

July 24, 2016

VIA EMAIL

REFERENCE NO:

123736-0039

PLEASE REPLY TO:

Brian J. Meronek Q.C.

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Federal Court of Appeal
Thomas D'Arcy McGee Building
90 Sparks Street, 5th Floor
Ottawa, ON K1A 0H9

Attention: Danielle Parent, Designated Registry Officer

Dear Madam:

**Re: Dr. Gábor Lukács v. Canadian Transportation Agency et al
Federal Court of Appeal File No.: A-242-16
Urgent motion for an interlocutory injunction/stay pending appeal
Abridgment of the delays under Rule 369**

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Direction of the Court for the Cross-Examination by NewLeaf of the Appellant's Affidavit

On July 23, 2016 at 5:43 p.m.(CST) the Court advised the parties in part that "*the appellant is asked to provide dates of availability for cross-examination on his affidavit, in Canada, in the coming weeks, pursuant to Rules 83 and ss. (sic)*".

At 8:56 p.m. (CST) on July 23, 2016, Mr. Lukacs wrote to the Court requesting as an alternative that cross-examination be conducted by Skype given that:

"1. It appears that opposing counsel may have misunderstood my situation as being simply on vacation in Europe. This is no (sic) the case. I have been residing in Hungary (my birth country) since early May 2016, for family reasons, while doing my very best to meet my obligations to the Court..."

We have strong opposition to this request for the reasons set out below:

- (1) The court has issued a directive and there are no exceptional circumstances offered by the Appellant why that directive should be varied.

Foliot Inc. v. Heartwood Manufacturing Ltd., 2002 FCT 996 @ para. 7

- (2) The Court in an Order dated June 9, 2016 stated as follows:

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Services provided by:
Brian Meronek Law Corporation

o also of the Alberta Bar

The appellant is granted leave under section 41 of the Canadian Transportation Act, S.C. 1996, c. 10 to appeal the decision made by the Canadian Transportation Agency, dated March 29, 2016 and bearing Decision No. 100-A-2016 [the Decision].

This appeal shall be expedited provided the appellant files his Notice of Appeal within thirty (30) days of the date of this Order. If the application for judicial review in Federal Court of Appeal File No. A-39-16 is not rendered moot by this Order and if this appeal is expedited, then this appeal shall be heard immediately following the judicial review application in Federal Court of Appeal No. A-39-16.

Gabor Lukacs v. Canadian Transportation Agency and NewLeaf Travel Company Inc., Docket No. 16-A-17

Affidavit of Gabor Lukacs affirmed July 21, 2016, Exhibit 3a, page 23-25

- (3) On July 4, 2016, the CTA brought a motion to strike the judicial review application, the result of which will determine whether this appeal is heard on its own, or follows the hearing of the judicial review, if CTA's motion is unsuccessful.
- (4) On July 7, 2016 at 8:57 a.m. (CST), the Appellant wrote to Allan Matte (counsel to the CTA) advising in part that "*since I am currently travelling in Europe, I would kindly ask that you provide me with an electronic copy of the Motion Record*" (**attachment A to this letter**).
- (5) On July 17, 2016, the Appellant wrote to the court asking for an extension of time to reply to the motion to strike until August 25, 2016 in part because:

"1. I am currently travelling in Europe, and will be back in Halifax only on August 23, 2016. Until that day, I will have no physical access to a Canadian law library.

4(b) During the last week of July and the first week of August, I am scheduled to speak at two academic conferences, and I am a session organizer at one of them. As a result, I will be unable to prepare my responding motion record in the coming weeks"

(attachment B to this letter).

- (6) It now appears that the Appellant is unable to commit to the ordinary and appropriate rules pertaining to cross-examination in person (Federal Court Rules 83, 89 – 90) by virtue of the fact that he is residing in Hungary and has been since May 2016.
- (7) The convenience of the Appellant is not an exceptional circumstance.

Foliot Inc. v. Heartwood Manufacturing Ltd., supra @ paras. 10 - 12

- (8) If the Appellant is residing in Hungary as he now says, then he should be prevented from taking any steps under this action without posting substantial security. Otherwise, he should be returning to Canada to present himself for cross-examination in the normal course and as directed by the court. If he wishes to wait until he returns on August 23, 2016, so be it. We will accommodate that request and even go so far as to travel to Halifax to cross-examine him.
- (9) In terms of the alternate suggestion of Skyping, it is a wholly inadequate way of proceeding for the following reasons:
 - (a) Skyping reception is invariably a problem and there is a lag time in the communications back and forth.
 - (b) The logistics of the Court Reporter being able to accurately record is problematic.
 - (c) It renders the review of documents and the marking of same as exhibits difficult, if not impossible.
 - (d) As credibility is very much an issue in cross-examination, the interaction between the parties renders effective cross-examination very difficult and is therefore prejudicial to the Respondent.

NewLeaf for all of the above reasons requests that:

- (A) The Court does not vary its direction to have the Appellant present himself in Canada in the following weeks for cross-examination.
- (B) If the Appellant chooses not to make himself available before his scheduled return on August 23, then the cross-examination should be scheduled for his return that week in Halifax.

Reply to the Appellant's email of July 24, 2016 at 8:16 a.m. CST re: TICO

We have just received the Appellant's letter concerning the suggestion that the injunction may become moot. Newleaf has met with the Registrar and Vice President of Travel Industry Council of Ontario (TICO) and has undertaken to register with it in accordance with its directions and time lines. Newleaf does not see a need to have an Order committing Newleaf to a course of action already undertaken. The Appellant may well broadcast that he was successful in making Newleaf comply by way of a Court Order when in fact Newleaf has already undertaken to comply with TICO (paragraph 6 of Jim Young's affidavit). Consequently, we suggest that the matter be adjourned while the TICO requirements are completed.

I look forward to the further direction of the court.

Yours truly,

D'ARCY & DEACON LLP

Per:



BRIAN J. MERONEK Q.C.

BJM/mp

Atts.

cc. Dr. Gábor Lukács
Allan Matte