

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

AUGUST 14, 2009

Listing of Appendices

Appendix A

- Letter from RRMSI dated August 13, 2009

Appendix B

- Letter from Independent Legal Counsel to the Receiver dated August 14, 2009 in Response to RRMSI's letter dated August 13, 2009

1.0 Additional information in respect of the Fourth Report

- 1.1 On May 22, 2009, the Ontario Superior Court of Justice (the “Court”) issued an 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* (Canada) (“BIA”) of all the property, assets and undertakings (the “Assets”) of The Rosseau Resort Developments Inc. (“RRDI” or the “Company”). On June 2, 2009, the Court issued an Amended and Restated Appointment Order (the “Appointment Order”) continuing the appointment of the Interim Receiver and appointing A&M as receiver and manager (the “Receiver and Manager”) pursuant to Section 101 of the *Courts of Justice Act* (Ontario) (“CJA”) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager collectively defined as the “Receiver”).¹
- 1.2 On August 12, 2009, the Receiver filed its Fourth Report, which, among other things, described: (a) the steps that the Receiver proposes to take to restructure the Rental Pool and put in place a new form of RPMA and enable it to be financially viable; (b) the terms on which the Receiver proposes to complete new bilateral arrangements with Marriott Hotels and (c) the Settlement Agreements proposed to Unit Owners and Existing Unit Purchasers.

¹ Capitalized terms in this Supplementary Report to the Fourth Report shall have the meanings ascribed to them in the Glossary of Defined Terms attached as Appendix “A” to the Fourth Report.

1.3 This report (the "Supplementary Report to the Fourth Report") is filed in order to:

- Provide the Court with a copy of a letter delivered by RRMSI to the Receiver and legal counsel to the Receiver, dated August 13, 2009 (the "RRMSI Letter"), registering RRMSI's position with respect to the relief being sought by the Receiver in connection with this motion. In accordance with RRMSI's request, the Receiver is providing a copy of the RRMSI Letter to this Honourable Court. Attached as Appendix "A" is a copy of the RRMSI Letter. On August 14, 2009, the Receiver's independent counsel responded to the RRMSI Letter, advising that the Receiver does not agree with the allegations contained in the RRMSI Letter, nor is it prepared to accept the settlement offer proposed by RRMSI in the RRMSI Letter, but confirming that the Receiver would bring the RRMSI Letter to the attention of the Court. Attached hereto as Appendix "B" is a copy of the Receiver's letter.
- Advise the Court that the letter agreement between RRDI, on behalf of the Receiver and Marriott Hotels (the "Side Letter"), which modifies the terms of the New HMA, specifically in respect of these receivership proceedings, has not yet been finalized. The Receiver is hopeful it will complete the finalization of the Side Letter with Marriott Hotels in advance of the hearing of the motion in respect of these matters, and will provide the Side Letter, along with a schedule describing those provisions of the New HMA which are modified by the Side Letter, to this Honourable Court at the hearing thereof.

- Advise the Court that the Disclosure Documentation, which is subject to Court approval, and is required to be provided to prospective New Unit Purchasers pursuant to the Exemption Ruling and the *Condominium Act, 1998* (Ontario), is still in preparation. The Disclosure Documentation will be finalized once the outcome of the motion in respect of these matters is determined. Approval of the Court will be sought thereafter, but in advance of the date of the One-Day Only Sale.

* * *

All of which is respectfully submitted, this 14th day of August, 2009

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

Per:


Richard A. Morawetz

Appendix A

THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

Via E-mail

August 13, 2009

Richard Morawetz
Alvarez & Marsal Canada ULC, Receiver

and

Pam Huff
Blake Cassels & Graydon LLP

and

Jane Dietrich
Fraser Milner Casgrain LLP

Ladies and Gentlemen:

Re: Settlement Documentation regarding Rosseau Resort Developments Inc.

We are writing this letter in connection with your advice to The Rosseau Resort Management Services Inc. ("RRMSI") that the receiver intends to seek Court approval to:

- a) repudiate, on behalf of Rosseau Resort Developments Inc. ("RRDI"), which is in receivership, the Amended and Restated Hotel Management Agreement and other agreements with Marriott, and enter into a new hotel management agreement with Marriott;
- b) repudiate, on behalf of RRDI, the oral agreement between RRDI and RRMSI giving RRMSI the exclusive right to act as rental pool manager (which we note that the lenders and Marriott at all times had full knowledge of);
- c) enter into new rental pool management agreements with existing and new purchasers of condominium units (despite RRMSI's existing exclusive rental pool management agreements with current condominium owners); and
- d) enter into settlement agreements with existing and new purchasers of condominium units in respect of sale-leaseback and other incentive arrangements that they have entered into or agreed to enter into with RRDI.

You have subsequently provided us with copies of the proposed new rental pool management agreements, which you are proposing that RRDI would enter into with each existing and new condominium owner. We believe that, under the circumstances, the financial terms of these proposed new rental pool management agreements and incentive settlement agreements are reasonable. However, we believe that they would unfairly prejudice RRMSI and, without legal authority, terminate agreements between it and condominium owners to which RRDI is not a party. If permitted to occur, this would terminate rights that RRMSI values, over time, at many million dollars, without any

compensation, for the benefit of the lending syndicate that sought the appointment of the receiver, and to the detriment of RRMSI and its shareholders. From a legal perspective, there is in our view no basis for a receiver to obtain Court approval to purport to override agreements and arrangements to which the entity in receivership is not a party.

This might be possible to do were the banks to have obtained guarantees from RRMSI of RRDI's indebtedness to the lenders and collateral security over RRMSI's contractual rights with condominium owners, as the lenders could then have sought a receivership over RRMSI's assets as well. However, the lenders specifically did not obtain such guarantees and security, and RRMSI is not in receivership. Accordingly, this motion, which would see the Court being asked to bless the unauthorized taking of RRMSI's contractual rights, and the entry into new agreements by the receiver with condominium owners in violation of their existing exclusive commitments to RRMSI, should not be countenanced by the Court. In addition, even if RRDI terminates the Hotel Management Agreement with Marriott, the rights and obligations as between Marriott and RRMSI will remain. Were Marriott to seek to terminate them vis-à-vis RRMSI, and to succeed legally in doing so, it would then have no legal ability to arrange for the occupancy of such units in the ordinary course of the operation of the hotel, given RRMSI's exclusive rights thereto, unless it were to enter into an agreement in respect thereof with RRMSI.

It is for reasons such as this (and the complex web of arrangements that affect the whole development, including surrounding lands that are also not subject to the receivership) that RRDI and its affiliates originally sought a negotiated contractual solution rather than this receivership. That was not accepted by the lenders. The result, however, is that they are bound by the limitations applicable in a receivership situation.

RRMSI, however, has a solution to this conundrum, as we also wish to protect the investments of condominium owners and to maximize the value to stakeholders of the assets of RRDI in the receivership process, while protecting our own legal rights (which, as noted above, we believe to be worth many millions of dollars) as rental pool manager pursuant to existing and in force agreements with condominium owners. We also understand that you wish to market the right to act as rental pool manager, which belongs to RRMSI, as part of the institutional sales process, and we are prepared to cooperate in that process to seek to realize maximum value for all.

Accordingly, RRMSI advises that it is willing to:

a) continue to act as the rental pool manager, on the new financial terms negotiated by the receiver with condominium owners (i.e. we will accept the financial terms of those arrangements, including the material 40%ish reduction in the revenue that the rental pool manager will as a result be entitled to, as part of the solution needed to get condominium owners to settle their sale-leaseback and incentive rights and sign appropriate releases of all involved parties);

b) enter into a reasonable hotel management agreement with Marriott (or an acceptable successor hotelier) with respect to Marriott (or the successor) being able to continue to be or be (in the case of a successor) delegated the right to arrange for the occupancy of the condo

units (while we do not know what terms RRDI has negotiated, we expect that we will not have a problem with them as our interests in this regard would likely be reasonably well aligned);

c) in the event that, at the time of a new agreement as referred to under b) above, the existing Hotel Management Agreement is desired to be terminated, to waive any requirement for advance notice and agree to the termination thereof on reasonable terms (again, while we do not know what terms RRDI has negotiated, we expect that we will not have a problem with them as our interests in this regard would likely be reasonably well aligned); and

d) agree to cooperate reasonably in the institutional sales process with the receiver/RRDI on any joint sale of the rental pool rights and the other residual condo units and commercial space in the hotel, as well as in the retail sales process currently underway as recently approved by the Court.

If the receiver and/or the lenders refuse this proposal, in our view this is evidence that the lenders' real desire is to strip RRMSI of its contractual rights with third parties in order to enable such rights to be sold for millions of dollars to a third party for the benefit of the lenders.

We wish to cooperate in the receivership process, while respecting the legal rights and obligations between parties to agreements and arrangements not involving RRDI. In our view, the above (namely, respecting RRMSI's exclusive rights under agreements with the condominium owners to act as rental pool manager) is the only basis on which the Court should approve the receiver's requests. Otherwise, it would be being asked to authorize unlawful and improper interference with RRMSI's contractual rights with third parties, none of whom are in receivership.

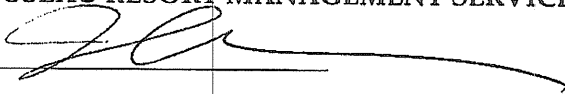
RRMSI is confident that it will be capable of carrying out its obligations under both the current or proposed amended rental pool management agreements, having regard to the terms thereof.

We believe that the above represents a fair and balanced solution to these issues. At this stage, RRMSI does not intend to file additional material or instruct counsel to attend to make additional submissions on the return of the motion provided that this letter is brought to the attention of the Court. The purpose of this letter is to register RRMSI's objection to the Order sought and that RRMSI does not consent to the Order. Please confirm that the

receiver will provide a copy of this letter to the Court.

Respectfully submitted,

THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

By: 

Ken Fowler, President

Appendix B



FRASER MILNER CASGRAIN LLP

Jane O. Dietrich
Direct Line: (416) 863-4467
jane.dietrich@fmc-law.com

August 14, 2009

VIA E-MAIL

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Attention: Simon Romano

Dear Mr. Romano:

Subject: The Rosseau Resort Management Services Inc. ("RRMSI")

This letter is in response to the letter of Ken Fowler, President of RRMSI, which you provided to Richard Morawetz, Pam Huff and myself yesterday, August 13, 2009 (the "RRMSI Letter").

Alvarez & Marsal Canada ULC, as court appointed receiver of The Rosseau Resort Developments Inc. (the "Receiver") does not agree with the allegations contained in your letter, nor is it prepared to accept the settlement offer proposed by RRMSI in the RRMSI Letter.

We confirm, on behalf of the Receiver, that a copy of the RRMSI Letter will be provided to the Court by supplemental report to the Court, which, the Receiver is currently preparing.

Yours truly,

FRASER MILNER CASGRAIN LLP



Jane Dietrich

JOD/sw

cc: Pamela Huff
Richard Morawetz

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