

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 class of “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)”;
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;

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. On September 29, 2020, Jean-François Gour, representative of Mont Tremblant, signed an affidavit which completed and corrected certain allegations in regards to the information on Mont Tremblant's website for customers and available to them prior to purchasing the Tonik Pass and the Privilege Bundle as well as with regards to Applicant's use of the Tonik Pass;
7. On October 6, 2020, the Court authorized the Defendants to file appropriate evidence at the authorization stage, with the Applicant's consent;

B. The Defendants' Proposed Relevant Evidence

8. The Applicant's allegations in relation to his Tonik Pass as well as his alleged loss of the unused hot chocolates in the Privilege Bundle are incomplete and incorrect in light of new facts;
9. The Defendants therefore seek to adduce relevant evidence showing that the Applicant renewed his Tonik Pass for the 2020-2021 season on October 7, 2020, the very day after the judgment authorizing the Defendants' relevant evidence:
 - a) The sworn affidavit of Jean-François Gour, dated January 18, 2021, filed herewith as **Exhibit MT-8**;
10. This affidavit also confirms the Applicant's unused hot chocolates in his Privilege Bundle were carried over to the 2020-2021 season, and therefore not lost;
11. It is important to emphasize that this new relevant evidence, based on actions the Applicant took on October 7, 2020, was unavailable at the time Jean-François Gour executed the affidavit dated September 29, 2020, and at the time the Court authorized the Defendants' relevant evidence on October 6, 2020;
12. This new evidence is necessary and essential for the Defendants to show the incompleteness and inaccuracy of the Applicant's allegations, including that he lost the benefit of the prepaid hot chocolates in the Privilege Bundle for the 2019-2020 season;
13. This information is relevant and necessary for the Defendants to adequately and fully respond to the Applicant's allegations and for the Court to assess whether the Applicant has demonstrated an arguable case at the authorization stage;
14. 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 **Exhibit MT-8**, as evidence at authorization;
- C. **THE WHOLE**, with legal costs to follow.

Montréal, January 18, 2021

Borden Ladner Gervais

Borden Ladner Gervais LLP

Lawyers for Defendants

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

Mtre Anne Merminod

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NOTICE OF PRESENTATION

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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, January 18, 2021



Borden Ladner Gervais LLP

Lawyers for Defendants

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LIST OF EXHIBITS

EXHIBIT MT-8

Sworn affidavit of Jean-François Gour, dated January 18, 2021

Montréal, January 18, 2021



Borden Ladner Gervais LLP

Lawyers for Defendants

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AFFIDAVIT OF JEAN-FRANÇOIS GOUR

I, the undersigned, Jean-François Gour, domiciled at 1780 rue des Souchets, Ste-Adèle, Province of Québec, J8B 2B7, solemnly declare:



1. I currently am Director of Marketing for the defendant Mont Tremblant Société en Commandite ("**Mont Tremblant**").
2. I have personal knowledge of the facts set forth herein and I have conducted internal inquiries to determine the information set forth in this affidavit.
3. On October 7, 2020, Mr. Barry Nashen renewed his Tonik pass for the 2020-2021 season for the price of \$549.00. The applicable renewal price at that time included a \$50 discount for Tonik 2019-2020 pass holders offered in the context of the Covid-19 pandemic.
4. All Tonik 2019-2020 pass holders who renewed their Tonik pass for the 2020-2021 season were offered a discount in the context of the Covid-19 pandemic, which was of \$50 for adults between the age of 18 and 69.
5. M. Barry Nashen did not purchase a Privilege Bundle for the 2020-2021 season. I can confirm that Mr. Barry Nashen's unused hot chocolates in his 2019-2020 Privilege Bundle have been carried over to the 2020-2021 season.
6. Mr. Nashen's renewal of his Tonik pass for the 2020-2021 season was unknown to me or Mont Tremblant when I signed my affidavit dated September 29, 2020.
7. All of the facts in this affidavit are true and correct.

AND I HAVE SIGNED in Mont-Tremblant, Québec, this January 18, 2021:



Jean-François Gour

DECLARED UNDER OATH REMOTELY
by technological means before me at
Ste-Julie, Québec, this January 18, 2021.



Nathalie Angers
Commissioner of Oaths #137908
Commissioner for Oaths for Québec

Angers, Nathalie

De: Angers, Nathalie
Envoyé: January 18, 2021 2:51 PM
À: jzukran@lpclex.com
Cc: Chênevert, Karine; Merminod, Anne
Objet: NOTIFICATION: Barry Nashen v. Station Mont-Tremblant et al. - 500-06-001075-205 / Application for Leave to Adduce Relevant Evidence and Exhibit MT-8 (OF: 299573-1)
Pièces jointes: Application for Leave to Adduce Relevant Evidence -and Exhibit MT-8.pdf

Suivi:	Destinataire	Réception
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	Chênevert, Karine	Remis: 2021-01-18 2:51 PM
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COURT FILE NUMBER AND NATURE OF THE NOTIFIED DOCUMENT:

Record number: 500-06-001075-205
Parties: **BARRY NASHEN v. STATION MONT-TREMBLANT SOCIÉTÉ COMMANDITE and
ALTERRA MOUNTAIN COMPANY**
Nature of the document: **APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE AND
EXHIBIT MT-8**

Number of pages: -8-
(attachments only)



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MT-8 (OF: 299573-1)

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