

Summary of the proposed class action Lachaine vs. Air Canada and als.

Here is a summary of the proposed class-action lawsuit filed by Montreal law firms *Perrier Avocats* and *Donati Maisonneuve* against major Canadian airlines, namely *Air Transat*, *Transat Tours Canada Inc.*, *Air Canada*, *Touram Limited Partnership*, *Sunwing Airlines inc.*, *Sunwing Vacations inc.*, *Westjet Airlines inc.* or *Westjet Vacations inc.* (collectively “**Defendants**”), following their refusal to reimburse consumers whose airline ticket or travel package had to be cancelled due to the covid-19 pandemic (“**members of the Group**”).

Please note that this summary has no legal value and only the documents filed in court have legal value. This summary is intended only to help the members to understand the legal process of this court case. This summary may not take into account any modifications or other proceedings file to the court.

Indeed, instead of reimbursing the price paid for plane tickets or travel packages as it should have been the case, Defendants offered consumers credit vouchers for future travel to be used according to a given specific deadline (i.e. two years from the cancellation). By doing so, the Defendants unilaterally modified the contracts entered into with consumers, thereby violating the provisions of the *Civil Code of Quebec* (“**C.c.Q.**”), and the rules of *common law* where applicable, which grant of restitution of the performances rendered under an agreement.

As such, we will argue that the Defendants, having failed to perform their legal obligation of honoring the plane tickets and travel packages had the obligation to reimburse their customers for the entire price paid for the purchase of air tickets and travel packages. Indeed, for each member of the Group, the date chosen for the travel package, the price and the destination were essential conditions in the conclusion of the contract to purchase a travel package. Therefore, by unilaterally deciding to keep the sums paid by the members of the Group, Defendants infringed the mandatory ruling which requires a reimbursement in such circumstances and caused additional damage to all the members of the Group who find themselves in one of the following situations:

- Those directly affected by the consequences of the covid-19 pandemic, having lost their jobs and facing hardship, thus needing the funds retained by the Defendants;
- Those who might not want to travel due to fear, whether justified or not, within the 24 months deadline imposed by the Defendants to use the credit vouchers;
- Those who will have to pay a higher price to take the same trip by the time they are able to use the credit voucher given the likely increase in prices or simply the fact that they will be forced to travel in high season, due to various factors such as a return from maternity leave or less flexible schedules, while the canceled trip was to take place during low season;
- Those who would have liked to travel on the wings of another air carrier, or take advantage of a more favorable travel dates or better prices for the next trip they wish to make;
- Those traveling with children under two, who therefore had paid a discounted fee, and who’s children will no longer be eligible for such rates by the time they are able to use the credit voucher as they are likely not to be able to travel in the short term due the additional costs that will have to be incurred by then, or as one might have more children by then and hence might not even be to travel again within the next two years;

- Those belonging to a group of at least two people for whom it may be difficult to organize a trip with those same people, who do not want to travel alone and who therefore might not even be interested in using the credit offered;

Damages for disturbances and inconveniences

As consumers, currently experiencing hardship, are being deprived of considerable sums of money belonging to them in the current context of an unprecedented health, social and economic crisis, each member of the Group is thereby entitled to claim damages for disturbances and inconveniences for the stress caused by the situation, the impossibility of having immediate access to the amount paid for a canceled trip as well as the steps taken to be fully reimbursed for the price paid for the plane ticket and the travel package, as the case may be, following the Defendants' unilateral decision to impose travel credit as opposed to a full reimbursement as provided for by the basic legal principle of restitution of performances.

Punitive damages

Taking into account the fact that Defendants acted in total violation of the law and failed to act in accordance with good faith principles by dispensing justice on their behalf and keeping the monies paid by powerless consumers facing difficult times, and by forcing them to do business with them within the next two years, each member of the Group is also entitled to claim exemplary damage.

Moreover, in the current social and economic context, it is despicable that air carriers can thus denigrate their legal obligations to the detriment of consumers, in an obvious attempt to cling onto cash that does not belong to them. By unlawfully unilaterally modifying a bilateral contract, the Defendants are thereby forcing consumers into an agreement they did not freely chose to enter into and this behavior must open the way to punitive damages on top of the aforementioned moral damages for disturbances and inconveniences.

Defendants' decision to impose a travel credit must be strictly penalized as the latter certainly count on the delays resulting from instituting proceedings in order to seek legal remedies, thereby forcing consumers to accept travel credit, or even to renounce to what is rightfully theirs and to take the the loss, which will obviously only benefit the air carriers. Since without considerable efforts on behalf of those involved in the legal sector, it is illusory to believe that a final judgment could be returned before the expiration of the two-year period imposed by Defendants, the latter's strategical approach ought to be sanctioned by the award of punitive damages in the amount of \$ 250 for each member of the Group.

Reimbursement of interest and additional compensation

Finally, each member of the Group is entitled to claim reimbursement of interest and additional compensation on the amount owed as of March 20, 2020, date on which the proposed class-action was brought before the Superior Court.

To sum it up, the remedies sought for consumers are to order Defendants to:

- fully reimburse the members of the Group the price paid for the purchase of air tickets or travel packages, with legal interest and the additional indemnity provided for in section 1619 C.C.Q. as of the date of service of the proposed class-action;

- pay to the members of the Group the additional sum of \$ 250 in moral damages for trouble and inconvenience, with legal interest and the additional indemnity provided for in section 1619 C.C.Q. as of the date of service of the proposed class-action;
- pay to the members of the Group the sum of \$250 as punitive damages, with interest at the legal rate increased by the additional indemnity provided for in article 1619 C.C.Q. as of the date of service of the proposed class-action;
- pay to the members of the Group the interest at the legal rate plus the additional indemnity provided for in article 1619 CCQ, calculated from the date when the member of the group should have been reimbursed on the date when he used the credit imposed for book a new flight or stay:
- allow members of the Group who have made a credit request to one of the defendants to cancel this request and allow them to request a full reimbursement instead.