

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

COASTAL AIR TRANSPORT

Appellant/Defendant,

v.

MARCELLIN LOCKHART,

Appellee/Plaintiff.

) **S. Ct. Civ. No. 2019-0086**
) Re: Super. Ct. Rv. No. 005/2019 (STX)

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On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Douglas A. Brady

Considered: October 13, 2020
Filed: December 2, 2020

Cite as: 2020 VI 22

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

APPEARANCES:

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Law Office of Martial A. Webster, Sr.
St. Croix, U.S.V.I.
Attorney for Appellant,

Marcellin Lockhart
St. Croix, U.S.V.I.
Pro se.

OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 Coastal Air Transport (“Coastal”) appeals the judgment of the Superior Court, affirming the decision of the Magistrate Division holding Coastal liable for denying Marcellin Lockhart’s

boarding and a seat on one of its flights. For the reasons that follow, we affirm the Superior Court's ruling.

I. STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

¶ 2 This case arises from an airline passenger ticket dispute between Lockhart and Coastal. Lockhart claims that his wife purchased a Coastal airline ticket for him for a flight from Dominica to St. Croix, scheduled to depart on August 27, 2017. Lockhart testified that he passed through airport security with no problem, but was denied boarding on the flight by a Coastal gate agent who informed him that his ticket was for the prior day, August 26, and that the flight he was attempting to board was full.

¶ 3 On July 20, 2018, Lockhart filed a claim in the Small Claims Division of the Superior Court seeking damages against Coastal. Lockhart's action for debt sought to recover \$965, which included a refund of the price of his ticket and associated costs. The matter was assigned to a magistrate judge, *see* 4 V.I.C. § 123(a)(4), who held hearings and took evidence on October 30 and November 13, 2018. Lockhart testified personally and Mike Foster, founder and proprietor of Coastal, testified on behalf of Coastal. The magistrate judge found that Lockhart did have a confirmed reservation for August 27 and that Coastal wrongfully denied him a seat on the flight, causing Lockhart to incur extra expenses. The magistrate judge held that Coastal was liable to Lockhart and entered judgment on April 15, 2019, for \$576.50, which reflected the cost of the ticket, roundtrip taxi fare, and a one-night hotel stay, plus \$100.00 in court costs.

¶ 4 On May 10, 2019, Coastal filed an appeal to the Superior Court. On October 18, 2019, the Superior Court affirmed the judgment of the Magistrate Division. Coastal then timely filed a notice of appeal with this Court on November 15, 2019. (JA 13.) *See* V.I. R. APP. P. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 5 “The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court.” 4 V.I.C. § 32(a); *see also* 48 U.S.C. § 1613a(d). The Superior Court’s October 18, 2019 judgment was a final order because it “ends the litigation on the merits, leaving nothing else for the court to do except execute the judgment.” *Pub. Employees Relation Bd. v. United Indus. Workers-Seafarers Int’l Union*, 56 V.I. 429, 433 (V.I. 2012). Accordingly, the Court has jurisdiction over the appeal taken from that judgment.

¶ 6 This Court exercises plenary review over applications of law and reviews findings of fact for clear error. *See St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007).

B. Compensation for Bumping

¶ 7 The only issue Coastal raises on appeal is whether a passenger involuntarily denied boarding (“bumped”) is entitled to compensation when the plane has a capacity of only nine seats. Coastal says that such a passenger is not entitled to compensation because federal regulations¹

¹ In 1967 the Civil Aeronautics Board began regulating the amount of compensation owed bumped passengers. Priority Rules, Denied Boarding Compensation Tariffs and Reports of Unaccommodated Passengers, 32 Fed. Reg. 11,939-40 (Aug. 18, 1967) (codified at 14 C.F.R. § 250); *see generally* Elliott Blanchard, *Terminal 250: Federal Regulation of Airline Overbooking*, 79 N.Y.U. L. Rev. 1799, 1809 (2004) (describing the federal approach to regulating overbooking). Congress passed the Airline Deregulation Act (“ADA”) in 1978 to encourage competitive market forces in the airline industry and limit state regulation. Pub. L. No. 95–504, Oct. 24, 1978, 92 Stat. 1705; originally codified at 49 U.S.C. § 1305(a)(1). The ADA preempts some types of claims. *See Cape Air Int’l v. Lindsey*, 53 V.I. 604, 619 (V.I. 2010) (discussing the application of the ADA in the Virgin Islands and finding that a claim for jewelry missing from lost luggage was not preempted); *see generally* Construction and Application of § 105 Airline Deregulation Act, 149 A.L.R. Fed. 299 (1998) (describing preemption clause of ADA).

provide that “[a] passenger denied boarding involuntarily from an oversold flight shall not be eligible for denied boarding compensation if: . . . (b) The flight for which the passenger holds confirmed reserved space is . . . on an aircraft with a designed passenger capacity of 60 or fewer seats.” 14 C.F.R. § 250.6.

¶ 8 However, as pointed out by Lockhart, this is a misleading fragment of the relevant federal regulations. The full regulation section states:

A passenger denied boarding involuntarily from an oversold flight shall not be eligible for denied boarding compensation if: . . . (b) . . . on an aircraft with a designed passenger capacity of 60 or fewer seats, the flight for which the passenger holds confirmed reserved space is *unable to accommodate that passenger due to weight/balance restrictions when required by operational or safety reasons.*”

14 C.F.R. § 250.6. (emphasis added). While Coastal’s plane had fewer than 60 seats, Coastal presents no evidence that Lockhart was bumped due to weight or balance restrictions required by operational or safety reasons. The regulation states that a bumped passenger is not eligible for boarding compensation when weight or balance restrictions required by operational or safety reasons prevent that passenger from boarding. Here, Lockhart was bumped because the flight on which he was booked was full and not because of weight and balance safety restrictions. Therefore, the plain text of this regulation does not support Coastal’s argument. This regulation would not deny boarding compensation to Lockhart.

¶ 9 As correctly recognized by the Superior Court, the debate over the meaning of 14 C.F.R. § 250.6 is irrelevant to this case because Section 250 is limited in the following way:

This part applies to every carrier, as defined in § 250.1, with respect to scheduled flight segments using an aircraft that has a *designed passenger capacity of 30 or more passenger seats*, operating in (1) interstate air transportation or (2) foreign air transportation with respect to nonstop flight segments originating at a point within the United States.

14 C.F.R. § 250.2. (emphasis added). The Coastal plane in question has only nine seats, which is less than 30, and therefore Section 250 does not apply to this flight.²

¶ 10 Furthermore, Coastal fundamentally misreads these federal regulations. The Department of Transportation crafted 14 C.F.R. § 250 in order to set minimum standards for the treatment of airline passengers with confirmed reservations who were bumped. *Modernizing Payment of Denied Boarding Compensation*, 84 Fed. Reg. 11,658 (March 28, 2019). However, a bumped passenger is entitled to decline the airline’s offer and “seek to recover damages in a court of law.” 14 C.F.R. § 250.9; *see also West v. Northwest Airlines, Inc.*, 995 F.2d 148, 152 (9th Cir. 1993) (holding that a passenger has three options: accept the airline’s offer of alternate transportation, accept airline compensation, or decline the payment and sue in court); *see also* 47 Fed. Reg. 52,982 (Nov. 24, 1982) (explaining that in exceptional cases where the regulatory payment is inadequate, the passenger is free to refuse it and bring a private legal action). While a bumped passenger on a Coastal flight with a capacity of less than 30 seats would not be automatically entitled to

² Lockhart’s flight originated in Dominica and landed in the U.S. Virgin Islands, making it an international flight. (JA 6.) Accidents related to international flights are governed by the Montreal Convention. Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, S. Treaty Doc. No. 106–45, 2242 U.N.T.S. 309. However, any defense Coastal might have had under the Montreal Convention was waived, because invoking the Convention is an affirmative defense, and Coastal did not raise such a defense. *See Coastal Air Transp. v. Royer*, 64 V.I. 645, 657 (V.I. 2016) (holding that invocation of the Convention is an affirmative defense that must be pled in the first responsive pleading); *see also Maduro v. Am. Airlines, Inc.*, S. Ct. Civ. No. 2007–0029, 2008 V.I. Supreme LEXIS 24, at *8 n.4 (V.I. Feb. 28, 2008) (unpublished).

compensation for bumping per title 14, section 250 of the Code of Federal Regulations,³ the passenger could still choose to pursue a claim in court.⁴

¶ 11 Because the federal regulations do not apply here, this action becomes a simple contract dispute.⁵ The Superior Court affirmed the magistrate judge’s conclusion that Coastal breached its contract with Lockhart and its award of damages. Coastal’s only argument on appeal is based on an erroneous reading of the 14 C.F.R. § 250.6 and it has presented no other argument why it should not owe damages for breaching its contract with Lockhart. Thus, we affirm the Superior Court’s judgment and award of damages.

III. CONCLUSION

¶ 12 Coastal’s only argument on appeal is based on an erroneous reading of 14 C.F.R. § 250.6. Therefore, this Court affirms the Superior Court’s October 18, 2019 judgment.

DATED this 2nd day of December 2020.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

³ When applicable, passengers may be entitled to compensation as much as 400% of the fare to the passenger’s destination or first stopover, up to \$1,350. 14 C.F.R. § 250.9.

⁴ Although some types of claims are preempted by the Airline Deregulation Act (ADA), contract claims are not. *See American Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33 (1995); *see also Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1432 (7th Cir. 1996) (holding that breach of contract claims for “bumping” were not preempted by the ADA).

⁵ To establish a breach of contract claim, the Plaintiff must show “(1) an agreement; (2) a duty created by that agreement; (3) a breach of that duty; and (4) damages.” *Phillip v. Marsh-Monsanto*, 66 V.I. 612, 621 (V.I. 2017).

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court