

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.)

THURSDAY, THE 4TH

JUSTICE KOEHNEN)

DAY OF MARCH, 2021



BANK OF MONTREAL

Applicant

- and -

**2592931 ONTARIO INC., W.G.K. FITNESS INC., 2039675 ONTARIO INC., WGWINDSOR 2
FITNESS INC., WG BRAMPTON FITNESS INC., WGH FITNESS INC., CFC WELLAND INC.,
W.G.C. FITNESS INC., 2014595 ONTARIO INC., CFC BRANTFORD INC., CFC
WATERDOWN INC., CFC LONDON SOUTH INC., W.G.G. FITNESS INC., WGWINDSOR
FITNESS INC., W.G.W FITNESS INC., WGLONDON FITNESS INC., and WG ORILLIA INC.
Respondents**

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended and Section 101 of the *Courts of Justice Act*,
R.S.O. 1990, c. c-43, as amended

**ORDER
(Adjournment, Appointing Monitor)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended (the "CJA") appointing Richter Advisory Group Inc. ("Richter") as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of W.G.K. Fitness Inc., 2039675 Ontario Inc., WGWindsor 2 Fitness Inc., WG Brampton Fitness Inc., WGH Fitness Inc., CFC Welland Inc., W.G.C. Fitness Inc., 2014595 Ontario Inc., CFC Brantford Inc. CFC Waterdown Inc., CFC London South Inc., W.G.G. Fitness Inc., WGWindsor Fitness Inc., W.G.W Fitness Inc., WGLondon Fitness Inc., and WG Orillia Inc. (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via judicial videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Tina Scalia sworn March 1, 2021 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, no one appearing for any other party on the service list although duly served as appears from the affidavits of service of Margaret Henderson sworn March 1, 2021 and Laurie Marshall sworn March 2, 2021 and on reading the consent of Richter to act as the Monitor (as defined below).

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and service validated, as necessary, so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that the Applicant's Application to appoint a Receiver is hereby adjourned *sine die*, returnable on three days' notice, on the terms contained in this Order.

3. THIS COURT ORDERS that Richter is hereby appointed as monitor (in such capacity, the "Monitor"), without security, and with only the powers granted below, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a businesses carried on by the Debtors, including all proceeds thereof (the "Property").

MONITOR NOT IN POSSESSION OF ASSETS

4. THIS COURT ORDERS that the Monitor shall not operate the Debtors' businesses or take possession or control of the Property without further Order of the Court.

5. THIS COURT ORDERS that the Debtors' shall remain in possession of the Property and shall carry on business in the ordinary course and shall not take steps outside of the ordinary course of business to dissipate the Property.

MONITOR'S POWERS

6. THIS COURT ORDERS that the Monitor is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and the Monitor is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:

- a) to monitor, but not control, the receipts and disbursements arising out of or from the Property;

- b) as agent for the Applicant, to undertake a sale and investment solicitation process (the “SISP”) for the Property;
- c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;
- d) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property and the exercise of its powers and duties hereunder, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and
- e) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

7. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control and shall grant immediate and continued access to the Property to the Monitor.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the businesses or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Monitor or permit the Monitor to

make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Monitor for the purpose of allowing the Monitor to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Monitor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Monitor. Further, for the purposes of this paragraph, all Persons shall provide the Monitor with all such assistance in gaining immediate access to the information in the Records as the Monitor may in its discretion require including providing the Monitor with instructions on the use of any computer or other system and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the information.

10. THIS COURT ORDERS that the Debtors all of the Debtors' directors, officers, employees, agents, and shareholders shall cooperate with the Monitor in carrying out the SISP.

11. THIS COURT ORDERS that the Monitor shall have access to the Debtors' premises and the Debtors' books and records at any time or times, including evenings, weekends and holidays, and the Debtors' shall take all reasonable steps to ensure that the Monitor will have such access, provided however that the Monitor shall exercise its right to such access in such a manner to minimally interfere with the Debtors' business.

12. THIS COURT ORDERS that the Monitor shall be permitted to disclose any information which it obtains with respect to the Debtors or the Property (i) to the Applicant, and (ii) for the purpose of undertaking the SISP, but only provided to third parties in the SISP after said parties have entered into a suitable non-disclosure agreement, but otherwise shall not disclose such information, except with leave of this Court or as permitted by this Order.

NO PROCEEDINGS AGAINST THE MONITOR

13. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Monitor except with the written consent of the Monitor or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

14. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that all rights and remedies against the Debtors, the Monitor, or affecting the Property, are hereby stayed and suspended except with leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

CONTINUATION OF SERVICES

16. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without leave of this Court.

17. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with normal payment practices of the Debtors or such

other practices as may be agreed upon by the supplier or service provider and the Debtors, or as may be ordered by this Court.

PIPEDA

18. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to undertake the SISP. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of a transaction, and if it does not complete a t, shall return all such information to the Monitor, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

LIMITATION ON THE MONITOR'S LIABILITY

19. THIS COURT ORDERS that the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

MONITOR'S ACCOUNTS

20. THIS COURT ORDERS that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Monitor and counsel to the Monitor shall be entitled to and are hereby granted a charge (the "Monitor's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Monitor's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

SERVICE AND NOTICE

22. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

23. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Monitor is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

24. THIS COURT ORDERS that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

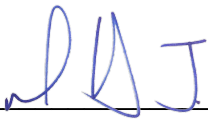
25. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors, or any of them.

26. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

27. THIS COURT ORDERS that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis.

29. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



BANK OF MONTREAL
Applicant

and

2592931 ONTARIO INC. et al
Respondents

Court File No.: CV-21-00658033-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**ORDER
(Adjournment, Appointing Monitor)**

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