

CANADA

**S U P E R I O R C O U R T**  
(Commercial Division)

PROVINCE OF QUEBEC  
DISTRICT OF LONGUEUIL

N°: 505-11-016890-217  
Estate N°: 41-2744253

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**IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL  
OF:**

**NAUTILUS PLUS INC.**, a duly incorporated legal person, having its head office at 3550, 1<sup>st</sup> Street, in the City of Longueuil, District of Longueuil, Province of Quebec, J3T 8Y5;

*Debtor*

-and-

**RAYMOND CHABOT INC.**, a duly incorporated legal person, having its head office at 600, De La Gauchetière Street West, Suite 2000, in the City of Montreal, District of Montreal, Province of Quebec, H3B 4L8;

*Trustee*

-and-

**ENRICO GIOIOSA**, domiciled and residing at 12383, Jules-Helbronner Street, in the City of Montreal, District of Montreal, Province of Quebec, H1C 0E7;

*Petitioner*

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**APPLICATION TO LIFT THE STAY OF PROCEEDINGS**  
(s. 69.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "*BIA*")

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF LONGUEUIL, OR TO THE REGISTRAR THEREOF, YOUR PETITIONER RESPECTFULLY STATES AS FOLLOWS:**

**A. THE PARTIES:**

1. Petitioner, a senior applications consultant, is a consumer within the definition provided for at section 1(e) of the *Consumer Protection Act* (CQLR, c. P-40.1) (the "**CPA**") and resides in the Judicial District of Montreal.
2. Debtor is a merchant within the definition provided for at section 1, paragraph 2 of the *CPA*, and same owns and operates a large number of physical fitness studios in the Province of Quebec, the whole as evidenced from an Extract of the Quebec Enterprise Register, communicated herewith as **Exhibit R-1**.

**B. FACTS:**

3. On or around the 30<sup>th</sup> of October, 2019, Petitioner and Debtor executed a contract for services involving sequential performance of bilateral obligations (the "**Gym Contract**"), the whole as evidenced by a copy of the Gym Contract, communicated herewith as **Exhibit R-2**.
4. As stated in the Gym Contract, Exhibit R-2, Petitioner was to pay to Debtor a Service Fee in the sum of fourteen dollars and thirty-eight cents (\$14.38) on a bi-monthly basis (the "**Membership Fee**") in consideration for the ability to use Debtor's fitness studio equipment and other ancillary gym services.
5. Given the indeterminate closure of all physical fitness studios, Petitioner was therefore evidentially deprived of his ability to obtain usage of Debtor's fitness studio equipment and other ancillary gym services, as per the Gym Contract, Exhibit R-2.
6. However, notwithstanding the fact that Debtor was no longer providing Petitioner with uninterrupted service in accordance its contractual obligations under the Gym Contract, Exhibit R-2, same continued to charge the latter the full amount of the Membership Fee.
7. Upon discovering same, Petitioner contacted Debtor and requested on numerous occasions that the Gym Contract, Exhibit R-2, be cancelled retroactively to the date upon which services were interrupted, but Debtor consistently refused to accept same, stating that it would simply extend the Gym Contract for the same period of time that Membership Fees were paid by Petitioner, the whole as evidenced by copies of various emails exchanged between the parties, communicated herewith as **Exhibit R-3**.
8. Moreover, as appears from the FAQ page published on Debtor's website, Debtor unilaterally modified the terms of all its consumer contracts to extend same for an indeterminate period of time without written consent of its consumers, thereby circumventing the *CPA*, the whole as evidenced by a copy of the COVID-19 FAQ section of Debtor's website, communicated herewith as **Exhibit R-4**.

9. It is upon the foregoing premise that, on or around June 1<sup>st</sup>, 2020, Petitioner, served and filed its *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* (the "**Authorization Application**"), before this Honourable Court, in the District of Montreal, bearing court record number 500-06-001074-208 (the "**Class Action File**"), the whole as evidenced from a copy of the Authorization Application, communicated herewith as **Exhibit R-5**.
10. As appears from the Authorization Application, Exhibit R-5, Petitioner essentially sought authorization to file a class action against the Debtor herein for its alleged illegal acts above-described and that the former be appointed as representative plaintiff on behalf of the following class:

**Class:**

All persons who, as of the 15<sup>th</sup> of March, 2020, had executed, in the Province of Quebec, a Consumer Service Contract with the [Debtor] and were as such subscribed to as members of one or more of [Debtor's] physical fitness studios and who have continued to be charged Service Fees (i.e. Membership Fees) by [the Debtor] without being able to benefit from the correlative benefits as per their respective Consumer Service Contracts for the period of deprivation of usage;

(hereinafter referred to as the "**Class**").

11. On or around the 7<sup>th</sup> of July, 2020, Debtor filed an Answer in contestation of the Authorization Application, the whole as appears from the Court Record.
12. Shortly after the filing of Debtor's Answer, on or around the 23<sup>rd</sup> of July, 2020, the Honourable Gary D.D. Morrison, J.S.C. was appointed as the Authorization Judge for the purposes of adjudicating the Authorization Application and any preliminary applications thereto, the whole as evidenced from a Letter sent by the Hon. Morrison J. to counsel, communicated herewith as **Exhibit R-6**.
13. On or around the 30<sup>th</sup> of September, 2020, Debtor filed its only preliminary application to the Authorization Application; namely, its *Application for Authorization to Examine the Petitioner* (the "**Examination Application**"), the whole as evidenced from a copy of the Examination Application, communicated herewith as **Exhibit R-7**.
14. On December 9<sup>th</sup>, 2020, the Hon. Morrison J. dismissed Debtor's Examination Application, the whole as evidenced from a copy of the Judgment rendered by the Hon. Morrison J. thereon, communicated herewith as **Exhibit R-8**.
15. Given that no appeal was taken therefrom and no other preliminary applications were to be presented, the parties therein proceeded to schedule the hearing for

the adjudication of the Authorization Application, which was scheduled for a full day hearing on May 25<sup>th</sup>, 2021, before the Hon. Morrison J.

16. On May 25<sup>th</sup>, 2021, following the parties arguments on the Authorization Application, the Court proceeded to take the matter under advisement, the whole as appears from the Court Record.
17. However, notwithstanding that a judgment adjudicating the Authorization Application was likely imminent, on or around June 14<sup>th</sup>, 2021, Petitioner was shocked and dismayed to discover that Debtor had filed a Notice of Intention to Make a Proposal pursuant to sections 50.4 & ff. of the *BIA* (the "NOI"), and Mr. Jean Gagnon of Raymond Chabot Inc. was named Trustee thereunder, the whole as evidenced from a copy of the NOI, communicated herewith as **Exhibit R-9**.
18. Shortly thereafter, the Trustee notified and filed a Stay of Proceedings in the Court Record of the Class Action File, claiming therein that the said file is stayed by virtue of section 69(1) of the *BIA*, the whole as evidenced from a copy of the Stay of Proceedings, communicated herewith as **Exhibit R-10**.
19. Notwithstanding the Stay of Proceedings received, Exhibit R-10, it is interesting to note that the Debtor did not include Petitioner or any of its consumers in the proposed Class as creditors in its List of Creditors to the Trustee, the whole as evidenced from a copy of the Debtor's List of Creditors, communicated herewith as **Exhibit R-11**.
20. Given the statutory Stay of Proceedings, Petitioner – and by extension, all members of the proposed Class – are left in a state of legal purgatory, since this Honourable Court cannot render judgment on the Authorization Application in the face of same.
21. Without any admission of any kind whatsoever, Petitioner respectfully submits that the Authorization Application is not a claim provable in bankruptcy *per se* in accordance with section 69(1) of the *BIA*, and as such, same should not have been the subject of the Trustee's Stay of Proceedings, Exhibit R-10.
22. Rather, the Authorization Application is a procedural vehicle that simply determines whether or not Petitioner can bring forth and file, on behalf of the proposed Class, an Introductory Application for a Class Action against Debtor.
23. In the alternative, should this Honourable Court conclude that the Authorization Application is a claim provable in bankruptcy in accordance with section 69(1) of the *BIA* – which is denied by Petitioner herein – Petitioner respectfully submits that the Stay of Proceedings in respect of the Authorization Application be lifted in accordance with section 69.4 of the *BIA*.

24. Respectfully, it is in the interest of justice that the status of Petitioner – and by extension that of all proposed Class members – be clarified, in respect of the Authorization Application, as until such time the exact number of creditors and value of creditors' claims in respect of the Debtor cannot be validly determined.
25. Moreover, given that the hearing for the adjudication of the Authorization Application has already taken place and that the matter was already taken under advisement by this Honourable Court when the NOI was filed, the lifting of the Stay of Proceedings shall not cause any material prejudice to any party herein, since all that remains therein is for judgment to be rendered by the Hon. Morrison J.
26. Furthermore, given that Petitioner's claim in the Class Action File was contested, it is highly probable that same – and those of all the proposed Class members – will be contested by the Debtor herein, thereby illustrating the necessity to liquidate and clarify the status of potentially 50,000 creditors.
27. Additionally, in consideration of the sheer number of potential consumer creditors that forms the proposed Class, it would be of benefit to all parties herein for judgment to be rendered in the context of the Authorization Application so that same could all be represented as a class herein.
28. The present Application to Lift the Stay of Proceedings is well-founded in fact and in law.

**WHEREFORE, PETITIONER PRAYS THAT BY JUDGMENT TO BE RENDERED HEREIN, THIS HONOURABLE COURT:**

29. **GRANT** the present Application to Lift the Stay of Proceedings;
30. **SHORTEN** the delays for service and presentation of the present Application to Lift the Stay of Proceedings, if necessary;
31. **DECLARE** that sections 69 to 69.3 of the *Bankruptcy and Insolvency Act* do not apply to Petitioner in the context of the Authorization Application;
32. **AUTHORIZE** the continuation of the proceedings in the Superior Court, District of Montreal, bearing Court Record number 500-06-001074-208;
33. **THE WHOLE** with legal costs.

Westmount, July 7<sup>th</sup>, 2021.

  
**STEIN & STEIN INC.**  
Attorneys for Petitioner

**AFFIDAVIT OF PETITIONER**

I, the undersigned, **Enrico Gioiosa**, domiciled and residing at 12383, Jules-Helbronner Street, in the City of Montreal, Province of Quebec, H1C 0E7, solemnly declaration **THAT**:

1. I am the Petitioner herein;
2. All the facts alleged in the foregoing *Application to Lift the Stay of Proceedings* are, to the best of my knowledge, true and correct.

AND I HAVE SIGNED:

  
ENRICO GIOIOSA

**SOLEMNLY AFFIRMED** before me this 7<sup>th</sup> day of July, 2021, by Enrico Gioiosa, whose oath was taken and received in the City of Westmount, Province of Quebec, the whole by technological means and in accordance with the memorandum of the Quebec Ministry of Justice dated March 20<sup>th</sup>, 2020.



*Commissioner of Oaths for all the Judicial  
Districts of the Province of Quebec*



**NOTICE OF PRESENTATION**  
(s. 101 C.C.P.)

**TO: Nautilus Plus Inc.**  
**Debtor**  
3550, 1<sup>st</sup> Street,  
Longueuil (Quebec) J3T 8Y5

**Me Noah Boudreau**  
**FASKEN MARTINEAU DUMOULIN LLP**  
Attorneys for Debtor in the Class Action File  
800, Square Victoria, Suite 3500  
Montreal (Quebec) H4Z 1E9  
T: 514-394-4521  
F: 514-397-7600  
E: [nboudreau@fasken.com](mailto:nboudreau@fasken.com)

**Mr. Jean Gagnon, CPA, CA, CIRP, SAI**  
**RAYMOND CHABOT INC.**  
**Trustee**  
600, De La Gauchetière Street West, Suite 2000  
Montreal (Quebec) H3B 4L8  
T: 514-393-4848  
F: 450-676-2202  
E: [gagnon.jean@rcgt.com](mailto:gagnon.jean@rcgt.com)

**TAKE NOTICE** that Petitioner's *Application to Lift the Stay of Proceedings* will be presented for adjudication before one of the Honourable Judges of the Superior Court, sitting in the Commercial Division, in and for the District of Longueuil, or to the Registrar thereof, on **July 15<sup>th</sup>, 2021**, at **2:00 pm**, in **room 1.25**, of the **Longueuil Courthouse**, located at **1111, Blvd. Jacques-Cartier East, Longueuil (Quebec) J4M 2J6**, or as soon as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Westmount, July 7<sup>th</sup>, 2021.

  
**STEIN & STEIN INC.**  
Attorneys for Petitioner

N° 505-11-016890-219

**SUPERIOR COURT**  
(Commercial Division)  
**PROVINCE OF QUEBEC**  
**DISTRICT OF LONGUEUIL**

**IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF:**

**NAUTILUS PLUS INC.**

*Debtor*

-and-

**RAYMOND CHABOT INC.**

*Trustee*

-and-

**ENRICO GIOIOSA**

*Petitioner*

**APPLICATION TO LIFT THE STAY OF  
PROCEEDINGS**

(s. 69.4 of the *Bankruptcy and Insolvency Act*)

ORIGINAL

**CODE NO. BS0327      FILE NO. 12542-2**

**ME NICHOLAS CHINE**

***nchine@steinandstein.com***  
4101, Sherbrooke Street W.  
Westmount (Quebec) H3Z 1A7  
T: 514-866-9806 | F: (514) 875-8218

**Stein & Stein**

Avocats  
Carrière 0 800-385-3853