

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.

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.

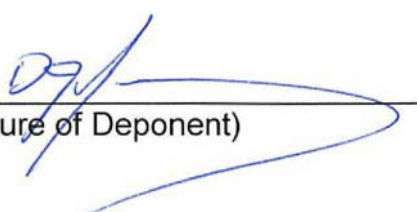
39. To Airports - When NewLeaf recommenced sales on June 23, it announced sub daily service on 19 routes, with 60 flights per week. Of these routes, 18 were unserved on a non stop basis by current airlines. Since the company's announcement, additional non stop services were added by other airlines on 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

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



Notary Public in and for the
Province of Manitoba



(Signature of Deponent)