

REPLY

Introduction

1. NewLeaf has sought a protective order on the basis that the affidavits contained information relating to their commercial interests and commercial agreements which would harm their competitive advantage, harm their relationships with third parties and harm the public interest in encouraging commerce between parties.

2. NewLeaf submits that in paragraphs 4-6, the Appellant fails to comprehend that NewLeaf is not seeking a blanket protection order. Rather, it is seeking an order protecting confidential information as set out in the affidavit of Donald James (Jim) Young sworn July 23, 2016 paragraph 31. Specifically, the financial numbers found in paras. 18, 19, 20, 22, 24 25, 26, 27, 28, 41 and 42.

3. Revealing the financial information will reveal Newleaf's competitive advantages and disadvantages in the highly competitive industry of Airline. It will also breach the undertakings that Newleaf has vis-a-vis under third party agreements.

4. NewLeaf submits that paragraph 31 of James Young' affidavit should read to include paragraph 21 under the purview of information protected by confidentiality agreements.

5. NewLeaf submits that there is no basis for the Appellant's assertion in his injunction materials that NewLeaf should be required to post a monetary bond. He has conceded that should Newleaf be registered with Travel Industry Council of Ontario his injunction is moot. We would agree. Please see also see injunction reply.

6. While the Appellant is correct that NewLeaf bears the burden of establishing evidence that the information should be subject to a protection order, he fails and misses the point where the burden shifts to him to present evidence to establish that the public interest requires the production of the information in question in order to properly adjudicate the matter in an open fashion.

7. NewLeaf submits that in paragraphs 4-6, the Appellant has failed to comprehend the secondary or collateral object of *Sierra Club* as a legal authority. *Sierra Club* stands for the proposition that while the public interest and the open court principle are core, paramount principles, it also recognizes that commercial dealings and particularly commercial contractual obligations breakdown if the Court does not provide protection for those provisions, and therefore the Court should protect confidentiality in commercial dealings.

8. Lastly, NewLeaf submits that it has serious concerns with releasing the confidential information to the Appellant given that without the protection order as he is under no professional or ethical obligation to ensure that the disputed materials are not disseminated to the public. If the confidential information were given to competitors, either directly it would place a cooling effect on similar commercial arrangements in the future.

9. When the operation plans of Newleaf were being reviewed by the CTA, Newleaf applied under section 31, regulation 2014-104 Canadian Transportation Act. (the "Act") requesting certain material/information be maintained confidential. Attached is section 31 of the regulation.

10. This is the same material the Appellant is seeking be revealed in this injunction application. Given the Appellant's concession that the injunction would be moot with the registration of Newleaf with Travel Industry Council of Ontario the information is no longer needed on the public record for public protection.

11. The Canadian Transportation Agency (CTA) has recognized the concerns of transportation commercial entities and have created a process to protect Confidential Information. Newleaf submitted certain material to the CTA requesting protection under section 31 of the Act.

12. The CTA as a quasi-judicial tribunal follows the "open court principle." The principle is identical to the guidance of the Supreme Court of Canada on such matters. At first instance all documents are considered as public record unless in the CTA's opinion the

Applicant under section 31 can demonstrate a need to maintain the confidential nature of the material or information.

13. Allan Matte counsel on behalf of the Canadian Transportation Agency filed a letter a letter dated May 16, 2016 in the Federal Court of Appeal. (Federal Court of Appeal matter No. 16-A-17) He informed the Court that the materials submitted by NewLeaf to the Canadian Transportation Agency were submitted as confidential information and should not be produced. Attached hereto is a copy of that letter.

14. The Court should further rely upon the Order provided by Gleason J.A. dated June 9, 2016 on Docket No. 16-A-17 whereby Gleason J.A. orders a process for production of the confidential information. That process will govern the production of the confidential information through the application proper. Attached is a copy of that Order.

15. Newleaf acknowledges that this Court is not bound by the decisions of the CTA or Justice Gleason. Newleaf submits the court should follow these previous decisions.

16. Newleaf is concerned that the Appellant is pursuing his motion for the purpose of obtaining the confidential information which has not been allowed to be produced to date.

17. Disclosing the confidential information would, it is submitted, be harmful:

- a. to the CTA's review and understanding of maintaining confidential business information to encourage full disclosure and commerce for those entities regulated by the "Act";
- b. to the previous decision of this Court which acknowledged and followed the CTA maintaining the confidential information to ensure that commercial interests NewLeaf's business plan, operations and contractual agreements.

18. On July 23, 2016 at 2:48 p.m. (CST), the Appellant responded in writing to the affidavits filed by NewLeaf Travel Company Inc. ("NewLeaf") in opposition to his notice of motion for an injunction/stay. As argument on the motion is premature, we will

reserve our rights to provide formal argument as directed by the court after the conclusion of the cross-examination of the Appellant on his affidavit.

Submission of Kempton Lamb on NewLeaf's motion for a protective order

19. NewLeaf requests that the court ignore the submission made by Kempton Lamb in an email sent July 23, 2016 at 5:15 p.m. (CST) for the following reasons:

- (a) This individual has no standing before the court to make submissions.
- (b) It would appear that the individual is a personal blogger who sent this email at the instance of the Appellant since the individual could not otherwise have known about the motion brought by NewLeaf that same afternoon.

20. It is submitted that a protective order be made in accordance with the concession of the Appellant that all financial information as set out in paragraph 3 of this submission be redacted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24th DAY OF JULY 2016:



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IN THE FEDERAL COURT OF APPEAL

BETWEEN:

Dr. GÁBOR LUKÁCS

Appellant

and

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

Respondents

**NOTICE OF APPEARANCE OF
NEWLEAF TRAVEL COMPANY INC.**

REPLY OF NEWLEAF TRAVEL COMPANY INC.

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