

AMERICAN AIRLINES, INC. § IN THE DISTRICT COURT
 §
 § TARRANT COUNTY, TEXAS
V. §
 §
JACQUES E. VROOM, JR. § 348th JUDICIAL DISTRICT

DEFENDANT’S FIRST AMENDED COUNTERCLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Defendant, JACQUES E. VROOM, JR., hereinafter referred to as “Counter-Plaintiff” and files this his First Amended Counterclaim against AMERICAN AIRLINES, INC., hereinafter referred to as “Counter-Defendant” or “AA”, and for cause of action would show the Court as follows:

I.
FACTS

1. On December 28, 1989, Defendant Jacques Vroom purchased an AAirpass from Plaintiff American Airlines, Inc. for \$356,000.00. The terms of the AAirpass Agreement (Section 3.d) gave Mr. Vroom:

Unlimited Mileage Lifetime With Companion. Unlimited mileage in any class of service, including First Class, for Holder’s lifetime and will entitle Holder to take along one accompanying companion of any age per flight; may be purchased and used at any age.

In other words, the AAirpass gave Mr. Vroom the right to fly on American Airlines at any time, to any destination, with one companion of his choosing for the rest of his life. Over the next 18 plus years, Mr. Vroom used his AAirpass frequently to fly himself, family members, friends and other persons to various destinations around the world.

2. In July 2008, Mr. Vroom had flown to London, England with a companion using his AAirpass. On July 30, 2008, he was at Heathrow Airport in London, England preparing to board a plane to return to Dallas, when he was approached by American Airlines' security personnel. The American Airlines' personnel handed Vroom a letter stating that his AAirpass was terminated effective immediately, and that all of his reservations on American Airlines had been canceled. Mr. Vroom was forced by Plaintiff's action to purchase a ticket from another airline to return home to Dallas.

3. The termination letter stated that the reason for American Airlines' termination of his AAirpass agreement was due to Mr. Vroom's alleged sale or barter of his companion seat. The letter alleged that any sale or barter of the companion seat violated American's Rules Tariff.

4. Mr. Vroom denies that he violated the agreement by selling or bartering the AAirpass. Any alleged sale or barter of the companion seat did not violate the agreement he signed with AA. Mr. Vroom purchased the AAirpass and entered into the AAirpass Agreement on or about December 28, 1989. The 1989 AAirpass Agreement contains the following provision:

Any amendment or supplement to this Agreement must be in writing and executed by both parties.

There is nothing in the body of the agreement prohibiting the sale or barter of the AAirpass companion set. There was no AA Tariff Rule on December 28, 1989, nor any other applicable AA rule or regulation on that date, that prohibited the sale or barter of the AAirpass companion seat.

5. The "Tariff Rule" upon which the termination was purportedly based is part of American Airlines' 1993 revision of Tariff Rule 744, and states in part:

Companion travel may not be sold or bartered under any circumstances.

However, this part of Rule 744 was issued on February 26, 1993, and did not go into effect until April 27, 1993, over three years after Mr. Vroom bought the AAirpass and entered into the agreement.

6. When Mr. Vroom entered into the AAirpass Agreement, the agreement said nothing about prohibiting the sale or barter of the companion seat, and there is no evidence that any American Airlines Tariff Rule barred selling or bartering companion seats at the time Mr. Vroom bought the AAirpass. AA never contacted or notified Mr. Vroom about any proposed amendment to the contract relating to the sale or barter of companion seats, nor did it seek his consent to modify the AAirpass agreement to prohibit the sale or barter of the companion seat. Mr. Vroom never signed nor agreed to any amendment or supplement to the AAirpass Agreement relating to the prohibition of the sale or barter of the companion seat.

7. In violation of the AAirpass Agreement, AA has refused and continues to refuse to honor the agreement and allow Mr. Vroom and his companion to fly on AA flights using Mr. Vroom's AAirpass, and has failed to provide adequate assurance of performance.

II. **BREACH OF CONTRACT**

8. It is Mr. Vroom's position that AA had to obtain his written consent to amend the AAirpass agreement to prohibit the sale or barter of the companion seat. Mr. Vroom was never requested by AA to provide such consent, nor did he ever provide such consent. Alternatively, the agreement is ambiguous as to whether AA had to obtain Mr. Vroom's consent, and because AA drafted the AAirpass agreement, it should be strictly construed against AA. The agreement should be construed by the fact finder to mean that AA had to have Mr. Vroom's written consent to amend

the AAirpass agreement to prohibit the sale or barter of the companion seat. Without such written consent, the agreement did not prohibit the sale or barter of the companion seat.

9. AA breached the AAirpass agreement by terminating Mr. Vroom's Airpass, and by refusing to allow Mr. Vroom to fly on AA flights using the Airpass. Said breach has proximately caused Mr. Vroom to suffer damages.

10. Alternatively, Mr. Vroom seeks the remedy of specific performance, and requests a judgment requiring AA to honor its obligations under the AAirpass and return the AAirpass to him, and permit Mr. Vroom to fly with a companion using the AAirpass on AA flights pursuant to the terms of the AAirpass agreement.

11. With regard to Mr. Vroom's claim for breach of contract, all conditions precedent have been performed or have occurred.

IV. **FRAUDULENT INDUCEMENT**

12. The representations, acts, conduct and omissions of Counter-Defendant AMERICAN AIRLINES, INC, as described above, and relied upon by Counter-Plaintiff to his detriment, were made by AMERICAN AIRLINES to induce Counter-Plaintiff to enter said Agreement, and but for said representations, acts, conduct and omissions of Counter-Defendant, Counter-Plaintiff would not have entered into said agreement, and/or would not have engaged in conduct that has been alleged by Counter-Defendant as a breach of said agreement.

V. **VIOLATIONS OF DECEPTIVE TRADE PRACTICES ACT**

13. Counter-Plaintiff is a consumer under the Deceptive Trade Practices Act "DTPA" and

Counter-Defendant is a corporation that can be sued under the DTPA;

14. Counter-Defendant violated the DTPA when it engaged in false, misleading, or deceptive acts or practices involving all aspects of the advertisement, sale and delivery of the air-travel related services in question, and which Counter-Plaintiff relied on to Counter-Plaintiff's detriment.

15. The representations, acts, conduct, and omissions of Counter-Defendant AMERICAN AIRLINES, INC. as described above, and relied upon by Counter-Plaintiff to his detriment, constitute unfair methods of competition and unfair and deceptive acts or practices under the Texas Deceptive Trade Practices Act. Said acts and conduct of Counter-Defendant were done knowingly which entitles Counter-Plaintiff to recover treble damages under Texas Business & Commerce Code section 17.50(b)(1). The statutory violations have caused Counter-Plaintiff damage as a direct, proximate, producing cause and responsibility thereof in an amount in excess of the minimum jurisdictional limits of this Court.

16. Counter-Plaintiff is entitled to recover reasonable and necessary attorney fees for prosecuting this suit under Texas Business & Commerce Code section 17.50(d).

VI. **INJUNCTIVE RELIEF**

17. Counter-Plaintiff seeks injunctive relief under the Deceptive Trade Practices Act to enjoin Counter-Defendant AMERICAN AIRLINES, INC. from preventing Counter-Plaintiff from using the AAirpass in issue.

VII.
DEFAMATION

18. As a direct and proximate result of Counter-Defendant AMERICAN AIRLINES, INC.'s defamation, including false, discrediting and slanderous statements referred to above, Counter-Plaintiff JACQUES E. VROOM, JR. has endured shame, embarrassment, humiliation, and mental pain and anguish. Additionally, Counter-Plaintiff is and will in the future be seriously injured in his good name and reputation in the community, and exposed to the hatred, contempt and ridicule of the general public, as well as of his friends and relatives.

19. Counter-Defendant published a statement asserting as fact that Counter-Plaintiff committed fraud, and/or acted fraudulently in its actions related to Counter-Defendant's airline. The statement was defamatory because it unambiguously associates alleged fraudulent activity with Counter-Plaintiff's actions that were false.

20. Counter-Defendant is strictly liable to Counter-Plaintiff for the defamation.

21. Counter-Defendant's false statement caused injury to Counter-Plaintiff, which caused the damages alleged herein.

VIII.
NEGLIGENCE

22. Counter-Defendant AMERICAN AIRLINES, INC. was negligent in implementing and operating the AAirpass program during the times material to the allegations contained herein, and in the allegations of Plaintiff's Original Petition, and as a direct result of said negligence on the part of AMERICAN AIRLINES, INC., Counter-Plaintiff has been damaged in excess of the minimum jurisdictional limits of the Court.

IX.
ATTORNEYS' FEES

23. Because of Counter-Defendant's suit, it has become necessary for Counter-Plaintiff JACQUES E. VROOM, JR. to retain counsel to present this action and accordingly sues for attorneys' fees reasonable in relation to the work expended against Counter-Defendant hereto, pursuant to V.T.C.A. Civil Practice & Remedies Code Section 38.001, plus an additional sum in the event of an appeal herein by any party to the Texas Court of Civil Appeals, and a further sum in the event of an appeal to the Supreme Court of Texas.

X.
DAMAGES

24. Counter-Plaintiff JACQUES E. VROOM, JR. would further show that many of his damages may be determined by known standards of value and accepted rules of evidence. Accordingly, Counter-Plaintiff is entitled to recover prejudgment interest as damages from the date of loss and/or the date such damages can be determined prior to judgment, or as the Court otherwise, directs, calculated at the legal rate, or as otherwise set out by law, including exemplary and treble damages.

XI.
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiff JACQUES E. VROOM, JR. prays that Counter-Defendant be cited to appear and answer herein; that upon final hearing Counter-Plaintiff has and recovers the following:

- (1) judgment against AA for damages;
- (2) alternatively, judgment against AA ordering that AA specifically perform its obligations under the AAirpass agreement and allow Mr. Vroom to continue to use the AAirpass with a companion;

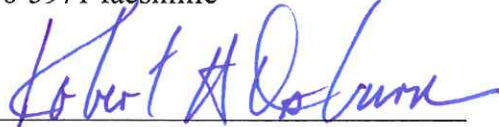
- (3) A permanent injunction be ordered on final trial of this cause, enjoining AA from preventing Mr. Vroom from using the AAirpass in issue;
- (4) Reasonable and necessary attorney's fees;
- (5) Prejudgment interest at the maximum legal rate allowed by law;
- (6) Post-judgment interest at the legal rate until paid;
- (7) Costs of suit;
- (8) Such other and further relief to which Counter-Plaintiff may be justly entitled, both in law and in equity.

Respectfully submitted,

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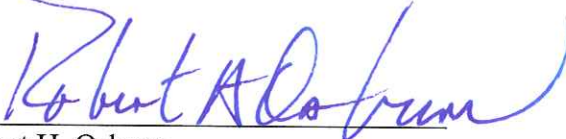
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with the Rules of Civil Procedure, on this 21 day of September, 2011.



Robert H. Osburn