

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2004/0465

BETWEEN

LUIS JARVIS

Trading as L & J Production

AND

AMERICAN EAGLE AIRLINES INC.

Appearances:

Mr. Steadroy Benjamin and Mr. Damien Benjamin Jr. for the Claimant
Ms. Veronica Thomas for the Defendant

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2008: December 8

December 18
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JUDGMENT

- [1] **Blenman J:** Mr. Luis Jarvis, who trades as L & J Productions of Jolly Harbour, St. Mary's Antigua, claims against American Eagle Airlines Inc (American Eagle) of V. C. Bird International Airport, St. George's Antigua, damages for breach of contract of carriage; he also seeks \$84,611.00 as liquidated damages for actual loss and loss of profits he allegedly suffered on the 18th July 1999, together with interests.

[2] American Eagle disputes that it had any contract of carriage with Mr. Jarvis. Alternatively, it says that if there was such a contract, it has in no way breached the contract of carriage.

[3] Finally, American Eagle says that in any event, Mr. Jarvis' claim is statute barred.

[4] **Background**

Mr. Jarvis claims that he was the producer of shows and musical events in Antigua and Barbuda under the style and title of L & J Productions. It is undisputed that American Eagle carries on the business of an airline operator in and out of Antigua. He says that he was a customer of American Eagle. Mr. Jarvis contends that in the month of July 1999, American Eagle, through its servant or agent Regal Travel, contracted with him to transport, by air for reward on American Eagle, 11 members of a Puerto Rican Musical Band to Antigua on the 18th July 1999. He contends that he purchased the 11 airline tickets and an electronic printout confirming the sale and/or purchase of the tickets was produced evidencing the following facts: A. Fare - Price Retained/History, B. Ticket Record -Stored – Fared – CHGD, C. AA Facts, D. Remarks.

[5] He says that at the time of the ticket purchase he made it plain and known to American Eagle's servant and/or agent that it was essential that the 11 band members' journey to Antigua on the 18th July, 1999 with a scheduled arrival time of 1:40 pm, since the band was scheduled to perform at a musical show sponsored and organized by him. He says that American Eagle knew that, failing a break down of the aircraft or an act of God, if the band members did not travel on the scheduled flight that he would suffer loss and damage. Alternatively, it was an implied term of the agreement that priority ought and should be given to the 11 band members, who had been confirmed on the scheduled flight to Antigua on the 18th July, 1999.

- [6] Mr. Jarvis says that on the 18th July, 1999 all 11 band members arrived at the check-in counter of American Eagle in Puerto Rico on time to be booked and placed on the scheduled flight to Antigua and in breach of the agreement, American Eagle's employees, agents and/or ticket and check-in agents informed the band members that the flight was over booked. No band member was put on that flight. Further, Mr. Jarvis says that by reason of the breach and delay he has suffered loss and damage and he claims \$84,611.00; damages; interest; further and/or other relief; legal practitioners' costs.
- [7] American Eagle in its defence says that Mr. Jarvis was never its customer and it can confirm that it has no record that he was at any material time a customer of the airline.
- [8] Further, American Eagle says that there was a group booking of 14 holding confirmed space on its flight 5544 for 18th July, 1999 from San Juan to Antigua, it however denies that Mr. Jarvis had purchased tickets for the 11 band members. Further, it denies that the electronic printout confirms the sale and/or purchase of the tickets by Mr. Jarvis or is evidence of any contractual relationship between Mr. Jarvis and American Eagle.
- [9] Accordingly, American Eagle denies the existence of any contract of carriage with Mr. Jarvis or any breach thereof. It strenuously denies that he has suffered any loss or damage as alleged.
- [10] Further, it disputes Mr. Jarvis' claim as set out in the amended statement of claim on the grounds that the standard terms and conditions of its carriage by air upon which, at all time, it agrees to undertake the carriage of passengers, and/or where they may be found, are printed on the travel itinerary, passenger ticket and ticket jacket and is otherwise available at all airport locations. The terms and conditions are also available on its website. The standard terms and conditions of carriage are by express agreement and/or necessary implication the only terms and conditions of the contract of carriage between Mr. Jarvis and American Eagle, if any. At all times, the standard

terms and conditions upon which it agreed with Mr. Jarvis, if at all, to perform the contract of carriage, including the condition relating to sales, were known to him. It is an expressed condition of every contract of carriage with American Eagle that any legal action premised on or related to damage, delay or loss must be commenced within two years of the date of the incident alleged. Accordingly, Mr. Jarvis is unable to maintain his action against American Eagle. Therefore, American Eagle maintains that Mr. Jarvis' action is statute barred, the relevant limitation period having expired on or about the 17th day of July, 2001. In support of its defence, American Eagle relies on the provisions of Article 19 of the 1929 Warsaw Convention as ratified by the Carriage by Air Order 1953.

[11] Issues

The issues that arise for the Court to resolve are as follows:

- (a) Whether Mr. Jarvis had a contract of carriage with American Eagle;
- (b) If the answer to (a) is in the affirmative, whether American Eagle has breached the contract;
- (c) Whether Mr. Jarvis is entitled to recover any damages;
- (d) Alternatively, whether Mr. Jarvis' claim is statute barred, due to the relevant limitation period having expired.

[12] Evidence

Mr. Luis Jarvis presented evidence on his behalf and was cross examined. Ms. Cathy-Ann Edwards, Country Manager of American Eagle testified and she was cross examined.

[13] **Mr. Steadroy Benjamin's submissions**

Learned Counsel Mr. Benjamin stated that the facts establish clearly that Mr. Jarvis was a customer of American Eagle. There is no doubt that a reservation was made for a group travel of 11 persons to travel from Puerto Rico to Antigua. Mr. Benjamin said that during cross examination Mr. Jarvis indicated that he had paid for the tickets by his American Express Credit Card and pointed the Court to item 14 on the electronic print out. Even though he appeared to be confused during cross examination on this point, he did in re-examination restate that the price for the tickets was charged on his credit card. This fact is supported by the indication on the electronic print out the area marked Ticket Record-Stored-Fared- CHGD.

[14] Mr. Benjamin learned Counsel said that Mr. Jarvis indicated and it was not contradicted that this was the receipt and record he received from Regal Travel, which showed the reservation made and the fact that the tickets had been paid for. The fact that Mr. Jarvis was given the electronic printout establishes the fact, in light of the foregoing, that he dealt with this matter personally. Mr. Benjamin said the fact that Mr. Jarvis travelled to the V.C Bird International Airport at about 10:00 pm on the night of the 18th July, 1999 to pick up Richard Cruz (a band member) together with another band member, is indicative of the fact that Mr. Jarvis had contact with the group which was to have travelled on the earlier Flight AA 5544, and also with the two band members who had travelled on this later flight.

[15] Accordingly, learned Counsel Mr. Benjamin stated that on a balance of probabilities the Court should conclude that Mr. Jarvis was a customer of the American Eagle, with respect to this transaction. Mr. Benjamin stated that the facts of this case clearly establish that there was non-performance by American Eagle of the contract of carriage entered into by the parties. Further, the carriage from Puerto Rico to Antigua was a single contract and not divisible. The evidence revealed that only two band members out of a total of 11 were transported by American Eagle to Antigua on the 18th July, 1999. In those circumstances, can one conclude that there was partial performance of the contract when 11 members of the musical band were due to perform in Antigua

at a scheduled event at 6:00 pm that day, asked Mr. Benjamin. Further, those two band members who arrived in Antigua at 10:30 pm, some 4 hours after the scheduled start of the programme, can that be considered partial performance of this particular contract? Mr. Benjamin submitted that the answer must be in the negative.

[16] Next, learned Counsel Mr. Benjamin said that Article 19 of the Convention provides that a carrier is liable for damages occasioned by delay in the carriage by air of passengers, luggage or goods. He acknowledged that Article 29 that right to damages “shall be extinguished” if an action is not brought within two years reckoned from the date of arrival at the destination. Learned Counsel Mr. Benjamin however, referred the Court to **Wolgel v Mexican Airlines [1987] US App. Lexis 8033** Circuit Judge Flaum, in giving the opinion of the United States Court of Appeal for the seventh circuit noted that at the Second Diplomatic Conference on Private Aeronautical Law held in 1929 the Italian delegate in commenting on Article 21, the predecessor of Article 19, said that the article did not provide a remedy for non-performance.

[17] Mr. Benjamin stated that the evidence in the case at bar leads to a clear conclusion that there was a non performance of the contract by American Eagle and therefore Article 19 does not apply, see **Wolgel v Mexican Airlines** *ibid*, as it does not provide a remedy for non-performance, Mr. Jarvis is entitled to his loss and damages as claimed.

[18] Finally, Mr. Benjamin learned Counsel argued that Mr. Jarvis’ claim is not statute barred.

[19] **Ms. Veronica Thomas submissions**

Learned Counsel Ms. Thomas said that although Mr. Jarvis gave evidence that he carried on promotions for approximately two months prior to the event by way of brochures, pamphlets and even sold tickets, he has failed to produce any evidence of this. Learned Counsel Ms. Thomas

argued that he has therefore failed to discharge the evidential burden of proving that he had sponsored and promoted a show scheduled for 6:00 pm on 18th July, 1999.

[20] Next, Ms. Thomas said that Mr. Jarvis relied on the electronic printout as evidence that he had purchased the 11 tickets. However, he was forced to acknowledge during cross examination that neither his name nor the name of his business appeared on the electronic print out and in fact, there was no reference to him anywhere on the document. Further, Mr. Jarvis acknowledged that the number which he claims is his American Express number could be any number as his name does not appear next to it. It was further revealed by Mr. Jarvis that he had many other persons working with him at the time and he could have asked someone to purchase the tickets for him. Contrary to the evidence given in his witness statement, this evidence given during cross examination takes Mr. Jarvis completely out of the transaction, which he alleges took place between him and the sales agent and opens the possibility that someone other than himself could have made the bookings and paid for the tickets. Moreover, Mr. Jarvis, by failing to provide a credit card statement or any other evidence to corroborate his statement that the American Express number is his credit card number, has failed to discharge the evidential burden placed on him to satisfy the Court, on a balance of probabilities, that he was the one who purchased those 11 tickets.

[21] In view of the foregoing, learned Counsel Ms. Thomas submitted that Mr. Jarvis has failed to prove, on a balance of probabilities, the existence of any contract between himself and American Eagle for the carriage of the 11 band members from Puerto Rico to Antigua on 18th July, 1999, or at all. Counsel therefore argued that the claim should be dismissed with costs to American Eagle.

[22] Further, learned Counsel Ms. Thomas said that there is no evidence before the Court on which a finding of breach of contract by American Eagle can be made. Mr. Jarvis' own evidence on cross examination is that he was in Antigua on the 18th July, 1999. He acknowledged that he cannot say

anything about what may have happened in Puerto Rico on that day. He cannot say if any of the band members had presented themselves at the check-in counter as alleged.

[23] Alternatively, learned Counsel Ms. Thomas stated that in the event the Court finds that there was a contract of carriage between Mr. Jarvis and American Eagle, the standard terms and conditions formed a part of that contract. Counsel maintained that the standard terms and conditions of carriage are by express agreement and/or necessary implication the only terms and conditions of the contract of carriage. At all times, the standard terms and conditions upon which American Eagle agreed with Mr. Jarvis to perform the contract of carriage were known to Mr. Jarvis. This is borne out in the witness statement of Ms. Cathy Ann Edwards which states that “no agent, employee or representative of American Eagle has authority to alter, modify or waive any provision of the conditions of carriage without written authorization by a corporate officer of the airline. Her further evidence is that she found no record that any such written authorization was granted in this case. A copy of American Eagle’s standard conditions of carriage appears in the bundle of documentary exhibits and was admitted into evidence with the consent of the parties. Learned Counsel Ms. Thomas said that the standard condition stated that “it is an express condition of the contract of carriage with the claimant that any legal action premised on or related to damage, delay or loss must be commenced within two years of the date of the incident alleged”. By agreement between the parties, therefore, Mr. Jarvis is unable to maintain this action against American Eagle.

[24] Learned Counsel Ms. Thomas said that Mr. Jarvis, whose claim is for the liquidated sum of \$84,611.00, was unable to produce any evidence by way of receipts or otherwise in support of his claim for loss or damage. It is settled law that special damages must be specifically pleaded and proven in order to be recovered. Mr. Jarvis has failed to prove his entitlement to recover the sum of \$84,611.000 or any portion thereof. His claim ought to be dismissed with costs.

[25] **Court's analysis and conclusions**

This is a civil case and he who asserts must prove. This is known as the burden of proof. It is the law that the standard of proof is on the balance of probabilities. I have had the privilege to observe and listen to Mr. Jarvis, particularly when he testified during cross examination. I am in total agreement with Ms. Thomas that he was a most unreliable and incredible witness. There is no doubt that he was uncomfortable with most of the evidence that he had given in his witness statement. In fact, during intense cross examination, he was forced to resile from earlier positions that he had taken. Initially, he had said that he paid for the ticket using his credit card. He later changed his story to say that someone else could have paid for the tickets on his behalf, utilizing his credit card. It is passing strange that Mr. Jarvis had no other information about the alleged purchase of the ticket or the manner of purchase. The credit card was not produced in evidence neither was any effort made to substantiate the claim of the purchase by a credit card.

[26] To say the least, I find it particularly curious that even though he is aware that the crux of his case is whether there existed a contract of carriage between himself and American Eagle, yet he has not seen it fit to produce an iota of documentary evidence to corroborate his position. Mr. Jarvis would have the Court believe that the credit card that was used to effect the payment belonged to him and that he still had it in his possession, at home. One would have expected him, at least, to have provided a copy of the credit card statement or some other documentary evidence in the hope of proving his claim. What is of greater concern is that Mr. Jarvis, on whom the evidential burden rests, did not see it fit to even summon an employee for Regal Travel to adduce evidence in support of his contention that he had purchased the 11 airline tickets for travel on the American Eagle flight. He quite confidently said that it is possible to obtain that information, yet he has not called any of the employees of the travel agent as witnesses on his behalf.

[27] While it is clear that there was a print out of the flight information, I am far from persuaded that the print out represents a purchase of tickets either by charge or credit. There is no credible evidence that either Mr. Jarvis or anyone on his behalf paid for the seats for the 11 band members on the

American Eagle flight. There is no evidence before me on which I can properly conclude that Mr. Jarvis purchased any tickets for the 11 band members to travel on the American Eagle flight. I hold the view that there simply was no contract between the parties. If such an agreement had been reached, there would have been some written document to that effect; or at least, the Court would have been able to so infer from the facts of the case.

[28] In any event, the electronic printout on which he relies cannot assist him in proving his claim. By way of emphasis, I state that it neither states his name or his business name; further it does not evidence that he or anyone on his behalf paid for the ticket. In a word, Mr. Jarvis did not paint a very good picture. His evidence was neither consistent nor candid. He is not a witness of truth. There was not a scintilla of evidence presented to the Court on which it could be concluded that a contract of carriage existed between Mr. Jarvis and the American Eagle. In order to establish the existence of a contract there must be credible evidence of an offer and an acceptance of that offer. See **Gibson v Manchester City Council [1979] 1 All ER 972**. An offer is an expression of willingness to contract on specified terms requiring acceptance for a binding agreement to be formed.

[29] I am therefore in total agreement with Ms. Thomas that Mr. Jarvis has failed to reach the threshold of the evidential standard required of him to establish that there was a contract of carriage between himself and the American Eagle. He therefore cannot sustain his claim for breach of the contract of carriage against American Eagle.

[30] I am fortified in my position and it is the law that consideration is an essential ingredient of a contract. Consideration is said to exist where there is proof of a benefit and/or a detriment; **Thomas v Thomas [1842] 2 QB 851**. There is no evidence of this.

[31] In view of the above conclusion, it is unnecessary for me to address the other issues identified above.

[32] Based on the totality of circumstances, Mr. Jarvis has failed to prove his claim against American Eagle.

[33] **Conclusion**

It is hereby ordered that Mr. Luis Jarvis' claim against American Eagle Airlines Inc is dismissed with prescribed costs, unless otherwise agreed.

[35] I thank both learned Counsel for their assistance.

High Court Judge
Louise Esther Blenman