

IN THE COUNTY COURT AT BROMLEY

Case No: H38YY522

Court House  
College Road  
Bromley  
BR1 3PX

Wednesday, 1<sup>st</sup> February 2023

Before:  
DISTRICT JUDGE WATSON

B E T W E E N:

TERESA HALLETT

and

TUI AIRWAYS LIMITED

MS S PRAGER appeared on behalf of the Claimant  
MS K HOWELLS appeared on behalf of the Defendants

JUDGMENT  
(Approved)

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*This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court.*

DISTRICT JUDGE RICHARD WATSON:

1. This is an application by the defendants in these proceedings, represented by Miss Howells of counsel, seeking first that the purported amendment of the claim form on 9 February 2022 without the permission of the Court be struck out. Secondly, that the claimant's claim against the defendant be struck out pursuant to Civil Procedure Rule (CPR) Part 3.4(2)(a) and/or (b), namely on the basis that either the claimant's particulars of claim disclosed no reasonable grounds for bringing the claim or the claimant's particulars of claim are an abuse of the Court's process or are otherwise likely to obstruct the just disposal of the proceedings. Miss Prager of counsel represents the claimant. The application notice is dated 26 May 2022 and is supported by a statement of the same date. There is no evidence in opposition submitted by the claimant.
2. This action is a claim for compensation in respect of injuries alleged to have been sustained by an airline passenger when an item fell from an overhead locker onto her head during the course of a flight from Paphos, Cyprus to London Gatwick on 20/11/2019.
3. Liability in respect of injuries sustained by passengers on board aircraft during flights is not governed by ordinary principles of tortious or contractual liability but by international conventions ratified by countries and incorporated in national law by statute.
4. There is no dispute that this claim is governed by the provisions of the Montreal Convention incorporated into English law ("the Montreal Convention")
5. The history of these proceedings are that the claim was issued on 15 November 2021 against a company called TUI UK Limited, which is a travel agency and is not the correct defendant. On 9 February 2022 the proceedings were amended pursuant to CPR 17.1, which permits amendments to statements of case at any time before they have been served on any other parties, to substitute TUI Airways Limited as the correct defendant. The proceedings were then served on 11 February of 2022, and a defence was filed on 6 April 2022.
6. The Defendant seeks to strike out the claim on the ground that, at the date of the Claimant's purported amendment of the Claim Form to substitute the correct Defendant (TUI Airways

Limited) as the Defendant, there was no cause of action in existence against that Defendant, the same having been extinguished (not merely statute barred) by the expiry of the 2-year prescription period under the Montreal Convention. No claim against the correct Defendant having been issued during this period, no claim existed to be amended and the Claimant is unable to rely on any provision of the CPR or any other domestic provision to purport to amend the Claim Form and continue the claim.

7. I was greatly assisted by the submissions of both Miss Howells and Miss Prager in considering this case. There was a very significant amount of agreement between them in relation to the application of the Montreal Convention.
8. In the course of argument, I was referred to a very great number of authorities and in particular the judgement of HHJ Worster in the case of *Hall v Heart of England Balloons Ltd and Another* [2010] 1 Lloyd's Rep. 373, which provided a helpful analysis for the Court of the effect of the Montreal Convention. It provides for the sole and exclusive cause of action in relation to liability of an air carrier in respect of passenger claims and particularly Article 17(1) provides:

“The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking”.
9. It is common ground that that is in play in this case. In addition, then Article 35:

“The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped”.
10. In this case it is common ground that proceedings were issued against the incorrect defendant prior to the expiry of the two-year limitation period. It is also common ground that the proceedings were not amended to include the correct defendant until after the expiry of that limitation period. The scheme is one of strict liability. It is clear from the authorities that I was referred to that it is a key feature of the Montreal Convention that it provides a substantive prescription period, in other words the expiry of the 2 year period serves to extinguish the claim and provide the defendant with a substantive defence.
11. It does not, unlike the Limitation Act 1980, act as a mere procedural bar to the remedy whilst leaving the claim in existence. The claim itself ceases to exist in law and cannot be resuscitated by reliance on the CPR or any other domestic law. In relation to that see the

judgment of Dyson LJ, paragraph 69 to 70 in *Laroche v Spirit of Adventure (UK) Ltd* [2009] QB 778 at 794H-795A. He said:

“The judge was in my view right to hold at [48] to [51] that article 29(2) does not permit the 2 year period to be suspended, interrupted or extended by reference to domestic law. The only thing that it leaves for determination by the court seised of the case is the calculation of the precise dates of the beginning and end of the relevant two year period and the determination of whether the action has been brought within that two year period”.

12. While the claimant accepts that they issued the proceedings against the wrong defendant, what they say is that they were permitted by the CPR to substitute the correct Defendant. The relevant parts of CPR 17 provide as follows:

“17.1 (1) A party may amend his statement of case at any time before it has been served on any other party.

17.2 (1) If a party has amended his statement of case where permission of the court was not required, the court may disallow the amendment.

(2) A party may apply to the court for an order under paragraph (1) within 14 days of service of a copy of the amended statement of case on him”.

13. The claimant say that the Defendant did not make an application under CPR 17.2(2); that they should have done so; that they have brought the wrong application; that is not open to the Defendant to apply to strike out the claim pursuant to CPR 3.4 and that once the proceedings were served, they were served on the correct defendant and had been issued against the correct defendant pursuant to the amendment made on 9 February 2022.
14. Having considered the authorities, I accept and adopt the analysis by HHJ Worster in the case of *Hall v Heart of England Balloons Ltd and Another*. It is clear to me that the Montreal Convention is indeed a self-contained code. There is no room for the application of any domestic law rules or principles. What Miss Prager says is that, notwithstanding that, the proceedings when issued were not against the correct defendant CPR 17 permits a claimant to amend their claim, and that is what they did. Therefore, when the proceedings were served there was a claim in existence against TUI Airways Limited.
15. To accept Ms Prager’s argument would mean that the domestic CPR are in some way allowed to override the provisions of the Montreal Convention.
16. In my judgment, all the authorities referred to all came to the same conclusion in relation to the application of the Convention and the inability of domestic rules of procedure to seek to

take precedence over the provisions of the Convention. A number of those authorities were not binding upon me; decisions of Circuit Court judges and/or district or deputy district judges. However, I consider that the defendants' analysis is the correct one. In particular an example of a provision of domestic law that in my judgment cannot be used to flout the two-year prescription period in the Montreal Convention is the doctrine of relation back.

17. To allow such a provision, in other words, the fiction that an amendment dates back to the date of issue is, in my judgment, clearly contrary to the substantive nature of the prescriptive period in Article 35 of the Montreal Convention. I note the doctrine of relation back was confirmed as having no application in relation to the one-year limit in the Hague Rules in the case of *Payabi -v- Armstel Shipping Corporation [1992] QB 907*. It is also consistent with the need for certainty that is provided for by the Convention and referenced in a number of cases that have considered the detail of the Convention that there is no room for flexibilities that might otherwise be afforded by relevant domestic law regimes.
18. This is a case where there is no scope in my judgment for the Court to do anything other than strike out the claim as disclosing no reasonable cause of action against the defendant because the provisions of the Montreal Convention make clear that when these proceedings were amended so that the correct defendant was included the limitation period in the Montreal Convention had expired. There was no legal cause of action at that stage that the claimant had against the defendant. It follows, therefore, in my judgment that the claim should be struck out pursuant to Civil Procedure Rule 3.4(2)(a).

**End of Judgment**

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