

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PRINCE OROGBU,)	
)	
Plaintiff,)	
)	
v.)	No. 11-cv-3523
)	
LUFTHANSA GERMAN AIRLINES)	
)	
Defendant.)	

**DEFENDANT LUFTHANSA GERMAN
AIRLINES' NOTICE OF REMOVAL**

Defendant, LUFTHANSA GERMAN AIRLINES (“Lufthansa”), by its attorneys, McBREEN & KOPKO LLP, and pursuant to 28 U.S.C. §§ 1441(a), (b), (c) and 1446, hereby removes this action from the Circuit Court of Cook County, Illinois to the United States District Court for the Northern District of Illinois, Eastern Division. This action may be removed because this Court has original jurisdiction over the complaint pursuant to 28 U.S.C. §§ 1331 and 1367(a). In support of removal, Lufthansa states as follows:

PROCEDURAL REQUIREMENTS

1. On April 22, 2011, plaintiff Prince Orogbu filed a complaint against defendant Lufthansa in the Circuit Court of Cook County, Illinois (the “complaint”).
2. Plaintiff alleges that on April 22, 2010 he boarded Lufthansa flight 436 in Germany departing to Chicago, Illinois, with luggage containing clothing and other items plaintiff intended to market.
3. Plaintiff further alleges that during the international flight defendant lost his luggage and all of the possessions listed in an exhibit attached to the complaint.

4. Copies of the summons and complaint were delivered to Lufthansa on or about May 5, 2011. See Exhibit A. No further proceedings have been had in the action.

5. Lufthansa's notice of removal is timely pursuant to 28 U.S.C. § 1446, because it is filed within 30 days of the date on which Lufthansa was served and/or the date on which any defendant was served with the summons and complaint.

6. Written notice of the filing of this notice of removal and supporting papers have been have been served on plaintiff and filed with the Clerk of the Circuit Court of Cook County, Illinois, as required by 28 U.S.C. § 1446(d).

7. Venue is proper in this District under 28 U.S.C. § 1391.

STATUTORY GROUNDS FOR REMOVAL

8. The federal removal statute provides:

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending ...

(b) Any civil action of which the district courts have original jurisdiction founded on the claim or right arising under the Constitution, treaties, or laws of the United States shall be removable without regard to the citizenship or residence of the parties ... 28 U.S.C. § 1441(a) & (b).

9. Federal district courts have "original jurisdiction" for all civil actions "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Specifically, this Court has jurisdiction over plaintiff's claims inasmuch as plaintiff's claims arise under a treaty of the United States commonly known as the Montreal Convention. The Montreal Convention¹, known officially as the "Convention for the Unification of Certain Rules for

¹ The Montreal Convention is available in the UNITED STATES CODE SERVICE (U.S.C.S.) volume titled International Agreements at 635 (2007). It is also available at S. Treaty Doc. No. 106-45, 1999 WL 33292734 at **29-45.

International Carriage by Air, May 28, 1999,” was officially adopted by the United States on November 4, 2003. *See, e.g., Ehrlich v. American Airlines, Inc.*, 360 F.3d 366, 371-72 (2d Cir. 2004). The Montreal Convention provides the exclusive remedy for claims arising out of the carriage of international passengers by air and has been construed as having a complete preemptive effect over all claims within its scope. *See* Montreal Convention Art. 29², *see El Al Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155, 162, 174-75 (1999); *Booker v. BWIA West Indies Airways*, 2007 WL 1351927 at 2 (E.D.N.Y. May 08, 2007), *aff’d*, 307 Fed. Appx. 491 (2d Cir. Jan 13, 2009)(construing Montreal Convention).

10. Thus, Lufthansa may remove this action pursuant to 28 U.S.C. § 1441(b) because plaintiff’s claims explicitly arise under the Montreal Convention.

11. The state law breach of contract claim asserted in the complaint is integrally related to plaintiff’s federal claims and thus form a part of the same case or controversy. Accordingly, this Court has supplemental jurisdiction over these claims under 28 U.S.C. § 1367(a).

12. Accordingly, original federal question jurisdiction is vested in this Court with respect to plaintiff’s entire complaint by 29 U.S.C. § 1132(e) and 28 U.S.C. § 1331.

² Article 29 states, in pertinent part: “In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contact or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention”

CONCLUSION

WHEREFORE, defendant Lufthansa respectfully requests that plaintiff's claims be removed to federal court pursuant to 28 U.S.C. §§ 1331 and 1367(a).

Dated: May 25, 2011

Respectfully submitted,

/s/ Hugh G. McBreen
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Attorneys for Defendant Lufthansa

CERTIFICATE OF SERVICE

Hugh G. McBreen, an attorney, hereby certifies that a true and correct copy of the foregoing defendant's Notice of Removal was filed with the Court's CM/ECF electronic filing system on May 25, 2011 and served via U.S. First Class Mail on:

Attorney for Plaintiff

Robert Habib, Esq.
77 West Washington Street
Suite 411
Chicago, Illinois 60602

/s/ Hugh G. McBreen