

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-001074-208

DATE : September 13, 2021

PRESIDING: THE HONOURABLE GARY D.D. MORRISON, J.S.C.

ENRICO GIOIOSA
Petitioner

v.

NAUTILUS PLUS INC.
Respondent

JUDGMENT
(APPLICATION TO DISCONTINUE)

[1] **WHEREAS** Petitioner seeks permission to discontinue his class action authorization proceedings, and this after the authorization application had been presented and taken under advisement on May 25, 2021;

[2] **WHEREAS** the proposed class action pertains to alleged changes to service contracts between Respondent Nautilus Plus Inc. and its members in relation to interrupted gym services at 33 gym training centers due to Quebec Government decrees issued during the COVID-19 pandemic;

[3] **WHEREAS** on June 11, 2021, Nautilus issued a Notice of Intention to file a Proposal pursuant to the *Bankruptcy and Insolvency Act* ("BIA"), resulting in the issuance of a Notice to Suspend (Exhibit AD-1) so as to stay the class action authorization application;

[4] **WHEREAS** on July 9, 2021, Nautilus filed an Initial Proposal to its creditors (Exhibit AD-3), including first and second-ranking moveable hypothecary creditors involving the debtor's assets for an approximate amount of \$36 million in both secured and unsecured debt, as well as other unsecured creditors;

[5] **WHEREAS** the Initial Proposal provided for a "basket" amount of \$900,000 to be paid, on a *pro rata* basis, to ordinary unsecured creditors and, by continuing to conduct business, enabling Nautilus to honour its membership obligations towards its 37,500 members throughout Quebec;

[6] **CONSIDERING** that an Amended Proposal has followed (Exhibit AD-5) that more specifically provides for Nautilus continuing to honour its member's memberships and, further, extending the number of months thereof in cases where funds had been debited from members' accounts without services being rendered, the whole however conditional on the filing of a Discontinuance in the present matter, and with the said proposal operating as a release of all claims;

[7] **CONSIDERING** that Nautilus has further confirmed in writing (Exhibit AD-6) that notwithstanding such release, it would continue to respect its Closure Policy which provides special provisions relating to the option of full reimbursement of membership fees in areas where gyms had been closed or where training services were no longer in place;

[8] **CONSIDERING** that the Amended Proposal was approved on July 30, 2021, by the required majority of creditors (Exhibit AD-7);

[9] **CONSIDERING** that the Superior Court approved and ratified the Amended Proposal on August 12, 2021 (Exhibit AD-8);

[10] **CONSIDERING** that pursuant to Art. 585 C.C.P., the authorization of the Court is required in order for a petitioner to file a discontinuance of suit in class action proceedings;

[11] **CONSIDERING** that not filing a Discontinuance of Suit in the present matter would constitute a failure to respect a condition of the Amended Proposal;

[12] **CONSIDERING** that the ratified proposal would enable putative class members to continue to receive the benefit of their membership or, in some cases, the full reimbursement of their membership fees, as mentioned above;

[13] **CONSIDERING** that the proof submitted in support of the Application to discontinue demonstrates that failure to implement the Amended Proposal would most probably give rise to the bankruptcy of Nautilus, which would not be in the best interest of putative class members;

[14] **CONSIDERING** that in the circumstances, the proposed discontinuance will not cause undue prejudice to the putative class members, will not diminish the integrity of the legal system and, more importantly, appears to be in the best interest of the putative class members;

[15] **CONSIDERING** Petitioner's undertaking to file a public notice of discontinuance in the Class Action Registry;


FOR THESE REASONS, THE COURT:

GRANTS Petitioner's Application for Permission to Discontinue the Putative Class Action;

AUTHORIZES Petitioner to discontinue, without costs, its Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff;

PRAYS ACT of Petitioner's undertaking to publish the Discontinuance of Suit, in the form contained at Exhibit AD-10, in the Class Action Registry, and **ORDERS** Petitioner to do so and to publish the Notice on his lawyers website, the whole within the ten (10) days following the date of the present judgment;

THE WHOLE without legal costs.



Gary D.D. Morrison, J.S.C.

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Date of Hearing : September 13, 2021