

COURT FILE NUMBERS 25-2731795
25-2731797
25-2731799

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER

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

APPLICANTS INTERNATIONAL FITNESS HOLDINGS INC., INTERNATIONAL FITNESS HOLDINGS LP and WORLD HEALTH NORTH LP

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Counsel for the Applicants, International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP

DATE ON WHICH ORDER WAS PRONOUNCED: May 5, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Madam Justice L.B. Ho

LOCATION OF HEARING: Calgary, via Webex



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UPON the Application of International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP (collectively, the “**Applicants**”); **AND UPON** reading the Order; **AND UPON** reading the Affidavit of Peter Melnychuk sworn on April 26, 2021 (the “**Melnychuk Affidavit**”); **AND UPON** reading the supplemental Affidavit of Peter Melnychuk sworn on May 4, 2021; **AND UPON** reading the First Report of KPMG Inc., in its capacity as proposal trustee of IFH (the “**Proposal Trustee**”) dated April 27, 2021; **AND UPON** reading the First Supplemental Report of the Proposal Trustee dated May 3, 2021; **AND UPON** hearing submissions by counsel for the Applicants and any other counsel or other interested parties present,

IT IS HEREBY ORDERED THAT:

1. The time for delivery of the Application and supporting materials is hereby abridged and service is deemed to be good and sufficient;
2. Capitalized terms not otherwise defined in this Order shall have the meaning set forth in the Melnychuk Affidavit;
3. The Stay Period is hereby extended for an additional period of five (5) days (i.e. until May 28, 2021);
4. The Applicants are hereby authorized to obtain and borrow under a debtor-in-possession credit facility from First Canadian Cardio-Fitness Clinics Ltd. (the “**DIP Lender**”) in an amount of up to \$10,000,000.00 (the “**DIP Facility**”) in accordance with the terms of the DIP Term Sheet attached as Exhibit “E” to the Melnychuk Affidavit (the “**DIP Term Sheet**”);
5. The Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), including such documents already granted to the DIP Lender, as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order;

6. The DIP Lender is hereby granted, and is entitled to the benefit of, a charge over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") in order to secure the performance and payment of all obligations described in the DIP Facility (the "**DIP Charge**");
7. The following professionals are hereby granted a priority charge over the Applicants' Property to secure the payment of their respective fees and disbursements incurred in connection with these proceedings up to an amount of \$300,000.00: (i) the Proposal Trustee; and (ii) the Proposal Trustee's counsel (the "**Administration Charge**");
8. The Applicants shall indemnify their current and future directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants following the NOI Filing Date, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct;
9. The current and future directors and officers of the Applicants are granted a charge over the Applicants' Property securing the payment of the amounts for which the Applicants may be called upon to indemnify its current and future directors and officers, acting in such capacity following the NOI Filing Date, when and if D&O insurance coverage is denied or insufficient, in an amount up to \$600,000.00 (the "**D&O Charge**", and together with the DIP Charge and the Administration Charge, the "**Charges**");
10. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Applicants' current and future directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 11 of this Order;
11. The priority ranking of the Charges shall be as follows:
 - a) Administration Charge;

- b) DIP Charge; and
 - c) D&O Charge;
12. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect;
 13. Subject to paragraph 14 of this Order, the Charges shall constitute a charge on the Applicants' assets and such Charges shall rank in priority to all other security interests, trust, liens, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively "**Encumbrances**") in favour of any person;
 14. Notwithstanding paragraph 13 hereof, the DIP Charge shall at all times rank subordinate to any "Permitted Priority Liens" (as such term is defined in the DIP Term Sheet) against the Applicants' assets;
 15. Except as otherwise expressly provided for herein, or as may be approved by the Court, the Applicants shall not grant any Encumbrances over any assets that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants obtain the prior written consent of the beneficiaries of the Charges or further order of this Court;
 16. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by:
 - a) the pendency of these proceedings and the declarations of insolvency made in this Order;
 - b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
 - c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

- d) the provisions of any federal or provincial statutes; or
 - e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement: (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which it is a party; (ii) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and (iii) the payments made by the Applicants pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law;
17. Any interested person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets of the Applicants;
18. Any party to these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsel’s email addresses as recorded on the Service List to be maintained by the Proposal Trustee, and the Proposal Trustee shall post a copy of all prescribed materials on its website;
19. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



Justice of the Court of Queen’s
Bench of Alberta