

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-09-031236-243

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

APPLICANT – Plaintiff

v.

INTRAWEST ULC, a legal person having its place of business at 3500-855 ST 2 SW, City of Calgary, Province of Alberta, Canada, T2P 4J8

and

DIAMOND RESORTS CORPORATION, a legal person having one of its places of business at 1201 Hays Street, City of Tallahassee, State of Florida, USA, 32301

and

DIAMOND RESORTS IW HOLDING COMPANY, a legal person having one of its places of business at 1201 Hays Street, City of Tallahassee, State of Florida, USA, 32301

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

APPLICATION FOR LEAVE TO APPEAL
AFTER THE EXPIRY OF THE TIME LIMIT
(Article 363 CCP)

Dated November 4, 2024

TO THE HONOURABLE JUDGES OF THE COURT OF APPEAL, THE APPLICANT SUBMITS:

1. On September 12, 2024, the Honourable Donald Bisson, of the Superior Court, District of Montreal (the “**Judge**”), dismissed the application of the applicant Mr. Martin Robichaud (“**Mr. Robichaud**”) for leave to amend his originating application (the “**Judgment**”).
2. Mr. Robichaud’s request for leave to amend arose in the context of a class action 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**”).
3. Mr. Robichaud sought to add defendants, namely the respondents Diamond Resorts Corporation (“**Diamond Corporation**”), Diamond Resorts IW Holding Company (“**Diamond Holding**”) and Diamond Resorts Canada, Ltd. (“**Diamond Canada**”), as well as Diamond Resorts International Inc (“**Diamond International**”) (collectively, “**Diamond**”).
4. On September 23, 2024, the office of the court of first instance issued a notice of judgment in accordance with Art. 335 CCP.
5. The hearing, held on September 6, 2024, lasted approximately 4 hours.
6. The record does not contain any confidential information.
7. Although the time limit for appealing from the Judgment and for filing the notice of appeal has expired, not more than six months have elapsed since the Judgment.

I. NOTIFICATIONS AND SERVICES MADE WITHIN THE TIME LIMIT

8. As of October 18, 2024, Mr. Robichaud had prepared an *Application de bene esse for leave to appeal* (the “**Application**”) (**TAB 1**) and a *Notice of appeal* (the “**Notice**”) (**TAB 2**).
9. The same day, Mr. Robichaud notified Diamond’s and Intrawest’s counsel of the Application (**TAB 3**) and the Notice (**TAB 4**).
10. On October 21, 2024, Mr. Robichaud served Intrawest (**TAB 5**), Diamond Canada (**TAB 6**), and the Superior Court (**TAB 7**) with the Application and the Notice.
11. On October 23, 2024, Mr. Robichaud filed the Application and the Notice with this Court, including the relevant proof of notification or service.
12. For the reasons indicated below, it was impossible for Mr. Robichaud to appeal the Judgment with respect to Diamond International, Diamond Corporation, and Diamond Holding within the prescribed time limit.

II. MR. ROBICHAUD’S IMPOSSIBILITY TO APPEAL THE JUDGMENT WITH RESPECT TO DIAMOND CORPORATION AND DIAMOND HOLDING WITHIN THE TIME LIMIT

13. On October 16, 2024, Mr. Robichaud’s counsel wrote to Diamond’s and Intrawest’s counsel to inform them that they will seek authorization for special service and to request that they confirm their clients’ addresses (**TAB 8**). This request was not answered.
14. On October 18, 2024, Mr. Robichaud’s counsel wrote to Diamond’s and Intrawest’s counsel to correct some of the respondents’ addresses (**TABS 9 and 10**), after verification of the information contained in the *Registre des entreprises*, particularly with regard to Intrawest (**TAB 11**) and Diamond Holding (**TAB 12**).

15. Also on October 18, 2024, at 8:40 a.m., Mr. Robichaud's counsel transmitted their request for special service, which was denied at 9:44 a.m. since Diamond and Intrawest had known addresses **(TAB 13)**.
16. On October 22, 2024, Mr. Robichaud's counsel was informed by their bailiff that their attempt to serve Diamond International, Diamond Corporation, and Diamond Holding at their known address in Las Vegas has failed and that the premises in question were vacant.
17. At 12:04 p.m., Mr. Robichaud's counsel informed this Court that they have been unable to effect service and are unaware of the addresses of Diamond International, Diamond Corporation, and Diamond Holding, thus requesting again leave to serve the proceedings on Diamond's counsel (TAB 13).
18. At 12:35 p.m., Diamond's counsel confirmed that the Las Vegas address was no longer valid, and provided a new address in Orlando, Florida **(TAB 14)**.
19. Mr. Robichaud's counsel immediately instructed their bailiffs to attempt service on Diamond at the Orlando address.
20. At 1:50 p.m., Diamond's counsel indicates that the address provided is valid only for Diamond Corporation and Diamond Holding, informing this Court that Diamond International no longer exists and no longer has a valid address (TAB 13).
21. On October 23, 2024, around 2:57 p.m., Mr. Robichaud's counsel was informed that the service at the Orlando address, referred to in paragraph 18, was refused and that the bailiffs had been redirected to an address in Tallahassee, Florida.
22. Mr. Robichaud's counsel instructed their bailiffs to serve the proceedings at this latter address, informed this Court of the situation, and sought to obtain confirmation from Diamond's counsel that the Tallahassee address is the correct one (3:46 p.m.), and such confirmation was received at 5:00 p.m. **(TAB 15)**.

23. In the meantime, the time limit for completing the filing of the proceedings with proof of service on Diamond International, Diamond Corporation, and Diamond Holding had expired. These entities have been served with the Application and the Notice only on October 24, 2024 (**TAB 16**).
24. These facts demonstrate Mr. Robichaud's consistent intention to appeal the Judgment, his diligence in serving the proper procedures within the time limit, and his inability to do so were for reasons beyond his control.¹
25. Importantly, Mr. Robichaud does not seek leave to appeal the Judgment *vis-à-vis* Diamond International (TABS 1 and 2)². This is because Diamond International was dissolved on August 2, 2021 (**TAB 17**), and no longer has a valid address (TAB 13).

III. **MR. ROBICHAUD'S APPEAL HAS REASONABLE CHANCES OF SUCCESS**

26. Mr. Robichaud's grounds of appeal from the Judgment are set out in the Application (TAB 1) and the Notice (TAB 2). These grounds demonstrate that Mr. Robichaud's appeal has reasonable chances of success.
27. For present purposes, it is sufficient to state the following:
28. The contracts for the acquisition of points entered between the members of the class action (the "**Members**") and Intrawest (the "**Members' Contracts**") constitute consumer contracts that encompass both the sale of points, the currency within the Club Intrawest's time-sharing program, and a credit agreement to finance the Members' acquisition of said points. 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.³

¹ *Peterkin c. Piscardelis*, [2019 QCCA 1130](#), para 8.

² See footnote 16 at page 9 of the Application (TAB 1).

³ Art.187.10 and ff. CPA; art. 66 and ff. CPA.

29. On the one hand, the Judge erroneously concluded that the Members' Contracts had not been assigned to Diamond Corporation, but did not consider Mr. Robichaud's argument that there had been an assignment of debt, owned to Intrawest by the Members, to Diamond Corporation, within the meaning of Art. 103 of the CPA.
30. 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 to Intrawest under the Members' Contracts in favor of Diamond Corporation.
31. This assignment of debt is sufficient to trigger 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 solidarily 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". Consequently, Diamond Corporation, and its subsequent assignees Diamond Holding and Diamond Canada, may be held liable for obligations arising from these contracts, as well as for Intrawest's misrepresentations concerning the resale of points by Members.⁴
32. On the other hand, the Judge erroneously concluded that Diamond Holding was acting solely as an agent of Club Intrawest in collecting resort fees (the "**Fees**"), and therefore cannot be held liable for any failings on the part of Club Intrawest in this regard, including those alleged by Mr. Robichaud under the CPA.

⁴ *Caisse populaire Desjardins du Village huron c. Desrosiers*, [2012 QCCA 195](#), par. 32-41 (see also : Pierre-Claude LAFOND, « *Moyens de protection contractuelle : contrôle des obligations nées du contrat de crédit* », dans *Droit de la protection du consommateur : Théorie et pratique*, 2^e éd., 2021, EYB2021PCO40, para 902-903; *Comitini c. G.M.A.C. Leaseco Ltd.*, J.E. 93-1080, p. 10-14 (C.S.); *Dubuc c. Banque Nationale du Canada*, [2006 QCCQ 6530](#), para 19-22; *Doucet c. Banque Nationale du Canada*, [2006 QCCQ 402](#), para 18-20; *Pelletier c. Climatisation et Chauffage Bon-Air Inc.*, [2004 CanLII 34004](#), para 28-34 (QC CQ)).

33. Art. 187.24 CPA is clear 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, and that the consumer may, with respect to a contract entered into with a third party merchant, exercise directly against the merchant a recourse based on the non-performance of the contract or the provisions of the CPA.
34. Consequently, the Members retain the right to pursue their claims against both their original co-contractor, Intrawest, and the Member Contracts' assignee, Diamond Corporation (and its subsequent assignees, Diamond Holding, and Diamond Canada), even though the Fees are paid at the Club Intrawest's request and to its benefit.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT this application;

AUTHORIZE the filing of the applicant's application for leave to appeal and notice of appeal of October 18, 2024 after the expiry of the time limit with respect to the respondents Diamond Resorts Corporation and Diamond Resorts IW Holding Inc.;

THE WHOLE, with costs to follow the outcome of the appeal.

Montreal, November 4, 2024

Woods s.e.n.c.r.l./LLP

Woods LLP

Attorneys for the Applicant-Plaintiff

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Code BW 0208 / Our reference : 5779-1

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**PROVINCE OF QUEBEC
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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

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RESPONDENTS - Defendants

AFFIDAVIT

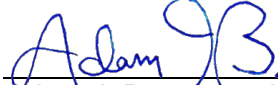
Applicant

Dated November 4, 2024

I, the undersigned, Adam Jeffrey Beauregard, lawyer, practising with the firm Woods LLP, located at 2000 McGill College Avenue, Suite 1700, in the City and District of Montreal, Province of Quebec, do solemnly affirm the following:

1. I am one of the Applicant-Plaintiff's attorneys.
2. All of the facts alleged in the present *Application for leave to appeal after the expiry of the date limit* are true.

This November 4, 2024, in Montreal



Adam J. Beauregard
Lawyer

Solemnly affirmed before me this
November 4, 2024

Ameliesimard no178694

Amélie Simard
Commissioner of Oaths

NOTICE OF PRESENTATION

TO: DIAMOND RESORTS CORPORATION
DIAMOND RESORTS IW HOLDING COMPANY
1201 Hays Street
Tallahassee, State of Florida, USA, 32301

RESPONDENTS-Defendants

and

Mtre. Francis Rouleau
DELEGATUS SERVICES JURIDIQUES INC.
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Attorneys for the RESPONDENT-Defendant Intrawest ULC

and

Mtre. Guillaume Boudreau-Simard
Mtre. Marianne Batille Parent
Mtre. Raphaëlle Mombleau
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Attorneys for the RESPONDENT-Defendant Diamond Resorts Canada, Ltd.

NOTICE IS HEREBY GIVEN that the *Application for leave to appeal after the expiry of the time limit* will be presented before a judge of the Court of Appeal sitting at the Ernest-Cormier Building, located at 100 Notre-Dame Street East, in Montreal, on **December 16, 2024**, at 9:30 a.m., in Courtroom RC-18.

DO GOVERN YOURSELF ACCORDINGLY.

Montreal, November 4, 2024

Woods s.e.n.c.r.l./LLP

Woods LLP

Attorneys for the Applicant-Plaintiff

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**TABLE OF CONTENTS FOR THE SCHEDULES IN SUPPORT OF THE
APPLICATION FOR LEAVE TO APPEAL AFTER THE EXPIRY OF THE TIME LIMIT**

Applicant

TAB 1:	Application <i>de bene esse</i> for leave to appeal from a judgment rendered in the course of a proceeding, dated October 18, 2024;
TAB 2:	Notice of appeal, dated October 18, 2024;
TAB 3:	E-mail notification to Intrawest's and Diamond's counsel (re: application <i>de bene esse</i> for leave to appeal), dated October 18, 2024 (13:34 p.m.);
TAB 4:	E-mail notification to Intrawest's and Diamond's counsel (re: notice of appeal), dated October 18, 2014 (13:24 p.m.);
TAB 5:	Affidavit of service (re: Intrawest), dated October 22, 2024;
TAB 6:	Affidavit of service (re: Diamond Canada), dated October 22, 2024;
TAB 7:	Minutes of service at the Superior Court, dated October 21, 2024;
TAB 8:	E-mail from Mr. Robichaud's counsel to those of Intrawest and Diamond, dated October 16, 2024;
TAB 9:	E-mail from Mr. Robichaud's counsel to those of Diamond, dated October 18, 2024;
TAB 10:	E-mail from Mr. Robichaud's counsel to those of Intrawest, dated October 18, 2024;
TAB 11:	Intrawest's information as at <i>Registre des entreprises</i> ;
TAB 12 :	Diamond Holding's information as at <i>Registre des entreprises</i> ;
TAB 13:	E-mails between Mr. Robichaud's counsel, Diamond's counsel and Mtre. Julie Brunet, clerk of the Court of appeal, dated October 18 and 22, 2024;

- TAB 14:** E-mails between Mr. Robichaud's counsel, Diamond's counsel and Mtre. Julie Brunet, clerk of the Court of appeal, dated October 18, 22 and 23, 2024;
- TAB 15:** E-mails between Mr. Robichaud's counsel, Diamond's counsel and Mtre. Julie Brunet, clerk of the Court of appeal, dated October 18, 22 and 23, 2024;
- TAB 16:** *En liasse*, affidavits of service for Diamond Corporation, Diamond International and Diamond Holding;
- TAB 17:** *En liasse*, certificate of ownership and certificate of merger, dated August 2, 2022 (re: Diamond Resorts International, Inc.).

Montreal, November 4, 2024

Woods s.e.n.c.r.l./LLP

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Attorneys for the Applicant-Plaintiff

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RESPONDENTS - Defendants

APPLICATION FOR LEAVE TO APPEAL
AFTER THE EXPIRY OF THE DATE LIMIT

(Article 368 C.C.P.)

Dated November 4, 2024

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