

SUPERIOR COURT
(Class Actions)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° : 500-06-000865-176

DATE : September 12, 2017

PRESENT : THE HONOURABLE PIERRE-C. GAGNON, J.S.C.

MOSHE CHETRIT

Applicant

c.

SOCIÉTÉ EN COMMANDITE TOURAM

Defendant

JUDGEMENT OF TEMPORARY STAY

[1] **WHEREAS** on June 6, 2017, the Applicant filed an *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* in this matter (the “Application”);

[2] **WHEREAS**, by this Application, the Applicant seeks to represent the following putative class:

All consumers within the meaning of Quebec’s Consumer Protection Act who, from April 19th to 20th, 2016 (the “Class Period”), purchased a vacation package (flight, hotel, or both) from Defendant, and who, after receiving a purchase confirmation from Defendant at the price which Defendant initially advertised, subsequently had their purchase cancelled by Defendant

or any other class to be determined by the Court.

[3] **WHEREAS** an application for authorization to institute a class action based on similar facts and seeking similar conclusions was filed against Air Canada in the case of *Hurst v. Air Canada* bearing docket number 500-06-000756-151 (hereinafter the “Hurst Matter”);

[4] **WHEREAS** on January 27, 2017, the Honorable Justice Pepita Capriolo of this Court authorized the bringing of the proposed class action in the Hurst Matter;

[5] **WHEREAS** the originating demand was filed on September 5, 2017 in the Hurst Matter;

[6] **WHEREAS**, subject to the essential condition that the present matter be stayed until a final and enforceable judgment is rendered on the merits in the Hurst Matter, the whole without any admission and without prejudice to any argument, exception or defence that may be raised in response to Applicant’s claim and the claims of other putative class members; the Defendant consents to the authorization of the proposed class action herein, under the terms set out in paragraphs [7] to [9] below;

[7] **WHEREAS** the parties have agreed to define the putative class as follows for the purposes of the authorization of the class action only, and without prejudice to any argument, exception or defence that may be raised by the Defendant at the trial on the merits:

All consumers within the meaning of Quebec’s Consumer Protection Act who, from April 19th to 20th, 2016 (the “**Class Period**”), purchased a vacation package (flight, hotel, or both) from Defendant, and who, after receiving a purchase confirmation from Defendant at the price which Defendant initially advertised, subsequently had their purchase cancelled by Defendant.

(hereinafter, the “**Class**”)

[8] **WHEREAS** the parties have agreed that, subject to this Court’s approval, the principal questions of fact and law to be decided collectively should be defined as follows:

- (a) Did the Defendant contravene articles 10, 16(1), 41 and 224 (c) of the *Consumer Protection Act* (“**CPA**”)?
- (b) In the affirmative, did Class members suffer any damages as a result of the Defendant’s contravention?
- (c) Are the Class members entitled to compensatory damages and, if so, on what basis should these compensatory damages be calculated?
- (d) Are the Class members entitled to punitive damages and, if so, on what basis should these punitive damages be calculated?

[9] **WHEREAS** the parties have agreed that, subject to this Court's approval, the conclusions sought by the proposed class action should be defined as follows, without prejudice to any argument, exception or defense that may be raised by the Defendant at the trial on the merits:

- (a) **GRANT** the class action of the Plaintiff and any class member against Defendant;
- (b) **DECLARE** the Defendant liable for the damages suffered by the Plaintiff and each of the members of the class;
- (c) **CONDEMN** the Defendant to pay to the members of the class an amount to be determined in compensatory damages, and order collective recovery of these sums;
- (d) **CONDEMN** the Defendant to pay to the members of the class an amount to be determined in punitive damages, and order collective recovery of these sums;
- (e) **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative*;
- (f) **CONDEMN** the Defendant to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
- (g) **DECLARE** that all members of the Group that have not requested their exclusion from the Group in the prescribed delay be bound by any judgment to be rendered on the class action as instituted;
- (h) **RENDER** any other order that this Honorable Court shall determine;

[10] **WHEREAS** it is in the best interest of justice and of the putative class members to authorize the class action under the terms agreed upon by the parties and described at paragraphs [7] to [9] above, and to stay the present matter pending the expiry of 30 days subsequent to a final judgment in the Hurst Matter;

FOR THESE REASONS, THE COURT / POUR CES MOTIFS, LE TRIBUNAL :

[11] **GRANTS** the Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff*;

[11] **ACCUEILLE** la demande du demandeur pour autoriser l'institution d'une action collective et pour lui attribuer le statut de représentant;

[12] **ASCRIBES** the Applicant the status of representative of the persons included in the Class herein described as:

[12] **ATTRIBUE** au demandeur le statut de représentant des personnes incluses dans le Groupe décrit comme suit :

All consumers within the meaning of Quebec's Consumer Protection Act who, from April 19th to 20th, 2016 (the "Class Period"), purchased a vacation package (flight, hotel, or both) from Defendant, and who, after receiving a purchase confirmation from Defendant at the price which Defendant initially advertised, subsequently had their purchase cancelled by Defendant.

All consumers within the meaning of Quebec's Consumer Protection Act who, from April 19th to 20th, 2016 (the "Class Period"), purchased a vacation package (flight, hotel, or both) from Defendant, and who, after receiving a purchase confirmation from Defendant at the price which Defendant initially advertised, subsequently had their purchase cancelled by Defendant.

[13] **IDENTIFIES** the questions of fact and law to be treated collectively as follows:

[13] **IDENTIFIE** comme suit les questions de faits et de droit à être traitées collectivement :

- (a) Did the Defendant contravene articles 10, 16(1), 41 and 224 (c) of the *Consumer Protection Act* ("CPA")?
- (b) In the affirmative, did Class members suffer any damages as a result of the Defendant's contravention?
- (c) Are the Class members entitled to compensatory damages and, if so, on what basis should these compensatory damages be calculated?
- (d) Are the Class members entitled to punitive damages and, if so, on what basis should these punitive damages be calculated?

- a) la défenderesse a-t-elle contrevenu aux articles 10, 16(1), 41 et 224(c) de la Loi sur la protections des consommateurs (« LPC »)?
- b) si oui, les membres du Groupe ont-ils subi un préjudice découlant de la contravention par la défenderesse?
- c) les membres du Groupe ont-ils droit à des dommages compensatoires et, si oui, sur quelle base ceux-ci devraient-ils être calculés?
- d) les membres du Groupe ont-ils droit à des dommages punitifs et, si oui, sur quelle base ceux-ci devraient-ils

[14] **IDENTIFIES** the conclusions sought

by the class action as follows:

être calculés?

- (a) **GRANT** the class action of the Plaintiff and any Class member against Defendant;
- (b) **DECLARE** the Defendant liable for the damages suffered by the Plaintiff and each of the members of the Class;
- (c) **CONDEMN** the Defendant to pay to the members of the Class an amount to be determined in compensatory damages, and **ORDER** collective recovery of these sums;
- (d) **CONDEMN** the Defendant to pay to the members of the Class an amount to be determined in punitive damages, and **ORDER** collective recovery of these sums;
- (e) **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative*;
- (f) **CONDEMN** the Defendant to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of
- [14] **IDENTIFIE** comme suit les conclusions recherchées par l'action collective :
- a) **ACCUEILLIR** l'action collective du demandeur et de tous les membres du Groupe contre la défenderesse;
- b) **DÉCLARER** la défenderesse responsable du préjudice subi par le demandeur et chaque membre du Groupe;
- c) **CONDAMNER** la défenderesse à payer aux membres du Groupe des dommages-intérêts compensatoires aux montants à être déterminés et **ORDONNER** le recouvrement collectif de tels montants;
- d) **CONDAMNER** la défenderesse à payer aux membres du Groupe des dommages punitifs aux montants à être déterminés, et **ORDONNER** le recouvrement collectif de tels montants;
- e) **CONDAMNER** la défenderesse à payer l'intérêt et l'indemnité additionnelle sur tels montants à partir de la date de signification de la demande d'autorisation;
- f) **CONDAMNER** la défenderesse à payer les frais de justice de la présente action incluant le coût des avis, le coût de l'administration des réclamations

the collective recovery orders;

(g) **DECLARE** that all members of the Class that have not requested their exclusion from the Class in the prescribed delay be bound by any judgment to be rendered on the class action as instituted;

(h) **RENDER** any other order that this Honorable Court shall determine;

[15] **DECLARES** that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

[16] **SETS** the deadline for opting-out at thirty (30) days from the date of the publication of the notices to Class members, date upon which the members of the Class who have not opted for exclusion will be bound by any judgement to be rendered herein;

[17] **STAYS** the present matter, including the notices to Class members, until a final and enforceable judgment is rendered on the merits in the case of *Hurst v. Air Canada*, docket number 500-06-000756-151;

[18] **THE WHOLE, WITHOUT COSTS.**

et les frais d'experts, le cas échéant, incluant les frais indiqués dans les ordonnances de recouvrement collectif;

g) **DÉCLARER** que tous les membres du Groupe qui n'auront pas requis d'être exclus du Groupe dans le délai prescrit, seront liés par tout jugement rendu dans le cadre de l'action collective telle qu'instituée;

h) **RENDRE** toute autre ordonnance que cette Honorable Cour jugera à propos;

[15] **DÉCLARE** que tous les membres du Groupe qui n'auront pas requis d'être exclus seront liés par tout jugement rendu dans le cadre de l'action collective telle qu'instituée, selon la loi;

[16] **FIXE** le délai pour s'exclure à trente (30) jours à partir de la date de publication des avis aux membres du Groupe, date à partir de laquelle les membres du Groupe n'ayant pas choisi de s'exclure seront liés par tout jugement rendu dans le présent dossier;

[17] **SUSPEND** la présente affaire, incluant les avis aux membres du Groupe, jusqu'à jugement final et exécutoire, rendu au fond dans le dossier *Hurst c. Air Canada*, C.S.Montréal n° 500-06-000756-151;

[18] **LE TOUT, SANS FRAIS.**

M^e Joey Zukran
LPC Avocat Inc.
Counsel for the Applicant

M^e Louise-Hélène Sénécal
M^e Jean-François Bisson-Ross
Air Canada
Counsel for the Defendant

Hearing date: None. By exchange of correspondence only.

NOTICE TO CLASS MEMBERS

(Form to be agreed by the parties and provided in advance of the hearing)