

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.**

**MEMORANDUM OF FACT AND LAW ON NEWLEAF TRAVEL COMPANY INC.'S
MOTION FOR CONFIDENTIALITY (PROTECTIVE) ORDER**

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File No. 123736-0039

**MEMORANDUM OF FACT AND LAW ON NEWLEAF TRAVEL COMPANY LTD.'S
MOTION FOR CONFIDENTIALITY (PROTECTIVE) ORDER**

Introduction

1. On July 21, 2016, the Appellant filed a notice of motion seeking an interlocutory injunction as well as a stay of Canadian Transportation Agency (“CTA”) Decision No. 100-A-2016, wherein the CTA reviewed the NewLeaf Travel Company Inc. (“NewLeaf”) business model and allowed NewLeaf to operate without an Airline license.
2. The practical effect of the Court granting the Appellant’s motion would be to suspend the operations of NewLeaf which are set to launch on July 25, 2016.
3. On July 21, 2016, the Appellant filed his motion record for the above motion and includes, among other things, the allegation that NewLeaf does not have the financial means to deliver and sustain the services that it sells, and NewLeaf will be incapable of compensating stranded passengers for their resulting out-of-pocket expenses.
4. In order to properly rebut the allegations found in the Appellant’s motion materials, NewLeaf must present certain evidence regarding its commercial interests and commercial agreements with third parties (the “Protected Material”);

Relief Sought

5. NewLeaf, on the Appellant’s motion for an emergency interlocutory injunction cross-motions for an order that:
 - a. Material filed in reply to the Appellant’s motion for an interlocutory injunction is of a confidential nature and therefore shall be treated as confidential pursuant to Rule 151 of the Federal Court Rules;
 - b. That unless otherwise ordered by this Honourable Court:
 - i. only a solicitor of record in this proceeding, or the Appellant acting on behalf of himself shall have access to confidential material;
 - ii. confidential material shall be given to a solicitor of record or the Appellant only if the respective party gives a written undertaking to the Court that he or she will:

1. not disclose its content except to solicitors assisting in the proceeding or to the Court in the course of argument,
 2. not permit it to be reproduced in whole or in part, and
 3. destroy the material and any notes on its content and file a certificate of their destruction or deliver the material and notes as ordered by the Court, when the material and notes are no longer required for the proceeding or the solicitor ceases to be solicitor of record;
 4. only one copy of any confidential material shall be given to the solicitor of record or the Appellant; and
 5. no confidential material or any information derived therefrom shall be disclosed to the public by any means, including, without limitation, electronic media in any form.
6. NewLeaf submits that it meets the statutory and common-law requirements to be granted a confidentiality order.

***Bombardier Inc. c. Union Carbide Canada Inc., 2014 SCC 35 (S.C.C.) at para 66
aff'd Sierra Club of Canada v. Canada (Minister of Finance) (2002), 211 D.L.R.
(4th) 193 (S.C.C.) at para 53 para 66***

Federal Courts Rules, SOR/98-106, ss 151 and 152

Law and Analysis

7. First, an order is necessary to prevent serious risks to NewLeaf's important interests, including its commercial interests, in the context of litigation because reasonably alternative measures will not prevent the risk.
 - a. The commercial interests and commercial agreements with Third Parties contain confidentiality provisions which state that NewLeaf is not entitled to provide the Protected Material to other parties;
 - b. Furthermore, the Protected Material is confidential by its very nature and is deserving of an Order protecting said confidentiality.

- c. The commercial integrity of agreements in Canada generally will be harmed if a Protective Order is not granted. The terms, performance and reliance upon confidential commercial terms will be harmed generally should there be no protection afforded by the Court for those terms.
- d. NewLeaf submits that on the foregoing considerations the risk of the breach of its commercial, confidential agreements with third parties are real and substantial and pose a serious threat to the interests seeking to be protected by advancing this material.

***Sierra Club of Canada v. Canada (Minister of Finance) (2002),
211 D.L.R. (4th) 193 (S.C.C.) at para 53***

- 8. Second, the salutary effects of the order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible court proceedings.
 - a. If the Protected Material is released it is likely to cause irreparable harm to commercial interests of NewLeaf and Third Parties;
 - b. The above harm is likely to cause NewLeaf to suffer serious financial consequences which may include having to cease operations permanently;
 - c. The public interest in the Protected Material is limited to non-existent as it relates to commercial dealings between private individuals;
 - d. Commercial Agreements which contain confidentiality clauses deserve protection from the Courts to enhance, protect and encourage commercial commerce and agreements in Canada.

***Sierra Club of Canada v. Canada (Minister of Finance) (2002),
211 D.L.R. (4th) 193 (S.C.C.) at para 53***

Conclusion

- 9. Based on the foregoing, NewLeaf submits that it meets the requirements for this Honourable Court to issue a Protective Order in respect of the Protected Material and that irreparable harm will follow if the Court does not so order.

10. NewLeaf requests that this Honourable Court issue the relief sought, and submits that the salutary effects of any order outweigh the deleterious effects of doing so for the foregoing reasons.
11. NewLeaf therefore requests that a Protective Order be issued as outlined in paragraphs 5-6 above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 23RD DAY OF JULY 2016:



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