

## COURT OF QUEBEC

« Small Claims Division »

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
« Civil Division »

No: 500-32-139671-137

DATE: June 15, 2015

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BY THE HONOURABLE DOMINIQUE GIBBENS, J.C.Q.

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**RACHEL SANELLI**

Plaintiff

v.

**SUNWING VACATIONS INC.**

Defendant

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### JUDGMENT

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[1] Rachel Sanelli claims \$3,000 in damages from Sunwing Vacations Inc. (« **Sunwing** ») after the departing flight of her one week all-inclusive vacation package was delayed by several hours.

[2] Sunwing claims that the delay was due to unforeseeable weather conditions and to the fault of a small group of passengers for whom it cannot be held liable.

### QUESTIONS IN ISSUE

[3] The case raises the following questions:

a) Is Sunwing responsible for the delayed flight?

b) If so, is Ms. Sanelli entitled to the amounts claimed?

### **FACTUAL CONTEXT**

[4] On May 16, 2013, Ms. Sanelli purchased through a travel agency a one week all-inclusive Sunwing vacation package to Varadero, Cuba at a cost of \$1,206.<sup>1</sup> She was scheduled to fly out of Montreal on July 19, 2013 at 9:30 p.m. and to land in Varadero, Cuba at 1:30 a.m. on July 20, 2013.

[5] When Ms. Sanelli arrived at the departure gate around 8:00 p.m. on July 19, 2013 she was advised that the flight was delayed because of bad weather conditions. The incoming plane had been diverted to Syracuse as a result of the weather and alternate plans were being made by Sunwing to fly the passengers to Varadero later that evening. No revised departure time was initially provided to the passengers.

[6] At approximately 10:30 p.m., the passengers were advised that a plane was being prepared for take off and that they would be leaving around 11:30 p.m. At this time, approximately 30 passengers were allowed to leave the waiting area to smoke, but they were instructed by Sunwing staff to return no later than 11:30 p.m. because the security gate closed at this time and they would not be allowed back into the waiting area afterwards.

[7] Nine or ten passengers did not return by 11:30 p.m. as instructed by Sunwing. When they tried to re-enter the waiting area shortly after 11:30 p.m., they found the security gate closed. Sunwing staff tried to get the security gate staff to reopen the gate to let the passengers through, but to no avail.

[8] According to Sunwing, the plane was ready to depart at 11:30 p.m.,<sup>2</sup> but because some of the passengers would not be boarding, Sunwing had to follow the security requirement of segregating the luggage of boarding and non-boarding passengers.

[9] This process could not be completed quickly enough for the plane to take off within the airport curfew and the flight attendant's maximum flight time. Passengers were therefore advised around 2:00 a.m. that the flight was rescheduled for 7:00 a.m. Passengers had to pick up their luggage and leave the waiting area, only to go through the check-in and security process again a few hours later prior to boarding.

[10] Ms. Sanelli finally flew out of Montreal at 6:51 a.m. on July 20, 2013 and she arrived at her destination resort mid-day.

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<sup>1</sup> Invoice of Voyages Cap Evasion, Exhibit P-4. This is the price for one of the two vacation packages purchased.

<sup>2</sup> As stated by Sunwing in a letter of August 2, 2012, Exhibit D-8.

[11] There were no subsequent problems during her stay, although Ms. Sanelli claims to have been inconvenienced and stressed by having to interact with the smokers responsible for the delay while at the resort.

## **ANALYSIS AND DECISION**

### **a) Is Sunwing responsible for the delayed flight?**

[12] It is uncontested that the initial delay to Ms. Sanelli's flight (from 9:30 p.m. to 11:30 p.m. when another plane was ready to take off<sup>3</sup>) was caused by weather conditions beyond Sunwing's control and for which Sunwing cannot be held responsible.<sup>4</sup>

[13] At issue is the delay beyond 11:30 p.m., for which Ms. Sanelli blames Sunwing. She argues that Sunwing was negligent in allowing passengers to leave the waiting area at 10:30 p.m. and that it was this decision that resulted in her flight being delayed until the next morning.

[14] It should be noted that travel agents and wholesalers are allowed some flexibility regarding departure and arrival times. The Court of Appeal, for instance, has stated that delays in flight transportation are frequent and do not all constitute a breach of contract giving rise to liability.<sup>5</sup>

[15] In fact, this Court has recognized that the obligation to respect scheduled departure or arrival times is an obligation of means or best efforts and that a travel agent or wholesaler will not be liable where it shows that it acted prudently and diligently and made all reasonable efforts to respect the schedule.<sup>6</sup>

[16] Applying these principles to the facts in issue, the Court is of the opinion that Sunwing did not act prudently and diligently and did not make all reasonable efforts to respect Ms. Sanelli's scheduled flight.

[17] Indeed, the Court finds that it was imprudent to allow a group of passengers to leave the waiting area at 10:30 p.m., so close to the estimated departure time of 11:30 p.m., more particularly given the imminent close of the security gate. The prudent solution would have been to advise the passengers that they had to remain in the waiting area until take off at 11:30 p.m.

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<sup>3</sup> As stated by Sunwing in a letter of August 2, 2012, Exhibit D-8.

<sup>4</sup> Exhibits P-3, D-5, D-6 and D-7.

<sup>5</sup> *Lambert c. La Minerve du Canada, Compagnie de transport aérien inc.*, 1998 CanLII 12973 (QC CA), p. 14-15 of the opinion of Justice Baudouin.

<sup>6</sup> *Pelletier c. Tours Mont-Royal inc.*, J.E. 96-1801 (C.Q.); *Gosselin c. 102150 Canada inc.*, J.E. 96-730 (C.Q.).

[18] The Court also disagrees with Sunwing's argument that the delay was due to the conduct of the passengers and that this was outside of its control. Until Sunwing made the decision to allow the smokers to leave the waiting area at 10:30 p.m., all passengers were under Sunwing's control. Were it not for Sunwing's decision to allow them to leave the waiting area, the evidence shows that the flight would have departed shortly after 11:30 p.m.

**b) If so, is Ms. Sanelli entitled to the amounts claimed?**

[19] Ms. Sanelli's claim of \$3,000 in compensatory, punitive and exemplary damages is exaggerated. She paid \$1,206 for her vacation package and apart from the initial delay, she received the expected air transportation, accommodation, food and activities at the resort.

[20] The law entitles Ms. Sanelli to compensation for the direct and immediate consequences of Sunwing's fault.<sup>7</sup> She has proven that she lost a half-day of her 7 day vacation, as she was scheduled to land in Varadero, Cuba in the middle of the night in any event. She also had to spend the night in the airport and retrieve and re-check her luggage. For this, the Court finds that \$200 is adequate compensation.

[21] Finally, this is not a case justifying punitive or exemplary damages.

[22] The Court will grant interest on the compensatory damages from the date of the application only, because Ms. Sanelli did not put Sunwing in default prior to its filing.

**FOR THESE REASONS, THE COURT:**

**GRANTS** the action in part;

**CONDEMNS** defendant Sunwing Vacations Inc. to pay to plaintiff Rachel Sanelli the amount of \$200, together with interest and the additional indemnity provided by article 1619 of the *Civil Code of Québec* from August 22, 2013;

**WITH COSTS** in the amount of \$136 representing the judicial stamp of the Application.

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**DOMINIQUE GIBBENS, J.Q.C.**

Date of hearing: March 2, 2015

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<sup>7</sup> Articles 1607 and 1611 of the *Civil Code of Québec*.