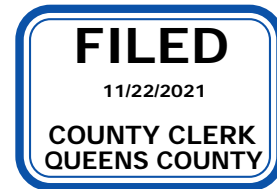


Silver v American Airlines Inc.
2021 NY Slip Op 33135(U)
November 18, 2021
Supreme Court, Queens County
Docket Number: Index No. 715655/2021
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101



P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

JONATHAN SILVER & BELLA BEKKER SILVER, Index No.: 715655/2021

Plaintiffs, Motion Date: 11/18/2021

- against - Motion No.: 44

AMERICAN AIRLINES INC.; EXPEDIA INC., Motion Seq.: 2

Defendants.

- - - - - x

The following electronically filed documents read on this motion by defendant AMERICAN AIRLINES INC. for an Order dismissing plaintiffs' second amended complaint as against defendant AMERICAN AIRLINES INC., including all claims of violations of General Business Law 349(h), negligence, and punitive damages pursuant to CPLR 3211(a) (7):

	Papers Numbered:
Notice of Motion-Affidavits-Memo. of Law-Exhibits...	EF 31 - 36
Affirmation in Opposition-Exhibits.....	EF 47 - 48
Affirmation in Reply-Exhibits.....	EF 49 - 50

This action arises out of an incident that occurred on June 8, 2021 whereby plaintiffs, who had booked tickets through defendant Expedia, Inc. (Expedia) on May 21, 2021, were informed at the departing airport that they were not ticketed for a non-stop flight to Jackson Hole, Wyoming.

The Second Amended Complaint specifically alleges that plaintiffs purchased the tickets through Expedia, and received the confirmation email for the purchase from Expedia. At the American Airlines Inc. (American) check-in counter, plaintiffs learned that even though they had received an email from American with a Record Locator on May 21, 2021, they were not ticketed for the flight. They were told that Expedia never booked the tickets. On the date of the incident, plaintiffs attempted to contact Expedia. The American workers told them that the email really did

not come from American, but from Expedia. The workers refused to look at the email and told them to step away from the counter. Another American worker told them they must buy another ticket. The extra tickets were paid for.

The Second Amended Complaint contains two causes of action: negligence and violations of Section 349(h) of the General Business Law. American now moves to dismiss the Second Amended Complaint in its entirety.

It is well settled that in considering a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211[a][7], the pleadings must be liberally construed. The sole criterion is whether, from the complaint's four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law (Leon v Martinez, 84 NY2d 83 [1994]; Guggenheimer v Ginzburg, 43 NY2d 268 [1977]; Rochdale Vil. v Zimmerman, 2 AD3d 827 [2d Dept. 2003]). The facts pleaded are to be presumed to be true and are to be accorded every favorable inference, although bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration (see Morone v Morone, 50 NY2d 481 [1980]; Gertler v Goodgold, 107 AD2d 481 [1st Dept. 1985], affirmed 66 NY2d 946, [1985]). The Court's role is limited to determining whether the pleading states a cause of action, not whether there is evidentiary support to establish a meritorious cause of action (see EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11 [2005]; Guggenheimer v Ginzburg, 43 NY2d 268 [1977]; Sokol v Leader, 74 AD3d 1180 [2d Dept. 2010]).

The first cause of action asserts a negligence claim against American. For a negligence claim to survive dismissal, plaintiffs must establish: (1) the existence of a duty; (2) a breach of this duty; and (3) a resulting injury to the plaintiffs (see Martinez v Khaimov, 74 AD3d 1031 [2d Dept. 2010]).

In opposition, plaintiffs contend that the motion papers are inadequate as there is no affidavit from anyone with personal knowledge of the facts. Plaintiffs also contend that on May 21, 2020, plaintiffs received two emails from American confirming the reservation. Based on such, plaintiffs contend that the issuance of the email was the act committed by American.

However, even if American "acted", the Second Amended Complaint fails to allege that American owed a duty to plaintiffs and that American breached this duty. Accordingly, the negligence claim shall be dismissed.

This Court notes that the first cause of action also states that American acted intentionally. To the extent plaintiffs rely on such to sustain a claim for punitive damages, punitive damages are "available only in those limited circumstances where it is necessary to deter defendant and others like it from engaging in conduct that may be characterized as gross and morally reprehensible, and of such wanton dishonesty as to imply a criminal indifference to civil obligations" (Bernstein v Kelso & Co., Inc., 231 AD2d 314, 324 [1st Dept. 1997][internal quotation marks omitted]).

Here, the allegations in the Second Amended Complaint do not arise to the level of gross and morally reprehensible behavior. American's actions were limited to informing plaintiffs that they need to speak with Expedia about their booking; American could not issue a ticket to them as the booking was made through Expedia; they should step away from the counter; and they should buy another ticket if they wanted to fly to their destination. Even if American did issue the emails, such act does not rise to a level of oppressive intentional misconduct or gross and morally reprehensible conduct.

American also seeks to dismiss the cause of action asserting violations of Section 349(h) of the General Business Law on the grounds that the statute is preempted by Federal Law and as American did not undertake any deceptive or misleading actions with respect to plaintiffs.

In pertinent part, Section 349(h) of the General Business Law states that "any person who has been injured as a reason of [deceptive acts or practices] may bring an action" to recover damages as a result of the alleged wrongdoing. Section 349(d) provides that "it shall be a complete defense [to a claim made under Section 349] that the act or practice is. . . subject to and complies with the rules and regulations of, and the statutes administered by. . . any official department, division, commission or agency of the United States as such rules, regulations or statutes are interpreted by. . . such department, division, commission or agency or the federal courts".

Here, the Second Amended Complaint does not state that American's actions failed to comply with any applicable federal rules, regulations or statutes. Thus, the claim for "deceptive consumer practices [under Section 349] is prohibited by statute where the airline has complied with federal requirements" (Stone v Continental Airlines, 10 Misc.3d 811, 814 [Sup. Ct., New York Cnty. 2005]). Since the Section 349(h) claim is preempted by Federal Law, the substance of the claim need not be addressed herein.

Accordingly, and based on the above reasons, it is hereby

ORDERED, that the motion to dismiss by defendant AMERICAN AIRLINES INC. is granted in its entirety, the Second Amended Complaint is dismissed as against defendant AMERICAN AIRLINES INC., and the Clerk of the Court shall enter judgment accordingly.

Dated: November 18, 2021
Long Island City, N.Y.

Robert J. McDonald

ROBERT J. MCDONALD
J.S.C.