

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**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, AND SECTION 68 OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990 C. C. 30, AS AMENDED**

**SUPPLEMENTARY REPORT TO THE FIRST REPORT OF
ALVAREZ & MARSAL CANADA ULC,
AS CONSTRUCTION LIEN ACT TRUSTEE AND
MCINTOSH & MORAWETZ INC., AS INTERIM RECEIVER
OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.**

MAY 29, 2009

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1.0 Introduction

- 1.1 On May 22, 2009, the Ontario Superior Court of Justice (the “Court”) issued an order (the “Appointment Order”) appointing Alvarez & Marsal Canada ULC (“A&M”) and McIntosh & Morawetz Inc., as trustee and interim receiver, respectively (collectively the “Interim Receiver”) pursuant to Section 68 of the *Construction Lien Act (Ontario)* (“CLA”) and Section 47(1) of the *Bankruptcy and Insolvency Act* (“BIA”) of all the property, assets and undertakings (the “Assets”) of The Rosseau Resort Developments Inc. (“RRDI” or the “Company”).
- 1.2 A&M, as proposed receiver, filed a report dated May 19, 2009 and a supplementary report dated May 20, 2009 (collectively the “A&M Reports”) in support of an application brought before this Honourable Court by WestLB AG, Toronto Branch, as agent for the Lender Syndicate of WestLB AG, Toronto Branch and CIT Financial Ltd. (the “Syndicate”) for the appointment of the Interim Receiver and a receiver and manager pursuant to Section 101 of the *Courts of Justice Act* (“CJA”) and Section 68 of the CLA.
- 1.3 The Court adjourned a portion of the application relating to the appointment of a receiver and manager under the CJA and the CLA to June 1, 2009. On this return date, the Court will consider the balance of the Syndicate’s application (the “Receiver and Manager Application”) for the appointment of A&M as receiver and manager (the “Receiver and Manager”) in addition to its current appointment. On May 27, 2009, the Interim Receiver filed its first report (the “First Report”) in support of the Receiver and Manager Application, among other things.

- 1.4 This report (the “Supplementary Report to the First Report”) is being filed by the Interim Receiver to update this Honourable Court on certain matters with respect to the Company that the Interim Receiver has become aware of since the date it filed its First Report.

2.0 Terms of Reference

- 2.1 In preparing this Supplementary Report to the First Report, the Interim Receiver has relied on 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. The Interim Receiver 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 on in this Supplementary Report to the First Report is based on management's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Interim Receiver expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Supplementary Report to the First Report, or relied upon by the Interim Receiver in preparing this Supplementary Report to the First Report. All references to dollar figures contained in this Supplementary Report to the First Report are in Canadian currency unless otherwise specified.
- 2.2 Capitalized terms in this Supplementary Report to the First Report shall have the meanings ascribed to them in either the A&M Reports or the First Report unless otherwise defined herein.

3.0 Matters Relating to Construction Holdback Amounts and the Company's Subcontractors

- 3.1 As described in the First Report, on Tuesday, May 26, 2009, the Interim Receiver and its legal counsel held a meeting (the "Meeting") at the Hotel with representatives of the most substantial construction subcontractors to discuss the receivership proceedings and explain the process going forward. While concerns were raised, it was the Interim Receiver's view that parties in attendance were generally supportive of the receivership proceedings.
- 3.2 At the Meeting, the Interim Receiver discussed the terms of the Appointment Order and advised the attendees that, while there was a stay of proceedings, the Appointment Order expressly did not prevent the registration of claims for lien.
- 3.3 During the Meeting, one of the primary concerns raised by legal counsel to certain of the subcontractors in attendance was the order of priority ultimately to be afforded to subcontractors pursuant to the CLA.
- 3.4 On Wednesday, May 27, 2009, legal counsel to certain of the subcontractors sent two emails to the Interim Receiver advising of his intention to: (a) seek an adjournment of the motion to hear the Receiver and Manager Application until June 8, 2009; (b) seek to obtain certain financial information with respect to the Company; and (c) deliver a formal request for information pursuant to Section 39 of the CLA ((b) and (c) being collectively referred to as the "Information Request").
- 3.5 Upon receiving the Information Request, the Interim Receiver worked diligently to obtain the information being sought by the subcontractors' legal counsel and, with the assistance

of the Interim Receiver's legal counsel, has organized a telephone conference call with the subcontractors' counsel to discuss the Information Request and the proposed adjournment of the motion to hear the Receiver and Manager Application. A telephone conference call has been scheduled for 3:00 pm EDT on Friday, May 29, 2009 and the Interim Receiver intends to update this Honourable Court on the outcome of that telephone call during the hearing to consider the Receiver and Manager Application on Monday, June 1, 2009.

3.6 While compiling the information requested in the Information Request including through detailed discussions with the Company's employees throughout the morning of Thursday, May 28, 2009, the Interim Receiver and Altus began to identify possible inconsistencies with the process in which construction holdback monies were released to subcontractors prior to the appointment of the Interim Receiver. The Interim Receiver has also been advised that certain subcontractors entered into agreements with the Company prior to these proceedings whereby they agreed to defer the release of holdback deficiency amounts.

3.7 Due to the limited time since its appointment, the Interim Receiver has not yet had the opportunity to conduct a detailed analysis of these inconsistencies. It may be ultimately determined that the quantum of unpaid construction holdback deficiencies is greater than amounts previously disclosed by the Company to A&M and reported in the A&M Reports (the amount detailed in the A&M Reports being approximately \$3.4 million). The Interim Receiver is presently of the view that, regardless of what the ultimate quantum of holdback deficiencies is determined to be, based on the forecast net proceeds from the sale of Hotel units currently under APS (64 units), there will be sufficient

realizations to (a) repay the maximum amount of the Receiver's Borrowings; and (b) subject to the conduct of a claims administration process pursuant to the CLA, pay all outstanding claims that are determined to have priority over the Syndicate Loan Facilities.

3.8 The Interim Receiver intends to conduct a thorough investigation with respect to all amounts paid to subcontractors prior to its appointment and will advise this Honourable Court of the outcome of its investigation in future reports. To the extent that additional construction holdback deficiency amounts are identified, it would ultimately be to the benefit of those subcontractors who have not been paid amounts owing to them in accordance with the CLA, as any unpaid construction holdback deficiencies would, if proven to be valid, have the priority afforded to them under the CLA, but be subordinate to the Receiver's Borrowings.

3.9 The Interim Receiver is aware that at least three (3) claims for lien have been registered against the Hotel property and expects a number more in the near future. The registration of liens will enable the Receiver and Manager to start the process of reviewing and quantifying claims as part of its CLA mandate.

3.10 As has already been noted in the Application Record and the A&M Reports, there is a need to finish the Hotel as quickly as possible in order to ensure maximum value for all stakeholders, including subcontractors. The Receiver intends to continue its communications with subcontractors and to seek their cooperation. It is the Interim Receiver's view that the Information Request from subcontractors and the need for further investigation identified by the Interim Receiver, reinforce the need for the

proposed Amended and Restated Appointment Order and the Receiver's Borrowings. The Receiver and Manager, if appointed, will be able to undertake a detailed review of the books and records of the Company and implement a comprehensive claims administration process for construction claimants pursuant to the CLA, while taking those actions necessary to complete construction of the Hotel, complete the sale of the Hotel units which are subject to an APS, undertake to sell the unsold Assets and collect all of the proceeds therefrom for the benefit of all of the Company's stakeholders, including those subcontractors who are duly owed amounts with respect to the construction holdback deficiencies. In the absence of, or in the delay of, the issuance of the Amended and Restated Appointment Order, the Interim Receiver will not have the funding, the authority or the ability to complete construction and this will jeopardize the closings of Hotel units subject to an APS and lose valuable time to market and sell the unsold Hotel units during the current peak summer selling season.

* * *

All of which is respectfully submitted, this 29th day of May, 2009

**ALVAREZ & MARSAL CANADA ULC &
McINTOSH & MORAWETZ INC. IN THEIR CAPACITIES AS
CONSTRUCTION LIEN ACT TRUSTEE AND
INTERIM RECEIVER, RESPECTIVELY, OF THE ASSETS OF
THE ROSSEAU RESORT DEVELOPMENTS INC.**

Per: 
Richard A. Morawetz