

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

No.: **500-06-001075-205**

BARRY NASHEN

Applicant

v.

**STATION MONT TREMBLANT SOCIÉTÉ
EN COMMANDITE
-and-
ALTERRA MOUNTAIN COMPANY**

Defendants

**APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE
(Articles 18, 19, 574, 575, CCP)**

**TO THE HONOURABLE CHANTAL CORRIVEAU, J.S.C., APPOINTED CASE
MANAGEMENT JUDGE IN THE PRESENT CLASS ACTION, DEFENDANTS HEREBY
PLEAD AS FOLLOWS:**

A. Overview and Facts

1. On June 8, 2020, the Applicant Barry Nashen (the “**Applicant**”) filed an *Application to Authorize the Institution of a Class Action and to Appoint the Status of Representative Plaintiff* (the “**Application**”) against the Defendants;

2. The Applicant seeks to represent the following class:

Class:

All persons who purchased a 2019-2020 “Tonik” ski pass for Mont-Tremblant (including persons who also purchased the “*Privilege Bundle*” | “*Tonik Forfait de Privilèges*” add-on);

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court.

3. The Applicant purchased a 2019-2020 Tonik Pass and a Tonik Privilege Bundle from the defendant Station Mont Tremblant Société en Commandite ("**Mont Tremblant**") for the amounts of \$479 plus taxes (P-6) and \$79 plus taxes (P-8), respectively;
4. Due to government orders intended to protect public health in the wake of the COVID-19 crisis, the Mont Tremblant ski resort closed on March 14, 2020, and for the remainder of the 2019-2020 ski season;

B. Cause of Action Alleged

5. The Applicant claims that he is entitled to partial restitution of the price paid for the 2019-2020 Tonik Pass and the Tonik Privilege Bundle for the proportion of the 2019-2020 ski season during which Mont Tremblant was closed;
6. The Applicant rests his claim on selected excerpts from Mont Tremblant's website (Exhibits P-3 and P-7) while omitting several portions of the same website relating to his contractual relationship with Mont Tremblant;
7. The Applicant's allegations are incomplete and overlook significant pieces of information on Mont Tremblant's website for customers and available to them prior to purchasing the Tonik Pass and the Privilege Bundle;

C. The Defendants' Proposed Relevant Evidence

8. The Defendants therefore seek to adduce relevant evidence concerning the terms of the contract between Applicant and Mont Tremblant, in particular the non-refund clause applicable to the 2019-2020 Tonik Pass and the Privilege Bundle:
 - a) An excerpt from the Mont Tremblant website detailing applicable policies, terms and conditions for the Tonik Pass, communicated herewith as **Exhibit MT-1**;
 - b) An excerpt from the Mont Tremblant website detailing applicable policies, terms and conditions for the Privilege Bundle, communicated herewith as **Exhibit MT-2**;
 - c) Screenshots from the Mont Tremblant website page for the online purchase of the Tonik Pass, filed herewith **Exhibits MT-3A, MT-3B and MT-3C**;
 - d) Applicant's acceptance of the Tonik Membership Waiver, filed herewith as **Exhibit MT-4**;
 - e) The Tonik Membership Waiver, filed herewith as **Exhibit MT-5**;

- f) The sworn affidavit of Jean-François Gour, namely in support of Exhibits MT-1 to MT-5, filed herewith as **Exhibit MT-6**;
9. In addition, the Defendants seek to adduce relevant evidence concerning the legislative context in which the closure of the Mont-Tremblant ski station occurred:
- g) Order 2020-004 of the Québec Minister of Health and Social Services dated March 15, 2020, providing for the suspension of ski station activities, filed herewith in its French and English versions as **Exhibits MT-7A** and **MT-7B**;
10. It is relevant and necessary for the Court to have a full picture of the contractual relationship between the Applicant and the Defendants, as well as the legal obligations imposed on the Defendants during the health crisis, to assess whether the Applicant has demonstrated an arguable case at the authorization stage;
11. For these reasons, the Defendants seek leave from this Court to adduce the above stated documents as relevant evidence. The present *Application for Leave to Adduce Relevant evidence* is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THIS COURT:

- A. **GRANT** the present *Application for Leave to Adduce Relevant Evidence*;
- B. **ALLOW** the Defendants to file **Exhibits MT-1, MT-2, MT-3A, MT-3B, MT-3C, MT-4, MT-5, MT-6, MT-7A** and **MT-7B** as evidence at authorization;
- C. **THE WHOLE**, with legal costs to follow.

Montréal, September 29, 2020

Borden Ladner Gervais

Borden Ladner Gervais LLP

Lawyers for Defendants

**STATION MONT TREMBLANT SOCIÉTÉ
EN COMMANDITE and ALTERRA
MOUNTAIN COMPANY**

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TAKE NOTICE that the foregoing *Application for Leave to Adduce Relevant Evidence* will be presented for adjudication before the Honourable Justice Chantal Corriveau, J.S.C., of the Superior Court, at a time and in a room to be determined by her, at the Montréal Courthouse, located at 1, Notre-Dame Street East.

KINDLY GOVERN YOURSELF ACCORDINGLY.

Montréal, September 29, 2020

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LIST OF EXHIBITS

- EXHIBIT MT-1:** Excerpt from the Mont Tremblant website detailing applicable policies, terms and conditions for the Tonik Pass;
- EXHIBIT MT-2:** Excerpt from the Mont Tremblant website detailing applicable policies, terms and conditions for the Privilege Bundle;
- EXHIBIT MT-3A:** Screenshot from the Mont Tremblant website page for the online purchase of the Tonik Pass;
- EXHIBIT MT-3B:** Screenshot from the Mont Tremblant website page for the online purchase of the Tonik Pass;
- EXHIBIT MT-3C:** Screenshot from the Mont Tremblant website page for the online purchase of the Tonik Pass;
- EXHIBIT MT-4:** Applicant's acceptance of the Tonik Membership Waiver;
- EXHIBIT MT-5:** Tonik Membership Waiver;
- EXHIBIT MT-6:** Sworn affidavit of Jean-François Gour dated September 29, 2020;
- EXHIBIT MT-7A:** Order 2020-004 of the Québec Minister of Health and Social Services dated March 15, 2020, providing for the suspension of ski station activities (French version);

EXHIBIT MT-7B: Order 2020-004 of the Québec Minister of Health and Social Services dated March 15, 2020, providing for the suspension of ski station activities (English version).

Montréal, September 29, 2020

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Lawyers for Defendants

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AND EXHIBITS MT-1 TO MT-7B**

ORIGINAL

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