

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JESSICA SPENCER

PLAINTIFF

AND:

TRANSAT A.T. INC., AIR TRANSAT A.T. INC., TRANSAT TOURS CANADA INC., and
FLAIR AIRLINES LTD.

DEFENDANTS

Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview

1. This proposed class proceeding concerns the execution of an unlawful scheme by the defendants involving the fraudulent misrepresentation of commercial flight itineraries to both consumers and aviation authorities with the objective of increasing profit. In internal communications, the defendants refer to their scheme as the “Mexican Game”.
2. The Mexican Game works as follows: the defendants advertise commercial flights with itineraries that do not include any stops between departure and destination, inducing both (a) consumers to purchase tickets at inflated cost and (b) aviation authorities to approve seemingly unremarkable flight plans. The defendants then instruct flight crews, first, to cause these flights to make one or more undisclosed, but premeditated, stops during the scheduled itinerary and, second, to refrain from advising consumers and aviation authorities of these undisclosed stops until the affected flights are airborne and consequently incapable of interruption.
3. The undisclosed stops enabled by the Mexican Game allow the defendants to utilize sub-standard aircraft otherwise incapable of executing the advertised itineraries. The utilization of these inferior aircraft, although considered dangerous by the defendants’ flight crews, significantly reduces the defendants’ operational costs.
4. On January 21, 2017, the plaintiff fell victim to the defendants’ scheme, resulting in the marked interruption of her dream wedding and the consequent emotional suffering and expense. The plaintiff brings this claim on her own behalf and on behalf of other Canadians who have suffered in consequence of the defendants’ unlawful and dangerous conduct.

Parties

5. The plaintiff is an accountant who resides in British Columbia and has an address for service, for the purposes of this proceeding, of 671D Market Hill, Vancouver, British Columbia, V5Z 4B5.
6. The defendant, Transat A.T. Inc. (“**Transat**”), is a corporation incorporated pursuant to the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 (incorporation number 215599-1), and has a registered office address located at Place Du Parc, 300, Rue Léo-Pariseau, Bureau 600, Montréal, Quebec, H2X 4C2. Transat is publically listed on the Toronto Stock Exchange as “TRZ” and claims to be a vertically-integrated company specializing in the organization, marketing, and distribution of holiday travel in the tourism industry. Transat claims that its services include air transportation, distribution through a network of travel agencies, services at travel destinations, as well as accommodations.
7. The defendant, Air Transat A.T. Inc. (“**Air Transat**”), is a corporation incorporated pursuant to the *Canada Business Corporations Act* (incorporation number 211268-0), and has a registered office address located at 5959 Boul. De La Cote Vertu Ouest, Montréal, Quebec, H2X 4C2. Air Transat is a wholly owned subsidiary of the defendant Transat and is a member of the International Air Transport Association (the “**IATA**”) operating under the IATA designator “TS”. Air Transat claims to be Canada’s number one holiday travel airline purportedly carrying nearly 4.5 million passengers annually to approximately 60 destinations in 25 countries.
8. The defendant, Transat Tours Canada Inc. (“**Transat Tours**”), is a corporation incorporated pursuant to the *Canada Business Corporations Act* (incorporation number 897090-4), and has a registered office address located at 300, Rue Léo-Pariseau, Bureau 500, Montréal, Quebec, H2X 4C2. Transat Tours is a wholly owned subsidiary of the defendant Transat that organizes, markets, and distributes holiday travels. Transat Tours claims to develop and commercialize products, including destination weddings, beach vacations, guided tours, and cruise packages, under the Transat and Air Transat brands.
9. Collectively the defendants Transat, Air Transat, and Transat Tours will be hereinafter referred to as the “**Transat Defendants**”.
10. The defendant, Flair Airlines Ltd. (“**Flair Air**”), is a corporation incorporated pursuant to the *Business Corporations Act*, S.B.C. 2002, c. 57 (incorporation number BC0676747), having an address for service located at Pushor Mitchell LLP, 3rd Floor – 1665 Ellis Street, Kelowna, B.C. V1Y 2B3. Flair Air is a privately-owned charter airline based in Kelowna that operates five Boeing 737-400 airplanes. Flair Air is also registered as the proprietor for a sole proprietorship (registration number FM0528642) of the same name. The exact relationship between Flair Air and the Transat Defendants is known only to the defendants.

The Ticket

11. On or about March 7, 2016, the plaintiff purchased from the defendants an airline ticket (the “**Ticket**”) for the purposes of attending her destination wedding (the “**Wedding**”) in Cancún, Mexico.
12. The Ticket expressly provided the following itinerary for the return flight:
 - (a) Flight TS 5330 – scheduled to depart from Kelowna International Airport (“**YLW**”) on January 21, 2017 at 10:00 p.s.t. arriving at Cancun International Airport (“**CUN**”) at 18:45 e.s.t. the same day; and
 - (b) Flight TS 5331 – scheduled to depart from CUN on February 4, 2017 at 19:30 e.s.t. arriving at YLW at 00:20 p.s.t. on February 5, 2017.

(the “**Itinerary**”)

13. The Ticket included the following express or implied terms:
 - (a) The defendants would undertake best efforts to carry its guests and their baggage with reasonable dispatch;
 - (b) The defendants would not add, alter, or omit stopping places listed on the ticket’s itinerary unless in case of exigency;
 - (c) The defendants would be liable for all damages occasioned by any delay during carriage unless the defendants took all reasonable measures to avoid that damage;
 - (d) The defendants would conduct themselves honestly, lawfully, reasonably, and with integrity; and
 - (e) The defendants would deploy all reasonable efforts to provide their customers with satisfactory care-free travel.

(the “**Terms**”)

14. The Ticket was more expensive than other itineraries considered by the plaintiff, many of which were offered by the defendants’ direct competitors, but the plaintiff ultimately purchased the Ticket, and convinced her guests to do likewise, in reliance on the above-described Itinerary and Terms.

The Undisclosed Stops

15. On January 21, 2017, Flight TS 5330 departed from YLW with the plaintiff, her husband, and 26 wedding guests onboard. Instead of following the published Itinerary, however, Flight TS 5330 travelled directly to Calgary International Airport (“**YYC**”) where it landed, executing a lengthy and undisclosed stop (the “**Calgary Stop**”). The Calgary

Stop was not disclosed to the plaintiff until Flight TS 5330 had departed from YLW and was airborne.

16. Flight TS 5330 eventually departed from YYC and began its flight to CUN. The plaintiff did not arrive in CUN until 10:00 p.m. that evening, over 3 hours later than scheduled. Due to her late arrival, the plaintiff missed the wedding activities scheduled for that evening, including an organizational meeting, a social event, dinner, and attendance at a concert. The plaintiff had been carefully planning these events, about which she cared deeply, for over 12 months and suffered significant emotional disturbance, including pain, anguish, grief, humiliation, wounded pride, and damaged self-confidence, in consequence of their cancellation.
17. On February 4, 2017, Flight TS 5331 departed from CUN, again with the plaintiff and her husband onboard. Again, Flight TS 5331 did not follow the Itinerary, but rather flew to Regina International Airport (IATA airport code – **YQR**), executed a prolonged, undisclosed stop, before eventually continuing on to YLW.
18. This undisclosed stop at YQR (the “**Regina Stop**”) delayed the plaintiff’s arrival in YLW by approximately two and one half hours. The Regina Stop was not listed in the Itinerary and was not previously disclosed to the plaintiff, either at the time of the purchase of the Ticket or at any time before the flight was airborne on February 4, 2017.
19. Upon her return to Canada, the plaintiff discovered, through the national media, that she had fallen victim to the defendants’ “Mexican Game”, described above. This discovery exacerbated the plaintiff’s distress and humiliation.
20. The plaintiff brings this claim on her own behalf and on behalf of the other Canadians who have suffered in consequence of the defendants’ unlawful and dangerous conduct. The class definition will be further particularized in the plaintiff’s application for certification under the *Class Proceedings Act*.

Part 2: RELIEF SOUGHT

1. The plaintiff claims on her behalf and on behalf of a proposed class of similarly situated persons in both British Columbia and Canada:
 - (a) an order certifying this action as a class proceeding and appointing her as representative plaintiff under the *Class Proceedings Act*;
 - (b) a declaration that the benefits which accrued to the defendants as a result of their wrongful conduct unjustly enriched the defendants;
 - (c) an accounting of the benefits which accrued to the defendants as a result of their wrongful conduct;
 - (d) discouragement of the benefits which accrued to the defendants as a result of their wrongful conduct;

- (e) damages:
 - (i) damages for breach of contract;
 - (ii) damages for fraudulent misrepresentation;
 - (iii) damages for loss of opportunity;
 - (iv) general damages;
 - (v) special damages;
 - (vi) aggravated damages; and
 - (vii) punitive damages.
- (f) declaratory and injunctive relief as well as statutory damages under the *Business Practices Consumer Protection Act*, S.B.C. 2004, c. 2 (“**BPCPA**”) and amendments thereto;
- (g) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 and amendments thereto;
- (h) costs and disbursements; and
- (i) such further and other relief as this Honourable Court may deem meet and just.

Part 3: LEGAL BASIS

Breach of Contract

1. By purchasing the Ticket, the plaintiff entered into a contract (the “**Contract**”) with the defendants for the carriage by air of her person and baggage.
2. The Contract imposed upon the defendants the following duties:
 - (a) Duty to comply with the Terms of the Ticket;
 - (b) Duty to perform the Contract in good faith; and
 - (c) Duty to act honestly in the performance of the Contract;
 (the “**Owed Duties**”)
3. The defendants breached the Owed Duties by:
 - (a) intentionally failing to disclose to the plaintiff that Flight TS 5330 would be making the Calgary Stop and, therefore, was never intended to carry the plaintiff with reasonable dispatch to CUN according to the Itinerary;

- (b) intentionally failing to disclose to the plaintiff that Flight TS 5331 would be making the Regina Stop and, therefore, was never intended to carry the plaintiff with reasonable dispatch to YLW according to the Itinerary;
- (c) intentionally planning, at all material times, to make the Calgary Stop and the Regina Stop but intentionally failing to disclose this fact to the plaintiff;
- (d) adding undisclosed stopping places in non-exigent circumstances;
- (e) unlawfully failing to advise the various national aviation authorities of the actual intended flight plan; and
- (f) failing to indemnify the plaintiff for damages occasioned by the delay that she experienced during carriage.

(the “**Breaches**”)

- 4. As a result of the Breaches, the plaintiff has suffered, and continues to suffer, loss and damage, including, but not limited to, mental anguish, delay, loss of enjoyment of her Wedding, loss of goods and services already paid for but not received, loss of opportunity, out of pocket expenses, and such further and other damages that counsel for the plaintiff shall advise.

Fraudulent Misrepresentation

- 5. At all times, the defendants represented that they would comply with the Terms of the Ticket (the “**Fraudulent Representations**”). The Fraudulent Representations were made to induce the plaintiff to purchase the Ticket.
- 6. The plaintiff purchased the Ticket in reliance on the Fraudulent Representations, as described.
- 7. The Fraudulent Representations were false. The defendants made the Fraudulent Representations knowing they were false or, in the alternative, without belief in their truth or, in the further alternative, recklessly, not caring whether they were true or false.
- 8. In consequence of the Fraudulent Representations, the plaintiff has suffered, and continues to suffer, loss and damage, including, but not limited to, mental anguish, delay, loss of enjoyment of her Wedding, loss of goods and services already paid for but not received, loss of opportunity, out of pocket expenses, and such further and other damages and counsel for the plaintiff shall advise.

Unjust Enrichment

9. The defendants enjoyed an enrichment, in the form of increased revenue and profit, in consequence of their described wrongful conduct. The plaintiff suffered a corresponding deprivation, as described. There was no juristic reason for the defendants' enrichment.

Breach of the *Business Practices and Consumer Protection Act*

10. Prior to the plaintiff purchasing the Ticket and entering into the Contract, the defendants supplied, solicited, offered, advertised, and promoted the sale of the Ticket to the plaintiff. The defendants are therefore suppliers within the meaning of s. 1 of the *BPCPA*.
11. The purchase by the plaintiff of the Ticket, and the entering into of the Contract, was for primarily personal, family, or household uses and as such was a "consumer transaction" within the meaning of s. 1 of the *BPCPA*.
12. The defendants engaged, contrary to s. 4 of the *BPCPA*, in numerous deceptive acts and/or practices in the supply, solicitation, offer, advertisement and promotion of the Ticket.
13. Specifically the Representations had the capability, tendency or effect of deceiving or misleading the plaintiff, and did deceive and mislead the plaintiff, and therefore constitute deceptive acts or practices under s. 4 of the *BPCPA*.
14. The defendants have gained and unfairly profited from the purchase by the plaintiff of the Ticket because of the deceptive acts and practices committed by the defendants in that consumer transaction, as set out above.
15. As a result the plaintiff is entitled, under s.172 of the *BPCPA*, to the restoration of that part of the amount paid by her to purchase the Ticket that is equal to the amount received by the defendants because of the deceptive acts and practices set out above.

Punitive and Aggravated Damages

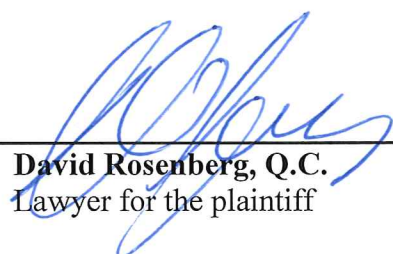
16. The defendants' utilization of the Mexican Game, described above, showed reckless disregard for the well-being of the public, the plaintiff, and class members. The defendants' fraudulent conduct was callous and arrogant and offends the ordinary community standards of moral and decent conduct. The actions, omissions, or both, of the defendants involved such want of care as could only have resulted from actual conscious indifference to the rights, safety, or welfare of the plaintiff and class members. Accordingly, the plaintiff claims aggravated damages, in relation to her own humiliation and distress, and punitive damages, in relation to the defendants' disturbing conduct.

17. The plaintiff pleads that the defendants are vicariously liable for the acts and omissions of their officers, directors, agents, employees, and representatives.

Rosenberg Kosakoski LLP
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Vancouver, BC
V5Z 4B5

Place of trial: Vancouver, British Columbia
Registry: 800 Smithe Street, Vancouver, B.C., V6Z 2E1

Dated: August 17, 2017



David Rosenberg, Q.C.
Lawyer for the plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

Form 11 (Rule 4-5 (2))

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff, Jessica Spencer, claims the right to serve this pleading on the defendants, Transat A.T. Inc. and Air Transat A.T. Inc., outside British Columbia on the grounds that it concerns contractual obligations, and those contractual obligations, to a substantial extent, were to be performed in British Columbia.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The plaintiff's claim concerns breaches of contract, fraudulent misrepresentations, and breaches of the *Business Practices Consumer Protection Act*, S.B.C. 2004, c. 2 all of which were committed by the defendants during the provision of commercial flights and have caused the plaintiff loss and damage, including, but not limited to, delay, loss of promised enjoyment of her wedding, loss of goods and services already paid for but not received, loss of opportunity, and out of pocket expenses.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A dispute concerning:

[X] the provision of goods or services or other general commercial matters

Part 3: THIS CLAIM INVOLVES:

[X] a class action

Part 4:

Class Proceedings Act, R.S.B.C. 1996, c. 50

Business Practices Consumer Protection Act, S.B.C. 2004, c. 2

Court Order Interest Act, R.S.B.C. 1996, c. 79