



Legal Update: Aviation Law

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Dear Clients and Colleagues,

We are pleased to provide you with important aviation law update.

Right to Assign or Transfer a Flight Ticket to another Passenger

Civil Action – Summary Procedure - 24292-02-20 Lipschitz v. Sun d'Or International Airways

The Magistrates' Court in Bat Yam recently heard a claim brought against the company Sun d'Or which concerned the question of whether under Israeli law a person who purchased a flight ticket could transfer or assign their ticket to a different person. The court in this case also adjudicated on whether the original ticket purchasers held this right even if it was agreed in advance at the time of purchase that assigning or transferring the ticket was not permitted in accordance with the airline's conditions.

In this case the Plaintiffs purchased two flight tickets from the airline. Approximately one week before the scheduled departure date, the Plaintiffs requested to transfer their flight tickets to their daughter and her spouse due to Plaintiff's health issues which suddenly arose. The airline denied the request and refused to transfer the flight tickets.

The Plaintiffs argued that the airline did not indicate in the reservation and on the flight tickets that the flight tickets are not transferrable. However, the airline argued that its General Conditions of Carriage and a separate summary three-page document that it provided to its customers with specific details on the relevant services, expressly stated that the tickets were not transferrable.

The court found that there were no Israeli laws or caselaw that dealt with the issue of the passenger's right to transfer their flight ticket, thus it was necessary to apply the Standard Contracts Law, 5743-1982. Accordingly, the court held that the contractual term which precluded the right to transfer or assign the Plaintiffs' flight tickets was an unfair term which was void and of no force and effect and which the Defendant could not benefit from.

In the court's judgement it found that the airline failed to prove that there were security,

economic or aviation reasons which justified preventing the transfer of a flight ticket to another passenger. In addition, the court held that the rule prohibiting such transfer did not arise from the airline's technical or logistical limitations, and moreover the court stated that the rule demonstrated a moral and social failing and deficient service to consumers which amounted to serious harm to the flight ticket purchasing public.

Under these circumstances the airline was obligated to permit the Plaintiffs to exercise their transfer right of their flight tickets but because it failed to permit such exercise at the time of the flight, the court ordered the airline to refund the cost of the flight tickets to the Plaintiffs.

In addition, the court reviewed in detail the documents the airline claimed established the prohibition to transfer the flight tickets. The court found that these documents did not contain clear and express terms prohibiting the transfer of flight tickets for the following reasons:

- A term in the airline's General Conditions of Carriage established that, "A ticket cannot be assigned except if it was issued as a part of a package which European Union Directive 09/314 applies to and which fulfills the following conditions." The court held that due to the fact that the EU directive was not described, it could be concluded that the possibility existed for the transferability of the flight tickets.
- The airline argued that it was not possible to transfer the flight tickets, because among other reasons, the flight tickets were reduced price tickets which did not include this option. The court rejected this argument as it did not find any reference to such restriction for reduced price tickets in the section of the airline's General Conditions of Carriage which dealt with such tickets.
- The separate summary three-page document that the airline provided to its customers included the condition that, "Changing the name of the passenger on the flight ticket is not permitted," but the court held that this condition was inconsistent with the airline's General Conditions of Carriage, in particular due to the fact that the summary document included a clarification that the "complete conditions of the relevant flight ticket were subject to the final terms specified on the website."
- The court concluded that the terms on the company's website were not clear and were not consistent with respect to the possibility to transfer or assign flight tickets, thus the Plaintiffs' general agreement to the terms at the time when they made their reservation need not be to their detriment.
- Moreover, in a recorded discussion between the Plaintiff and a representative of the Defendant, the representative stated that transferring the flight tickets was prohibited

under "international law". The company denied this statement and argued that the representative had misspoke, but the court did not accept this reservation and held that if the prohibition was established in the airline's General Conditions of Carriage, it was clear that the representative would have indicated this in the discussion with the Plaintiff, but this was not the case. From this discussion, the court concluded that even according to the Defendant, the source of the prohibition against transferring the flight tickets was not in its General Conditions of Carriage or in the terms of the agreement for the specific reservation.

The above-described judgement constitutes a significant innovation with respect to the law on the passenger's ability to transfer or assign his flight ticket. However, as the judgement was rendered by the lower Magistrates' Court, it is not binding caselaw.

We will continue to follow this case and update you on any developments.

Sincerely,

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