

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions Division)

NO : 500-06-001233-234

RANDY SEARS

Applicant

v.

EMILE BENAMOR

and

TARIQ HASAN

and

AIRBNB IRELAND UC

and

AIRBNB CANADA INC.

and

AIRBNB, INC.

and

AIRBNB PAYMENTS UK LTD.

Solidary Defendants

**APPLICATION FOR AUTHORIZATION TO DISCONTINUE AGAINST ALL
DEFENDANTS**

(Arts. 19 and 585 C.C.P.)

**TO THE HONOURABLE DONALD BISSON, JUDGE OF THE SUPERIOR COURT OF
QUÉBEC, DESIGNATED JUDGE IN THE PRESENT CASE, THE APPLICANT
SUBMITS THE FOLLOWING:**

I. INTRODUCTION

1. The Applicant Randy Sears (the "**Applicant**") seeks leave of the court to discontinue his *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* (the "**Application**") against all Defendants, for the reasons that follow.

2. In the early morning of March 16, 2023, a fire (the “**Fire**”) broke out at a building located at 224 Place d’Youville in Old Montreal (the “**Building**”). At the time of the fire there were 22 people in the Building, 7 of whom died.

II. PROCEDURAL CONTEXT

3. On March 31, 2023, the Applicant filed the Application for authorization to institute a class action, seeking remedy following the fire that broke out, on behalf of the following proposed class:

A. All individuals inside the building on March 16, 2023.

B. The estates of the individuals who passed away on March 16, 2023.

C. The family members of individuals in subparagraphs A.

(Hereinafter defined as the “Class”)

Or any other Class to be determined by the Court.

4. Notification of the Application was completed on all entities on May 22, 2023.
5. All Defendants have filed an Answer, except Airbnb Ireland UC (“**Airbnb Ireland**”) and Airbnb Payments UK Ltd (“**Airbnb Payments**”) due to ongoing discussions between counsel about possibly not moving forward with the Application, as disclosed to this Court in a letter dated June 12, 2023.
6. In order to allow counsel to pursue discussions about the appropriate procedural vehicle to move this matter forward, this Court was asked not to immediately assign a case management judge to oversee this proposed class action. This request was granted, provided counsel report back by the end of August 2023.
7. On August 30, 2023, this Court was advised that the Applicant had agreed to seek leave from this Court to discontinue his Application.
8. On August 31, 2023, this Court requested that the Applicant file a formal application to authorize the discontinuance.

III. BASIS FOR THE DISCONTINUANCE

9. The Applicant is seeking leave to discontinue the Application because the criteria set out in article 575(3) of the *Code of civil procedure* (“**C.c.p.**”), namely that “the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings or for consolidation of proceedings”, is not met.

10. Despite initially believing that it would be difficult or impracticable to obtain mandates from each putative class member, after extensive work over the course of the summer by the Applicant's lawyers, all 22 putative class members (including families of the deceased) have been identified.
11. Individual mandates have been obtained from most of the 22 putative class members. The status is as follows:
 - a) Applicant's lawyers have met with and obtained individual mandates from 18 of the 22 victims and their families.
 - b) Applicant's lawyers have met with a 19th victim, however no mandate could be signed for reasons covered by solicitor-client privilege.
 - c) A 20th victim is represented by a different counsel.
 - d) The remaining 2 victims were identified by name by the *Association for the Indemnisation des Victims d'Actes Criminels* (IVAC). Although IVAC could not directly share their identities with the Applicant's lawyers pursuant to privacy legislation, IVAC did undertake to communicate with these two victims to advise them to contact Applicant's lawyers.

A. THE RIGHTS OF THE PUTATIVE MEMBERS ARE NOT PREJUDICED

12. If, and when, the discontinuance of the Application is granted, the Applicant's lawyers have obtained consent from their 18 mandated clients, to proceed via a different procedural vehicle, namely by jointly filing an originating application pursuant to articles 141 and 143 of the *Code of civil procedure* ("C.c.p.").
13. The discontinuance of the Application does not negatively affect the interests of any putative class members because they maintain their rights to pursue the Defendants through a joint ("joinder") lawsuit or individual lawsuits; furthermore, their claims will only be prescribed in law in March 2026.
14. Given that the majority of the putative members have signed mandates, their rights will be better preserved with a lawsuit where they have control over their own cases, permitting them to express their individual harm. Furthermore, it is likely to proceed more rapidly and with certainty, rather than through a contested authorization within the class action regime.

B. THE DISCONTINUANCE DOES NOT UNDERMINE THE INTEGRITY OF THE JUSTICE SYSTEM

15. For the reasons expressed above, it is in the interests of justice and in compliance with the principles of proportionality and the economy of judicial resources to allow the Applicant to discontinue the Application.

16. Neither the Applicant, putative class members or the Applicant's lawyers have received any payment in exchange or conditional to seeking the discontinuance of the Application.
17. No funding from the Fonds D'aide aux Actions Collectives was obtained.

C. NO FORMAL NOTICE PROGRAM IS REQUIRED

18. The Applicant's lawyers have already advised 19 out of the 22 putative class members (including the individual with whom no individual mandate was signed) that the Applicant seeks to discontinue the Application and there is no objection from any of them.
19. As explained above, the family of one of the victims is represented by a different counsel and the Applicant's lawyers were advised that this individual intends to pursue a separate claim.
20. Regarding the 2 putative class members identified by IVAC, the latter has undertaken to provide them with the contact information of the Applicant's lawyers given they could not directly share their identity pursuant to privacy legislation. Of note, these remaining two survivors have not made any attempt to contact the Applicant's lawyers despite their identity being widely known given the extensive media reports surrounding the Fire.
21. Given the circumstances, the Applicant respectfully submits that a formal notice program for the discontinuance of the Application is not required.

D. CONCLUSION

22. Given the small size of the proposed class, the known identities of the putative class members, and the fact that individual mandates from almost all of them were obtained, the criteria set out in article 575(3) of the C.c.p., namely that it is difficult or impractical to obtain individual mandates, is clearly not met.
23. The discontinuance of the Application does not prejudice the rights of the putative members, nor does it undermine the integrity of the justice system in any way. To the contrary, it is in the interest of justice that the present *Application for permission to discontinue against all Defendants* be granted.
24. The present *Application* is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for permission to discontinue against all Defendants* without judicial costs;

GRANT LEAVE to the Applicant to file a discontinuance in the Court record within ten days of the present judgment;

THE WHOLE without legal costs.

MONTRÉAL, September 13, 2023

Annette Lefebvre Avocats

ANNETTE LEFEBVRE AVOCATS

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AFFIDAVIT

I the undersigned, Annette Lefebvre, attorney practicing my profession at 2185 Crescent St., 2nd Floor, in the city and district of Montreal, do hereby solemnly declare:

1. **THAT** I am the attorney for the Applicant in the present case;
2. **THAT** all the facts alleged in the foregoing Application are true and correct;

AND I HAVE SIGNED:


Annette Lefebvre

Solemnly declared before me at Montreal,

this 13th day of September, 2023



Commissioner of Oaths for the District of
Montreal

NOTICE OF PRESENTATION

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Attorney for Defendant
TARIQ HASAN

TAKE NOTICE that the *Plaintiff's Application for Permission to Discontinue a Class Action* will be presented for decision before the Honourable Justice Donald Bisson, Coordinating Judge of the Class Action Division, sitting in the Class Action Division of the Superior Court of Québec, in the Montréal Courthouse situated at 1 Notre-Dame Street East, Montréal, QC H2Y 1B6, at a date and time to be determined by Court.

PLEASE GOVERN YOURSELF ACCORDINGLY.

MONTRÉAL, September 13, 2023

Annette Lefebvre Avocats

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COUR SUPERIOR COURT
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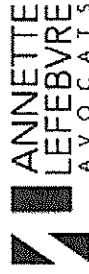
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ORIGINAL

Our file: 5336 BA 1201



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