Rawa v Port Auth. of NY and NJ
2011 NY Slip Op 33311(U)
August 16, 2011
Supreme Court, Queens County
Docket Number: 29751/2010
Judge: Allan B. Weiss
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE WEISS, ALLAN B. IA Part 2
Justice

TRACIE JEAN RAWA, x

Plaintiff,

-against-

PORT AUTHORITY OF NY AND NJ,
JETBLUE, JETBLUE AIRWAYS CORP.,
UNITED AIRLINES, INC.,

Defendants.

x

Index
Number 29751 2010

Motion
Date June 15 2011

Motion
Cal. Number 17 - 19

Motion Seq. No. 1-3

The following papers numbered 1 to 22 read on these separate motions by JetBlue Airways Corporation (JetBlue), United Air Lines, Inc. (United), and Port Authority of New York and New Jersey (Port Authority), to dismiss the complaint pursuant to CPLR 3211 (a)(7) and (c).

	Papers Numbered
Notices of Motions - Affidavits - Exhibits......................................	1 - 13
Answering Affidavits - Exhibits...	14 - 20
Reply Affidavits..	21 - 22

Upon the foregoing papers it is ordered that the motions are granted.

Plaintiff in this action seeks damages for, inter alia, breach of contract, wrongful termination and assault. This action stems from the arrest of plaintiff for allegedly impersonating a flight attendant and attempting to obtain free plane travel aboard a JetBlue

airline. Plaintiff, a United employee, was arrested by the Port Authority police. All three defendants move to dismiss the complaint pursuant to CPLR 3211, for failure to state a cause of action, and based upon documentary evidence.

Facts

Plaintiff is a former "Key Account Manager" for defendant United Airlines, Inc. (United). On November 30, 2009, plaintiff was arrested by the Port Authority of New York and New Jersey police department (PAPD), after she allegedly attempted to impersonate a United flight attendant and fly for free on a JetBlue flight from New York to Buffalo. It is alleged that a JetBlue employee at the ticket counter, Adam Liotti, asked plaintiff for a valid identification showing that she was a flight attendant, which plaintiff did not produce. Plaintiff (allegedly) then went to a different JetBlue ticket counter, checked in and went through the screening point where she was stopped by JetBlue corporate security and identified by Liotti. Plaintiff allegedly admitted to the police that she was not a United crew member even though, it appears that she had checked-in to the JetBlue flight as one. It is further alleged that Liotti and another JetBlue employee, Carmelo DiBeneditti, told the police that a check of JetBlue's records showed that plaintiff had previously boarded JetBlue flights without paying the requisite fare by claiming to be a United flight attendant.

Plaintiff was arrested and charged with attempted petit larceny. The Queens County District Attorney's Office charged plaintiff with theft of services, criminal impersonation and attempted petit larceny. The underlying criminal case was disposed of by plaintiff's payment of $2,000 restitution to JetBlue.

In this lawsuit, plaintiff seeks to hold JetBlue, United and PAPD civilly liable, under a myriad of intentional tort, negligence and contract theories of recovery for monetary damages which plaintiff allegedly suffered as a result of her arrest and subsequent prosecution/plea agreement.

Motions to Dismiss

Defendants move to dismiss on the grounds that the complaint fails to state a cause of action (*see* CPLR 321[a][7]), and that they have a defense founded upon documentary evidence (*see* CPLR 3211[a][1]).

On a motion to dismiss for failure to state a cause of action, the court must afford the complaint a liberal construction, accepting the allegations of the complaint as true and deferring to the plaintiff when possible (AG Capital Funding Partners, L.P. v State St. Bank & Trust Co., 5 N.Y.3d 582, 591 (2005) (citing *Leon v Martinez,* 84 N.Y.2d 83, 87(1994). The court is not to determine whether the allegations are true, but whether the complaint states

a cause of action recognizable at law (*Foley v D'Agostino,* 21 AD2d 60 [1964]). "[T]he criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one"(*Guggenheimer v Ginzburg,* 43 NY2d 268, 275 (1977). With regard to a CPLR 3211(a)(7) motion to dismiss a cause of action, the court looks to the substance rather than to the form, so "[l]ooseness, verbosity and excursiveness, must be overlooked on such a motion if any cause of action can be spelled out from the four corners of the pleading (*Foley, supra* at 64-65 (internal citations omitted);see *also Continental Ins. Co. v 115-123 West 29th St. Owners Corp.,* 275 AD2d 604, 605 [2000]). "[B]are legal conclusions, as well as factual claims flatly contradicted by the record, are not entitled to any such consideration" (*Garner v China Natural Gas, Inc.,* 71 AD3d 825, 826 [2010]; *see Riback v Margulis,* 43 AD3d 1023 [2007]).]]

To succeed on a motion to dismiss pursuant to CPLR 3211(a)(1), the documentary evidence which forms the basis of the defense must resolve all factual issues as a matter of law and conclusively dispose of the plaintiff's claim (*see Goldman v Metropolitan Life Ins. Co.,* 5 NY3d 561 [2005]; *Nisari v Ramjohn,* 85 AD3d 987 [2011]*; FG Harriman Commons, LLC v FBG Owners, LLC,* 75 AD3d 527 [2010]; *GuideOne Specialty Ins. Co. v Admiral Ins. Co.,* 57 AD3d 611 [2008]). Although the facts alleged in the complaint are regarded as true, and the plaintiffs are afforded the benefit of every favorable inference (*see Leon v Martinez,* 84 NY2d 83 [1994]), allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration (*see Adler v 20/20 Cos.,* 82 AD3d 915 [2011]; *Prudential Wykagyl/Rittenberg Realty v Calabria–Maher,* 1 AD3d 422 [2003]; *New York Community Bank v Snug Harbor Sq. Venture,* 299 AD2d 329 [2002]; *see also Maas v Cornell Univ.,* 94 NY2d 87 [1999]).

"False" Arrest and Malicious Prosecution (First, Second and Third Causes of Action)

The first and second causes of action claim that plaintiff was recklessly and maliciously arrested without a warrant. The third cause of action alleges that plaintiff was maliciously prosecuted. At the outset, it is noted that there is no cause of action for "reckless arrest". Where a plaintiff seeks damages for an injury resulting from a wrongful arrest and prosecution, he or she may not recover under broad general principles of negligence, but must proceed by way of the traditional remedies of false arrest and malicious prosecution (*see Santoro v Town of Smithtown,* 40 AD3d 736 [2007]; *Galatowitsch v New York City Gay & Lesbian Anti–Violence Proj., Inc.,* 1 AD3d 137 [2003], *lv denied* 1 NY3d 507 [2004]).

A plaintiff asserting a common-law claim for false arrest must demonstrate that: the defendant intended to confine the plaintiff; the plaintiff was conscious of the confinement; the plaintiff did not consent to the confinement; and the confinement was not otherwise privileged (*Martinez v City of Schenectady,* 97 N.Y.2d 78 [2001]; *Broughton v State of New*

York, 37 NY2d 451 [1975], *cert. denied sub nom. Schanbarger v Kellogg,* 423 U.S. 929 [1975]). To establish a malicious prosecution claim, a plaintiff is required to establish: (a) the commencement or continuation of a legal proceeding by the defendant against the plaintiff; (b) the termination of the proceeding in favor of the plaintiff; © the absence of probable cause for the criminal proceeding; and (d) actual malice. The existence of probable cause to arrest, which is the dispositive issue herein, constitutes a complete defense to the claims of false arrest and malicious prosecution (*Marrero v City of New York,* 33 AD3d 556 [2006]*; Strange v County of Westchester,* 29 AD3d 676 [2006]; *Molina v City of New York,* 28 AD3d 372 [2006]; *Brown v Sears Roebuck & Co.,* 297 AD2d 205 [2002]; *see also Martinez v City of Schenectady,* 97 NY2d 78 [2001]).

"The presence or absence of probable cause ... can be decided as a matter of law where the facts leading up to an arrest and the inferences to be drawn therefrom are not in dispute" (*Orminski v Village of Lake Placid,* 268 AD2d 780, 781 [2000]; *see Parkin v Cornell Univ.,* 78 NY2d 523, 529 [1991]; *Lundgren v Margini,* 30 AD3d 476, 477 [2006]; *Restey v Higgins,* 252 AD2d 954 [1998]; *Malone v City of Glens Falls,* 251 AD2d 838 [1998]). Probable cause, a mixed question of law and fact (*People v Gonzalez,* 99 N.Y.2d 76, 83 [2002]), "requires the existence of facts and circumstances which, when viewed as a whole, would lead a reasonable person possessing the same expertise as the arresting officer to conclude that an offense has been or is being committed, and that the defendant committed or is committing that offense (*see People v Bigelow,* 66 NY2d 417, 423 [1985] ...). A finding of probable cause does not, however, require the same quantum of proof necessary to sustain a conviction, or to establish a prima facie case ... Rather, it need merely appear more probable than not that a crime has taken place and that the one arrested is its perpetrator' (*People v Hill,* 146 A.D.2d 823, 824 [1989] ...). Moreover, in determining whether a police office has probable cause for an arrest, the emphasis should not be narrowly focused on ... any ... single factor, but on an evaluation of the totality of circumstances, which takes into account "the realities of everyday life unfolding before a trained officer who has to confront, on a daily basis, similar incidents' " (*People v Bothwell,* 261 AD2d 232, 234 [1999] ...)" (*People v Wright,* 8 AD3d 304, 306-307 [2004] [citations omitted]; *see also* CPL 140.10[1][b]; *People v Maldonado,* 86 NY2d 631, 635 [1995]). In making the determination to arrest, the officer is not obligated to eliminate all possible innocent explanations for incriminating facts (*see People v Mercado,* 68 NY2d 874 [1986]; *People v Daye,* 194 AD2d 339, 340 [1993]). Moreover, "[a] party may act with probable cause even though mistaken ... if the party acted reasonably under the circumstances in good faith" (*People v Colon,* 60 N.Y.2d 78, 82 [1983]).

In this case, probable cause was established by the report by JetBlue employees of plaintiff's actions prior to the arrest. Specifically, it was reported that plaintiff pretended to be a United Airlines flight attendant and checked-in to a JetBlue flight without paying the

applicable transportation fees. The record reveals that on November 30, 2009, plaintiff was employed by United Airlines as a Key Account Manager and never worked as a flight attendant for them. JetBlue employee Liotti reported to the police that plaintiff had identified herself as a flight crewmember/flight attendant and checked in to fly the aircraft at no cost, a benefit which was available only to crewmembers/flight attendants. Upon learning of these facts from both JetBlue employees Liotti and DiBenedetti, as well as hearing plaintiff's admission that she indeed was not a flight attendant, Officer Rahner had probable cause to arrest plaintiff.

Since there is no evidence to support the contention that plaintiff was "assaulted" during her arrest, the portion of the cause of action which alleges the same is dismissed. There was no evidence that there was force used to effectuate the arrest or that, if used, it was excessive, as required for plaintiff to establish a claim for assault (see Scott v City of New York, 40 AD3d 408 [2007]).

Finally, the causes of action to recover damages for malicious prosecution as asserted against all the defendants are dismissed inasmuch as there is no evidence of actual malice or evidence from which malice can be inferred (*see Williams v Pinks, Feldman & Brooks,* 141 AD2d 723 [1988]; *Casler v State of New York,* 33 AD2d 305 [1970]).

Accordingly, the first, second and third causes of action are dismissed.

<u>Negligence by JetBlue (Fourth Cause of Action)</u>

In the fourth cause of action, plaintiff alleges that JetBlue was negligent in its "sale, operation, transportation and management of its air travel in ejecting plaintiff and instigating, encouraging and urging the arrest, handcuffing, detention and searching of plaintiff. To the extent plaintiff's intentional tort claim is premised on JetBlue's refusal to permit her to board her flight, the court believes it is preempted. To determine whether a claim has a connection with, or reference to an airline's prices, routes, or services, one must look at the facts underlying the specific claim *(Travel All Over The World, Inc. v Kingdom of Saudi Arabia,* 73 F.3d 1423 [7th Cir.1996]). Plaintiff's tort claim is based in part upon JetBlue's refusal of permission to board. Undoubtedly, boarding procedures are a service rendered by an airline. *Hodges,* 44 F.3d at 336, 339; *Chukwu v Board of Directors British Airways,* 889 F.Supp. 12, 13 (D.Mass.1995), *aff'd mem.,* 101 F.3d 106 (1st Cir.1996). Therefore, to the extent plaintiff's claim is based upon JetBlue's boarding practices, it clearly relates to an airline service and is preempted under the ADA (*Chukwu,* 889 F.Supp. at 13-14; *Williams v Express Airlines I, Inc.,* 825 F.Supp. 831, 833 (W.D.Tenn.1993).]]]

Finally, to the extent that plaintiff claims that JetBlue was negligent in its investigation of the issues which resulted in her wrongful arrest, there is no cause of action in New York sounding in negligent prosecution or investigation (see Coleman v Corporate Loss Prevention Assocs., Inc. 282 AD2d 703 [2001]; *Antonious v Muhammad,* 250 AD2d 559 [1998]; *Pandolfo v U.A. Cable Sys.,* 171 AD2d 1013 [1991])

Negligent Arrest (Fifth Cause of Action)

The fifth cause of action alleging that the Port Authority "negligently arrested" plaintiff is also dismissed. It is well settled that an action for negligent arrest and investigation does not exist in the State of New York (*see, Hernandez v State of New York,* 228 AD2d 902 [1996]; *Higgins v City of Oneonta,* 208 AD2d 1067 [1994], *lv. denied* 85 NY2d 803 [1995]).

Breach of Contract (Sixth Cause of Action)

The sixth cause of action which alleges breach of contract by JetBlue and United is dismissed.

In order to prevail on a breach of contract claim, a plaintiff must establish each of the following four elements: (1) existence of a valid contract; (2) plaintiff's performance of the contract; (3) defendant's material breach of the contract; and (4) damages (*Noise In The Attic Productions, Inc. v London Records,* 10 AD3d 303 [2004] [referencing N.Y. PJI 4:1–elements of breach of contract]; and *Furia v Furia,* 116 AD2d 694 [1986]). Thus, unless a plaintiff has performed the contract pursuant to its terms, the plaintiff has not established all the required elements to sustain a breach of contract claim, even if the other three elements are satisfied.

In September, 2000, plaintiff commenced employment with United. At all times herein relevant, plaintiff was not a United flight attendant but rather held the job title of "key account manager".

In 2004, United and JetBlue entered into an "Interline Agreement for Employee Business/Pleasure Reduced Fare Travel (the "Interline Agreement"). Pursuant to the Interline Agreement, United and JetBlue reciprocally agreed to provide "fare reductions" to its respective "regular employees with a minimum of three months continuous service." Specifically, pursuant to the Interline Agreement, JetBlue agreed that eligible United employees could enjoy "[r]educed rates . . . in the amount of $25.00 one way or $50.00 round

trip plus all applicable taxes." Significantly, the Interline Agreement does not provide for any form of free travel on any JetBlue flights.

Completely separate from the Interline Agreement, in 2007, United and JetBlue entered into a separate and distinct "Reciprocal Flight Attendant Cabin Seat Travel Agreement" ("Flight Attendant Agreement"). The Flight Attendant Agreement applies only to flight attendants; it does not apply to any other airline job classifications, including plaintiff's "key account manager" position. The Flight Attendant Agreement provides that flight attendants can fly "free" upon the production of proper ["CREW"] identification upon check-in for his/her flight. The Flight Attendant Agreement specifically disclaims that the "privileges granted under this agreement are granted from one company to another and confer no personal right or entitlement to any employees of the partners hereto" (Emphasis Added).

On November 30, 2009, at 2:55 p.m., plaintiff made a reservation through JetBlue's reservation system, to board Flight 130 departing at 6:30 p.m., from John F. Kennedy International Airport (JFK), and arriving in Buffalo, New York at 8:20 p.m. In her complaint, plaintiff infers that this reservation was made pursuant to the "Interline Agreement", which plaintiff describes as the "Zonal Employee Discount Fare Program." As noted above, pursuant to the Interline Agreement, plaintiff's round-trip JFK-Buffalo trip would have cost plaintiff $50.00, together with applicable taxes. The reservation record, submitted by defendant JetBlue, indicates that plaintiff misrepresented to JetBlue that she was a United flight attendant and that, as a result, pursuant to the Flight Attendant Travel Agreement, plaintiff fraudulently did not pay anything for her reservation. JetBlue, therefore, submits that since plaintiff did not pay anything for her flight reservation, she cannot credibly assert that she was legitimately seeking to avail herself of the discounted travel pursuant to a so-called "Zonal Employee Discount fare program".

The record further reveals that when plaintiff was unable to present a valid "CREW" documentation to demonstrate that she was a United flight attendant eligible for free travel, JetBlue did not permit plaintiff to board flight 130. Plaintiff then made a new reservation through JetBlue's reservation system for a one-way trip from JFK to Buffalo on flight 10 at 9:05 p.m. Once again, it is alleged, rather than availing herself of the Interline Agreement and paying $25.00 for this flight, plaintiff again misrepresented that she was a United flight attendant and did not pay anything for the record reservation. When plaintiff did not present the proper identification, once again, JetBlue did not permit plaintiff to board flight 10. Plaintiff submits that she never attempted to board flight 10. Regardless, at some point following the second reservation, plaintiff was arrested as noted above.

At the outset, it is noted that since plaintiff was not a party to the contract alleged to have been breached, her cause of action for breach of contract is dismissed (see *Podolsky v Citation Abstract, Inc*., 279 AD2d 559 [2001]). Furthermore, insofar as plaintiff attempted to fly for free on JetBlue flights, because the Interline Agreement provides only for discounted travel, the operative contract upon which plaintiff must rely to support the breach of contract claim is the Flight Attendant Travel Agreement (which provides for free travel). However, this Agreement specifically disclaims that "privileges granted under this Agreement are granted from one company to another and *confers no personal right or entitlement to any employees of the partners hereto*. (Emphasis Added). Moreover, even if plaintiff could establish that the Flight Attendant Travel Agreement is an enforceable contract, she has not sufficiently alleged that JetBlue breached it. Dispositively, plaintiff was not a United flight attendant and thus, she had no rights whatsoever under the Flight Attendant Travel Agreement.

Dismissal of this cause of action also invokes issues of preemption under the federal Airline Deregulation Act (the ADA), so it appropriate first to review the statute's preemption provision, the United States Supreme Court's decisions interpreting that provision, and federal law concerning the boarding practices of airlines. The Act provides:

> [A] State, political subdivision of a State, or political authority of at least 2 states may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.
>
> 49 U.S.C. § 41713(b)(1). The Supreme Court first considered the scope of preemption under the ADA in *Morales v Trans World Airlines, Inc.,* 504 U.S. 374 [1992]). It noted that section 41713(b)(1) was enacted "[t]o ensure that the States would not undo federal deregulation with regulation of their own." *Id.* at 378. Focusing on the statutory phrase "relating to" the Court held that "the words thus express a broad pre-emptive purpose." *Id.* at 383. Claims that have "a connection with, or reference to" an airline's prices, routes, or services are therefore preempted under the statute. *Id.* at 384. Specifically, the Court stated that even general statutes, when particularly applied to the airline industry, are preempted. *Id.* at 386. However, state actions that would affect airline prices, routes, or services " 'in too tenuous, remote, or peripheral a manner' " would not be preempted. *Id.* at 390, 112 S.Ct. at 2040 (citation omitted). Applying these principles, the Court held that the ADA preempted the specific application of general state consumer protection statutes to airline fare advertising.

Before recodification in 1994, the preemption clause read, in relevant part: "[N]o State or political subdivision thereof and no interstate agency or other political agency of two or more

States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law *relating to* rates, routes, or services of any air carrier....” 49 U.S.C.App. § 1305(a)(1) (Supp.1994) (emphasis added).

The Court next considered the ADA's preemption clause in *American Airlines, Inc. v Wolens,* 513 US 219 [1995]). In accord with *Morales,* the Court held plaintiffs' claims under the Illinois Consumer Fraud Act were preempted, because such actions served “to guide and police the marketing practices of the airlines” *Wolens,* 513 U.S. at 228. However, the Court carved out an exception to ADA preemption for contract claims against airlines such as those involving frequent-flyer programs, even when related to prices, routes, or services. The Court reasoned that such contract actions merely seek to enforce the parties' “own, self-imposed undertakings.” *Id.* The Court, however, limited its breach-of-contract exception to actions confined to the terms of the parties' bargain, “with no enlargement or enhancement based on state laws or policies external to the agreement.” *Id.* at 233. Thus, when a contract claim cannot be adjudicated without resort to outside sources of law, the claim is still preempted by the ADA. State contract claims escape preemption only when courts would be confined to the terms of the parties' agreement (*see Wolens*, *supra*).

Plaintiff first contends that the Supreme Court's decision in *Wolens* saves her breach-of-contract claim from preemption by the ADA. She argues that by refusing her permission to board her flight, JetBlue breached a general contractual duty to transport her to Buffalo.

Subsequent to *Morales,* the Supreme court determined that claims that an airline breached its agreement with its passengers under its frequent flyer program are not preempted (*American Airlines, Inc. v Wolens,* 513 U.S. 219 [1995]). That holding has been interpreted to mean that no breach of contract claim by a passenger against an airline shall be preempted (*Galbut v American Airlines, Inc.*, 27 F.Supp.2d 146 [E.D.N.Y. 1997]; *see, e.g., Travel All Over the World, Inc. v Kingdom of Saudi Arabia,* 73 F.3d 1423 [7th Cir.1996]; *Chukwu v Board of Directors Varig Airline,* 880 F.Supp. 891 [D.Mass.1995]; *Chrissafis v Continental Airlines, Inc.,* 940 F.Supp. 1292 [N.D.Ill.1996)]). As a result, plaintiff's breach of contract claim in this case is not preempted.

Notwithstanding this however, plaintiff has failed to establish the four elements to sustain a breach of contract: formation of a contract between parties, performance by plaintiff, breach by defendant and damages (*Reuben H. Donnelley Corp. v Mark I Marketing Corp.,* 925 F.Supp. 203, 206 [S.D.N.Y.1996]). Here, even assuming that plaintiff did indeed enter a contract with defendant by making the airline reservation, plaintiff has failed to establish any fact that even suggests a breach of that contract. Plaintiff does not dispute that she did not perform by paying for the reservation. Further, even assuming that there was a contract for discounted travel, plaintiff does not dispute (once again) that she did pay the

discounted amount. Third, plaintiff has not even alleged that the contract entitled her to free travel, so that defendant's requirement of payment cannot be considered a breach.

Wrongful Termination (Seventh Cause of Action)

Plaintiff's seventh cause of action asserts that her termination from United "was in violation of certain rules, conduct [sic] and regulations relating to discipline, separation and termination." However, the record reveals that plaintiff was clearly an at-will employee. In the absence of an agreement establishing a fixed duration of employment, an employment relationship is presumed to be freely terminable by either party, at any time, for any reason, or even for no reason at all *(Wieder v Skala, 168 AD2d 355 [1990]; Weiner v McGraw-Hill, Inc.,* 57 NY2d 458 [1982]; *Guard-Life Corp. v Parker Hardware Mfg. Corp.,* 50 NY2d 183 [1980]; *Murtha v Yonkers Child Care Assn.,* 45 NY2d 913 [1978]; see also Abeles v Mellon Bank Corp., 298 AD2d 106 [2002]). This fundamental rule "undergirding employment relationships" which has been in existence for over a century, presumes that "employment for an indefinite or unspecified term is at will and may be freely terminated by either party at any time without cause or notice" (*Horn v New York Times*, 100 NY2d 85, 91 [2003]).

Furthermore, even assuming *arguendo* that United's right to terminate plaintiff on an at-will basis was somehow limited, the documentary evidence submitted clearly shows that United could terminate plaintiff for cause for improperly impersonating a flight attendant, a clear violation of the Company's rules and policies.

Duress (Eighth Cause of Action)

Plaintiff's eighth and final cause of action alleges that JetBlue imposed a two thousand dollar ($2,000.00) payment on plaintiff by force and duress. JetBlue correctly argues that plaintiff fails to state a cause of action for economic duress by JetBlue during the criminal case plea negotiations. The Court may invalidate a contract on the ground of economic duress only where a party involuntarily agreed to the terms of the contract because of a wrongful threat that prevented the party from exercising free will (*805 Third Ave. Co. v M.W. Realty Assoc*., 58 NY2d 447, 451 [1983]*; Stewart M Muller Const. Co., Inc. v New York Tel. Co.,* 40 NY2d 955 [1976]). Economic duress can also exist where one party to a contract threatens to breach unless the other party agrees to a further demand (*Edison Stone Corp. v 42nd Street Development Corp.,* 145 AD2d 249 [1989]). There can be no claim for economic duress where there is no allegation of the existence of a contract (*Friends Lumber, Inc. v Cornell Development Corp.,* 243 AD2d 886 [1997] ("The existence of economic duress is demonstrated by proof that one party to a contract has threatened to breach the contract by withholding performance unless the other party agrees to some further demand").

Here, plaintiff did not enter into a plea agreement with JetBlue, thus the District Attorney's settlement demands did not preclude plaintiff from exercising her free will. Even affording the complaint a liberal construction, plaintiff fails to state a cause of action for economic duress relative to the plea agreement because the parties never entered into an agreement. Therefore, the eighth cause of action for duress is dismissed.

Conclusion

The motions to dismiss are granted.

Dated: August 16, 2011 ___________________________

J.S.C.