

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

NEWLEAF TRAVEL COMPANY INC.

Plaintiff / Respondent,

– and –

**DR. GÁBOR LUKÁCS and the said DR. GÁBOR LUKÁCS, operating as AIR
PASSENGER RIGHTS,**

Defendant / Moving Party.

NOTICE OF MOTION (MASTER)

**Motion pursuant to *Rule 17.06(1)*
to set aside service outside Manitoba and/or to stay the proceeding**

HEARING DATE: TUESDAY, FEBRUARY 21, 2017 at 9:30 A.M.

MASTERS' UNCONTESTED LIST

Dr. Gábor Lukács

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NOTICE OF MOTION

THE Defendant, Dr. Gábor Lukács, will make a motion before the presiding Master on **TUESDAY, FEBRUARY 21, 2017 at 9:30 A.M.** or as soon thereafter as the motion may be heard, at the Law Courts Building, 408 York Avenue, in the City of Winnipeg, in the Province of Manitoba.

THE MOTION IS FOR:

1. an Order, pursuant to *Court of Queen's Bench Rule 17.06(1)*, setting aside service outside Manitoba and/or staying the proceeding; and
2. costs on a full indemnity basis.

THE GROUNDS FOR THE MOTION ARE:

A. Overview

1. Service of the Statement of Claim outside Manitoba is not authorized by the *Court of Queen's Bench Rules* in the case at bar.
2. This Honourable Court lacks jurisdiction *simpliciter* to hear the proceeding.
3. Manitoba is not a convenient forum for the hearing of the proceeding.

***Wildwood Transport Inc. v. Eagle West Cranes Inc.*,
2011 MBQB 42, para. 8**

B. Background

(i) Dr. Lukács

4. The Defendant, Dr. Gábor Lukács, is an ordinary resident of Halifax, Nova Scotia. He has not set foot in Manitoba for more than four years.
5. Dr. Lukács is an air passenger rights advocate, who volunteers his time and expertise to the benefit for the travelling public. His activities include:
 - (a) filing approximately two dozen successful regulatory complaints with the Canadian Transportation Agency, resulting in airlines being ordered to amend their conditions of carriage and offer better protection to passengers;
 - (b) promoting air passenger rights through the press and social media;

- (c) referring passengers mistreated by airlines to legal information and resources;
 - (d) offering *pro bono* representation to passengers in matters before the Canadian Transportation Agency, the Nova Scotia Small Claims Courts, the Office of the Privacy Commissioner of Canada, and the Canadian Human Rights Commission; and
 - (e) challenging the legality of decisions of the Canadian Transportation Agency before the Federal Court of Appeal.
6. The work and public interest litigation of Dr. Lukács have been recognized by the Federal Court of Appeal in a number of judgments, including:
- (a) *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140, relating to the open court principle in proceedings before the Canadian Transportation Agency;
 - (b) *Lukács v. Canada (Canadian Transportation Agency)*, 2015 FCA 269, relating to denied boarding compensation; and
 - (c) *Lukács v. Canada (Canadian Transportation Agency)*, 2016 FCA 220, relating to the standing of Dr. Lukács to complain about discrimination against large passengers even though he is not personally affected by the discrimination.

7. In 2013, the Consumers' Association of Canada recognized the achievements of Dr. Lukács in the area of air passenger rights by awarding him its Order of Merit for "singlehandedly initiating Legal Action resulting in revision of Air Canada unfair practices regarding Over Booking."

(ii) **NewLeaf Airways and NewLeaf Travel**

8. 1919183 Ontario Ltd. is a company incorporated under the laws of Ontario, and doing business as NewLeaf Airways.
9. The Plaintiff, NewLeaf Travel Company Inc. [NewLeaf Travel], is a federally incorporated company that at all times material has had the same directors as NewLeaf Airways.
10. NewLeaf Travel and NewLeaf Airways had the same registered office address at 130 King Street West, Suite 2120, Toronto, Ontario, M5X 1K6.
11. In August 2015, the Canadian Transportation Agency commenced an inquiry into whether NewLeaf Travel was operating an air service, and thus was required to hold a domestic licence under the *Canada Transportation Act*, S.C. 1996 c.10 [CTA].
12. In December 2015, the Canadian Transportation Agency announced a public consultation on whether Indirect Air Service Providers [IASPs], such as NewLeaf Travel, should continue to be required to hold a domestic licence.

(iii) First Launch (January 2016)

13. On or around January 6, 2016, while the Canadian Transportation Agency's consultation and inquiry about whether NewLeaf Travel required a licence was ongoing, NewLeaf Travel began selling tickets on the Internet for flights within Canada starting February 12, 2016. NewLeaf Travel had an unrealistic business plan and was grossly underfunded, with only \$250,000 in actual secured funds.
14. On or around January 18, 2016, NewLeaf Travel suspended sales, and cancelled the tickets already sold. Affected passengers were provided refunds, but no monetary compensation for the failure of NewLeaf Travel to deliver the services it sold nor for having to purchase Air Canada or WestJet tickets at a higher price.
15. On or around January 22, 2016, NewLeaf Travel relocated its registered office to the nominal address of 1 Lombard Place, Suite 2200, Winnipeg, Manitoba, R3B 0X7, which is the address of D'Arcy & Deacon LLP.

(iv) The decision of the Canadian Transportation Agency

16. On March 29, 2016, the Canadian Transportation Agency issued Decision No. 100-A-2016, in which it concluded that IASPs are no longer required to hold licences under the *CTA*, so long as they do not hold themselves out as an air carrier operating an air service; and NewLeaf Travel, being an IASP, is therefore not required to hold a licence.

(v) **Proceedings before the Federal Court of Appeal**

17. On June 9, 2016, the Federal Court of Appeal granted Dr. Lukács leave to appeal the decision of the Canadian Transportation Agency about the requirement to hold licences in general, and the legality of NewLeaf Travel's business model in particular. Gleason, J.A., writing for a unanimous court, held that:

[4] Contrary to what Newleaf asserts, the materials filed do raise an arguable case and Dr. Lukács does have standing to commence this appeal, either as a private or public interest applicant.

[Emphasis added.]

***Lukács v. Canada (Canadian Transportation Agency),
2016 FCA 174, para. 4***

18. On June 28, 2016, Dr. Lukács filed his Notice of Appeal in the Federal Court of Appeal. Currently, the appeal is ready for hearing.

(vi) **Second launch (June 2016)**

19. On June 23, 2016, without waiting for the outcome of the appeal before the Federal Court of Appeal, NewLeaf Travel began selling tickets on the Internet again, this time for flights within Canada starting July 2016.

(vii) **The present action**

20. On July 15, 2016, NewLeaf Travel commenced the present action against Dr. Lukács for defamation, injurious falsehood, and intentional interference with economic relations.

21. NewLeaf Travel also seeks an injunction restraining Dr. Lukács from posting, publishing or otherwise communicating what NewLeaf Travel alleges to be false and misleading statements about NewLeaf Travel.

C. Service outside Manitoba is not authorized

22. The Statement of Claim contains no “specific statement of the grounds [...] relied on in support of” service outside Manitoba without leave, contrary to *Court of Queen’s Bench Rule 17.04(1)*.
23. The Statement of Claim contains no pleadings about contracts, and thus improperly cites *Court of Queen’s Bench Rule 17.02(f)*.
24. The Statement of Claim discloses no tort committed in Manitoba nor loss or damage sustained in Manitoba, and thus improperly cites *Court of Queen’s Bench Rules 17.02(g)-(h)*.
25. The Statement of Claim improperly cites *Court of Queen’s Bench Rule 17.02(i)*, because the Plaintiff seeks an injunction that:
 - (a) is not confined to ordering Dr. Lukács to do or refrain from doing anything in Manitoba; and
 - (b) falls outside the ambit of subsection 19(1) of the *Defamation Act*, C.C.S.M. c. D20, and thus is barred by section 57 of the *Court of Queen’s Bench Act*, C.C.S.M. c. C280.

D. This Honourable Court lacks jurisdiction *simpliciter*

26. The legal test for jurisdiction *simpliciter* is existence of a “real and substantial connection” between the forum and the subject matter of the litigation or the defendant. The presence of the plaintiff in the jurisdiction is not, on its own, a sufficient connecting factor.

***Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, para. 86**

27. There is no “real and substantial connection” between Manitoba and the subject matter of the litigation or Dr. Lukács:

- (a) Dr. Lukács is neither domiciled nor resident in Manitoba.
- (b) Dr. Lukács does not carry on business in Manitoba.
- (c) The litigation does not relate to tort committed in Manitoba.
- (d) The dispute is not connected to a contract made in Manitoba.

***Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, para. 90**

E. Manitoba is not a convenient forum

28. Ontario is clearly a more appropriate forum for the hearing of the action, based on the following factors:

- (i) the comparative convenience and expense for the parties to the proceeding and for their witnesses;

(ii) the desirability of avoiding conflicting decisions in different courts;
and

(iii) the unfairness to Dr. Lukács, and the “libel tourism” of NewLeaf Travel, which seeks to avoid the effect of Ontario’s anti-SLAPP legislation, *Protection of Public Participation Act*, 2015, S.O. 2015, c. 23.

(i) **Comparative convenience and expense**

29. NewLeaf Travel is a federally incorporated company carrying on business in Nova Scotia, New Brunswick, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia. The court rules of both Manitoba and Ontario require NewLeaf to be represented by counsel.

30. Dr. Lukács resides in Halifax, Nova Scotia, and is self-represented.

31. There are no non-stop flights between Halifax and Winnipeg. Air travel time between the two cities is 6 hours or more, not counting ground transportation to and from the airport and check-in times. Thus, a 1-day court appearance of Dr. Lukács in Winnipeg would likely require a 3-day trip with two nights of accommodation in Winnipeg.

32. Toronto is about half as far from Halifax as Winnipeg is. There are non-stop flights between Halifax and Toronto, with air travel times of approximately 2.5 hours, allowing for 1-day trips for court appearances.

33. It is common ground between the parties that the Manitoba Courts are technologically ill-equipped to accommodate parties appearing by way of telephone or video conference.
34. On the other hand, Ontario has procedures to accommodate parties at remote locations, such as motions heard in writing (Rule 37.12.1), and routinely hearing motions by telephone or video conference, including in the Court of Appeal for Ontario.
35. In order to establish facts relating to unpaid vendors, which are necessary for defending the action, Dr. Lukács intends to be calling witnesses who all reside in Ontario, including:
 - (a) Ms. HESSIE JONES, who resides in Pickering, Ontario, and who is the CEO of 8297525 Canada Inc., doing business as ArCompany;
 - (b) Mr. Robert Gregory Jones, who resides in Toronto, Ontario, and who is a director of both NewLeaf Travel and NewLeaf Airways; and
 - (c) Mr. Brian Joseph Reddy, who resides in Mississauga, Ontario, and who is a director of both NewLeaf Travel and NewLeaf Airways.
36. In partial response to the allegations of malice and bad faith in paragraphs 10-11, 13, 15, 17, 19, 21, 23, 25, 28, 31, 33, 35, 37, 39, 41, 43, 46, 48, 50, and 55(b) of the Statement of Claim, Dr. Lukács intends to call witnesses about his volunteer work for the benefit of the travelling public, including:

- (a) Ms. Nayla Farah and Ms. Amal Haddad, who reside in Toronto, Ontario and who rely on the assistance of guide dogs. Dr. Lukács has been assisting Ms. Farah and Ms. Haddad since July 2015 with respect to an incident of harassment and discrimination by airline crew due to their disabilities.

- (b) Ms. Erzsébet Poroszkai and Mr. János Cser, who reside in Toronto, Ontario, refugees from Hungary whose family was torn apart, in part, as a result of the conduct of an airline. Dr. Lukács has been assisting the family since September 2015, reunited them in February 2016, and continues to assist them in pursuing their rights against the airline.

- (c) Mr. Sulemaan Ahmed, a founder of the No Fly List Kids movement, seeking to protect children who have been facing barriers in their travels due to their names coinciding with names appearing on the no-fly list. Dr. Lukács has been involved with No Fly List Kids since February 2016.

- (d) Col. Christopher C. Johnson of the Royal Canadian Air Force, who resides in Kanata, Ontario. Dr. Lukács has been representing Col. Johnson before the Canadian Transportation Agency in a complaint against Air Canada.

(ii) **Avoiding conflicting decisions**

37. Paragraphs 19-24, 31-32 and 35-40 of the Statement of Claim refer to unpaid invoices and/or outstanding debts of NewLeaf.
38. On July 19, 2016, 8297525 Canada Inc., doing business as ArCompany, commenced an action against NewLeaf Travel, NewLeaf Airways, and Mr. Donald James Young, the CEO of these companies, in the Ontario Superior Court of Justice under File No. 16-69336, for the payment of unpaid invoices in the amount of \$76,485 (the very same amount referenced in paragraphs 39-40 of the Statement of Claim).
39. On August 24, 2016, NewLeaf Travel, NewLeaf Airways, and Mr. Young filed a defence and counterclaim against ArCompany and Ms. Jones, alleging among other things intentional interference with contractual relations in connection with publication of the unpaid invoices and Ms. Jones' alleged communications with Dr. Lukács.
40. Allowing the present action to proceed in Manitoba while ArCompany's action proceeds in Ontario creates a risk of conflicting decisions with respect to the existence of unpaid invoices or outstanding debt, referenced in paragraphs 19-24, 31-32 and 35-40 of the Statement of Claim. If the present action were transferred to Ontario, it could be joined with the ArCompany action due to common questions of fact, and thus eliminate the risk of conflicting decisions.

(iii) “Libel tourism” and unfairness to Dr. Lukács

41. NewLeaf Travel has had and continues to have exceptionally strong ties to Ontario:
- (a) NewLeaf Travel was incorporated in April 2015 with the same directors, and the same Ontario registered office address as NewLeaf Airways, which is an Ontario corporation. NewLeaf Travel was also using the logo of NewLeaf Airways.
 - (b) NewLeaf Travel’s business activities are substantially similar if not identical to NewLeaf Airways’ 2015 business plan: being a so-called ultra-low cost carrier operating from secondary airports and renting aircraft under an ACMI (Aircraft, Crew, Maintenance, and Insurance) contract.
 - (c) Hamilton, Ontario is the most significant airport for NewLeaf Travel.
 - (d) In July 2016, the Travel Industry Council of Ontario (TICO) advised NewLeaf Travel that it was required to register with TICO under the *Ontario Travel Industry Act, 2002*.
42. In November 2015, Ontario’s anti-SLAPP legislation, the *Protection of Public Participation Act, 2015*, came into force. The legislation requires Ontario courts to dismiss at a preliminary stage proceedings arising from expression relating to a matter of public interest, unless the plaintiff can show that the

proceeding has substantial merit, the defendant has no valid defence, and the harm suffered by the plaintiff outweighs the public interest in protecting the expression.

43. Permitting NewLeaf Travel to proceed with the present action in Manitoba is “libel tourism” and unfair to Dr. Lukács, because it deprives Lukács of the protection offered by the Ontario anti-SLAPP legislation, notwithstanding NewLeaf Travel’s exceptionally strong ties to Ontario.

F. Costs

44. Dr. Lukács is seeking costs on a full indemnity basis based on the principles set out in *Bergen v. Sharpe*, 2013 CanLII 74188 (ON SC).

G. Statutes and regulations

45. *Court of Queen’s Bench Rules 17.02, 17.04(1), and 17.06;*
46. Section 57 of the *Court of Queen’s Bench Act*, C.C.S.M. c. C280;
47. Section 19(1) of the *Defamation Act*, C.C.S.M. c. D20;
48. Such further and other grounds as the Defendant may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing
of the motion:

1. Statement of Claim, issued on July 15, 2016;
2. the affidavit of Dr. Gábor Lukács, to be filed; and
3. such further and other material as the Defendant may advise and this Honourable Court may permit.

September 23, 2016

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