



Court File No. **VLC-S-S-118115**

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

AHMET M. KADIOGLU

PLAINTIFF

AND:

DELTA AIR LINES, INC.

DEFENDANT

Brought under the *Class Proceedings Act*, RSBC 1996, c. 50

NOTICE OF CIVIL CLAIM

(Name and address of each plaintiff)

Ahmet M. Kadioglu
1751 Berkley Road
North Vancouver, B.C. V7H 1Y9

(Name and address of each defendant)

Delta Air Lines, Inc.
c/o Patricia Gallivan, Q.C.
Lawson Lundell LLP
Suite 1600, 925 West Georgia Street
Vancouver, B.C. V6C 3L2

This action has been started by the plaintiff(s) 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 plaintiffs.

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 plaintiffs 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 reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, 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

1. The Plaintiff is a business man and resides at 1751 Berkley Road in the District of North Vancouver in the province of British Columbia.
2. The Defendant is a body corporate duly incorporated under the laws of the State of Delaware in the United States of America and registered extraprovincially in British Columbia on July 11, 1991 under number A0033933. The mailing and delivery address within British Columbia is c/o Patricia Gallivan, Q.C., Lawson Lundell LLP Suite 1600, 925 West Georgia Street, Vancouver, B.C. V6C 3L2.
3. The Defendant is a full-service global airline with an extensive global group network flying to and from centrally-located airports around the world, including the Vancouver International Airport.
4. On or about October 26, 2011 the Plaintiff purchased, online, from the Defendant, a ticket to travel on October 29 and 30, 2011 from Vancouver

International Airport to Amsterdam, Netherlands and on to Istanbul, Turkey and returning through Amsterdam, Netherlands and on to Vancouver, British Columbia on November 29, 2011 for the price of \$748.00 CAD.

5. At the time the Plaintiff purchased the ticket he was charged and paid an additional CAD \$415.19 described on the ticket as "Taxes/Fees/Charges" which included a specified amount of CAD \$340.00 therein described as "YR".
6. By including the CAD \$340.00 YR item within the "Taxes/Fees/Charges" of the ticket the Defendant knowingly and willingly represented the CAD \$340.00 YR item as a tax, fee or charge, charged to, and collected from, the Plaintiff by the Defendant on behalf of a third-party government agency or body (the "representation").
7. Contrary to the representation, the CAD \$340.00 YR was not a third-party tax at all but was retained by the Defendant and diverted entirely to its own use.

Part 2: RELIEF SOUGHT

1. The Plaintiff seeks a declaration pursuant to s. 172(1)(a) of the B.C. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, as amended, (the "BPCPA") that the Defendant's Representation contravenes the BPCPA.
2. The Plaintiff also seeks a permanent injunction pursuant to s. 172(1)(b) BPCPA restraining the Defendant from contravening the BPCPA by way of the Representation.
3. The Plaintiff seeks an order pursuant to s. 172(3)(a) of the BPCPA that the Defendant restore to him and all other putative class members any and all monies which the Defendant has acquired in contravention of the BPCPA, including an order that the Defendant refund all monies charged by the Defendant to the class members for "YR". In the alternative, the Plaintiff seeks

an order that that the Defendant disgorge to the class members all revenues collected in respect of "YR".

4. In the alternative, the Plaintiff is entitled to recover the unjust enrichment accruing to the Defendant who, by its actions as aforesaid, has been enriched by the collection and retention of the "YR" revenues. The Plaintiff and putative class members have suffered a corresponding detriment, in that they have paid the "YR" monies to the Defendant. The "YR" revenues received by the Defendant from the Plaintiff and the class members resulted from the Defendant's wrongful acts as described in paragraphs 5, 6 and 7 of Part 1 herein and accordingly there is no juridical reason for the Defendant's enrichment.
5. The Defendant's conduct, as outlined in this Notice of Civil Claim, has been high-handed, reprehensible, and deserving of condemnation and punishment. The Plaintiff seeks, on behalf of himself and the members of the putative class, an award of punitive damages.
6. The Plaintiff claims on his own behalf and on behalf of all putative class members, the following:
 - (a) a declaration pursuant to s. 172(1)(a) of the BPCPA that the Defendant's Representation contravenes the provisions of the BPCPA;
 - (b) a permanent injunction pursuant to s. 172(1)(b) of the BPCPA restraining the Defendant from contravening the BPCPA by way of the Representation;
 - (c) an Order pursuant to s. 172(3)(a) of the BPCPA that the Defendant restore to him and all other putative class members any and all monies that the Defendant has acquired in contravention of the BPCPA including an Order that the Defendant refund all monies charged by the Defendant to the class members for "YR";
 - (d) in the alternative, the Plaintiff seeks an Order that the Defendant disgorge to the class members all revenues collected in respect of "YR";

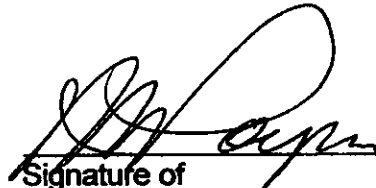
- (e) in the further alternative, the Plaintiff claims to be entitled to recover the unjust enrichment accruing to the Defendant by its actions;
- (f) punitive damages;
- (g) costs; and
- (h) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

1. This is a proposed class proceeding on behalf of the Plaintiff and a putative class of people in British Columbia who, when purchasing an airline travel ticket, were improperly charged a "tax" by the Defendant which was not in fact a third-party tax but was a charge collected by the Defendant and retained for its own use. The Plaintiff pleads and relies upon the provisions of the *Class Proceedings Act*, RSBC 1996, c. 50.
2. At all times material to this action, the Plaintiff was a "consumer" within the meaning of that term as defined in s. 1 of the BPCPA.
3. At all times material to this action, the Defendant was a "supplier" within the meaning of that term as defined in s. 1 of the BPCPA.
4. The transaction by which the Plaintiff purchased a plane ticket from the agent of the Defendant, as described in paragraph 5 of Part 1 herein, was a "consumer transaction" within the meaning of that term as defined in s. 1 of the BPCPA.
5. The Representation constitutes a "deceptive act or practice" within the meaning of s. 4 of the BPCPA in that it had the capability, tendency or effect of deceiving or misleading the Plaintiff by creating a false impression that the CAD \$340.00

YR" item included within the "e-Ticket Receipt" dated October 26, 2011 was a tax collected by the Defendant for remittance to a third-party government agency, when in fact it was simply additional monies charged, collected and retained by the Defendant on its own behalf and for its own use.

Date: 30/Nov/2011


Signature of
[] filing party [x] lawyer for filing party
James M. Poyner

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 pleadings 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.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

When purchasing an airline travel ticket, the Plaintiff was improperly charged a "tax" by the Defendant which was not in fact a third-party tax but was a charge collected by the Defendant and retained for its own use. The Plaintiff alleges that the Defendant knowingly and willingly represented the charge as a tax charged to and collected from the Plaintiff by the Defendant on behalf of a third party government agency or body (the "Representation"). The Plaintiff alleges that the Representation constitutes a "deceptive act or practice" within the meaning of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES

[Check one box below for the case type that best describes this case.]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- I do not know

Part 3:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

The Plaintiff(s) rely on the following enactments:

1. *Class Proceedings Act*, RSBC 1996, c. 50; and
2. *B.C. Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.