
Dietrich Voigtländer (Vice Chairman),
Klemens Breuer, Thomas Groß,
Dr. Hans-Jürgen Niehaus, Werner Tauber
Head of the Supervisory Board: Michael Breuer
Registered Office: Düsseldorf/Münster
Amtsgerichte Registration Numbers Düsseldorf, HRB 42975 / Münster, HRB 6400
— Forwarded by Robert Dyck/TD/MLB on 04/28/2009 05:03 PM —
"Kennedy, John (Dev Asset Mgmt)" <John.Kennedy@marriott.com>

04/28/2009 04:48 PM

To: <robert_dyck@westlb.com>
Cc: "Jens-Joachim Schaefer" <jschae@devcon.de>, "Janis Farrar" <ffarrar@lts.on.ca>, "Michael Sneyd" <msneyd@devcon.de>, "Kitty, Annie" <Annie.Kitty@marriott.com>, "Paragau, Laurent" <Laurent.Paragau@marriott.com>
Subject: RE: JW Rousseau - Introduction Fee to MI

Rob

The payment due to Harriott relating to the Introduction Fee for the units that closed in March should have been paid on April 30th and is now past due. Michael Sneyd informed Harriott for the first time yesterday via the email below that payment for those units and future ones would be delayed. As this is inconsistent with the requirements under the license agreement, I would like to have a call to discuss this with you and the owner. Any change from the current payment terms requires our consent.

5/20/2009

Regards,
John Kennedy

Telephone: (301) 380-2670 | Fax: (301) 644-7876 | Mobile: (240) 463-4557
Email: john.kennedy@marriott.com

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From: Michael Sneyd [mailto:msneyd@devconllc.com]
Sent: Monday, April 27, 2009 5:47 PM
To: Kennedy, John (Dev Asset Mgmt)
Cc: Matthias Schlaepfer; Jamie Farrar
Subject: RE: JW Rousseau - Introduction Fee to MI

John,

Your payment must be approved by the cost consultant, monitor and WestLB. They currently plan to have MI paid in three tranches: mid May, end of May, and June.

Best regards,

Michael

From: Jamie Farrar [mailto:jfarrar@kfe.on.ca]
Sent: Mon April 27, 2009 5:18 PM
To: Kennedy, John (Dev Asset Mgmt)
Cc: Michael Sneyd; Matthias Schlaepfer
Subject: FW: JW Rousseau - Introduction Fee to MI

John,

Thanks for your email. I've copied Michael Sneyd and Matthias at DevCon and have asked them to look into the status of the payments, which I believe are linked to us closing our permanent financing transaction with Westlb/Fortress. We hope to complete this in the next 30 days and we continue to actively discuss with them (Michael and I will be meeting them in New York tomorrow).

Jamie Farrar

Ken Fowler Enterprises

Phone (905) 688 9740 ext 22

Cell (905) 650 4366

Fax (905) 688 3060

From: Kennedy, John (Dev Asset Mgmt) [mailto:John.Kennedy@marriott.com]
Sent: Monday, April 27, 2009 5:12 PM
To: Jamie Farrar
Cc: robin@fowlerresorts.com
Subject: JW Rousseau - Introduction Fee to MI

Jamie

MI was supposed to have been paid on April 20th for the units that closed in March and we have not received payment yet. Can you look into this and let me know when payment will be made?

Regards,
John Kennedy

John Kennedy | Vice President, Development Asset Management | Marriott International, Inc.
Address: 10400 Fernwood Rd. - Dept. 51/911.JE - Bethesda, MD 20817

5/20/2009

Telephone: (301) 360-2670 | Fax: (301) 644-7876 | Mobile: (240) 463-4557
Email: john.kennedy@marriott.com

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5/20/2009