No. 0901-04199

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

IN THE MATTER OF THE COMPANIES CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF FAIRMONT RESORT PROPERTIES LTD., LAKE OKANAGAN RESORT VACATION (2001) LTD., LAKE OKANAGAN RESORT (2001) LTD., AND LL DEVELOPMENTS LTD.

Cross-examination on Affidavit of MURRAY MOORE, sworn the 17th day of June, A.D. 2009, taken before Kim Morosse, CSR(A), RPR, Examiner pursuant to Rules 203, 728, 204(1) of the Court of Queen's Bench of Alberta, at the offices of Macleod Dixon LLP, Calgary, Alberta, on the 18th day of June, A.D. 2009.

For Fairmont Resort Properties Ltd., Lake Okanagan Resort Vacation (2001) Ltd., Lake Okanagan Resort (2001) Ltd., LL Developments Ltd.:

H. A. Gorman, Esq.
(MACLEOD DIXON LLP
3700, 400-3 Ave. SW
Calgary, Alberta T2P 4H2
(403) 267-8144)

For Resort Funding LLC:

L. B. Robinson, Q.C.
(DAVIS LLP
1000, 250-2 St. SW
Calgary, Alberta T2P 0C1
(403) 296-4470)

For Century Services Inc.:

D. LeGeyt, Esq.
(FRASER MILNER CASGRAIN LLP
30th Fl. 237-4 Ave. SW
Calgary, Alberta T2P 4X7
(403) 268-3075)

For FRPL Finance Ltd. and FRPL Management Ltd.:

R. Gurofsky, Ms.
(BORDEN LADNER GERVAIS
1000, 400-3 Ave. SW
Calgary, Alberta T2P 4H2
(403) 232-9774)

For Ernst & Young Inc. (Court-Appointed Monitor):

R. Zahara, Esq.
(BLAKE, CASSELS & GRAYDON LLP
3500, 855-2 St. SW
Calgary, Alberta T2P 4J8
(403) 260-9600)

Official Court Reporter:

Kim Morosse, CSR(A) RPR

(Proceedings commenced at 12:30 p.m.)

MURRAY MOORE, sworn, cross-examined by Mr. Robinson:

Q. Mr. Moore, you're the Murray Moore that swore an affidavit in the Fairmont CCAA proceedings on June 17, 2009; is that correct?

A. I am.

Q. When I refer to your affidavit, you'll understand that's the affidavit that I'm referring to, because I believe you swore other affidavits in these proceedings as well.

You've taken an oath to tell the truth, and it's fair to say that you treat that oath as binding on your conscience?

A. I will.

Q. Could you tell me, sir, first of all, your educational background?

A. I'm a charted accountant.

Q. Just briefly your history of employment with Fairmont.

A. I was employed as the chief financial officer of Fairmont effective January 1, 2007. And continued in that role and became -- I was appointed the interim chief restructuring officer on March 30, 2009. And then the chief restructuring officer last week.

Q. Prior to the filing of these proceedings and you becoming interim chief restructuring officer, were there other individuals involved in senior management level at Fairmont?

A. Yes.
Q. Did they cease to be involved with the filing?
A. They did.
Q. You will forgive me if this information is contained somewhere already in the proceedings, but in your role as chief restructuring officer, have you formulated any idea of when the secured creditors are likely to be paid out?
A. I think it's too early for us to be able to assess that timing. The company has, based on our application last week, proceeded with a program that we hope to be able to be the basis of a program that helps us to come to a conclusion as to the timing.
So until we know of the success -- we haven't started that program yet. Until we know of the success, it's too early for us to assess what the time will be.
Q. Do you have even a range when it might be? Between two months and two years or . . .
A. Certainly it is our desire to see that we may be able to have something that we can come back to the Courts for later this fall.
Q. So that would be September, October?
A. I couldn't be held to a time.
Q. Is there anything happening with respect to the restructuring that would suggest that you might be able to pay the creditors out earlier than this fall?
A. Certainly part of our plan encompasses a number of various fronts. We are looking at potentially the sale of

certain of the various assets, along with the remainder conversion, monetization program that was blessed last week, and if for -- we were able to be successful on two or more of those fronts, it's possible that we could have something happen earlier.
Q. Is there any movement afoot to sell the receivables?
A. No, there is no movement to sell receivables.
Q. Now, you understand that I represent Resort Funding?
A. Yes.
Q. Would it be correct to say that Resort Funding has security -- whatever security they have, is restricted to an interest in receivables of Fairmont?
A. Providing they have security, it is restricted to the receivables.
Q. I will treat that qualification all the way through so we don't fence with each other. I understand there's some question about priority; I understand there's some question about the nature of the security.
A. I respect that.
Q. If they have something, it is a secured position or a claim with respect to receivables and receivables only?
A. Correct.
Q. With respect to another company that's mentioned often in these proceedings, which name I'm -- someday I'm going to learn to remember. FRPL, I believe they're commonly referred to?
A. If I could refer to them as FRPL Finance.

Q. FRPL Finance. My understanding is and, again, qualify it a bit with respect to some security that they might have taken in February of '09, did FRPL Finance lend and take security against real estate?
A. Yes, they did.
Q. Did they take security against receivables?
A. They did not take security against receivables, no, excepting as it pertained to a GSA filed at the point in time -- as we came on to the CCAA order.
Q. This is the security I was alluding to in my question around February of '09, I believe.
A. Yes.
Q. Is Resort Funding the only company that finances, to try and use a neutral phrase, your receivables, or do you have similar arrangements with respect to other companies on other of your receivables?
A. In the summer last year, we received an advance from an organization not typically in the business of funding receivables, but as we were in need of those funds, we agreed with them to provide a group of receivables as security, not notes, that were already pledged to our RFI as their security, but other notes that were provided as security for their loan.
Q. Again, help me with, what company was that?
A. The name of the entity was Cedar Point Estates.
Q. I'm going purely by memory here, but my recollection is there is some financing statements filed to the tune of

about $2 million by Cedar Point; is that correct?
A. That's correct.
Q. That would relate to the facility you're talking about?
A. That's correct.
Q. That, again, to your understanding, has nothing to do with the 1,600 odd notes that Resort Funding is claiming interest in?
A. That's correct.
Q. Now, Mr. Gorman, in his examination of Ms. Henson, questioned Ms. Henson about a particular note that -- or form of note that was attached to her affidavit. Paraphrasing, the question was, did she know how much was owing on that note now.
My understanding is, and you can correct me if I'm wrong, my understanding is that Fairmont has the direct contact with the makers of the promissory notes that Resort Funding claims an interest in?
A. That's correct.
Q. I don't know if they're referred to in the agreement, it says agent or not. But in some capacity, they collect the payments that come in on those notes?
A. We collect those payments.
Q. And do you refer to yourself as agents to collect the notes, or how do you refer to yourself?
A. We refer to ourselves as owners of those notes.
Q. To the makers of the notes?

A. That's right.
Q. As between you and Resort Funding, are you referred to as their agent, or how do you refer yourself?
A. I don't know that I could answer that. I have not had an opportunity to refer to the Resort Funding in that fashion.
Q. That's fine. In any event, prior to the CCAA proceedings, if a payment was made on one of those 600 odd -- or 1,600 odd notes, that payment, in turn, was passed on to Resort Funding by Fairmont; is that correct?
A. That's correct.
Q. Passed on in its entirety?
A. That's correct.
Q. That was done once a month, I understand?
A. That's correct.
Q. At the same time that the payments were passed on, did you also give Resort Funding a statement or a reconciliation indicating what payments had been received on which notes?
A. The timing, I believe, would be in a different time. Those -- that filing for the -- of the payment listing would have been made within the first two or three days of the month.
The payment due to Resort Funding in payment of the collections in the previous month, or equal to the amount of the collections in the previous month, was due to them by the 10th.

Q. More pointedly, I guess, then, would Ms. Henson be able to tell what was owing on any particular note at any particular time, give or take a few days, perhaps, based on statements that they would get from Fairmont?
A. I don't know that she could tell at any point in time exactly what the balance outstanding was on a particular note.
Q. When you say "at any point in time," are we talking about because there might be a few days' interest accrued between the date of your statement, or there might have been a payment received between last statement and this payment?
A. I would need to go back and look again at the report that we send to them of the payments, listing the payments, whether that statement indicates the balance of the notes as well as the amount of the payment.
Q. I'm hoping to not have a bunch of undertakings, but is that typical statement that you would send, a document that's readily available to you?
A. Yes, it is.
Q. I would ask then, through your counsel, whether you would undertake to provide me with a sample, and I am indifferent as to which month.
MR. GORMAN: I'm concerned with respect to individual's names and accounts being produced. Is your question -- is the reconciliation by 1,600 accounts or global reconciliation?

Q. MR. ROBINSON: My question is, and you can just answer -- if it can be answered another way, I would just like to zero in really on the question that Mr. Gorman was asking my client and whether, through the reporting vehicle that exists between Fairmont and Resort Funding, at a point in time, with some degree of certainty, does Resort Funding know the balance owing on any particular one of these notes?
A. Again, I would defer to reviewing that document.
MR. GORMAN: So we will review what the report looks like and provide it to you. Again, we're concerned if there's individual names and balances.
MR. ROBINSON: You understand the focus of my question, Mr. Gorman? I'm prepared to be very broad in term of how you respond to it, whether it's by way of redaction, by way of simply confirming a line item that would show on any particular note, what my client knows about that note.
A. I understand.
MR. ROBINSON: Again, really referencing back to the question Mr. Gorman asked.

UNDERTAKING SUBSEQUENTLY SATISFIED AT
PAGE 24, LINE 25 OF THE TRANSCRIPT

Q. MR. ROBINSON: Now, I'm hesitant to get into numbers with any witness, but particularly a charted accountant, but if I could refer you to your Exhibit A, and I'd like to get you to help sort of walk me through the numbers.

Your Exhibit A, I believe, reflects the total principal amount outstanding on -- cumulatively on the notes that Resort Funding holds at any point in time.

A. Uh-huh.

Q. Sorry, uh-huh --

A. I apologize. Ask the question again.

Q. You can't say "uh-uh." You have to say "yes" or "no." Okay, ask the question again?

A. Please.

Q. If I understand your Exhibit A correctly, it indicates to me cumulatively what the principal amount outstanding is on the packet of notes that Resort Funding holds at a point in time.

A. Yes. The second column in this schedule entitled "Total Notes and Security of RFI Loan," represents the total amount of the -- the total amount of the principal -- outstanding principal balance on those notes that have been provided as security.

Q. Okay, thank you. If I look -- and I just started to do the math starting at February '09. If I look at the period between February '09 and March '09, it appears to me, if my mathematics is correct, that the principal amounts on those notes went down by $380,669.

Would that appear to be approximately the right number?

A. $360,000.

Q. Sorry, 380 --
A. $380,000.
Q. $669. If I understand correctly, between March and April of '09, it went down by another $288,349?
A. That's correct.
Q. Similarly, between April and May '09, it went down from 11,220 *[sic]* odd dollars, to 10,901,000 odd thousand dollars, or an additional 319,000 odd dollars; is that correct?
A. Correct.
Q. So the obligation of the makers of these notes, to somebody, whoever it is - Fairmont, they think; or my client, we claim - that ultimate obligation of the makers is going down to the tune of between 288 and $380,000 per month?
A. That's correct.
Q. Or if you'll trust my math, on average, $329,000 in those three months?
A. Yes.
Q. Can you -- I'm curious, the swing. Why the swing? Why would there be, for example, so much more principal reduction between February and March and the next month? Almost $100,000 reduction in the principal and -- the principal reduction.
A. There could be a number of reasons. From time to time, we will receive requests from the holders of the notes in a month to pay out their balances.

Without understanding the individual financial situation of note holders, they may have, for instance, come through the Christmas season and find now that they paid their bills in January and they wish to -- maybe they're behind in their payments and make their January payments, so the month of February, they may be catching up. Or they may have decided to pay out the full amount of the balance of the notes. There could be various reasons for that payment.

Secondly, depending on the time period in which the payments came in or were processed, there may be a lag of a day or two and, therefore, it may simply arise from a timing difference.

We may have taken, for instance, as an example, the electronic payments that we get at the -- for the end of January may not have been processed until February 1, making February to March payments that much higher than they would be another month.

So there may be a number of reasons that those notes may decrease the principal -- the principal amounts of those notes may decrease from one month to another.

Q. I understand, thank you. But in any event, there's no particular anomaly? I haven't -- I have just taken the bottom three periods on your list. There's nothing that you would see from those three periods that would suggest they're not typical periods?

A. Not on the last three months, no.

Q. Now, from my client's perspective, there's two sides to the equation. One is the amount of security they claim to hold and the value of that security. And as I understand it, the value of that security, forgetting for a moment possible arrears that aren't shown in these statements, would be the principal amount of these notes?

A. Uh-huh. Yes.

Q. The other side is the amount of the debt?

A. Correct.

Q. Looking at Ms. Henson's affidavit -- have you seen Ms. Henson's affidavit? Of course you have, because you've commented on it.

A. Yes.

Q. Ms. Henson at some place -- and it's clear from your affidavit, you may have spent more time looking at Ms. Henson's affidavit than I have, but at Exhibit H of Ms. Henson's affidavit, she provides --

MR. GORMAN: 8?

MR. ROBINSON: H.

Q. MR. ROBINSON: She provides what looks to me like what I used to call a ledger of the -- I'm sorry. I guess towards the back of H, I think what I'm looking at is a ledger of the amount that the resort -- or Fairmont, owes to Resort Funding; is that correct?

A. That's correct.

Q. Do I have to add two numbers? I'm looking at the last page, which is a line entry 6409, and a balance of what

looks to me like a balance of 7,677,679. Is that the loan -- the amount that's due to Resort Funding by Fairmont Properties?
A. I'd like to find -- there are two amortization schedules we have here. So there is one that begins -- that has boxes around it. This first set doesn't have boxes around the whole document.
As we get back about four pages, there is a further amortization schedule that includes boxes. It appears to be something that has been produced from an Excel template, and the heading of the column to which you refer to is entitled "Balance," which would represent the balance of the loan outstanding at the end of the period.
Q. So this -- I'm just trying to zero in on how much at least Fairmont understands they owe Resort Properties, and would I be correct in saying that it's in the order of 7.6 or $7.7 million?
A. You refer to Resort Properties. I assume you mean Resort Funding?
Q. Sorry, I'm making the same -- Mr. Gorman has got me calling my client by the wrong name, too. I mean Resort Funding, yes, of course.
So roughly $7.7 million?
A. At that point in time, being at the 4th of June, 2009.
Q. Correct. I'm looking -- I'm counting over a column -- I'm looking at column D.
Again, if I understand this correctly, and I

may not, looking at line item 233, there is an entry $41,574.

Would my understanding be correct that that's the interest that Resort Funding believes it -- that it has earned on this loan from Fairmont Properties in that period?

A. That is correct.

Q. You'll see that there's no principal payments. The last principal payment was February -- the last payment shown was March 10, I guess just before the CCAA filing?

A. That's correct.

Q. So then there's three months of interest that have now accrued, if that's the right phrase?

A. That's correct.

Q. Because of the failure of payment since the funding. Those seem to go up between 41,000 and $46,000 a month.

Again, I'm somewhat curious why the interest accruing would be going down month by month. Is that -- is there an obvious answer to that? I'm just asking the question, if you know.

A. I don't know. This document was prepared by Resort Funding.

Q. I understand that.

A. I'm not sure why. One of the calculations would be, because the month of April would be a short month, it would be 30 days, so that would make it a little bit less that month.

Q. So it's calculated on a day-to-day basis?
A. Yes.
Q. I understand. But in any event, if I were to do the calculations of that 46, 44 and 41, I think it averages out at about, if my calculation is correct, 44 -- average of $44,000 per month of interest accruing?
MR. GORMAN: That number is probably correct. The last wasn't the whole month of May, it was until the 28th of May. So that's why May, with 31 days, is even less than April.
Q. MR. ROBINSON: It could be slightly more than $44,000. But in around that range?
A. In that order.
Q. So just to sort of summarize where think I'm at, and I hope I don't have to start over, I think where I'm at is Resort Funding is owed approximately $7.7 million by Fairmont, and that amount is now going up by approximately $44,000 per month because of the failure to remit?
A. That is correct.
Q. The notes as at the end of May, looking at your schedule, there's approximately -- I'm rounding up, approximately $11 million owing on the notes, or slightly less. And the amount owing on the notes is going down by approximately $330,000 a month; is that correct?
A. That's correct.
Q. So where right now one would say, or I might say Resort Funding is -- has approximately $11,000 worth of

notes to secure, if they're correct that they're held as security or some other capacity, to secure $7.7 million worth of indebtedness, that position is changing month by month?
A. Yes.
Q. It's changing --
MR. GORMAN: Sorry, just to clarify for the record, Mr. Robinson had said 11,000. I think everyone understood you meant 11 million.
MR. ROBINSON: Don't I wish it was 11,000.
Q. MR. ROBINSON: That position is changing by the tune of approximately 330 of principal decrease, plus $44,000 of interest, or approximately $375,000 per month?
A. I would suggest that as time progresses going forward, without examining and -- guesstimating this amount out, the amount of principal payment may change. It may be less, it may be more. It would be probably more as we'd go forward.
Q. So when I say that the gap between what we hold, or the spread between what we hold as security, allegedly, and what we're owed is closing by approximately $375,000 per month?
A. Right.
Q. The point that you're making is, because of the effects of the way interest works, in fact, the interest that Fairmont owes would be going up slightly; correct?
A. That's correct.
Q. And the amount of the payment that's coming in on the

notes, slightly more would be going to principal. So, in fact, my spread is going to close quicker even than I have suggested?
A. That is probably the case.
Q. Given that we're talking a comfort level of approximately 3 1/4 million dollars between loan amount and collateral value, and the spread closing at something in the range of $375,000 a month, am I using Voodoo math to suggest that the two meet somewhere out there about seven or eight months from now?
A. It's some time in the future. Seven, eight, nine months, somewhere out there.
Q. It's in the foreseeable future. Thank you.
Your statement, which I take at face value is accurate at the moment, at paragraph 12, that the face value of the notes is greatly in excess of the indebtedness. While greatly in excess today, being something in the range of $3.25 million, to use your phrase, seven or eight or nine months out from now, is suddenly zero dollars; is that correct?
A. Yes, all things being considered, yes.
Q. Now, my understanding is that Resort Funding only lent against or took as security for, or whatever, notes from certain of Fairmont's enterprise?
A. That's correct.
Q. You make the point in your affidavit that maintenance fees and budgets, and I infer from that budgets for the

particular properties against which these notes relate, also contain a component of maintenance fees that Fairmont would pay as owners of unsold timeshare leases. Is that the point you were making?
A. I ask you -- I'm going to ask if you could ask the question again, I'm sorry.
Q. I'm sure I'm misdescribing it, I'm sure. And I'm trying to use buzz words that I don't understand.
I'm looking at paragraph 15 and I'm referencing back to some extent to an area that Mr. Gorman took Ms. Henson in his cross-examination, and as I understand it, the point was being made that when Ms. Henson generally in her affidavit speaks of these properties being self-sufficient from a maintenance fee perspective, she ought to also bear in mind that some of those fees are paid by Fairmont with respect to their unsold interests or unsold units?
A. That is correct.
Q. That's a fair statement of the situation. I guess I would like to get an idea about how significant with respect to the particular properties that the 1,600 notes that Resort Funding holds, how significant are the unsold units? Is there a -- I just need an approximate. Is there a percentage or something of that sort?
A. Of the units that are owned -- that are available for sale or have been sold at Fairmont, there is approximately 700 of those units yet unsold.

To put this in perspective, there are 12,750 biannual, which means every second year, opportunities for sale. Some of those individuals or some of our clients buy a usage that is an annual usage, once every year; some buy a biannual usage.

So I am to -- to put this in perspective, I'm saying 700 units of all of the -- represent the unsold units that are available for sale or can be sold.

Q. Okay. 700 units available for sale against a total of 12,750, or against -- or as opposed to 12,750 that have been sold?

A. No, the total available are 12,750.

Q. So 12,750 available for sale. 700 yet to be sold. So 12,050 have been sold?

A. It's not quite as easy as that, and I apologize --

Q. I expect that it wasn't.

A. I apologize for this. We hold certain of the unsold for purposes of what we call annual sales. An individual comes and says he would like to buy a leasehold interest that allows him to come every year.

Some of those interests that I have identified in the 700 are annuals. The balance of them are biannuals. As I sit here today, I do not remember the split, but I would suggest to you that the majority of those 700 are biannuals, but I could not say to you today that there is 700 of a potential of 12,750. It would be a different number than that, but to give you a flavour, it's -- that's

reasonably close.
Q. I'm not seeking precision, sir. I think I understand what you've said, maybe.
Of this 12,750, I'd just like to, just for clarity, make sure we're not including -- I understand even within -- and again, correct me if I'm wrong, but either within Fairmont Resort or Okanagan -- Lake Okanagan Resort Vacations, there are certain of the buildings which are -- perhaps came at different phases and are not part of the same owner's unit or whatever.
I'm assuming we're not including -- we're only including in these numbers, projects or buildings, or whatever it's called, that relate to the notes that are under discussion here?
A. No. First of all, I want to be clear, the 700 relate only to Fairmont.
Q. Okay.
A. There is no connection between the notes that have been pledged to RFI, Resort Funding, and the amount of unsold weeks. There can be no connection there.
Of the -- we probably have in the order of 18,000 different owners at Fairmont. A number of which have no notes outstanding. A number who have bought more recently. Because they're seven-year notes, there would only be notes outstanding for those who have bought most recently. And then many of them never take the option of financing this through a note.

But certainly I don't want us to try and make a connection between the unsold weeks and those notes, or even the sold weeks and those notes that have been provided to RFI.

Q. The only reason this discussion is coming up is whether or not -- what impact it would be on the operation of these particular, whatever they're called, timeshare --

A. Intervals.

Q. Intervals or units, or whatever, were -- and only with respect to the projects where the 1,600 notes have been delivered up to Resort Funding, what impact it would be on the existing purchasers, makers of the notes, were Fairmont Resorts, Heaven forbid, to go into a complete meltdown and stop paying their share of the maintenance fees.

And if I understand correctly, and you tell me if I'm misunderstanding what you're saying, the effect would be that for some 700 interval units, give or take, out of a total of 12,750 interval units, maintenance fees would not come in from Fairmont?

A. That's correct.

Q. Then somehow that unit would have to rebudget to take into account that lost maintenance fee?

A. That is correct.

Q. Thank you. Was Resort Funding ever approached to provide debtor-in-possession financing for you?

A. No, they were not.

Q. Was FRPL Financing ever asked to provide debtor-in-possession financing, but for the initial $500,000 that was discussed in the initial order?

A. I do not recall whether they -- there was discussions, but whether we ever formalized that question or not.

FRPL Finance, in and of itself, has no source of cash that they have available for cash flow purposes, excepting that cash is made available through investors that invest with them.

Q. Again, you'll forgive me my ignorance, and your cash flow statements may answer this question, but through its restructuring, is Fairmont and the other applicants in the restructuring, making their real estate mortgage payments?

A. No, we're not -- if you mean real estate mortgage payments, you're referring to FRPL Finance. We are not making those payments.

Q. Anybody that holds mortgages on your property.

A. There are no payments made on mortgages on any of our properties.

MR. ROBINSON: That's all the questions I have. Thank you very much.

There is the one undertaking, but I'm sure nothing will arise from it.

MR. GORMAN: Anyone else?

(DISCUSSION OFF THE RECORD)

MR. GORMAN: Following the examination, with respect to the undertaking, we've determined that, on a monthly basis, Fairmont Resorts Properties would be able to and did report to Resort Funding on a note-by-note basis any payments that have been made in the previous month and the balance as at that date.

MR. ROBINSON: Thank you. That's satisfactory for the undertaking.

(Proceedings adjourned at 1:20 p.m.)

PROCEEDINGS CONCLUDED

Certificate of Transcript

I, the undersigned, hereby certify that the foregoing pages 1 to 25 are a true and faithful transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 18th day of June, A.D. 2009.

Kim Morosse, CSR(A) RPR
Official Court Reporter

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KM