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U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

★ NOV 10 2011 ★

BROOKLYN OFFICE

VIVIAN VUMBACA, individually and on
behalf of all others similarly situated

Plaintiffs,

v.

TERMINAL ONE GROUP ASSOCIATION,
L.P.

Defendant.

CV 11 - 5535

WEINSTEIN, J.

CLASS ACTION
COMPLAINT

J. ORENSTEIN, M.J.

JURY TRIAL DEMANDED

Plaintiff Vivian Vumbaca ("Plaintiff" or Ms. Vumbaca) individually and on behalf of all others similarly situated, by her undersigned counsel, alleges the following upon personal knowledge as to her own experience and upon information and belief as to all other matters. Plaintiff's information and belief is based upon the investigation conducted by counsel.

FACTUAL BACKGROUND

1. On December 26 and 27, 2010, a powerful Nor'easter struck the east coast of the United States. States from Maryland to Maine were impacted, but New York and New Jersey were among the hardest hit. The blizzard brought a widespread area of **20 to 30 inches** of snow across the New York metropolitan area, Northeast New Jersey, and Lower Hudson Valley. The greater New York area experienced

sustained winds of 30-45 MPH with gusts to over 60 MPH during the afternoon and night of December 26. Snows drifts piled as high as four feet. The storm also generated a rare meteorological phenomenon known as thundersnow in which thunder and lightning occur concurrently with the falling snow.

2. As result of the storm, New York city came to a virtual standstill for days. Roads were left unplowed, plows became stuck in snow, cars were abandoned in the middle of streets, and garbage piled up on sidewalks. A man who attempted suicide by jumping from a ninth story window was saved when he landed on a huge pile of garbage that had accumulated as a result of the blizzard. State Senator Carl Kruger called the city's response a "Colossal Failure."

3. John F. Kennedy International Airport ("JFK") faced similar failures. After the storm ended, JFK re-opened at around 6pm on December 27. Through at least early Wednesday December 30, 2010, however, reportedly at least 28 flights carrying thousands of passengers were stranded on the tarmac at JFK for as many as 11 hours. Those passengers were forced to endure cramped, unsanitary conditions, with little or no food or water for maddening periods of time.

4. Oddly, all of those flights had one thing in common (in addition to being stranded on the tarmac): they were all international flights. Despite the fact that many domestic flights also landed at JFK between December 27 and December 30, not a single one was stuck on the tarmac for more than three hours.

5. One reason this may have occurred solely to foreign flights is that in April 2010, after several well publicized incidents of nightmarishly long waits on the

tarmac, the FAA adopted a new rule that penalizes airlines with fines of as much as \$27,500 per passenger if planes are kept on the tarmac for more than three hours. But the new rule applies only to flights that begin and end in the United States. It does not apply to international flights that originate outside the U.S..

6. According to reports, there were *no* domestic flights stranded on the tarmac for more than 3 hours on December 28 and 29. For whatever reason, all of the domestic flights on December 28 and 29 were able to move promptly from the runway to a terminal to disembark, or were cancelled.

7. Numerous international flights, on the other hand, which were not subject to the steep fines imposed by the FAA, sat on the tarmac for excruciatingly long periods of time, where passengers (like Plaintiff) were kept in intolerable conditions with little or no food or water, in stagnant air, with overflowing toilets, and unsanitary conditions.

8. Defendant Terminal One Group Association, L.P., (“TOGA”) operates Terminal One at JFK, where most, if not all, of the international flights arriving and scheduled to deplane from December 27 to 29, 2010 were unable to do so, because they were blocked by snow and snow drifts. Had TOGA issued NOTAMS (Notices to Airmen) that it was impassable, or closed as it should have been, then the European carriers would have cancelled the flights.

9. Passengers on those flights, including Plaintiff and the class she seeks to represent, were trapped for as many as 11 hours due to Defendant’s negligence and recklessness in failing to provide a means for passengers to disembark. The reason

why Defendant imposed these intolerable conditions on Plaintiff and the class she seeks to represent – whether it was because Defendant was fixated on disembarking domestic flights to avoid steep fines, or because they could not keep taxiways to the international terminals clear, or for some other reason – is less important than the fact that the long hours of discomfort and misery that Defendant inflicted on Plaintiff and the class could have been avoided. Defendant could have closed the terminal or expended the resources necessary to ensure that the snow at the terminal was removed and flights were promptly disembarked - particularly since other Terminals had done so - but Defendant did not. The suffering imposed on thousands of international-flight passengers was the result of Defendant’s reckless, willful, wanton and shocking negligence, for which Plaintiff and the class are entitled to compensation.

PARTIES

10. Plaintiff Vivian Vumbaca (“Plaintiff” or Ms. Vumbaca) is a permanent resident of the United States and resides in New York, New York.

11. Defendant TOGA is a resident of Jamaica, New York. TOGA is a New York limited partnership established to lease, finance, construct, maintain, and operate the JFK Terminal One facility, which is a common-use eleven-gate international passenger terminal at JFK Airport. TOGA's general partner is Terminal One Management, Inc. (TOMI), and its limited partners are the signatory airlines: Air France, Japan Air Lines, Korean Air, and Lufthansa.

VENUE AND JURISDICTION

12. This Court has subject matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1332 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

13. Venue is proper in this District because Defendant resides in this District and many of the actions giving rise to the allegations set forth herein took place in this District.

14. This Court has personal jurisdiction over Defendant because it is a citizen of this state and conducts substantial business in this state.

PLAINTIFF'S EXPERIENCE

15. On the evening of December 28, 2010, Plaintiff was aboard New Alitalia Flight 610 having departed Rome, Italy, and arrived at JFK on the runway at approximately 6:30pm NY time. At the time of departure, Defendant knew or should have known that it was incapable of servicing arriving flights at Terminal One and should have provided adequate notice to airlines to cancel flights. Although the airport should have been operating under a snow plan approved by the FAA and implemented by the Port Authority, it was open in violation of the snow plan or common sense or both. NOTAMS had been issued confirming taxiways, lights, signs and passage on the ground were all blocked by drifting and blowing snow. If a

terminal is unable to clear snow, the JFK snow plan addresses this issue by closure of the affected terminal, but Defendant did not take the appropriate steps to notify its landlord, JFK and the Port Authority of NY & NJ (the "Port Authority"), that it had to close, even though it could not open. Defendant's lease and agreement with the Port Authority make Defendant responsible for the cleaning and removal of snow, and other responsibilities. When Plaintiff made original demand upon the Port Authority for compensation, the Port Authority identified the Defendant as in breach of its agreement, and the responsible party. See, Exhibit A.

16. At all times relevant hereto Defendant knew or should have known that aircraft could not move off of runway staging areas to taxiways and Terminal One and that emergency equipment could not reach aircraft on the ground.

17. Further, Defendant knew or should have known that few if any employees had reported for evening duty to park, service, and disembark the passengers and cargo on arriving flights.

18. Defendant has a duty to keep the Terminal One clear of snow so that it would remain operational for the safety and convenience of the public, or close it if unable to do so.

19. Due to Defendant's negligence, Ms. Vumbaca and the class members were forced to remain stranded in their aircraft on the tarmac, unable to exit and disembark from their airplanes for over 10 hours, and unreachable by emergency equipment. As a result of such wanton, reckless and outrageous negligence and showing a complete disregard of the welfare of the affected passengers, the affected

passengers and Ms. Vumbaca were all injured by delay, hunger, thirst, foul air, and the absence of sanitary facilities, resulting in severe emotional distress. Had these affected passengers been on a domestic flight, the airline could have been fined up to \$27,500 per passenger.

20. Plaintiff served a written Notice of Claim on the Port Authority of New York & New Jersey on or about April 5, 2011, pursuant to N.Y. Unconsol. Laws § 7108. The Port Authority referred Plaintiff's claims to Defendant TOGA, stating that the claim fell within TOGA's responsibility and requesting that TOGA handle the claim to a conclusion. Defendant TOGA never responded to Plaintiff's claim, however, and therefore Plaintiff filed this lawsuit.

CLASS ALLEGATIONS

21. Plaintiff brings this lawsuit both individually and as a class action pursuant to FED. R. CIV. P. 23 against Defendant on the behalf of the following Class:

All passengers on international flights that arrived at JFK Terminal One between December 26 and December 31, 2010, who were not disembarked until three hours or more after landing.

22. Excluded from the Class is Defendant, as well as Defendant's affiliates, employees, officers and directors, including franchise dealers, and the Judge to whom this case is assigned. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveals that the Class should be expanded or otherwise modified.

23. Numerosity/Impracticability of Joinder: The members of the Class are so numerous that joinder of all members would be impracticable. There are hundreds if not thousands of Class Members. The members of the Class are readily identifiable from information and records in Defendant's possession, custody and control. The disposition of these claims will provide substantial benefits to the Class members.

24. Commonality and Predominance: There is a well-defined community of interest and common questions of law and fact which predominate over any questions affecting only individual members of the Class. These common legal and factual questions which do not vary from one Class Member to another and which may be determined without reference to the individual circumstances of any Class member, include, but are not limited to the following:

- a. Whether Defendant had a duty to keep taxiways and parking areas at Terminal One clear from snow and ensure that passengers were disembarked in a timely manner, and comply with the JFK snow plan and its individual agreement with the Port Authority;
- b. Whether Defendant acted negligently and violated its duty in failing to keep Terminal One taxiways and parking areas clear from snow ,disembark passengers in a timely manner, and comply with the JFK snow plan;
- c. Whether Defendant falsely imprisoned Plaintiff and the Class, or committed a prima facie tort against Plaintiff and the Class ;

- d. Whether Defendant intentionally inflicted emotional distress upon Plaintiff and the Class who also suffered physical injury;
- e. Whether Defendant's actions were so reckless, outrageous, and shocking, as to justify exemplary damages;
- f. Whether Defendant is liable to Plaintiff and the Class;
- g. Whether Plaintiff and the Class are entitled to damages; and
- h. Whether the calculation of damages should begin with the amount set by the FAA for purely domestic flights in similar circumstances, or more.

25. Typicality. Plaintiff's claims are typical of the claims of the Class because Plaintiff and all Class Members were injured by the same wrongful practices in which Defendant engaged. Plaintiff's claims arise from the same practice, breach of duty, violation of agreement, shocking behavior and course of conduct that gives rise to the claims of the Class Members, and are based on the same or similar legal theories.

26. Adequacy. Plaintiff is a representative who will fully and adequately protect the interest of the members of the Class and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions, airline litigation, and other forms of complex litigation. Neither Plaintiff nor her counsel have interests which are contrary to or conflicting with those of the Class.

27. Superiority. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

- a. It is economically impractical for members of the Class to prosecute individual actions;
- b. The Class is readily definable;
- c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and
- d. A class action will enable claims to be handled in an orderly and expeditious manner. Furthermore, a class action will save time and expense and will ensure uniformity of decisions.

28. Plaintiff does not anticipate any difficulty in the management of this litigation.

29. Defendant has, or has access to, address information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.

FIRST COUNT
Negligence, False Imprisonment or Prima Facie Tort

30. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

31. Defendant had a duty at law and under its agreement with the Port Authority, to keep the Terminal One taxiways and parking areas clear of snow, to

abide by the Port Authority's snow plan for the airport, or close the Terminal if unable to do so, at all times relevant hereto.

32. Defendant intentionally failed to observe its duties at law and its duties under its Port Authority agreement, and intentionally breached the same, with full knowledge of the circumstances, or where it should have had full knowledge of the circumstances. It neither cleaned the snow from the relevant areas of Terminal One, making it operational, nor did it close Terminal One, although it could not as a result of the snow, operate the Terminal.

33. As a result of said breach of duties by the Defendant, the Plaintiff and the Class were injured by being unable to move freely, were kept on the aircraft against their will, and were unable to deplane or travel home, were kept prisoner and were unable to freely deplane a completely soiled, not catered and foul aircraft for more than four hours, and are entitled to damages in an amount to be determined at trial but in no event less than \$27,500 per passenger.

34. The Defendant's behavior constituted negligence, false imprisonment and/or prima facie tort against the Plaintiff and all of the Class.

35. Because the Defendant's intentional breach of duty, failure to follow the snow plan, and breach of its agreement with the Port Authority are so shocking, and display a wanton, reckless, and outrageous disregard of a traveling person's rights, safety and well-being, exemplary damages are warranted in this case.

SECOND COUNT
Intentional Infliction of Emotional Distress

36. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

37. The actions of the Defendant, by intentionally abandoning the Plaintiff and all the members of the Class, and failing to follow its agreement with the Port Authority, the JFK snow plan and its duties as an airport terminal operator, were done intentionally, recklessly and caused Plaintiffs to suffer a revolting, disgusting experience, imprisoned without food, without access to lavatories, or fresh air; at great distance from and inaccessible to emergency equipment; and was done with total disregard for the safety of the abandoned passengers, and in the scheme of human behavior, Defendant's behavior shocks the conscience. Defendant if unable to clear snow sufficient for aircraft to reach Terminal One, should have closed Terminal One. Defendant failed to do so. Plaintiffs suffered directly as a result.

38. Members of the proposed Class suffered mental and emotional injury as a result of the foregoing, together with their physical ailments.

PRAYER FOR RELIEF

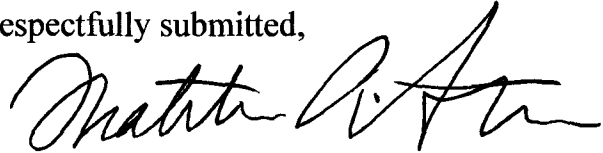
WHEREFORE, Plaintiff, on behalf of herself and on all others similarly situated prays for judgment against TOGA as follows:

- A. An Order certifying the class and appointing Plaintiff and her counsel to represent the Class;

- B. For an Order awarding all actual, compensatory, punitive or other damages available by law in an amount to be determined at trial;
- C. For an Order permanently enjoining Defendant from engaging in the unlawful practices as alleged herein;
- D. For an Order for attorneys' fees, costs and expenses; and
- E. For such other and further relief, including equitable and injunctive relief that the Court deems appropriate and just under the circumstances.

Dated: November 9, 2011

Respectfully submitted,



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