

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000626-123

DATE: OCTOBER 15, 2014

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BY THE HONOURABLE MR. JUSTICE MARK G. PEACOCK, J.S.C.

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LÉNINE PETIT  
Petitioner

v.

NEW BALANCE ATHLETIC SHOE, INC.,  
-And-  
NEW BALANCE, INC.,  
-And-  
NEW BALANCE CANADA INC.

Respondents

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## RECTIFIED JUDGMENT

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[1] The parties agree that the Court should correct errors in writing made by the Court in its original judgment resulting from a misinterpretation of a position taken by the Fonds d' Aide in relation to the reliquat. These errors have been deleted from this judgment. Furthermore, the amount for distribution as reliquat is \$492 and not \$490 as indicated in the original judgment. This too has been rectified.

[2] This is a Quebec Class Action proceeding involving consumers who purchased exercise shoes, commonly called "rocker shoes", because the uneven sole creates an inherent instability for the wearer and allegedly works various muscle groups in the process.

[3] All proceedings were settled out of court without any admission of liability. The Respondents have completed the process of paying out the settlement funds to class members of the Quebec proceedings.

[4] Under CCP article 1036, the Court is being asked to determine the beneficiary who is to receive the balance remaining (the *reliquat*) after all of the settlement funds have been disbursed to class members in this Quebec proceeding.

[5] *CCP* article 1036 reads as follows:

***"The Court disposes of the balance in the manner it determines, taking particular account of the interests of the members, after giving the parties and any other persons it designates an opportunity to be heard."***

[6] In normal non-class action proceedings, it is one of the parties already in the file that benefits from any order to pay. In the case of *CCP* article 1036, the legislator has specifically chosen the court to make the choice of beneficiary (one or more), who is not a party to the litigation. The Court must use this judicial discretion with the particular but not sole criteria being the interests of the members of the class. This places an added responsibility on the Court. It also places an added responsibility on counsel, as officers of the court, to propose appropriate beneficiaries in light of the requirements of *CCP* article 1036. Generally, counsel will need to file relevant evidence to permit the Court to make an enlightened determination. Without limitation, such evidence may include a report on the proposed organization's activities, explanatory materials from the organization's website and lists of relevant projects undertaken by the organization.

[7] The undersigned had occasion to consider the issue of who should be awarded the balance remaining after settlement payout in the 2009 case of *Stieber v. Joseph Elie Ltee*<sup>1</sup> as well as the 2014 case of *Nicholas D'Urzo v. TNow Entertainment Group, inc. et al.*<sup>2</sup>

[8] The Court applies the legal principles established in those two cases to the facts in this case.

## ANALYSIS

[9] Essentially, the Court must put itself in the shoes of those class members – not directly compensated and whose settlement share forms the balance – to determine what would be relevant compensation to indirectly indemnify them for their alleged loss.

[10] (...)

[11] (...) The sums that have not been claimed or distributed total \$492.00, which is the *reliquat* pursuant to *CCP* art. 1033. The Court is required to determine where this amount should be distributed (*CCP* art. 1036.)

[12] Both counsel agreed that an appropriate beneficiary for the \$492.00 remaining as *reliquat* are the sports programs of Sun Youth, a Montreal-based not-for-profit organization with a long and recognized history of supporting disadvantaged youth in

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<sup>1</sup> 2009 QCCS 2498.

<sup>2</sup> 2014 QCCS 365.

Montreal, particular through participation in sport.. Sun Youth promotes sports and recreation to "provide youth with a safe and supervised alternative to city streets and shopping centres".

[13] Its sports programs focus on football and basketball. It also provides afterschool study hall facilities for student-athletes.

[14] At the same time, Sun Youth each year organizes a "Bike Giveaway" to 50 deserving young people "who have either had a positive impact on their community" or "have shown extraordinary courage in exceptional circumstances".

[15] Since the "rocker shoes" at the heart of this litigation were purchased by consumers interested in sport and fitness, the Court infers that this choice of organization to receive the *reliquat* would meet with the approval of those class members whose un-cashed cheques are funding the *reliquat*.

[16] Accordingly, the Court confirms a prior instruction that the Respondents distribute the whole of the *reliquat* to this organization, with a copy of the transmittal letter and cheque having been already sent to Class Counsel and the Court.

[17] The Court has been provided with a copy of this confirmation. Accordingly, the Court is in a position to further confirm that the obligations arising under the final judgment that approved the Settlement Agreement and the authorized distribution have been completed and that this action is now concluded.

## CONCLUSIONS

### **FOR THESE REASONS, THE COURT:**

[18] **ORDERS** the Respondents to pay the balance of the *reliquat* of \$ 492.00, for use in its sports and fitness programs to:

**Sun Youth**  
251 Saint-Urbain,  
Montreal, Quebec, H2W 1V6

Att.: Mr. Sid Stevens  
Executive Vice-President

[19] **CONFIRMS** that the Respondents have already provided to Class counsel and the Court the proof of this payment;

[20] **CONFIRMS** that the final judgment approving the Settlement Agreement and all the obligations of the Respondents thereunder have been complied with and **DECLARES** the present action closed;

[21] **ALL WITHOUT COSTS.**



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**MARK G. PEACOCK, J.S.C.**

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(Not present at CCP article 1036 hearing)

Date of hearing: June 21, 2013