

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000865-176

MOSHE CHETRIT, [REDACTED]
[REDACTED]

Representative Plaintiff

vs.

SOCIÉTÉ EN COMMANDITE TOURAM,
having its head office at 1440 Sainte Catherine
Street West, suite 600, Montreal, district of
Montreal, Province of Quebec, H3G 1R8

Defendant

ORIGINATING APPLICATION
(Articles 141 and 583 C.C.P.)

THE REPRESENTATIVE PLAINTIFF RESPECTFULLY STATES THE FOLLOWING:

I. INTRODUCTION

1. This class action seeks the reimbursement of the “lost value”, being the difference between the replacement cost and the price advertised by the Defendant, for vacation packages reserved online by the Representative Plaintiff and Class members from April 19-20, 2016, as well as punitive damages;
2. On September 12, 2017, the Honourable Justice Pierre-C. Gagnon, J.S.C., authorized the Representative Plaintiff to bring a class action for the benefit of the persons forming part of the group hereinafter described, namely:

English:

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.

French:

Tous les consommateurs au sens de la *Loi sur la protection du consommateur* du Québec qui, du 19 au 20 avril 2016, ont acheté un forfait de vacance (vol, hôtel ou les deux) de la défenderesse et qui, après avoir reçu une confirmation d'achat de la défenderesse au prix que celle-ci a initialement annoncé, ont ensuite vu leur achat annulé par la défenderesse.

3. The Honourable Justice Gagnon appointed the status of Representative Plaintiff to Mr. Moshe Chetrit and identified the principal questions of fact and law to be dealt with collectively in the class action as follows:

English:

- 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?

French:

- a) la défenderesse a-t-elle contrevenu aux articles 10, 16(1), 41 et 224(c) de la *Loi sur la protection 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 être calculés ?

II. THE PARTIES

4. The Representative Plaintiff is a consumer within the meaning of the CPA;

5. The Defendant is a limited partnership carrying on any activity without restriction as a travel agency and offers tour operator services, as it appears from extracts of the enterprise's information statements from the enterprise register (CIDREQ) communicated herewith as **Exhibit P-1**;
6. The Defendant is a merchant within the meaning of the CPA and its activities are governed by this legislation, among others;

III. THE REPRESENTATIVE PLAINTIFF'S PERSONAL EXPERIENCE

7. Mr. Chetrit's brother was getting married in Israel on July 20, 2016, and so Mr. Chetrit was searching several months in advance for a flight and hotel in Israel for his wife, himself and their three children;
8. On April 20, 2016, Mr. Chetrit saw a vacation package offered on Defendant's website for a flight from Montreal to Tel-Aviv, and for two hotel rooms at the Dan Panorama hotel in Tel-Aviv, all for \$3,527.35 including taxes (for 2 adults and 3 children);
9. Mr. Chetrit decided to immediately accept the Defendant's offer and completed the purchase for the flights and hotel rooms;
10. The package was advertised at \$700.69 per person for an economy class flight from Montreal to Tel-Aviv from July 18, 2016, returning on August 1, 2016, as it appears from the email confirmation he received from Defendant on April 20, 2016, at 6:25 a.m., communicated herewith *en liasse* along with the invoice #1440162-1 attached thereto in PDF format as **Exhibit P-2**;
11. As it appears from his invoice, Exhibit P-2, Mr. Chetrit purchased a total of five (5) tickets for his family (for himself, his wife and 3 children) for a total of \$3,527.35;
12. As it further appears from his invoice, Exhibit P-2, the package also included two hotel rooms at the Dan Panorama hotel in Tel-Aviv from July 19, 2016, to August 1, 2016;
13. On April 20, 2016, Defendant charged the Mr. Chetrit's American Express credit card in the amount of \$3,527.35 (posted to his account on April 21, 2016), which corresponds to the total amount of his purchase appearing on his invoice #1440162-1, Exhibit P-2, as it appears from a copy of Mr. Chetrit's American Express statement communicated herewith as **Exhibit P-3**;
14. On April 21, 2016, at 6:23 a.m., the Defendant sent Mr. Chetrit an email with a PDF attachment containing "*information pertaining to a new or revised transaction*", Mr. Chetrit communicating herewith *en liasse* the email dated April

21, 2016, along with what appears to be a revised invoice bearing the #1440162-2 as **Exhibit P-4**;

15. On April 22, 2016, Defendant refunded Mr. Chetrit's American Express credit card in the amount of \$3,527.35, as it appears from Exhibit P-3;
16. On April 22, 2016, at 23h10 in the evening, Defendant sent Mr. Chetrit an e-mail confirming that it was cancelling his purchase due to an apparent pricing error and offered him compensation, Mr. Chetrit communicating herewith *en liasse* a copy of the email sent to him by Defendant, as well the 5 travel credits offered to him and the members of his family as **Exhibit P-5**;
17. Mr. Chetrit refused the compensation offered to him by Defendant and insists that his contract be honoured, or that he be compensated for the difference between what he would have to pay for the same package following Defendant's cancellation of his purchase and the initial advertised price he paid (hereinafter the "**Lost Value**");

IV. DEFENDANT'S LIABILITY

18. Following the cancellation of his contract by the Defendant, Mr. Chetrit then visited the Defendant's website and recalls seeing virtually identical flights and hotel packages then listed at approximately \$4,500.00 per person (including taxes), for an approximate total of \$22,500.00 for his reservation of five;
19. Mr. Chetrit suffered damages equal to the difference between the advertised price (which was charged to his American Express) by Defendant (\$3,527.35) and the price subsequently requested by Defendant for the same itinerary ($\$4,500.00 \times 5 = \$22,500.00$), representing a Lost Value to Mr. Chetrit in the amount of \$18,972.65;
20. Mr. Chetrit's damages are a direct and proximate result of the Defendant's violation and, in these circumstances, his claim for both compensatory and punitive damages against Defendant is justified;
21. The Defendant failed to fulfill the obligations imposed on it by Title I and Title II of the CPA, notably sections 10, 16(1), 41 and 224 (c), and are thus liable to Class members pursuant to section 272 CPA;

V. PUNITIVE DAMAGES

22. The Defendant breached consumer protection legislation in Quebec without any explanation;
23. The Defendant's overall conduct before, during and after the violation ignores

consumers' rights and its own obligations under the CPA;

24. Mr. Chetrit is accordingly entitled to claim and does hereby claim on behalf of Class members from the Defendant \$100.00 per Class member on account of punitive damages;
25. The Defendant's patrimonial situation is so significant that the foregoing amount of punitive damages is appropriate in the circumstances;

VI. THE PERSONAL CLAIMS OF EACH OF THE CLASS MEMBERS AGAINST THE DEFENDANT:

26. The Defendant failed in its obligation to honour all Class members' purchases at their own advertised price;
27. The prohibited practices committed by the Defendant were virtually identical vis-a-vis each Class member;
28. Each member of the Class lost value as a result of Defendant's failure to fulfill their contractual obligations;
29. All Class members, regardless of their specific itinerary or reservation, have a common interest both in proving the commission of prohibited businesses practices by the Defendant and in obtaining a reimbursement of the amount of the resulting Lost Value;
30. Every member of the Class has suffered damages equivalent to the difference between the cost of repurchasing a "cancelled" vacation package and the advertised price of the initial "cancelled" vacation package;
31. By reason of Defendant's unlawful conduct, Mr. Chetrit and members of the Class have suffered damages, which they may collectively claim against Defendant;
32. All of the damages to the Class members are a direct and proximate result of Defendant's misconduct;
33. Mr. Chetrit is accordingly entitled to claim and does hereby claim from the Defendant the following as damages on behalf of each Class member:
 - a) Reimbursement of the aggregate amount of the Lost Value for each Class member (using the theory of averages applicable in class action recovery);
 - b) Punitive damages in the amount of \$100.00 per Class member.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the class action of the Plaintiff and any Class member against

Defendant;

2. **DECLARE** the Defendant liable for the damages suffered by the Plaintiff and each of the members of the Class;
3. **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;
4. **CONDEMN** the Defendant to pay to the members of the Class punitive damages in the amount of \$100 each, and **ORDER** collective recovery of these sums;
5. **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*;
6. **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;
7. **RENDER** any other order that this Honorable Court shall determine.

Montreal, June 28, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Me Joey Zukran

Attorney for Representative Plaintiff

SUMMONS
(ARTS. 145 AND FOLLOWING C.C.P.)

TO: SOCIÉTÉ EN COMMANDITE TOURAM
1440 Sainte Catherine Street West, suite 600
Montreal, Quebec, H3G 1R8

Filing of a judicial application

Take notice that the Representative Plaintiff has filed this Originating Application in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at **1, Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Representative Plaintiff's lawyer or, if the Representative Plaintiff is not represented, to the Representative Plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Representative Plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Representative Plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Originating Application, the Representative Plaintiff intends to use the following exhibits:

Exhibit P-1: Extract of the enterprise's information statements from the enterprise register (CIDREQ) for Société en commandite Touram;

Exhibit P-2: *En liasse*, copies of the email confirmation received by Mr. Chetrit from Defendant on April 20, 2016, at 6:25 a.m., along with invoice #1440162-1;

Exhibit P-3: Redacted copy of Mr. Chetrit's American Express statement for April 2016;

Exhibit P-4: *En liasse*, copies of the email sent by Defendant to Mr. Chetrit on April 21, 2016, with what appears to be a revised invoice bearing the #1440162-2;

Exhibit P-5: *En liasse*, copy of the email sent to Mr. Chetrit by Defendant, along with the 5 travel credits of \$100.00 each.

The exhibits in support of the application are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, June 28, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.
Me Joey Zukran
Attorney for Representative Plaintiff

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West, suite 600, Montreal, district of Montreal,
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Defendant

ORIGINATING APPLICATION
(Articles 141 and 583 C.C.P.)
Nature of Suit: Damages

ORIGINAL

Me Joey Zukran
LPC AVOCAT INC.
Avocats • Attorneys
5800 blvd. Cavendish, Suite 411
Montreal, Quebec, H4W 2T5
Telephone: (514) 379-1572 • Fax: (514) 221-4441
Email: jzukran@lpclex.com

BL 6059

N/D: JZ-152
