

**ENTERED**

FILE NUMBER:

B201-731795  
B201-731797  
B201-731799



COM  
June 11, 2021  
Justice Lema

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

MATTERS: IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C.B-3, AS AMENDED, OF INTERNATIONAL FITNESS HOLDINGS INC. INTERNATIONAL FITNESS HOLDINGS LP WORLD HEALTH NORTH LP

APPLICANT: TESLIN INVESTMENTS LTD.

---

**QUESTIONING ON AFFIDAVIT**

**OF**

**JEFFERY BAKER  
(VIA VIDEOCONFERENCE)**

---

Taken in Edmonton, Alberta, on the 7th day of June, A.D. 2021.

- |                      |                                                   |
|----------------------|---------------------------------------------------|
| K. Fellowes          | Appeared for<br>International Fitness             |
| H. Sniderman         | Appeared for Teslin Investments<br>And Jeff Baker |
| M.C. McNeely, CSR(A) | Court Reporter                                    |

**ENTERED**



COURT FILE NUMBER: B201-731795  
B201-731797  
B201-731799

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

MATTERS: IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C.B-3, AS AMENDED, OF INTERNATIONAL FITNESS HOLDINGS INC. INTERNATIONAL FITNESS HOLDINGS LP WORLD HEALTH NORTH LP

APPLICANT: TESLIN INVESTMENTS LTD.

**QUESTIONING ON AFFIDAVIT**

**OF**

**JEFFERY BAKER  
(VIA VIDEOCONFERENCE)**

Taken in Edmonton, Alberta, on the 7th day of June, A.D. 2021.

- |                      |                                                   |
|----------------------|---------------------------------------------------|
| K. Fellowes          | Appeared for<br>International Fitness             |
| H. Sniderman         | Appeared for Teslin Investments<br>And Jeff Baker |
| M.C. McNeely, CSR(A) | Court Reporter                                    |



COURT FILE NUMBER: B201-731795  
B201-731797  
B201-731799

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

MATTERS: IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C.B-3, AS AMENDED, OF INTERNATIONAL FITNESS HOLDINGS INC. INTERNATIONAL FITNESS HOLDINGS LP WORLD HEALTH NORTH LP

APPLICANT: TESLIN INVESTMENTS LTD.

---

**QUESTIONING ON AFFIDAVIT**

**OF**

**JEFFERY BAKER  
(VIA VIDEOCONFERENCE)**

---

Taken in Edmonton, Alberta, on the 7th day of June, A.D. 2021.

---

K. Fellowes                                      Appeared for  
International Fitness

H. Sniderman                                    Appeared for Teslin Investments  
And Jeff Baker

M.C. McNeely, CSR(A)                      Court Reporter

\* UNDERTAKINGS \*

<u>NO.</u>	<u>PAGE</u>	<u>DESCRIPTION</u>
1	38	CONFIRM IF THE RENTAL RATE OF \$16.50 PER SQUARE FOOT WAS IN EFFECT IN NOVEMBER OF 2020
2	40	CONFIRM WAS RENTAL AMOUNT WAS BEING PAID IN 2021

---

\* UNDERTAKINGS HAVE BEEN INSERTED AND INDEXED \*

AS A COURTESY SERVICE TO COUNSEL TO BE

UTILIZED AT THEIR DISCRETION

1 JEFFERY BAKER, having first been duly affirmed at  
2 10:00 a.m. questioned by Ms. Fellowes testified as  
3 follows:

4 **(Videoconferencing Disclaimer: Due to the variations in**  
5 **internet connection, audio drops may occur for all**  
6 **parties, including the court reporter. Words or phrases**  
7 **may be missed, and therefore may not be transcribed.)**

8 Q MS. FELLOWES: Thank you, Mr. Baker. Just  
9 as a preliminary matter, can you tell me if you  
10 are alone in the room?

11 A Yes, I am.

12 Q Great. And do you have another screen or a  
13 phone in front of you on which you are  
14 receiving either text messages or emails during  
15 the course of this cross-examination?

16 A Well, I have on my computer screen all the  
17 exhibits in case I have to look any up.

18 Q Great. Other than that, you don't have your  
19 emails up, or you're communicating with anyone  
20 during the course of --

21 A No. Not at all.

22 Q Okay. Thank you, sir. All right. Can you  
23 please state your name for the record.

24 A Jeffery Howard Baker.

25 Q And, sir, what is your relationship with  
26 Teslin -- sorry, I'm going to say the correct  
27 name of your -- Teslin Investments Ltd.?

1 A I am the president and director.

2 Q All right. And how long have you held that  
3 position?

4 A Since the company was formed. So ten plus  
5 years or longer.

6 Q Okay. And I understand that the lease in  
7 question, which is attached as Exhibit A to  
8 your affidavit for the purposes of this  
9 cross-examination, sir, I'm going to refer to  
10 that as the 2012 lease.

11 A Okay.

12 Q Were you the President of  
13 Teslin Investments Ltd. at the time on the 2012  
14 lease was entered into?

15 A Yes, I was.

16 Q Okay. So I understand the lease is -- sorry.  
17 The lease was entered into with  
18 Teslin Investments Joint Venture. Is that --  
19 what's the relationship between  
20 Teslin Investments Joint Venture and  
21 Teslin Investments Ltd.?

22 A Good question. I don't recall, but my sister  
23 and I are Teslin Investments and maybe her and  
24 I were Joint Venture previously, but I'm not  
25 100 percent sure to be honest.

26 Q Okay. That's fine. Do you recall, sir, the --  
27 that you were involved in negotiating the terms

1 of the 2012 lease?

2 A Yes.

3 Q Great. And did you have other parties  
4 assisting you like a leasing agent or a  
5 property manager at the time?

6 A A leasing agent. Yeah.

7 Q And I understand that the 2012 lease was for a  
8 term of 14 years, I believe?

9 A To 2025, I believe.

10 Q I think it was 2026.

11 A Okay.

12 Q If you look, sir, at paragraph five of your  
13 affidavit.

14 A Okay. Hold on. Yeah, 2026. You're right.

15 Q Okay. Right.

16 A Yeah.

17 Q And I'm -- I'm referring again, sir, to  
18 paragraph five of your affidavit. And it  
19 refers to a lease term of 14 years and three  
20 months with a minimum rent expressed on an  
21 increasing scale starting at \$7 per square foot  
22 for the initial -- looks like the initial year  
23 or so, and then increasing to \$12.50 per square  
24 foot for another four years, and then up to  
25 \$14.50 for the next looks like about three  
26 years, and then finally for the last six years  
27 an increase of \$16.50 per square foot.

1           Sir, can you confirm to the best of your  
2           knowledge that those rental rate increases did  
3           come into effect at the times and dates as  
4           indicated in your affidavit and were paid  
5           accordingly?

6           A     Yes, they were.

7           Q     So just to confirm, since November 1st of 2020,  
8           which was only about six months ago, a little  
9           over six months ago now, you have been  
10          receiving rent on the basis of a base rent  
11          payment, or a minimum rent payment, sorry, of  
12          \$16.50 per square foot?

13          A     I believe so.

14          Q     Okay. Thank you. Sir, can you tell me about  
15          this property? Is -- my client, of course is  
16          International Fitness Holdings LP and World  
17          Health North LP. And they are sort of the  
18          successor corporations with respect to an  
19          operation known -- formally known as Worlds Gym  
20          or Spa Lady North and more recently operating  
21          under the brands Club Fit and GYMVT and HER  
22          GYMVT.

23          Sir, can you tell me at the time the 2012  
24          lease was entered into, has there been  
25          continuously and in operation a fitness club  
26          facility in the leased premises?

27          A     Yes, there has. The whole time.



1 Q Okay. Great. Are there any other tenants in  
2 the building?

3 A Oh, yeah. Not in their space, but in the  
4 building, yes.

5 Q Sure. Sure. Can you tell me what other  
6 tenants are on the premises?

7 A There's a bakery, a Dominos Pizza, a  
8 second-hand used goods store, a pharmacy,  
9 Himalayan something or other, that's -- that's  
10 it, I think.

11 Q Okay. So is this essentially a strip mall,  
12 then?

13 A It's a strip mall.

14 Q Okay. And, sir, do you know if any of the  
15 other tenants in the strip mall, the leased  
16 premises -- sorry, not the leased premises, but  
17 in the building, the strip mall itself, were  
18 affected or shut down during the course of the  
19 global pandemic which began in March of 2020?

20 A Not to my knowledge, none of them shut down.

21 Q Okay. Okay. And sir, I understand that there  
22 is some signage on the strip mall including  
23 some sort of a pylon or -- I don't know what  
24 the correct word for it is, but --

25 A Pylon.

26 Q -- an exterior sign. A pylon?

27 A Yeah, it's a pylon sign. Yeah.

1 Q Okay. Great. And can you tell me, sir,  
2 whether my client has had signage on that pylon  
3 continuously since 2012?

4 A They have.

5 Q Okay. And at any point in time was that pylon  
6 signage changed?

7 A Not to my knowledge it wasn't.

8 Q How about the change in name from World Health  
9 to Club Fit, was there any exterior signage  
10 change as a result of that?

11 A Yeah, they put a banner up on -- not on the  
12 pylon, on front -- on the building itself.

13 Q Okay.

14 A And they changed it without telling me on -- I  
15 found out from -- because he drives by there.

16 THE COURT REPORTER: Sorry, could you --

17 Q MS. FELLOWES: Okay. Not consent to that  
18 change?

19 A No. They weren't going to go under Club Fit.  
20 They were going to go under the lady spa name  
21 in their communicating with us and club fit was  
22 a surprise.

23 Q Okay. Did you subsequently have communications  
24 with the tenant on this change of name into  
25 Club Fit?

26 A No.

27 Q I thought I saw some correspondence on that.

1 Sir, if you can look at Exhibit G to your  
2 affidavit.

3 A Number what?

4 Q Exhibit G?

5 A Oh, Exhibit G.

6 Q M'mm-hmm.

7 A Okay. I'm there, go ahead.

8 Q Okay. So I'm just looking here, this looks to  
9 be an email from Mr. Broadmann to Eric Slatter.  
10 I understand Mr. Slatter is your leasing agent,  
11 is that correct?

12 A He is.

13 Q Okay. And it looks like the date of this email  
14 is February 13th, 2020. You see, sir, about  
15 four paragraphs in we talk -- there's a  
16 reference here to the World Health and Spa Lady  
17 name retired from the market, and then changing  
18 to Club Fit, which is an old Edmonton brand  
19 that we still own.

20 Do you now recall, sir, having some  
21 conversations with either Mr. Broadmann or  
22 someone else from my client with respect to the  
23 change of the signage?

24 A Yeah. Initial -- well, not signage. Name  
25 change to HER GYM, the paragraph above it,  
26 that's what I recall it, or the Spa Lady,  
27 that's what they were telling us about was they

1           were going to rebrand to Spa Lady, not to  
2           Club Fit. Later on Club Fit, when we saw the  
3           signage.

4           Q     Okay. And at the time did you have a concern  
5           about that change, or did you consent to the  
6           change in the signage?

7           A     I don't recall if I consented or not, but you  
8           know, it wasn't -- I'd say it wasn't a concern.

9           Q     Okay.

10          A     Them rebranding.

11          Q     Okay. And just to confirm, sir, that to the  
12          best of your knowledge, there is no change of  
13          the signage on the pylon?

14          A     Correct.

15          Q     And under the terms of the lease, sir, does the  
16          landlord have to consent to any change in  
17          signage?

18          A     I have no idea. I don't know.

19          Q     So would you normally be the one, sir, to make  
20          that decision, or is that handled by your  
21          property manager or leasing agent?

22          A     What's the question again?

23          Q     Whether the consent to change in signage, sir,  
24          would that be handled by you or by your  
25          property manager or leasing agent?

26          A     He -- him and I would confer with one other on  
27          that.

1 Q Okay. And when say "him", do you mean --

2 A My property manager.

3 Q Property manager. And is that Mr. Brown?

4 A Yes.

5 Q Okay. Sir, I'd like to take you through some  
6 portions of your affidavit now which speak to  
7 the events occurring during the years 2018 and  
8 2019.

9 A Okay.

10 Q And I understand based on the paragraphs in  
11 your affidavit that refer to that period of  
12 time, your main communication was -- with my  
13 client, sorry, was through Mr. Broadmann; is  
14 that right?

15 A Correct.

16 Q So do you have any -- I'm looking right now at  
17 paragraph 15 of your affidavit.

18 A Go ahead.

19 Q Yeah. It says you spoke to Mr. Boardmann after  
20 his email of May 13th, and prior to June 28th,  
21 2018. Do you have any records, sir, in  
22 relation to that conversation or can you tell  
23 me when that conversation occurred?

24 A I can't really tell when it occurred. It  
25 was -- you know, based on my memory recall of  
26 the conversation, you know, I don't have any --  
27 anything else I can really tell about that.

1 Q Okay.

2 THE COURT REPORTER: I'm sorry to interrupt,  
3 Counsel...

4 **(DISCUSSION OFF THE RECORD)**

5 Q MS. FELLOWES: So paragraph 16, sir, of your  
6 affidavit.

7 A Go ahead.

8 Q Yeah. You speak of your sister, Barb Baker  
9 Esenstadt, who is --

10 A Correct.

11 Q -- I guess your partner in --

12 A Yeah, that's right.

13 Q -- these proceedings. And have you, with  
14 respect to the evidence in this paragraph, have  
15 you spoken to your sister or were you part of  
16 that conversation?

17 A No, I was not. It was her on a call alone; I  
18 wasn't part of the call.

19 Q Okay. And does -- do you know if she has any  
20 documents or written communication in relation  
21 to that call?

22 A Well -- well, I'd assume if she did, she would  
23 have forward it on to Howie, to our lawyer.

24 Q Okay. On this paragraph there's reference to a  
25 first right to IFH to negotiate a long-term  
26 lease deal. And then it goes on to say  
27 Broadmann was interested and negotiations to

1           that end took place.

2           A     Correct.

3           Q     All right.  So the "negotiations to that end"  
4           references the first right that you're granting  
5           to IFH to negotiate a long-term lease; is that  
6           right?

7           A     Yeah.

8           Q     Okay.  And I understand those negotiations went  
9           on for an extended period of time; is that  
10          correct?

11          A     They did.  They did.

12          Q     And who was part of the negotiating team on  
13          your side, on the landlord's side, Mr. Baker?

14          A     Eric Slatter, our realtor.

15          Q     Okay.  And how about your lawyers?  Were they  
16          involved in the negotiations as well?

17          A     Not sure.  I think the lawyers come in after  
18          you have an agreement, not prior to it.

19          Q     Okay.  So can you tell me a little bit about  
20          this agreement?  I understand Exhibit D of your  
21          affidavit is a nonbinding letter of intent.

22          A     Hold on.  Let me get there.

23          Q     Sure.

24          A     Okay.  I got it here.

25          Q     Okay.  Sir, and were you involved in  
26          negotiating the terms of this nonbinding letter  
27          of intent or was it Mr. Slatter?

- 1 A Well, to me, we must be on two different  
2 Exhibit Bs, because the one I have in front of  
3 me says -- it looks like a press release  
4 issued -- it says for immediate release.  
5 Alberta company enters into agree to acquire  
6 World Health Edmonton, Calgary, April 5th; is  
7 that the one you're looking at?
- 8 Q Oh, sorry, maybe I misspoke. That's Exhibit B.  
9 I'm looking at Exhibit D as in dog.
- 10 A Okay. Hold on a second.
- 11 Q Maybe I wasn't speaking clearly enough.  
12 Exhibit D.
- 13 A Okay. So what was your question?
- 14 Q As in Dave. Exhibit D is identified in your  
15 affidavit, sir, as a nonbinding letter of  
16 intent, and I was asking you whether you were a  
17 party in negotiating LOI or whether it was done  
18 with Mr. Slatter solely?
- 19 A It couldn't be him solely. It would have to be  
20 both of us.
- 21 Q Okay. So is your signature on this document,  
22 sir?
- 23 A My initials are. Let's see. Hold on, I'm  
24 going to scroll through it. I just see my  
25 initials on each page.
- 26 Q Okay. And do you know who the other set of  
27 initials is?



1 A Hold on a sec. It says KP, I think it says.  
2 Let's see. Oh, Pinder, it says.

3 Q Yeah, I agree, it does look like Kendra  
4 Pinder's initials.

5 A Yes.

6 Q And she was a representative of the tenant, of  
7 my client.

8 A Right. I think she was their realtor.

9 Q Okay. Sir, so do you recall -- do you recall  
10 the negotiations? I see next to your initials  
11 there are certain terms that are crossed off  
12 and amendments are made. At negotiation, were  
13 those amendments made by the landlord as part  
14 of the negotiation with the tenant or proposed  
15 by the tenant?

16 A Say the question again.

17 Q Well, I just see that the LOI as initially  
18 presented appear to have been amended.

19 A Right.

20 Q There are some areas which are crossed out and  
21 then handwritten amendments are made next to  
22 those -- those crossed off provisions. And I  
23 just would like you to confirm that those  
24 crossed off provisions, were they part of a  
25 counteroffer from the landlord or were they  
26 part of a negotiation --

27 A Well, I think I'd have to read through the

1 whole letter to answer that question.

2 Q Okay.

3 A And -- through it -- haven't got --

4 THE COURT REPORTER: I'm sorry, sir, could you  
5 repeat your last answer?

6 I think I'd have to read through the whole  
7 letter to answer that question...

8 THE WITNESS: Correct.

9 THE COURT REPORTER: And then you said  
10 something after that, but our connection was  
11 cutting out.

12 THE WITNESS: I'd have to read through all the  
13 details I said. So the answer is I don't know.  
14 I don't know the answer to her question unless  
15 I read this whole letter itself or this whole  
16 Exhibit.

17 Q MS. FELLOWES: Well, I certainly wasn't asking  
18 you for a conclusion, I was just wondering what  
19 your recollection was.

20 A Well [audio interference] misinformation, so  
21 that's why I said that.

22 THE COURT REPORTER: Sorry, sir, could you --

23 Q MS. FELLOWES: Okay. So do you recall, sir,  
24 whether this --

25 A Of course, yeah.

26 Q Do you --

27 A I recall cantering and lots of negotiations

1 back and forth.

2 Q Okay. That's -- that's sort of what I was  
3 getting to.

4 A Yeah. Yeah.

5 Q There was extensive negotiations --

6 A Yeah.

7 Q -- leading to this LOI; correct?

8 A Yes. Yes.

9 Q Okay. Great. And the beginning of the LOI it  
10 does say: (As read)

11 On behalf of the tenant we are  
12 pleased to present this LOI to the  
13 landlord to amend the terms of  
14 lease on terms and conditions as  
15 signed in the lease dated August  
16 1st, 2012.

17 And then of course it goes on to talk about  
18 some of the changes that would be in this  
19 lease. But is it your understanding, sir, that  
20 essentially this LOI sought to extend and amend  
21 the existing 2012 lease?

22 A Let me read through that paragraph again, one  
23 sec.

24 Q Sure.

25 A I'll say this to amend in an extent.

26 Q Okay.

27 A The 1220 [sic] lease.

1 Q Okay. Thank you. And I understand that this  
2 LOI, letter of intent, contemplated that there  
3 would be a further formal lease amendment and  
4 extension agreement signed; is that right?

5 A I don't know.

6 Q Well, it does say again in that first  
7 paragraph, sir, if I can turn you to it. At  
8 the very end of the sentence it does say: (As  
9 read)

10 And the following terms and  
11 conditions shall be considered in a  
12 lease extension and amending  
13 agreement.

14 Do you see that?

15 A Yeah, I see that. Yeah.

16 Q Okay. And in fact, sir, there was a lease  
17 extension and amending agreement drafted; is  
18 that right?

19 A No, this was just a negotiation.

20 Q Right. But there was another document created  
21 entitled lease amending and extension  
22 agreement?

23 A I'm not sure about that.

24 Q Okay.

25 A I'd have to see that document.

26 Q Okay. Sure. If I can refer you, sir, to -- I  
27 think it's located at the end of your

1 Exhibit F. I don't know if it has a separate  
2 exhibit stamp on it.

3 If you turn to Exhibit F, sir, as in Frank.

4 A Yeah.

5 Q And you go one, two, three, four, five pages  
6 in.

7 A Okay. I'm there.

8 Q Okay.

9 A Yeah.

10 Q Do you see a document entitled lease assignment  
11 amendment and extension agreement?

12 A I see it, yes. Yeah.

13 Q Yeah. And sir, if I can just turn you to the  
14 end of that document, sorry I'm making you turn  
15 a lot of pages there. I think it's about nine  
16 pages -- page 9.

17 A Page 9. Hold on.

18 Q Yeah.

19 A Okay. I'm there.

20 Q Okay. And do you see there's a signature block  
21 for Teslin Investments Ltd.?

22 A Okay. Hold on a sec. Hold on. Six, seven,  
23 eight, nine. Yes. I see that. My signature  
24 is on it.

25 Q Okay. And it's your signature. Good. And  
26 this document was created by your lawyers; is  
27 that right? Because I see on page 10 it says

1 Witten LLP.

2 A Correct.

3 Q They are your lawyers; correct?

4 A These are my lawyers, yes.

5 Q Okay. And do you recall instructing your  
6 lawyer to draft this lease assignment amendment  
7 and extension agreement?

8 A I'll say yes.

9 Q Okay. And was the intent of this agreement to  
10 put into effect the terms as agreed to under  
11 the letter of intent which was exhibited  
12 earlier at Exhibit B?

13 A Say the question again. Was the intent...

14 Q Was the intent of the lease assignment  
15 amendment and extension agreement to put into  
16 effect the terms as previously agreed to in the  
17 LOI, which was exhibited at Exhibit B to your  
18 affidavit?

19 A You know what, I don't really understand the  
20 question exactly.

21 Q Okay. Well, commonly --

22 A All I understand is this is part of the  
23 negotiation for a new lease.

24 Q Right. So the LOI, which is exhibited at  
25 Exhibit D to your affidavit does have your  
26 initials on it and does appear to be signed by  
27 the parties or initialled by the parties at

1 least, and contemplates a further agreement  
2 being entered into. All I'm asking you, sir,  
3 is does this document appear to be the further  
4 agreement referenced in the LOI?

5 A I'll say yes.

6 Q Okay. Do you recall when this document was  
7 drafted and when you signed it?

8 A Which exhibit are we looking at?

9 Q This is the nine-page agreement entitled lease  
10 assignment amendment and extension agreement.

11 A What exhibit should I open up for that?

12 Q Sorry. It's Exhibit F --

13 A F.

14 Q -- and it's five pages in. Yeah.

15 A Okay. Ask the question again, though.

16 Q All right. Do you recall, sir, when this  
17 document was created and when you signed it?

18 A Well, I'm looking at the email dates here.  
19 November 6th, 2019. This document is dated  
20 November 9th, 2019. That's what it has on it.

21 Q Right. And do you believe you would have  
22 signed it on or about November 9th, 2019?

23 A I believe so.

24 Q Okay. And, sir, this document, lease  
25 assignment amendment and extension agreement  
26 does in fact, looks like, or purports to do  
27 those three things. Both to confirm a lease

1 assignment, to amend the terms of an existing  
2 lease, and to extend the terms of an existing  
3 lease.

4 A But it's not --

5 Q Is that your understanding?

6 A But it's not signed by your client.

7 Q I understand. I'm asking about the intention  
8 of this document when you signed it?

9 A Correct. I agree with you.

10 Q Okay. Great. And let's talk about the first  
11 item then, which is the lease assignment, sir.  
12 I understand that under the terms of the 2012  
13 lease, landlord's consent was required for any  
14 assignment of the lease; is that correct?

15 A Hold on a sec. We're in the same Exhibit F;  
16 correct?

17 Q We are, sir.

18 A Okay.

19 Q I'm referencing page two of the document with a  
20 heading at the top saying assignment?

21 A Okay. So ask the question again.

22 Q I'm asking, sir, whether the original 2012  
23 lease required the landlord's consent to any  
24 assignment by the tenant?

25 A Was the 2012 lease -- I'm not sure. Say the  
26 question one more time. Sorry.

27 Q Okay. Well, I can go back to the 2012 lease if



1           you like, but maybe you might want to take a  
2           quick read of paragraph 6 of the document that  
3           we're currently on, which refers to the  
4           landlord's consent being given.

5           A     I'm looking at it now.

6           Q     Okay. So you'll see that paragraph 6 (A)  
7           speaks of: (As read)

8                     The landlord's consent here and  
9                     after given shall not affect or  
10                    release the original tenant from  
11                    liabilities or responsibilities  
12                    under the terms of the lease herein  
13                    assigned. And the original tenant  
14                    covenants agrees they shall remain  
15                    responsible for all such  
16                    liabilities and responsibilities  
17                    notwithstanding said assignment.

18           So you understand, sir, that by signing this  
19           agreement the landlord is indicating its  
20           consent to the assignment?

21           A     I'd like to consult with my lawyer on what (A)  
22           says.

23           Q     Okay. Well, I know you're not a lawyer and I'm  
24           not asking you to make a legal conclusion, sir,  
25           but would you agree that the landlord's consent  
26           is required as a term of the 2012 lease in  
27           relation to any assignment by the tenant and

1           that in accordance with paragraph 6 (A), there  
2           is reference to the landlord's consent being  
3           given?

4           A     I'd agree.

5           Q     Okay. And the other part of the document, sir,  
6           the -- if you flip the page to paragraph 3.

7           A     Paragraph 3. Okay. Go ahead.

8           Q     Sorry, page 3.

9           A     Page 3?

10          Q     Yeah. Page 3. Sorry, my apologies.

11          A     Okay. From my realtor.

12          Q     Paragraph. Sorry, page 3 says "amendments,  
13          reuse, and purpose".

14          A     Okay. Hold on a sec. Page 3. Hold on. Okay.  
15          Yeah, I'm there with your. There I found it.

16          Q     Okay. Great. And there's reference there to  
17          the use of the premises, sir, being a fitness  
18          club. And then stating that it would be: (As  
19          read)

20                    Operating under the name of World  
21                    Health Club or such other name as  
22                    used by the tenant from time to  
23                    time at other World Health  
24                    locations owned or operated by the  
25                    tenant.

26          Do you see that, sir?

27          A     I'm looking at 8.1. That's what I'm reading.

1 Q Oh, dear. We're on the wrong paragraph. I am  
2 looking at page 3, paragraph 7.

3 A Okay. So paragraph 7 says the first paragraph  
4 of Section 8.1 of the original lease is hereby  
5 deleted and replaced to read as follows.

6 Q Oh, I see. Yes. Okay. You're right. We're  
7 both looking at the same paragraph, we're just  
8 referring to it by different numbers.  
9 So I was pointing you, sir, to the latter of  
10 part of that paragraph after the long list of  
11 items that might be offered at the premises.  
12 And there's a reference there, the paragraph  
13 starts: (As read)

14 And for no other purpose  
15 whatsoever, the tenant shall  
16 operate under the name World Health  
17 Club or such other name as may be  
18 used by the tenant from time to  
19 time at other World Health  
20 locations owned or operated by the  
21 tenant.

22 Do you see that paragraph?

23 A No, I don't see that. Where is that?

24 Q Sorry, I'm not describing this very well. So  
25 you were reading paragraph 8.1 from the  
26 original lease.

27 A Yeah. Yeah. That's where I am.

1 Q Right. And then there's a list that says, food  
2 and beverage services, athletic clothing, day  
3 spa, chiropractic; do you see that list?

4 A Yeah, I see that list, yeah.

5 Q Okay. If you just continue on after that list  
6 concludes, there's a couple of sentences.

7 A Yeah.

8 Q And those were the sentences I was reading  
9 from. Could you just take a quick read of  
10 those and I won't repeat them again.

11 A So lists all these services, and the last  
12 bullet point being tanning; right?

13 Q Correct.

14 A (As read):

15 For no other purposes whatsoever.  
16 The tenant shall operate under the  
17 name World Health Club or such  
18 other name as may be used by the  
19 tenant from time to time at World  
20 Health locations owned and operated  
21 by the tenant.

22 Okay. So what's the question?

23 Q No -- so -- I haven't even asked my question  
24 yet.

25 A Oh.

26 Q I was just going to point you to this  
27 provision, sir. To the best of your knowledge,

1 has this, has the use and purpose of the  
2 premises continued to be a fitness club and the  
3 services as described --

4 A No.

5 Q -- in paragraph 8.1?

6 A No.

7 Q No?

8 A No.

9 Q Okay. What changes have happened?

10 A We didn't agree to all those bullet points  
11 because it's a conflict of interest with  
12 existing tenants that are already in the  
13 centre, so we didn't agree to all that.

14 Q Okay. I -- I had understood, sir, that this  
15 document was drafted by your lawyers on your  
16 instructions and signed by you?

17 A But it wasn't signed by you. So I'm just going  
18 on memory recall that we had concerns about all  
19 these bullet points. Like, some of them were  
20 fine, but not all of them going on memory.

21 Q I see. All right.

22 A We had issues with some of them.

23 Q Okay.

24 A So I'm assuming they were part of the  
25 counteroffer negotiations that were still  
26 ongoing, but I'm just going on memory.

27 Q Okay. All right. And in terms of the name,

1           sir, at the time, I guess, that this document  
2           was created in November of 2019, the club was  
3           still operating under World Health Club?

4           A     It was.

5           Q     Okay. And were you aware, sir, of the brand  
6           name Club Fit and that was another part of  
7           another brand being used in the World Health  
8           Club system?

9           A     I can't say I was aware of that. I was only  
10          aware of World Health until they talked to us  
11          about rebranding.

12          Q     Okay. Okay. Sir, and then the next part this  
13          agreement speaks, I guess, to the extension.  
14          Remember we talked about both assignment  
15          amendment and extension. And it appears, sir,  
16          that this document sought to extend the  
17          original 2012 lease for three years. The  
18          original lease expired in 2026 and this was to  
19          expire in 2029; is that right?

20          A     That's what it says.

21          Q     And your recollection, was that the agreed upon  
22          extension?

23          A     No, not to my recollection. I really don't  
24          recall to be honest.

25          Q     Okay. Do you recall giving any options to  
26          renew this lease or negotiating for any options  
27          to renew?

- 1 A Yes, I recall that being part of the  
2 negotiation.
- 3 Q Okay. And did you come to any agreement with  
4 the tenant on options to renew?
- 5 A No, I don't believe we did.
- 6 Q Okay. And how about the rental terms as  
7 described in paragraph 9 of this document under  
8 the heading "minimum rent"?
- 9 A I don't believe we came to an agreement on that  
10 either.
- 11 Q Okay, sir. Well, the very last page of this  
12 document, it has your signature on it.
- 13 A Yeah.
- 14 Q So at the time you signed this agreement were  
15 you expecting that if it had been signed by my  
16 client in return you would have had a binding  
17 agreement in place?
- 18 A If it had been signed.
- 19 Q Okay. But that was your intention when you  
20 signed it, that you were committing Teslin  
21 Investments Ltd. to the contractual terms --
- 22 A Yes.
- 23 Q -- when you --
- 24 A Yes.
- 25 Q -- your signature?
- 26 A Yes. Yes.
- 27 Q Okay. Thank you. So now I'm going to talk a

1 little bit about what's been happening since  
2 the pandemic hit in March of 2020.

3 So in paragraph -- paragraph 27 of your  
4 affidavit, you say that neither yourself nor  
5 Mr. Slatter or anyone else on Teslin's behalf  
6 has had any communication with Mr. Broadmann or  
7 anyone from IFH with respect to the nonbinding  
8 LOI or the draft LAA since March of 2020?

9 A Correct.

10 Q Do you see that, sir? Okay.

11 A Yeah.

12 Q But that's -- you have had communications with  
13 representatives of IFH since March of 2020?

14 A After March you're saying?

15 Q Yes.

16 A Yeah. We did.

17 Q Okay. Okay. So what happened in March of 2020  
18 and the government shut down order came into  
19 effect?

20 A They asked for rent relief.

21 Q Right. Okay. And did you come to an agreement  
22 with them with respect to rent relief?

23 A I wouldn't use the word "agreement". They  
24 suggested that we explore like them what kind  
25 of programs are available for landlords. So  
26 the agreement was I agreed to help them out,  
27 you know, and -- you know, they presented what



1           they were looking for.

2           Q     Okay.  And do you recall who -- who you had  
3           those discussions with at IFH?

4           A     I believe with Peter or Dave Broadmann, one of  
5           the two.

6           Q     Okay.  Did you come to be aware at one point  
7           that Mr. Broadmann had left IFH?

8           A     Yes, Peter let me know about that.

9           Q     Okay.  And do you know when you first heard of  
10          that?

11          A     I can't recall.

12          Q     Okay.  But from that point forward, you were  
13          dealing with Peter not Mr. Broadmann; correct?

14          A     Correct.  Correct.

15          Q     Okay.  And I think you just told me that one of  
16          the points for discussion on the request for  
17          rent relief had to do with government programs?

18          A     Right.  That they told me to look into.

19          Q     Right.  Okay.  Can you describe those  
20          government programs to me?

21          A     It was called CECRA, and my property manager  
22          was familiar with it and he's the one who did  
23          all of the applications and paperwork on it.

24          Q     Do you have -- can you give me a rough idea of  
25          how that government program worked?  Did you  
26          receive 100 percent of your rent payments as a  
27          result of the government program?

1       A     I have no idea, and I can't give you those  
2             details.  It's not fresh in my memory to be  
3             honest.

4       Q     Have you had a chance to look at the affidavit  
5             of Mr. Melnychuk?

6       A     Yeah, I've ready it.

7       Q     Great.  And you will see at Exhibit -- I don't  
8             know if you have it in front of you, sir, but  
9             do you recall seeing at Exhibit J to his  
10            affidavit some documents in relation to this  
11            government program?

12      A     Hold on.  Let me go to J.  Oh, Exhibit J?  No,  
13             I don't have the exhibits.  I just have the  
14             affidavit itself.  I didn't print off any  
15             exhibits.

16      Q     Okay.  Well, sir, if you had a chance to look  
17             at the exhibit it does appear that it was the  
18             landlord who applies to the government for this  
19             program; is that your recollection?  It's not  
20             the tenant who applies, it's the landlord who  
21             applies.

22      A     Well, I thought they were different programs  
23             for the landlord and different for the tenant,  
24             so that's my recollection.

25      Q     Okay.  In Mr. Melnychuk's affidavit he  
26             describes the program on the basis that the  
27             landlord received 75 percent of its rent with

1           25 percent coming from the tenant and 50  
2           percent from the government. Does that accord  
3           with your recollection, or you're just not  
4           sure?

5           A     I really don't know.

6           Q     Can you confirm that Teslin Investments Ltd.  
7           did receive some cheques from the Government of  
8           Canada in relation to this program and this  
9           tenancy?

10          A     I believe so, but my property manager  
11          Dave Brown would be able to answerer that more  
12          accurately than myself, but I believe so.

13          Q     Do you know how long those subsidies were  
14          received?

15          A     No.

16          Q     And after this emergency government program  
17          ceased to be in effect, were there further  
18          negotiations with the tenant in relation to  
19          ongoing rent deferral?

20          A     Not -- I can't recall 100 percent on that.

21          Q     And would it have been your property manager  
22          Mr. Brown who had those discussions with my  
23          client?

24          A     It would be him, or him and I on the call  
25          together.

26          Q     Okay. Do you have any emails or written  
27          evidence with respect to any of these ongoing

1 talks with my client in relation to rent --  
2 request for rent deferral?

3 A If I have, it's already been forwarded to the  
4 lawyer.

5 Q Do you recall having telephone conversations  
6 with Mr. Melnychuk?

7 A About rental deferral?

8 Q Yes.

9 A Yes. Yes.

10 Q Okay. Great. And would Mr. Brown have been on  
11 the line for all of those calls, or was it  
12 possible --

13 A For some. I wouldn't say all. I wouldn't say  
14 all.

15 Q How about your sister?

16 A She might have been on some of them too.

17 Q Okay.

18 A Not guaranteed though.

19 Q Right. Do you know if she ever had any calls  
20 with Mr. Melnychuk when you were not present on  
21 the line?

22 A Possibly, but I don't know for sure.

23 Q At one point, sir, was there a request for  
24 further rent deferral on behalf of my client as  
25 a result of the rotating series of government  
26 shut down orders?

27 A I believe so.

1 Q Okay. And was there a discussion about how  
2 that deferred rent would be paid?

3 A I would say, yeah, that would definitely be  
4 part of the discussion.

5 Q Okay. And was there a request to pay off that  
6 deferred rent over time?

7 A Don't recall for sure. I believe so though.

8 Q And I think you had told me earlier that you  
9 were trying to assist the tenant, recognizing  
10 that the government shut down orders had a  
11 dramatic effect --

12 A Yeah.

13 Q -- on their business?

14 A Yes.

15 Q So was there ever any understanding that, you  
16 know, we would wait to see until the pandemic  
17 was over or the government lockdown orders had  
18 ceased before finalizing any payment of  
19 deferred rent?

20 A I'm not sure, really. I don't recall.

21 Q Okay. And sir, to the best of your knowledge,  
22 the government health orders still continue to  
23 affect my client's operations?

24 A To my knowledge, yes.

25 Q Okay. And do you know that my client filed a  
26 notice of intention under the *Bankruptcy and*  
27 *Insolvency Act* on April 23rd, 2021?

1 A I heard about that.

2 Q Okay. And when was the first time you heard  
3 about that?

4 A Through my lawyer. I think he's the one who  
5 received the bankruptcy notice.

6 Q Right. And were you aware either at the time  
7 that you received the bankruptcy notice or did  
8 you subsequently learn that many of the  
9 locations of the former World Health were being  
10 sold to a third-party?

11 A I had learned about that after the bankruptcy  
12 that -- I think Peter possibly told me that  
13 they were selling it to another group.

14 Q Okay. And have you had any discussions with  
15 the purchaser?

16 A Yeah, I've had -- I've definitely had one  
17 discussion, possibly more. But yes, I did have  
18 a discussion.

19 Q And were part of those discussions dealing with  
20 any alleged rental arrears or deferred rent  
21 from the old lease?

22 A I don't recall.

23 Q Okay. So just going back, sir -- and I think  
24 we're almost done here. Again, I just want to  
25 confirm with you what happened in 2020.

26 A Okay.

27 Q So best of your knowledge and --

1 A Yeah.

2 Q You received some government monies from  
3 approximately April 2020 to the end of the  
4 CECRA program, which I believe was in October  
5 of 2020; is that right?

6 A I don't know the dates, so I don't know if it's  
7 right or not, but...

8 Q Sure.

9 A Yeah. What's right is we received some money  
10 from my recollection, yes.

11 Q Okay.

12 A Okay.

13 Q You're right. Okay. And after that program  
14 ended, did you start receiving 100 percent of  
15 your rent from the tenant in accordance with  
16 the 2012 lease?

17 A I would have to check with my property manager.

18 Q Okay. Well, it was a term of the 2012 lease, I  
19 recall, right from the beginning of your  
20 affidavit that the rent rates went up  
21 significantly in November of 2020.

22 A Yeah. I believe that's when -- when we looked  
23 at the lease, it was 16.50; right? The last --

24 Q Correct.

25 A -- the last increments.

26 Q Right.

27 A Right.

1 Q So can you confirm that you received rent on  
2 the basis of \$16.50 per square foot commencing  
3 in November of 2020?

4 A No, I can't confirm that unless I talk to my  
5 property manager.

6 MS. FELLOWES: Okay. Can you do that? I think  
7 it is quite important just to confirm that the  
8 rate of up to \$16.50 per square foot did come  
9 into effect in November of 2020.

10 A Hold on. November 2020, 16.50; you want that  
11 confirmed?

12 Q Correct.

13 A Okay. Ask Dave.

14 Q Okay.

15 A Okay. I made a note of it.

16 Q Thank you very much, sir.

17 \* UNDERTAKING NO. 1 \*  
18 CONFIRM IF THE RENTAL RATE OF  
19 \$16.50 PER SQUARE FOOT WAS IN  
20 EFFECT IN NOVEMBER OF 2020, AS  
21 REFERRED TO ABOVE

22 Q MS. FELLOWES: And with respect to rent  
23 received in 2021 --

24 A Yeah.

25 Q -- were you receiving 100 percent of your rent  
26 at that time, sir, or some other amount?

27 A Again, I'd have to check with Dave. Dave



1 Brown, yeah.

2 Q Okay. It's my understanding from my client  
3 that in 2021 --

4 A Yeah.

5 Q -- they were paying 50 percent of their rental  
6 obligations --

7 A Okay.

8 Q -- based on the terms of the 2021 lease --

9 A Okay.

10 Q -- and that was done under a deferred rent  
11 agreement they made with you --

12 A Okay.

13 Q -- or your company.

14 MS. FELLOWES: So if you can't confirm  
15 that, sir, could you please get your property  
16 manager to confirm that?

17 A Yeah, hold on. I just want to -- November '21,  
18 deferred rent agreement, 50 percent paid; is  
19 that what you said?

20 Q Sorry, in November 2020 --

21 A Okay. November 2020.

22 Q -- and December 2020, my understanding is it  
23 was 100 percent of the rent based on \$16.50 a  
24 square foot.

25 A Okay. Hold on a minute. November 2020 and  
26 December 2020?

27 Q Correct.

1 A 100 percent of the rent.

2 Q Correct.

3 A Okay. Go on.

4 Q And then I understand starting January of 2021  
5 until the bankruptcy filing in April of 2021 --

6 A Okay.

7 Q -- you were receiving 50 percent of your rent.

8 A Okay.

9 Q And that was -- went to a deferred rent  
10 agreement that my client made with you or  
11 your --

12 A Okay. I'll check up on that and let you know.

13 \* UNDERTAKING NO. 2 \*

14 CONFIRM WAS RENTAL AMOUNT WAS BEING  
15 PAID IN 2021, AS REFERRED TO ABOVE

16 MS. FELLOWES: Okay. Just looking over my  
17 notes here. Okay. Okay.

18 Well, subject to those undertakings  
19 those are my questions.

20 WHICH WAS ALL THE EVIDENCE TAKEN AT THIS QUESTIONING.

21 (Questioning concluded at 10:54 A.M.)

22

23

24

25

26

27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Reporter Certification

I, Mary C. McNeely, Court Reporter,  
hereby certify that I attended at the above  
proceedings and took faithful shorthand notes,  
and the foregoing typewritten sheets are a  
complete and accurate transcript of my  
shorthand notes to the best of my skill and  
ability.

Dated at the City of Edmonton, in the  
Province of Alberta, this 9th day of June,  
A.D. 2021.



---

M. C. McNeely, CSR (A)  
Court Reporter.