

Court File No:

16-09336

**ONTARIO
SUPERIOR COURT OF JUSTICE**

8297525 CANADA INC., a company incorporated pursuant the *Canada Business Corporations Act*, with head offices in the City of Pickering, Ontario and carrying on business under the trade name **ARCOMPANY**.



PLAINTIFF

AND

NEWLEAF TRAVEL COMPANY INC., a company incorporated pursuant to the *Canada Business Corporations Act* with registered offices in the City of Winnipeg, Manitoba, 1919183 Ontario Ltd., a company incorporated pursuant to the Ontario Business Corporations Act with registered offices in the City of Toronto, **DONALD JAMES YOUNG**, an individual residing in the City of Nanaimo, British Columbia.

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2500.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date July 19, 2016

Issued by: The Registrar at Ottawa



Court Address: 1st Floor, 161 Elgin Street
Ottawa, Ontario
K2P 2K1 CANADA

TO: Newleaf Travel Company Inc.
Suite 2200 - 1 Lombard Place
Winnipeg, Manitoba R3B 0X7

AND TO: 1919183 Ontario Ltd.
Suite 2120 – 130 King Street West
Toronto, Ontario, M5X 1C8

AND TO: Donald James Young
6253 Eldorado Place
Nanaimo, BC, V9V 1N4

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

CLAIM

1. The Plaintiff's claim as against the Defendants is for the following:
 - i) damages in the amount of \$76,485.12.00 for unpaid invoices inclusive of HST;
 - ii) interest on the outstanding amount calculated from May 20, 2015 at rate of ten percent (10%) per annum or as determined acceptable by this Honourable Court;
 - iii) punitive damages in the amount of \$20,000.00; and
 - iv) costs of this proceeding against the defendant on a substantial indemnity basis;
 - v) such other relief as the plaintiff may request and this Honourable Court deems just.

2. The plaintiff, 8297525 Canada Inc. carrying on business under the trade name ArCompany (hereinafter "ArCompany") with registered office in the city of Pickering, Ontario is a consultancy providing specialized marketing, social media, set up and execution for the new proposed airline and branding and related services to the airline and related industries.

3. The defendant, NEWLEAF TRAVEL COMPANY INC., a company incorporated pursuant to the *Canada Business Corporations Act* with registered offices in the City of Winnipeg, Ontario and established for the purposes of operating a start-up company attempting to launch a regional airline (hereinafter "Newleaf").

4. The defendant, 1919183 Ontario Ltd., a company incorporated pursuant to the *Ontario Business Corporations Act* with registered offices in the City of Toronto, Ontario (hereinafter "1919183") established for the purposes of operating a startup regional airline and link by ownership interests and business plan to the other defendant Newleaf.

5. The defendant, DONALD JAMES YOUNG, an individual residing in the City of Nanaimo, British Columbia and a director and officer of both Newleaf and 1919183 and for the purposes of this claim and directing mind of both of these defendant companies (hereinafter 'Young').

FACTUAL BACKGROUND

6. ArCompany provided certain marketing, social media strategic planning and market research services for Canada Jetlines Ltd. a proposed start up airline, a regional airline of which Young was appointed President approximately at the time ArCompany was engaged.

7. All communications relating to the aforementioned work were conducted between ArCompany and Young.

8. The services as requested by Young were provided in three invoices tendered as follows:

- a. Invoice 0000043, dated March 5, 2014 for \$5,650.00 including HST;
- b. Invoice 0000057, dated May 1, 2014 for \$16,950.00 including HST; and
- c. Invoice 0000058, dated May 1, 2014 for \$16,950 including HST.

9. ArCompany subsequently learned that Young was dismissed as President of Canada Jetlines Ltd. in late June, 2014. ArCompany understood that one of the reasons for the dismissal was that Young was not authorized and had no authority to retain the services of ArCompany as such decisions could only be made with the approval of the board of directors of that company.

10. In July 2014 Young together with Mr. Bob Jones, a business associate of ArCompany, announced they would start their own company to set up a regional airline service under the name NewLeaf and that the services provided by ArCompany would be utilized and relevant for that new venture.

11. In August 2014 ArCompany is engaged to provide further services to Young as he was developing and building from the ground up his concept for a regional airline to be named NewLeaf. At all material times Young made clear to ArCompany that the previous services as rendered to Young would be honored and paid for via the Newleaf venture.

12. Based upon the representations of Young and his new partner, Mr. Bob Jones who was known to ArCompany as one of its principals, which representations were relied upon and included that the Newleaf venture was in the process of securing financing, ArCompany agree to and continue to provide services relative to the new venture.

13. Young established the defendant company 1919183 with an effective date of July 4, 2014 as the holding company for the proposed NewLeaf airline.

14. As an incentive and at the time perceived act of good faith, Young offered Newleaf common shares to ArCompany foreign equivalent equity stake of 5% in 1919183 at the founding share price of 00.001 per share. Such share offering was considered an added incentive in addition to the promises to pay previous invoices and for work that was ongoing relative to this new venture.

15. ArCompany hired third-party contractors help deliver the required services to Young and NewLeaf and 1919183 such amounts for such third-party contractors included costs incurred from for third party sub-contracts including one account for \$20,000 (US funds) and another for \$30,276.71 (Canadian funds).

16. ArCompany continued to provide services through the fall and early winter of 2014 under continued promises by Young that funding was forthcoming and that the outstanding accounts would not only be brought current but the new services delivered would be paid for as well.

17. During the period January – April, 2015 ArCompany assisted in running the Kelowna marketing and launch campaign for Newleaf on the understanding that funding would come in January of 2015. In light of the fact payment was not forthcoming, after that time period ArCompany decided to limit time and exposure relative to the Newleaf project under continued efforts to obtain payment from Young.

18. All communications from Young, Newleaf and from Bob Jones on behalf of both where that funding was forthcoming and ArCompany was assured its accounts would be addressed as the airline was close to becoming operational.

19. ArCompany eventually learned that a new company was established name NEWLEAF TRAVEL COMPANY INC. with an incorporation date April 15, 2015. The purposes of this new corporation were to pursue the contemplated regional airline service by Young.

THE CLAIM

20. ArCompany services were provided for the purposes of launching the airline Newleaf were utilized and directly benefited all of the defendants. As such, all of the defendants have ben unjustly enriched from the unpaid use of the services provided by ArCompany.

21. The defendants have not disputed for any reason the amount as herein claimed by ArCompany is due and owing and in fact have acknowledged directly and through Mr. Bob Jones that the amount is due and owing.

22. The defendants have secured funding for NewLeaf from investors and as such have funds. ArCompany therefore pleads and claims a lien and trust claim as against any investment funds secured or pending by NewLeaf or any of the defendants.

23. The final invoice tendered by ArCompany was tendered Invoice 000108, dated May 20, 2015 for a total amount of \$76,485.12 inclusive of HST and capturing all previously tendered invoices noted above.

24. Demand for payment of the above noted invoice has been made of all of the defendants including the legal counsel for the defendants the Winnipeg-based law firm, D'Arcy & Deacon.

25. The above noted invoice in the amount of \$76,485.12 remains outstanding as of the date of the issuance of the statement of claim.

26. ArCompany hereby claims the sum of \$76,485.12 from the defendants for the reasons set out above.

CLAIM AGAINST YOUNG PERSONALLY

27. ArCompany believes that Young knew or should have known that he was not authorized to retain the services of the plaintiff in his capacity as president of Canada Jetline Ltd. and as such unauthorized decision-making exposes him personally for such amounts due and owing to the plaintiff. Further, as a founder and principal of the defendant companies Young would be unduly enriched if not held personally liable for the amounts herein claimed by ArCompany.

28. In addition, ArCompany believes it is quite coincidental that such services were requested by Young when he knew he was not authorized to solicit such services and then shortly after his departure from Canada Jetline Ltd. that he would seek to transport the benefits from the work product of ArCompany to the new venture of which he was principal, namely the Newleaf airline project.

29. ArCompany claims that Young acted in bad faith and with the intention of transporting and utilizing the services and work product of ArCompany and its contractors for his personal benefit in the new airline venture described above. Further, that the ambiguity and changes of name and corporate structures further indicate that Young displaying a corporate shell game to either avoid creditors and/or frustrate ArCompany in the collection of the amounts as herein described.

CLAIM FOR PUNITIVE DAMAGES

30. ArCompany claims that the actions of all of the corporate defendants, and the individual defendant Young indicate that they acted maliciously, intentionally and in a concerted effort to extract services from ArCompany without paying for the same.

31. In light of the above, and the claims made in previous paragraphs. The defendants should be collectively and individually required to pay punitive damages as set forth in paragraph 1 above.

**FACTS IN SUPPORT OF RULE 17.02 –
NO ORDER REQUIRED TO SERVE CLAIM OUTSIDE ONTARIO**

32. The plaintiff pleads and relies upon the following facts in support of the position that no Order of this Honourable Court should be required to serve the herein claim:

- a. Pursuant to the Rules of Civil Procedure, Rule 17.02 (g) this claim relates to a matter of contract and breach of contract that formed and executed upon in the Province of Ontario where the services contacted for were delivered in Ontario and other correspondence were emailed and sent to residents of the Province of Ontario as outlined and described in paragraphs 6 to and including 23 set out above; and
- b. Pursuant to Rules of Civil Procedure, Rule 17.02 (h) in relation to damages caused to the 8297525 CANADA INC., a company incorporated pursuant the *Canada Business Corporations Act*, with head offices in the City of Pickering, Ontario and carrying on business under the trade name ARCOMPANY as outlined and described in paragraphs 6 through and including 23 set out above.

33. ArCompany claims that the nexus of this claim is the Courts of Ontario for the following reasons:

- a. ArCompany has its office in Pickering, Ontario;
- b. Key witnesses are located in the Province of Ontario;
- c. A primary defendant, NEWLEAF TRAVEL COMPANY INC. has registered offices in the Province of Ontario; and
- d. 8297525 CANADA INC. carrying on business as ArCompany has its registered office on the Province of Ontario.

34. ArCompany based upon the facts and reasons set out above as request of this Honourable Court the relief set out above in paragraph 1.

35. ArCompany requests that the trial of this matter take place at the City of Toronto, Ontario.

Date of Issue:

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Nicholas P. Katsepontes
LSUC No.: 36517D
Solicitor for the Plaintiff

TO: The Registry at Ottawa

AND TO: Defendant, Newleaf Travel Company Inc.
Suite 2200 - 1 Lombard Place
Winnipeg, Manitoba R3B 0X7

AND TO: Defendant, 1919183 Ontario Ltd.
Suite 2120 – 130 King Street West
Toronto, Ontario, M5X 1C8

AND TO: Defendant, Donald James Young
6253 Eldorado Place
Nanaimo, BC, V9V 1N4

8297525 CANADA INC., carrying on business under the trade name
ARCOMPANY. AND

NEWLEAF TRAVEL COMPANY INC.,, 1919183 Onta
Ltd, DONALD JAMES YOUNG

Plaintiff

Defend:

Court File No.: 16-69336

SUPERIOR COURT OF JUSTICE

Proceeding Commenced in the City of
Ottawa

STATEMENT OF CLAIM

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