

C A N A D A

S U P E R I O R C O U R T
(Class Action Division)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000754-156

STEVE ABIHSIRA

Petitioner

v.

STUBHUB, INC. et al.

Respondents

APPLICATION OF RESPONDENT VIVID SEATS, LLC
FOR AUTHORIZATION TO EXAMINE THE PETITIONER
(Article 574 of the *Code of Civil Procedure*)

TO THE HONOURABLE KIRKLAND CASGRAIN, s.c.J, DESIGNATED JUDGE IN THIS INSTANCE, SITTING IN AND FOR THE CLASS ACTION DIVISION OF THE DISTRICT OF MONTREAL, THE RESPONDENT VIVID SEATS, LLC RESPECTFULLY SUBMITS THE FOLLOWING:

A. INTRODUCTION

1. Respondent Vivid Seats, LLC ("**Vivid Seats**") is seeking the authorization to examine the Petitioner Steve Abihsira in relation to the 2nd *Re-Amended Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative* (the "**Motion**") and to file into the Court record the transcript of said examination as well as supporting exhibits or responses to undertakings, if any;
2. Vivid Seats submits that the examination of the Petitioner is necessary and will allow the Court to conduct an efficient verification as to whether the criteria of Article 575 of the *Code of Civil Procedure* ("**CCP**") are met in this case;

B. DESCRIPTION OF THE PROPOSED CLASS ACTION

3. On or about June 23, 2016, the Petitioner notified the Motion against, *inter alia*, Vivid Seats in respect of the following purported class:

Group:

Every consumer, pursuant to the terms of Quebec's Consumer Protection Act ("**CPA**"), who since August 28th, 2012 (the "**Class Period**"), has purchased from any of the Respondents at least one "**Ticket**" (as defined in section 236.1 *CPA* as meaning any

document or instrument that upon presentation gives the ticket holder a right of entry to a show, sporting event, cultural event, exhibition or any other kind of entertainment);
(hereinafter referred to as the "**Group**")

Subgroup 1:

Every consumer, pursuant to the terms of the *CPA*, residing in Quebec at the time of the purchase, who since August 28th, 2012, while physically located in Quebec, has purchased from any of the Respondents at least one "**Ticket**" giving the holder thereof a right of entry to an event in Quebec and/or outside of Quebec, at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event, and
this after Bill n°25: *An Act to prohibit the resale of tickets at a price above that authorized by the producer of the event* ("**Bill n°25**") came into force on June 7, 2012;
(hereinafter referred to as "**Subgroup 1**")

Subgroup 2:

Every consumer, pursuant to the terms of the *CPA*, residing in Quebec at the time of the purchase, who since August 28th, 2012, while physically located outside of Quebec, has purchased from any of the Respondents at least one "**Ticket**" giving the holder thereof a right of entry to an event in Quebec, at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event, and this after **Bill n°25**
came into force;
(hereinafter referred to as "**Subgroup 2**")

Subgroup 3:

Every consumer, pursuant to the terms *CPA*, non-resident of Quebec at the time of purchase, who since August 28th, 2012, while located in the province of Quebec, has purchased from any of the Respondents at least one "**Ticket**", giving the holder
thereof a right of entry to an event in Quebec and/or outside of Quebec, at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event, and this after **Bill n°25** came into force;
(hereinafter referred to as "**Subgroup 3**")

Subgroup 4:

Every consumer, pursuant to the *CPA*, non-resident of Quebec at the time of purchase, who since August 28th, 2012, while outside of the province of Quebec, has purchased from any of the Respondents at least one "**Ticket**", giving the holder thereof a right of entry to an event in Quebec, at a price above that announced by the vendor authorized to sell the Tickets by the producer of the event, and this after **Bill n°25** came into force;
(hereinafter referred to as "**Subgroup 4**")

Subgroup 5:

All current and former residents of Canada (subsidiarily Quebec), as well as non-residents, who since August 28th, 2012, while in Canada (subsidiarily Quebec) purchased a "**Ticket**" from any of the Respondents and who paid a price higher than the
price advertised by Respondents on their respective websites and/or mobile applications (at the first step), excluding the Québec sales tax or the Goods and Services Tax;
(hereinafter referred to as "**Subgroup 5**")

or any other group to be determined by the Court;

the whole as appears from paragraph 1 of the Motion;

4. In the Motion, the Petitioner is alleging, *inter alia*, that Vivid Seats and the other Respondents violated section 236.1 of the *Quebec Consumer Protection Act* (the "CPA") by selling tickets for events held in the province of Quebec and elsewhere around the world at a price above that announced by the vendor authorized to sell said tickets by the producer of the event (above "Face Value") without prior authorization from the producer, as appears from paragraphs 11 to 31.2 of the Motion;
5. In the Motion, the Petitioner is also alleging, *inter alia*, that Vivid Seats and the other Respondents violated section 224 of the CPA and sections 52 and 74.05 of the *Competition Act* by selling tickets for events held in the province of Quebec and elsewhere around the world at a price higher than the advertised price, as appears from paragraphs 32 to 32.14 of the Motion.
6. As a result, the Petitioner is claiming for himself and each member of the purported class compensatory and punitive damages, as appears from paragraph 46 of the Motion;

C. THE NECESSITY OF THE EXAMINATION OF THE PETITIONER

7. Vivid Seats submits that the Motion contains allegations that are vague, incomplete, or imprecise, that do not allow for a full and complete comprehension of the proposed class action;
8. More specifically, the allegations found in paragraphs 15, 22.1, 32.14, 44, 45.6, 46.5, 48.3, 56.1, 57, 65.6, 66, 66.1, 66.2, 68,69, 72, and 72.1 dealing with the Respondents' alleged fault, the cause of action, the damages suffered, and the Petitioner's capacity to properly represent the class members are either vague, incomplete, or imprecise;
9. It is necessary to examine the Petitioner at this stage, prior to the authorization hearing, in order to obtain additional information with respect to the allegations raised in the Motion and to ascertain whether there is a cause of action against Vivid Seats and the other Respondents and whether the Petitioner is in a position to properly represent the class members;
10. The examination of the Petitioner that Vivid Seats wishes to conduct seeks to provide this Court with necessary and relevant information with respect to the following:
 - a) The nature and existence of damages and the calculation method proposed, as well as clarification regarding the differences between the various conclusions sought;
 - b) The Petitioner's capacity to act as class representative, notably his capacity to participate in these legal proceedings and the absence of any conflict of interest;
 - c) The nature and extent of the enquiry conducted by the Petitioner before instituting the Motion;
 - d) The steps undertaken by Petitioner to contact Respondents;

- e) The circumstances under which Petitioner agreed to act as Representative, as well as the investigative procedures undertaken and the efforts made to identify and communicate with group members.
11. The necessity and appropriateness of the examination of the Petitioner with respect to Article 575 CCP is briefly described as follows:
- 1. The criterion of Article 575 (2)**
12. The examination of the Petitioner will assist this Court in determining on a *prima facie* basis :
- a) Whether the petitioner has a cause of action;
 - b) Whether the “facts” alleged justify the conclusions sought;
- 2. The criterion of Article 575 (3)**
13. The examination of the Petitioner will assist this Court in determining on a *prima facie* basis:
- a) Whether the Petitioner conducted any inquiry before the institution of the Motion;
 - b) Whether the Petitioner has information on the size and characteristics of the purported class;
 - c) Whether the Petitioner communicated or attempted to communicate with other purported class members before the institution of the Motion
- 3. The criterion of Article 575 (4)**
14. The examination of the Petitioner will assist this Court in determining on a *prima facie* basis:
- a) Whether the Petitioner has sufficient personal interest in the matter;
 - b) Whether the Petitioner has the capacity to act as the class representative;
 - c) Whether the Petitioner has sufficient competence to adequately represent the class;
 - d) Whether there exists a conflict of interest with other class members.
15. Vivid Seats believes that the examination of the Petitioner regarding the above-mentioned items would not exceed two hours;
16. Vivid Seats suggests that the requested examination of the Petitioner be held out of Court, prior to the hearing of the Motion;
17. Vivid Seats further submits that the examination of the Petitioner will not cause a delay in the proceedings;

D. CONCLUSION

18. Vivid Seats submits that the evidence it seeks to submit through the examination of the Petitioner is necessary, relevant and appropriate;
19. Without going into the merits of the case, such examination will be necessary for the Court in conducting an efficient verification of the criteria of Article 575 CCP in a judicious manner, and will shed light on some of the allegations of the Motion which are vague, incomplete or imprecise;
20. The evidence sought to be submitted by Vivid Seats also satisfies the principle of proportionality and the requirements of Articles 18 and 19 CCP;
21. It is in the interest of the parties and the interests of justice that the evidence sought to be submitted be authorized by this Court;
22. The foregoing is respectfully submitted for the sole purpose of this Motion for Authorization to Examine the Petitioner, without prejudice to the defences and recourses of Vivid Seats and without the waiver of any privilege to which it may be entitled at law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application for Authorization to Examine the Petitioner;

AUTHORIZE the Respondent Vivid Seats to examine the Petitioner Steve Abihira out of Court before hearing of the Petitioner's 2nd Re-Amended Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative at a time and under the conditions it may judge appropriate to impose; and

AUTHORIZE the filing in the Court record the transcripts of this examination, as well as supporting exhibits or responses to undertakings, if any;

THE WHOLE, without costs, unless the present application is contested.

Montreal, August 26, 2016



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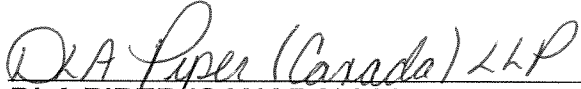
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TAKE NOTICE that the Application for Authorization to Examine the Petitioner of Vivid Seats, LLC will be presented for adjudication before this Honourable Court, at a date, time and place to be determined by the Honourable Kirkland Casgrain, s.c.j., at the Montreal Courthouse located at 1, Notre-Dame Street East, Montreal (Quebec) H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, August 26, 2016



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ORIGINAL

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