

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MAR 9 2009

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

M. ENGIN DERKUNT

§
§
§
§
§
§

CIVIL ACTION

V.

NO: A-09-CA-

SOUTHWEST AIRLINES Co. &
eBAY, INC.

A09CA 172SS

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Plaintiff DERKUNT and respectfully alleges the following
against Defendants SOUTHWEST AIRLINES Co. & eBAY, INC:

JURISDICTION & VENUE:

1. Federal court has jurisdiction because causes of action under 42 U.S.C. §§ 1981¹
& 1982² are alleged.

¹ SECTION 1981. EQUAL RIGHTS UNDER THE LAW

(a) Statement of equal rights

All persons within the jurisdiction of the United States **shall have the same right** in every State and Territory **to make and enforce contracts**, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the **making**, performance, modification, and termination **of contracts**, and the **enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship**.

(c) Protection against impairment

The rights protected by this section are protected against **impairment by nongovernmental discrimination** and impairment under color of State law.

42 U.S.C. § 1981 (emphases added).

² SECTION 1982. PROPERTY RIGHTS OF CITIZENS

All citizens of the United States shall have the **same right**, in every State and Territory, **as is enjoyed by white citizens** thereof **to inherit, purchase, lease, sell, hold, and convey real and personal property**.

42 U.S.C. § 1982 (emphases added).

2. Venue is proper in the Western District of Texas because the subject flight originated at Austin Bergstrom Int'l Airport ["AUS"] in Travis County, Texas.

PARTIES:

3. Plaintiff MUSTAFA ENGIN DERKUNT is an adult resident of Austin, Travis County, Texas. He is a Turkish-born secular Muslim naturalized citizen and he is an attorney licensed to practice in the State of Texas and in the U.S. District Court for the Western District of Texas. His middle name is identifiable as Turkish by those USAF personnel who served at Incirlik Air Base, a NATO base in the suburbs of Adana (at the northeastern corner of the Mediterranean, strategically placed in relation to Syria, Iraq, Lebanon, Israel, and northern Iran), Turkey, which is well known among San Antonio USAF veterans.
4. Defendant **SOUTHWEST AIRLINES Co.** ["SWA"] is a Dallas-based company, which may be served through its **CHAIRMAN & CEO GARY C. KELLY** at **P.O. Box 36611, Dallas, Texas 75235-1611**. Defendant **eBAY, INC.** ["eBay"] is a California-based company that does business in Texas; it may be served through its **PRESIDENT & CEO JOHN J. DONAHOE** at **2145 Hamilton Avenue, San Jose, California 95125**.

FACTUAL BACKGROUND:

5. On or about January 24, 2007, Plaintiff's friend and one time law clerk J. Allen Rindfuss purchased for \$350.00 a SWA Rapid Rewards (frequent flier) voucher from eBay for Plaintiff to fly from AUS to Nashville ["BNA"], to attend a late scheduled January 26 hearing before the U.S. District Court for the Eastern District of Tennessee at Knoxville, Tennessee. Shortly after the purchase, the hearing was cancelled and Plaintiff decided to use the voucher to fly from AUS to Philadelphia ["PHL"], for his younger son's Spring Break, on March 9-19, 2007.
6. On March 8 (one day prior to the flight), Plaintiff drove to AUS for computer confirmation of the voucher. On Friday, March 9, he checked-in at AUS for a 2-leg flight, AUS-BNA-PHL (with plane change at BNA, a SWA hub). All flights

were (or looked) full due to Spring Break. Plaintiff checked one bag and boarded the plane with a laptop computer. He was dressed business casual, with a necktie, because he intended to visit with a federal inmate at FCI-Loretto, in west-central Pennsylvania, on his way to western Ohio, where his older son was a USAF officer, stationed at Wright-Patterson AFB, near Dayton.

7. At BNA, while changing planes, Plaintiff was stopped and refused boarding to the second plane to PHL (although SWA still had Plaintiff's checked baggage and the plane was about getting ready to leave). During the 7 to 9 minutes which passed while waiting for a supervisor, the plane was completely full (except for Plaintiff's single spot) and the plane was basically waiting for Plaintiff. During part of that time, some white hoodlum (who might be checking in standby) with tattoos and cut-sleeves hanging shirt, threw intimidating glances at Plaintiff, who was merely explaining that he absolutely needed to be on that plane.
8. When the supervisor (whose name is believed to be Bryan) eventually showed up, he told Plaintiff that "this is not good," and that Plaintiff could only board the plane if he paid some additional amount between \$100 and \$200. When Plaintiff asked if that covered the return trip also, he was told that the whole thing would cost him an additional total of **\$509.60**. Plaintiff explained to Bryan that he did not agree with what was happening, that this was not right, but that his son would be waiting at PHL, that his son's school was closed and that he had no other place to go in Philadelphia, that Plaintiff would therefore pay whatever amount SWA asked for but that he would later sue SWA (without mentioning that he was a lawyer).
9. After Plaintiff made the credit card payment and boarded the plane, he saw that there was only one single seat left in the whole plane between two chubby gentlemen, who first looked like brothers. Shortly after take-off, a stewardess offered a free drink (alcoholic beverage) but Plaintiff thanked the stewardess but declined, stating that, because he would sue SWA, he would feel guilty if he accepted a free drink (again, without mentioning he was a lawyer).

10. After a letter to Mr. Jim Ruppel, VP for Customer Relations, produced no results, Plaintiff filed a discrimination complaint with Tennessee Human Rights Commission, stating that the subject vouchers were being sold very liberally both at eBay and at Craig's List websites, and that he must have been singled out because of his name. This national origin discrimination complaint did not produce any results either.

CAUSES OF ACTION:

11. **Impairment of the Same Right to Make & Enforce Contracts (Enjoyment of All Benefits, Privileges, Terms, & Conditions of the Contractual Relationship) as Is Enjoyed by White Citizens pursuant to 42 U.S.C. § 1981; Impairment of the Same Right as Is Enjoyed by White Citizens to Purchase Personal Property pursuant to 42 U.S.C. § 1982:** Defendant SWA singled out and targeted Plaintiff because of his name, which identified his national origin either as Turkish or as a foreigner, while hundreds and thousands of these vouchers were still being liberally sold both at eBay and at Craig's List websites.
12. **Breach of Contract, DTPA, & Common Law Fraud:** Defendants SWA & eBay (as well as non-Defendant SWA frequent fliers, who sell these vouchers) jointly conspired to cheat the prospective airline passengers by marketing Rapid Rewards vouchers (and allowing them to be mass marketed over several years and on dozens of webpages, with hundreds of entries) over the eBay and Craig's List websites, without disclosing to the public that these vouchers were not supposed to be honored for the purpose of flying.

PRAYER FOR RELIEF:

WHEREFORE, PREMISES CONSIDERED, Plaintiff M. Engin Derkunt would like to respectfully request that:

- a. Defendants SWA and eBay jointly pay Plaintiff **\$5,000** in compensatory damages, triple damages under the DTPA, and **\$200,000** in punitive damages;
- b. Defendants SWA and eBay jointly pay Plaintiff reasonable and necessary

- attorney's fees (would-be contingency-based attorney's fees, were Derkunt representing somebody else) and expert witness fees;
- c. Defendants SWA and eBay jointly pay Plaintiff pre-judgment (where applicable) and post-judgment interest; and
 - d. Defendants SWA and eBay jointly pay Plaintiff court costs and any other relief that Plaintiff may be justly entitled to.

PLAINTIFF RESPECTFULLY REQUESTS A JURY TRIAL.

Respectfully submitted,

M. Engin Derkunt

M. Engin Derkunt
Plaintiff Attorney *pro se*
Texas Bar No. 00785818
P.O. Box 6461,
Austin, Texas 78762-6461
(512) 656-3168 (phone)
(512) 402-8425 (fax)
derkuntlaw@yahoo.com