

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-09-

No.: 500-06-000777-157

COURT OF APPEAL OF QUEBEC

MARTIN ROBICHAUD, domiciled and residing at 119 Bord de l'eau street, City of Sainte-Catherine-de-Hatley, district of Saint-François, Province of Quebec, Canada, J0B 1W0

APPELLANT – Plaintiff

v.

INTRAWEST ULC, a legal person having one of its places of business at 1000 chemin des Voyageurs, City of Mont-Tremblant, district of Terrebonne, Province of Quebec, Canada, J8E 1T1

and

DIAMOND RESORTS CORPORATION, a legal person having its place of business at 10,600 West Charleston Boulevard, State of Nevada, City of Las Vegas, 89135, USA

and

DIAMOND RESORTS INTERNATIONAL INC., a legal person having its place of business at 10,600 West Charleston Boulevard, State of Nevada, City of Las Vegas, 89135, USA

and

DIAMOND RESORTS IW HOLDING COMPANY, a legal person having its place of business at 10,600 West Charleston Boulevard, State of Nevada, City of Las Vegas, 89135, USA

and

DIAMOND RESORTS CANADA, LTD., a legal person having its place of business at 326-375 Water St., City of Vancouver, province of British Columbia, Canada, V6B 5C6

RESPONDENTS - Defendants

NOTICE OF APPEAL
(Articles 352 C.C.P.)
Dated October 18, 2024

FACTS AND GROUNDS OF APPEAL

1. The appellant appeals from a judgment of the Superior Court rendered on September 12, 2024, by the Honourable Donald Bisson (the “**Judge**”), sitting in the District of Montreal, which dismiss its application for leave to amend the application initiating the proceedings, as it appears from the judgment of first instance communicated in support hereof as **Schedule 1** (the “**Judgment**”).
2. The authorization sought by the appellant arises in the context of a class action that was authorized by the Honourable Anne Jacob, of the Superior Court, District of Montreal, on March 20, 2018, against the respondent Intrawest ULC (“**Intrawest**”) (“**Authorization Judgment**”) and sought to add as defendants the respondents Diamond Resorts Corporation (“**Diamond Corporation**”), Diamond Resorts International Inc (“**Diamond International**”), Diamond Resorts IW Holding Company (“**Diamond Holding**”) and Diamond Resorts Canada, Ltd. (“**Diamond Canada**”) (collectively, “**Diamond**”).
3. On September 23, 2024, the office of the court of first instance issued a notice of judgment in accordance with art. 335 C.C.P., as it appears from the notice of judgment communicated in support hereof as **Schedule 2**.
4. The hearing, held on September 6, 2024, lasted approximately 4 hours.
5. The value of the subject matter of the dispute is indeterminate.

6. The record does not contain any confidential information.
7. The Judge erred in his judgment for the following reasons:
 - I. Errors of law
8. The Judge erred in concluding that the appellant failed to establish an appearance of right against Diamond Corporation, Diamond Holding, and Diamond Canada.
9. This erroneous conclusion was based on the following:
 - a) the determination that the contracts for acquisition of points between the members of the class action (the “**Members**”) and Intrawest (“**Members’ Contracts**”) had not been assigned to Diamond Corporation, Diamond Holding, and Diamond Canada and that they bore no responsibility for Intrawest's misrepresentations concerning the resale of points by the Members (Judgment, Schedule 1, paras 41 to 46), and
 - b) the assertion that Diamond Holding was merely acting as an agent of the Club Intrawest (the “**Club**”) in collecting the annual fee that Members must pay to redeem their points for vacation time (the “**Fee**”) (Judgment, Schedule 1, para 43).
10. The appellant intends to demonstrate the following:
11. The Members’ Contracts constitute consumer contracts that encompass both the sale of points, the currency within the Club’s time-sharing program, and a credit agreement to finance the acquisition of said points by Members. Consequently, these contracts are governed by the *Consumer Protection Act* (“**CPA**”), including its provisions pertaining to credit agreements and some provisions pertaining to timeshare accommodation rights.
12. The Members’ Contracts were fully assigned to Diamond Corporation pursuant to a purchase agreement entered between Intrawest and its parent company, Intrawest U.S. Holdings Inc., and Diamond Corporation and its parent company, Diamond International (the “**Purchase Agreement**”). As a result, Diamond Corporation and its

subsequent assignees, Diamond Holding and Diamond Canada, may be held liable for obligations arising from these contracts, including Intrawest's misrepresentations regarding the resale of points by Members.

13. The “exclusion” clauses cited by the Judge¹ are inapplicable to the present matter and warrants the intervention of this Court: at best, the Judgment offers one of many interpretations of the contractual arrangement and, in light of this, the Judge had to authorize the class action against Diamond Corporation, Diamond Holding and Diamond Canada.
14. More specifically, it is apparent that the first exclusion mentioned is limited to points sold prior to the closing, where the rescission period remains in effect as of the closing date. The second provision referenced to does not constitute an exclusion but merely delineates the “*Material Contracts*” [our emphasis] to be disclosed within the Intrawest’s “Representations and Warranties”. Accordingly, this provision cannot be construed to narrow down the scope of assets purchased by Diamond Corporation as set forth in the Purchase Agreement.
15. That the Fee payments must be made at the Club’s request and to its benefit does not alter the legal relationships pursuant to which these requests are made, i.e. those between the Members, on the one hand, and Intrawest, now Diamond, on the other hand.
16. Members retain the right to pursue their claims against their original co-contractor, Intrawest, or against the assignee of their contract, Diamond, the legislator having specifically provided for the impossibility of opposing as a defense to the consumer that liability under the contract is unbundled between various companies by virtue of a complex contractual structure. The legislator is clear in stating that any contract formed, even with a third-party, on the making of or in relation to a contract relating to timeshare accommodation rights forms a whole, the primary contract being inseparable from the ancillary contract.

¹ Judgment, Tab 1, par. 41.

17. In any event, the mere fact that Diamond Corporation has acquired “all right, title, and interest” of Intrawest as a secured party under “all purchase agreements providing for financing to the members of Club Intrawest” constitutes at the very least an assignment of the debt owed by members of the class action to Intrawest under the Members’ Contracts in favor of Diamond Corporation. This assignment of debt is sufficient to invoke the application of Art. 103 CPA, which provides that “the assignee of a debt owed to a merchant under a contract to which the latter is a party (...) is solitarily responsible with the merchant for the performance of the merchant’s obligations up to the amount of such debt at the time it is assigned to him”.
18. Consequently, Diamond Corporation, Diamond Holding, and Diamond Canada may be held liable for obligations arising from the Members’ Contracts, as well as for Intrawest’s misrepresentations concerning the resale of points by Members.
19. Those errors are overriding because had it not been for these errors, the Court would inevitably have concluded that the appellant had demonstrated an appearance of right against Diamond Corporation, Diamond Holding and Diamond Canada on both causes of action raised by the appellant.

CONCLUSIONS

20. The appellant will ask the Court of Appeal to:

- a) **ALLOW** the appeal;
- b) **REVERSE** the judgment in first instance;
- c) **AUTHORIZE** the appellant to amend the *Demande introductive d’instance* to add Diamond Resorts Corporation, Diamond Resorts IW Holding Company and Diamond Resorts Canada, Ltd. as defendants;
- d) **CONDEMN** the respondents to pay the legal costs both in first instance and on appeal.

This notice of appeal has been notified to the respondents Intrawest ULC, Diamond Resorts International, Inc., Diamond Resorts Corporation, Diamond Resorts IW Holding Company

and Diamond Resorts Canada, Ltd. to Mtre Guillaume Boudreau-Simard and Mtre. Francis Rouleau and to the office of the Superior Court, District of Montreal.

Montreal, October 18, 2024

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Code BW 0208 / Our reference : 5779-1

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NOTICE OF APPEAL**

- TAB 1:** Judgment rendered by the Honourable Donald Bison of the Superior Court on September 12, 2024;
- TAB 2:** Notice of judgment dated September 23, 2024.

Montreal, October 18, 2024

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