



Court File No. CV-13-10000-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 27TH DAY
JUSTICE MORAWETZ) OF MARCH, 2013

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EXTREME FITNESS, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

ORDER

(Re: Stay Extension, Assignment of Lease and Distribution)

THIS MOTION, made by Extreme Fitness, Inc. (the "**Applicant**"), for an order, *inter alia*:

- (a) extending the Stay Period (as defined in the Initial Order of the Honourable Mr. Justice Campbell granted on February 7, 2013 in these proceedings (the "**Initial Order**")) to and including May 10, 2013;
- (b) approving the Second Report of FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**"), dated March 22, 2013 (the "**Second Report**") and the Supplemental Report to the Second Report of the Monitor dated March 26, 2013 (the "**Supplemental Report**"), and approving the actions of the Monitor described therein;

- (c) sealing the Confidential Supplement to the Second Report and Confidential Exhibit “B” to the affidavit of Alan Hutchens sworn March 22, 2013 (the “**Hutchens Affidavit**”), filed, until further order of this Court;
- (d) ordering the assignment of the lease listed in **Schedule “A”** hereto, and all renewals, amendments and agreements related thereto (the “**Lease**”) to GoodLife Fitness Centres Inc. (“**GoodLife**”) pursuant to an asset purchase agreement between the Applicant and GoodLife dated March 19, 2013 (the “**APA**”) appended, in redacted form, to the Hutchens Affidavit and included, in unredacted form, as the Confidential Supplement to the Second Report; and
- (e) authorizing the Monitor to make interim distributions from the proceeds of the transaction contemplated in the APA to:
 - (i) Golub Capital Incorporated, as agent (in such capacity, the “**DIP Agent**”) for the benefit of itself and three lenders (collectively, in such capacity, the “**DIP Lender**”), in the amounts advanced under the DIP Credit Agreement (as defined in the Initial Order), plus interest and costs;
 - (ii) the Applicant, in an amount agreed to by the Monitor as is required to satisfy:
 - (1) the Applicant’s post-filing obligations, including, without limitation, the liabilities intended to be protected by the Administration Charge and the D&O Charge (as those terms are defined in the Initial Order); and

- (2) any monetary defaults under applicable leases existing at the time of their assignment, other than monetary defaults arising by reason only of the Applicant's insolvency, the commencement of proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. c-36, as amended (the "CCAA") or the Applicant's failure to perform a non-monetary obligation;
- (iii) Golub Capital Incorporated, as agent (in such capacity, the "**Priority Agent**") for the benefit of itself and the lenders (collectively, in such capacity, the "**Priority Lenders**") under the Priority Credit Agreement (as defined in the affidavit of Alan Hutchens sworn February 7, 2013 (the "**February Affidavit**")) in respect of the amounts advanced to the Applicant under the Priority Credit Agreement, plus interest and costs; and
- (iv) National Bank of Canada, as agent (in such capacity, "**NBC**"), for the benefit of itself and the lenders (collectively, in such capacity, the "**NBC Lenders**") under the National Bank Credit Agreement (as defined in the February Affidavit) on account of the Applicant's outstanding indebtedness for principal, interest and costs,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Hutchens Affidavit, the Second Report, the Supplemental Report and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for GoodLife, counsel for the DIP Agent, counsel for the Priority Agent and counsel for NBC, no

one appearing for any other person on the service list, although duly served as appears from the affidavit of Eunice Baltkois sworn March 22, 2013, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period, as defined in paragraph 14 of the Initial Order, be and is hereby extended to and including May 10, 2013.

SECOND REPORT AND SUPPLEMENTAL REPORT OF THE MONITOR

3. **THIS COURT ORDERS** that the Second Report and the Supplemental Report and the actions of the Monitor described therein be and are hereby approved.

4. **THIS COURT ORDERS** that, subject to further order of this Court, the Confidential Supplement to the Second Report and Confidential Appendix "B" to the Hutchens Affidavit shall be sealed, kept confidential and not form part of the public record, but, rather, shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of this Court.

ASSIGNMENT OF THE LEASE

5. **THIS COURT ORDERS** that, pursuant to section 11.3 of the CCAA ~~and the inherent jurisdiction of this Court,~~ upon delivery by the Monitor to GoodLife of the Monitor's Certificate



(as defined in the Approval and Vesting Order dated March 27, 2013), all of the Applicant's right, title and interest in and to the Lease and all amendments, renewals and other agreements related thereto are hereby assigned to GoodLife and all of the Applicant's rights and obligations under the Lease shall be transferred to and be assumed by GoodLife, effective as of the Closing Date (as that term is defined in the APA).

6. **THIS COURT ORDERS AND DECLARES** that the Lease constitutes Purchased Assets as that term is defined in this Court's Approval and Vesting Order issued March 27, 2013 and the assignment and transfer of the Lease to GoodLife as provided herein shall be subject to the provisions of such Approval and Vesting Order.

7. **THIS COURT ORDERS** that the assignment of the Lease to GoodLife as provided herein is valid, binding upon and enforceable against all of the counterparties to the Lease, notwithstanding any restriction or prohibition relating to assignment contained in any such Lease, including, but not limited to, any provision requiring the consent of any party to the transfer or assignment of the Lease or any fee, penalty or payment required to be paid in connection therewith.

8. **THIS COURT ORDERS** that no fee, penalty or payment (whether contemplated by the terms of the Lease or otherwise) shall be required to be made by either the Applicant or by GoodLife to any party, including, without limitation, any landlord under the Lease, in connection with the assignment of the Lease as provided herein.

9. **THIS COURT ORDERS** that, from and after the Closing Date (as that term is defined in the APA), all counterparties under the Lease shall be deemed to have waived any and all non-monetary defaults existing under the Lease as of the Closing Date, including, but not limited to,

any default related to the insolvency of the Applicant or the commencement of these CCAA proceedings, and such non-monetary defaults shall be deemed to have been rescinded *nunc pro tunc* and shall be of no further force or effect, including as against GoodLife.

INTERIM DISTRIBUTIONS

10. **THIS COURT ORDERS** that the Monitor be and is hereby authorized and directed to take all necessary steps to distribute from the proceeds of the transaction contemplated in the APA, without further Order of this Court:

- (a) USD\$1,310,302.78 to the DIP Agent on behalf of the DIP Lender in respect of the amounts advanced to the Applicant under the DIP Credit Agreement, inclusive of interest, plus costs;
- (b) to the Applicant, in an amount agreed to by the Monitor as is required to satisfy:
 - (i) the Applicant's post-filing obligations, including, without limitation, the liabilities intended to be protected by the Administration Charge and the D&O Charge; and
 - (ii) any monetary defaults under applicable leases at the time of their assignment, other than monetary defaults arising by reason only of the Applicant's insolvency, the commencement of proceedings under the CCAA or the Applicant's failure to perform a non-monetary obligation;

- (c) USD\$8,000,000 to the Priority Agent on behalf of the Priority Lenders in respect of the amounts advanced to the Applicant under the Priority Credit Agreement, plus interest and costs; and
- (d) CDN\$~~2,750,000~~ ^{2,320,000} to NBC on behalf of the NBC Lenders on account and in partial satisfaction of the Applicant's outstanding indebtedness to the NBC Lenders for principal, interest and costs.

11. **THIS COURT ORDERS** that the Monitor be and is hereby authorized, without further Order of this Court, to make one or more further distributions to NBC on behalf of the NBC Lenders on account of the Applicant's outstanding indebtedness to the NBC Lenders for principal, interest and costs from any: (i) existing or additional sale proceeds received by the Monitor pursuant to the terms of the APA; and (ii) additional funds that come into the Monitor's possession in respect of the assets or property of the Applicant, up to the amount of the Applicant's indebtedness to the NBC Lenders, subject to the Monitor maintaining an adequate reserve for any amounts secured by the Administration Charge, the D&O Charge and the Holdback (as that term is defined in the APA).

12. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings,
- (b) any application for a bankruptcy order or bankruptcy Order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant; or
- (c) any assignment in bankruptcy made in respect of the Applicant,

the distributions and payments made pursuant to paragraphs 10 and 11 of this Order are final and irreversible and shall be binding upon any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall the payments constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, or other reviewable transactions under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person.

13. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the Initial Order, the Monitor shall not be liable for any act or omission on the part of the Monitor, or any reliance thereon, including, without limitation, in respect to any information disclosed, any act or omission pertaining to the discharge of its duties under this Order or as requested by the Applicant or in respect to any other duties or obligations set out in this Order or in the Initial Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA, any other federal or provincial applicable law or the Initial Order.

14. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor.

15. **THIS COURT ORDERS** that upon fulfilment of its obligations under this Order, the Monitor is hereby authorized to apply to Court for its discharge.

A handwritten signature in black ink, appearing to read "A. D. Evans", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 27 2013

MB

SCHEDULE "A"
LEASE

1. Lease between the Applicant and 1079268 Ontario Inc. dated October 30, 2006, as amended by letter agreement dated October 12, 2007 in respect to the premises known municipally as 635 Danforth Avenue, Toronto, Ontario.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

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Court File No. CV-13-10000-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

(Re: Stay Extension, Assignment of Leases and Distribution)

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