

COURT FILE NUMBER Q.B. No. 1195 of 2020
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT BTA REAL ESTATE GROUP INC.

RESPONDENT FAMILY FITNESS INC.

IN THE MATTER OF THE RECEIVERSHIP OF FAMILY FITNESS INC.

ORDER

Before the Honourable Justice R.W. Elson in Chambers the 23rd and 24th days of February, 2021.

On the application of Mike Russell and Kevin N. Hoy, lawyers on behalf of BTA Real Estate Group Inc. ("BTA"), and upon hearing Mike Russell, Luanne C. Schlosser and Kevin Hoy on behalf of BTA, Kyle Kashuba, lawyer on behalf of Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties of Family Fitness Inc. ("**FFI**") pursuant to the Order of this Court made on October 13, 2020 (as amended from time to time) (the "**Receivership Order**"), James Rose and Tristan Culham, lawyers on behalf of SM Fitness Inc. ("**SMI**"), Said (Skye) Kaiss, Matthew Sawa and FFI; and upon reading the Notice of Application dated February 18, 2021, and all materials filed by counsel in relation thereto, a (draft) Order, the Second Report of the Receiver dated January 29, 2021 (the "**Second Report**"), the Sale Approval and Vesting Order dated February 5, 2021 (the "**SAVO**"), and the pleadings and proceedings herein, all filed:

The Court Orders:

SERVICE

1. Service of the Notice of Application on behalf of BTA and the materials filed in support thereof (collectively, the "**Application Materials**") shall be and is hereby deemed to be good and valid and, further, shall be and is hereby abridged, such that service of such Application Materials is deemed to be valid, timely and sufficient.

DEFINITIONS

2. "**Disputed Funds**" shall have the meaning ascribed to it in the Second Report.
3. "**Disputed Memberships**" shall have the meaning ascribed to it in the Second Report.
4. "**Purchased Assets**" shall have the meaning ascribed to it in the SAVO.

DECLARATION OF FRAUDULENT CONVEYANCE

5. This Court hereby declares that:
 - a. the transfer between FFI and SMI of the Disputed Memberships pursuant to the May 12, 2020, Group Membership Account Purchase Agreement, identified and produced at Appendix "C" to the Second Report, (the "**Transfer**") is a fraudulent conveyance contrary to the *Fraudulent Conveyances Act, 1571 (UK)*, 13 Eliz 1, c 5;

- b. the Transfer is declared to be void in its entirety;
- c. all legal and beneficial interests to the Disputed Memberships, and all funds derived therefrom, including the Disputed Funds (collectively, the "**Subject Funds**"), are hereby transferred to and invested in FFI free and clear of any interest of SMI; and
- d. FFI and SMI are hereby directed to execute such further documents and take such further actions as may be required to give effect to the preceding subparagraph of this Order.

DIRECTION AS TO VESTING OF DISPUTED MEMBERSHIPS AND FUNDS DERIVED THEREFROM

- 6. This Court hereby directs that the Purchased Assets shall include:
 - a. the Disputed Memberships; and
 - b. the Subject Funds.

ORDERS REGARDING COSTS AND PROCEDURE

- 7. BTA shall have its costs of this application in the amount of \$11,492.30, comprised of \$10,000.00 on account of fees and \$1,492.30 on account of taxable disbursements, to be paid forthwith by SMI to BTA (collectively, the "**Costs**").
- 8. ASF Payment Solutions Inc. shall forthwith deliver the Subject Funds to the law firm of W Law LLP, upon receipt of which Subject Funds, W Law LLP shall forthwith:
 - a. deduct and pay, in its discretion, the amount of the Costs from the Subject Funds; and
 - b. hold the amount of \$78,507.70 in trust until further Order of this Court or written agreement between counsel for the parties.
- 9. The Honourable Mr. Justice Elson shall remain seized with this application insofar as any matters pertaining to the enforcement of this Order.

ISSUED at Saskatoon, Saskatchewan, this 3rd day of May, 2021.


X. PINO

(Deputy) Local Registrar

This Order consented to in form and in substance this 30th day of April, 2021.

W Law LLP

Per: 

Mike Russell

This Order consented to in form and in substance this 30 day of April, 2021.

MLT Aikins LLP

Per: 

for James Rose

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:

W Law LLP

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Michael J. Russell

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