

31 July 2016

Dr Gabor Lukacs  
Air Passenger Rights  
Email: [lukacs@AirPassengerRights.ca](mailto:lukacs@AirPassengerRights.ca)

Dear Dr Lukacs:

Having reviewed the order of Scott J.A. (the “Order”, attached as Appendix “A”) and your redactions to the affidavit of Donald James Young (the “Redactions”, attached as Appendix “B”), I am of the opinion that the Redactions are sufficient to be compliant with the Order.

Sincerely yours,



Louis Béliveau, LL.B.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160724

Docket: A-242-16

Ottawa, Ontario, July 24, 2016

Present: SCOTT J.A.

BETWEEN:

DR GÀBOR LUKÀCS

Appellant

and

CANADIAN TRANSPORTATION AGENCY AND

NEWLEAF TRAVEL COMPANY INC

Respondents

**ORDER**

**UPON** motion filed on July 23, 2016 by the respondent NewLeaf Travel Company Inc. for an order pursuant to Rules 151 and 152 of the *Federal Court Rules* SOR/98-106(the Rules);

**AND UPON** reviewing the motion record and reply of the moving party;

**AND UPON** it appearing that the respondent the Canadian Transportation Agency has not responded to the motion;

**AND UPON** considering the partial opposition of the appellant Dr. Gàbor Lukàcs;

**AND UPON** it appearing that some of the material in issue should be treated as confidential notwithstanding the public interest in open and accessible court proceedings;

**THIS COURT ORDERS** that the financial and commercial information as set out in paragraphs 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 41 and 42 of the affidavit of Donald James sworn July 23, 2016, be treated as confidential under Rules 151 and be filed and maintained as confidential in accordance with Rule 152 of the *Federal Courts Rules*.

"A.F. Scott"

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J.A.

**Court File No. A-242-16****IN THE FEDERAL COURT OF APPEAL**

BETWEEN:

**Dr. GÁBOR LUKÁCS**

Appellant

and

**CANADIAN TRANSPORTATION AGENCY and  
NEWLEAF TRAVEL COMPANY INC.**

Respondents

**AFFIDAVIT OF DONALD JAMES YOUNG**

I, DONALD JAMES YOUNG, Executive, of the City of Winnipeg, in the Province of Manitoba, affirm that:

1. I am the Chief Executive Officer of NewLeaf Travel Company Inc. ("NewLeaf"), and as such have knowledge of the fact to which I hereinafter depose, except where they are stated to be based on information and belief, in which case I believe them to be true.
2. I have been in the airline industry for over 20 years. A current resume of my experience can be found in Exhibit "E" at page 69 to the affidavit affirmed by Gabor Lukacs in this motion.
3. The current model utilized by NewLeaf is that of a reseller contracting with Flair Airlines Ltd. ("Flair"), which is a licensed air carrier to provide Ultra Low Cost Carrier service to the Canadian market.
4. I am aware of the Appellant's concerns with respect to the operation of NewLeaf.

### Passenger Protection

5. In specific response to the direction of the Court dated July 22, 2016, three provinces have enacted travel industry legislation - BC, Ontario and Quebec. All three have travel compensation funds to provide refunds to passengers (from any jurisdiction) who book their travel through a registered retail travel agent in that jurisdiction. NewLeaf does not travel to Quebec.

6. The compensation funds in the BC and Ontario models are funded on the basis of the travel agent making contributions. In Ontario, it is at a semi-annual rate of \$0.25 on each thousand dollars of sales. I am advised by Brian Reddy, the Chief Financial Officer of NewLeaf, that the Travel Industry Council of Ontario ("TICO) considers NewLeaf to be a travel agent for the purpose of contributing to its compensation fund. I expect that its counterpart in BC will likewise follow suit and require NewLeaf to contribute to its compensation fund. NewLeaf will abide by whatever the requirements are.

7. Credit card issuers are liable to the consumer for processed transactions, where goods and services are not received. Therefore, the protection for the consumer lies within NewLeaf's credit card processor PSiGate. Attached and marked as **Exhibit "A"** to my affidavit is a copy of the relevant portions of the credit card agreement.

8. Due to the exposure to the risk, PSiGate retains 100% of the transaction fee for up to one week past when the passenger has completed his/her full travel to ensure the services have been provided.

9. PSiGate's responsibilities include holding all funds for any repatriation on any return flight booked by the passenger. Repatriation in this context means the return from the passenger's destination to the point of origin on any return flight booked. The consumer is therefore protected until the entire flight has been completed.

10. PSiGate is required to return to consumers any charges to their credit card where the services have not been performed. As stated above, 100% of the cost is held by PSiGate until after the flights have been completed.

11. In addition, once any passenger has entered the jetway to the aircraft, he/she is protected by the published airline tariff of Flair.

12. In addition to the tariff, NewLeaf's Booking and Reservation Terms and Conditions will take care of all other concerns that a passenger might have with respect to inconvenience as to travel and baggage. Attached hereto and marked as **Exhibit "B"** to my affidavit is a copy of said Terms and Conditions.

13. NewLeaf also has an Aircraft, Crew, Maintenance and Insurance (ACMI) agreement with Flair, which requires Flair to provide airplane capacity to NewLeaf.

14. NewLeaf is required to provide to Flair in advance 100% of the costs of the air travel every week to ensure that all cost relating to passengers flying in that period are fully paid.

15. NewLeaf's sales are entirely through its website or call centre based in Winnipeg, Manitoba. The only form of payment accepted at this time is protected by NewLeaf through a valid credit card.

16. As such, the process for consumers is equal to that offered in the case of travel agencies and airlines.

### **Revenue/Expenses**

17. I have reviewed the allegations made by the Appellant in his notice of motion and supporting affidavit, which, in our view, are wrong and based on inaccurate information as more fully set out below.

18. As of 0600 CT July 23, 2016, NewLeaf has sold over [REDACTED] segments for travel from July 25, 2016 to October 2, 2016.

19. The gross receipts collected from the above sales totals [REDACTED] and is on deposit with NewLeaf's Credit Card Processor- PSiGate and held by it in trust as set out above.

20. As of this date, NewLeaf has paid over [REDACTED] to its third party vendors, airport authorities, ground handling companies and Flair in the form of prepayments and deposits to secure services not yet delivered.

### **Capitalization**

21. As of this date, NewLeaf has investors who have committed [REDACTED] of immediate cash, which is held in trust, and an additional [REDACTED] for the next four or five months as needed and upon approval of the board of directors for expenditures.

22. I was told by the investors who have provided the primary funding that they have funds of up to [REDACTED] of additional capital available to NewLeaf if required to protect their investment.

23. These investors are well experienced in ULCC model funding, led by Ben Baldanza as Chairman of the board of NewLeaf. Mr Baldanza was formerly the CEO of the very successful Spirit Airlines in the US.

24. NewLeaf has [REDACTED] in an escrow account with Flair to confirm that NewLeaf will pay any of its payments under the ACMI and MOU agreements with Flair, to be utilized by Flair, if it is called upon to repatriate passengers.

25. NewLeaf has placed deposits totaling approximately [REDACTED] with airport authorities, ground handling companies and other related vendors to ensure payment for all services rendered and remittance of all fees collected from the consumer on their behalf.

26. As of today Newleaf has prepaid approximately [REDACTED] for services related to operating the aircraft and hiring additional crew members to support the schedule over the next 6 months.

27. Additionally, NewLeaf will pay [REDACTED] to Flair for operations commencing August 1.

28. As stated in paragraph 19 above, as of today's date, NewLeaf has on deposit with the Credit Card merchant [REDACTED] in total gross receipts which funds are not accessible to NewLeaf until the passenger has completed his/her flight segment. Settlement of these funds occurs weekly on a Friday based on completed flights up to the previous Wednesday, creating a further protection to the consumer in as much NewLeaf cannot be paid until well after the consumer has completed that part of their trip. Any return flight payments will remain with the credit card company for reimbursement to the consumer if that flight segment does not take place.

29. NewLeaf does not and cannot at this point rely on credit card revenues to fund current operations. Contrary to the Appellant's assertions, NewLeaf does not cover its present costs with future sales revenues.

30. Accordingly, the allegation that NewLeaf is under capitalized and financially unstable is baseless.

31. More importantly, the facts contained in paragraph 22 to 29 above are bound up in confidentiality agreements with investors and Flair, and those agreements are in jeopardy of being breached if the contents are not protected by an order of the Court.

32. In addition, this information is of high competitive value to NewLeaf's competitors and would simply erode NewLeaf's ability to carry on its operations if this material were made available to the public.

**Kelowna Airport Contract**

33. NewLeaf has executed the airport agreement with Kelowna Municipal Airport Authority and expects a fully executed copy from that Authority imminently.



34. The required deposit has been paid to the Authority.

### **Disputed Accounts**

35. The accounts referred to by the Appellant are accounts incurred by 1919183 Ontario Ltd. 1919183 Ontario Ltd. tried to work with both Ms. HESSIE JONES and Mr. Norm LeCavilier while doing a separate business of Ski Charter flights specific to recreational travelers.

36. The 1919183 Ontario Ltd. accounts have been discussed with each of the individuals claiming failed payment. In both cases, the amount of the accounts, the specific alleged work performed and quality of work performed are disputed. The failure to provide adequate services in a timely and adequate manner cost significant business losses to 1919183 Ontario Ltd. A claim by Ms. Jones has been filed in the Ontario Courts and a defence and a counterclaim will be filed as part of that process.

### **Irreparable Harm**

37. NewLeaf would suffer extreme prejudice and harm to its business interests and the customers who have purchased tickets if an injunction is granted which prematurely decides the issues.

38. To NewLeaf - A delay in the commencement of operations would have significant impact to NewLeaf's financial position as the company would be expending additional capital with no return in income in the form of additional salaries rents, minimum payments to Flair, and other related fees in order to wait out the proceedings of the court.

39. To Airports - When NewLeaf recommenced sales on June 23, it announced sub daily service on 19 routes, with 60 flights per week. Of these routes, 18 were unserved on a non stop basis by current airlines. Since the company's announcement, additional non stop services were added by other airlines on a temporary basis with competitive prices. If NewLeaf were not allowed to operate, competitors could potentially raise fares as the impetus for low fare transportation has been removed, or in the case of route

competition remove the service entirely as the competitive threat no longer exists, which is what happened when NewLeaf suspended operations in January 2016. Airport revenues would be harmed as a result of lower total collected fees and increased airport unit costs due to fewer passengers transiting their facility, particularly during the peak summer season.

40. First Nation Investors - A group of Manitoba First Nations has taken as significant equity investment position in NewLeaf. The First Nations' investment represents, for them, an opportunity to lift their community's financial returns through stimulated economic development.

41. Consumers - To date over [REDACTED] tickets have been sold to consumers across the country. Should NewLeaf not be allowed to commence operations, the impact to their travel plans would have the same effect that the Appellant is trying to prevent; that being, passengers would be faced with an immediate financial hurdle imposed on them by the other airlines charging higher airfares resulting from the elimination of low fare competition and reduced seat capacity and the inconvenience and expense of making alternate arrangements.

42. Employees - Currently NewLeaf employees over [REDACTED] direct employees and approximately [REDACTED] indirect employees in the employment of NewLeaf's vendors and partners. These people were hired to specifically work on the NewLeaf project. If NewLeaf were not allowed to operate, it is apparent that these employees would need to be laid off or terminated as there would no longer be employment for them. NewLeaf would also suffer financially from cancellation fees, severance payments and other penalties for early contract termination.

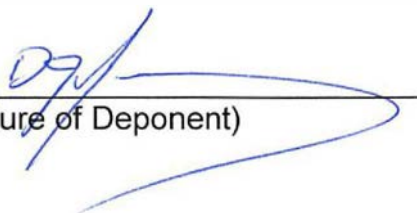
43. I make this affidavit in good faith and in response to the notice of motion for an injunction/stay of the CTA decision.

Sworn before me at the City of Winnipeg in the Province of Manitoba on 23 July 2016



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Notary Public in and for the  
Province of Manitoba



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(Signature of Deponent)