

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

LEONISE GREIG-POWELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 2017-42
	)	
LIAT (1974) LTD.,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

ATTORNEYS:

Clive Claudius Rivers

Law Offices of Clive Rivers
St. Thomas, VI

For the plaintiff Leonise Greig-Powell

Christopher Allen Kroblin

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St. Thomas, VI

For the defendant LIAT (1974) Ltd.

ORDER

GÓMEZ, J.

Before the Court is the motion of LIAT (1974) Ltd. for judgment on the pleadings.

FACTUAL AND PROCEDURAL HISTORY

Leonise Greig-Powell ("Greig-Powell") is a resident of St. Thomas, U.S. Virgin Islands.

LIAT (1974) Ltd. ("LIAT") is a foreign corporation incorporated under the laws of Antigua and Barbuda with its principal place of business in Antigua. LIAT is a regional

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 2

airline that offers flights between destinations in the Caribbean.

On August 16, 2016, Greig-Powell was scheduled to travel from St. Thomas to Trinidad on LIAT flight 553. Flight 553 was scheduled to travel from St. Thomas to Antigua. From Antigua, Greig-Powell was scheduled to travel on a connecting LIAT flight to Trinidad. Greig-Powell alleges she missed her connecting flight from Antigua to Trinidad because the flight from St. Thomas to Antigua was delayed. LIAT placed Greig-Powell on the next available flight from Antigua to Trinidad.

While on board the flight to Trinidad, Greig-Powell informed a flight attendant that she was diabetic and felt unwell. Greig-Powell further informed the flight attendant that she required food to take her medication. Greig-Powell alleges that her request for food was ignored. Subsequently, Greig-Powell lost consciousness and struck her head on the seat of the plane, sustaining injuries.

On May 17, 2017, Greig-Powell brought a complaint for personal injury against LIAT in the Superior Court of the Virgin Islands. On June 15, 2017, LIAT filed an answer. On June 26, 2017, LIAT removed the action to this Court based on diversity jurisdiction. LIAT now moves for judgment on the pleadings.

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 3

DISCUSSION

A. Judgment on the Pleadings

Pursuant to Federal Rule of Civil Procedure 12(c) ("Rule 12(c)"), "[a]fter the pleadings are closed ... any party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c); *see also Turbe v. Gov't of the V.I.*, 938 F.2d 427, 428 (3d Cir. 1991) ("A Rule 12(c) motion for judgment on the pleadings may be filed after the pleadings are closed."). Requests for dismissal under Rule 12(c) are governed by the same standards as Fed. R. Civ. P. 12(b)(6) motions. *See Turbe*, 938 F.2d at 428. Accordingly, this Court must accept all Greig-Powell's allegations as true and "draw all reasonable factual inferences in favor of the Plaintiff." *Turbe*, 938 F.2d at 428; *see also Jablonski v. Pan American World Airways*, 863 F.2d 289, 290-91 (3d Cir. 1988) (citing *Society Hill Civic Ass'n v. Harris*, 632 F.2d 1045, 1054 (3d Cir. 1980)). Furthermore, "under Rule 12(c), like Rule 12(b)(6), judgment will not be granted unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law." *Society Hill Civic Ass'n v. Harris*, 632 F.2d 1045, 1054 (3d Cir. 1980) (citation omitted); *see also Turbe*, 938 F.2d at 428.

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 4

B. International Airline's Liability for Passenger Injury

It is well settled that "recovery for a personal injury suffered on board an aircraft or in the course of any of the operations of embarking or disembarking" in foreign territory is governed exclusively by the Montreal Convention and its predecessor, the Warsaw Convention. *El Al Isr. Airlines v. Tsui Yuan Tseng*, 525 U.S. 155, 161, 174 (1999) (noting that Montreal Protocol No. 4, which had been ratified by the time *El Al* was decided, "merely clarifie[d], it d[id] not alter, the [Warsaw] Convention's rule of exclusivity."); see also *Acevedo-Reinoso v. Iberia Lineas Aereas De Espana S.A.*, 449 F.3d 7, 11 (1st Cir. 2006). In order to support "the uniform regulation of international air carrier liability," the Warsaw Convention was the exclusive remedy for an aggrieved traveler against a foreign airline. *El Al*, 525 U.S. at 161 ("[R]ecovery for a personal injury suffered on board an aircraft or in the course of any of the operations of embarking or disembarking, if not allowed under the Convention, is not available at all") (alterations omitted) (citations omitted) (internal quotation marks omitted).

The Convention for the Unification of Certain Rules Relating to International Carriage by Air (referred to herein as the "Warsaw Convention") is a multilateral treaty that sets forth certain rules and regulations with respect to the

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 5

liability of aircraft carriers and the rights of passengers involved in international commercial air travel.¹ The United States became a party to the Warsaw Convention upon ratification by the United States Senate on June 15, 1934. See 78 Cong. Rec. S11582 (1934). In an effort to further improve uniformity among and between countries with respect to air carriage, members of the international community convened and drafted the Convention for the Unification of Certain Rules for International Carriage by Air (referred to herein as the "Montreal Convention" or "MC").

The Montreal Convention is a multilateral treaty governing the international air carriage of passengers, baggage, and cargo.² The Montreal Convention superseded the Warsaw Convention.³ The United States became a party to the Montreal Convention upon ratification by the United States Senate on July 31, 2003. See 149 Cong. Rec. S10870 (daily ed. July 31, 2003); see also List of Signatories to the Montreal Convention,

¹ See Multilateral Convention and Additional Protocol between the United States and Other Powers Relating to International Air Transportation, Concluded at Warsaw, October 12, 1929; Proclaimed October 29, 1934, *reprinted* at 49 Stat. 3000 et seq.

² See Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, ICAO Doc. 9740, S. Treaty Doc. No. 106-45, 1999 WL 33292734 (2000).

³ See MC Art. 55(1) ("This Convention shall prevail over any rules which apply to international carriage by air: 1. between States Parties to this Convention by virtue of those States commonly being Party to (a) the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 ...").

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 6

maintained by the United Nations International Civil Aviation Organization, available at https://www.icao.int/secretariat/legal/List%20of%20Parties/Mt199_EN.pdf (last visited September 19, 2018). On November 4, 2003, the Montreal Convention entered into force. *See Ehrlich v. Am. Airlines, Inc.*, 360 F.3d 366, 372 (2d Cir. 2004). Notably, the Montreal Convention is self-executing and creates a private right of action in U.S. courts.⁴ The Montreal Convention covers "all international carriage of persons, baggage or cargo performed by aircraft for reward." MC Art. 1(1). Article 1(2) of the Montreal Convention defines "international carriage" as:

any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the

⁴ "[A] treaty is 'equivalent to an act of the legislature,'" and hence self-executing, when it "operates of itself without the aid of any legislative provision." *Medellin v. Texas*, 552 U.S. 491, 505 (2008) (quoting *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829)). "Self-executing treaties are those that immediately create rights and duties of private individuals which are enforceable and are to be enforced by domestic tribunals." *Flores v. S. Peru Copper Corp.*, 414 F.3d 233, 257 n.34 (2d Cir. 2003) (internal quotation marks, alterations, and citations omitted.). By contrast, "non-self-executing treaties require implementing action by the political branches of government or are otherwise unsuitable for judicial application." *Flores*, 414 F.3d at 257 n.34 (internal quotation marks, alterations, and citations omitted.) "An international agreement of the United States is 'non-self-executing' (a) if the agreement manifests an intention that it shall not become effective as domestic law without the enactment of implementing legislation, (b) if the Senate in giving consent to a treaty, or Congress by resolution, requires implementing legislation, or (c) if implementing legislation is constitutionally required." Restatement (Third) Of Foreign Relations Law § 111(4) (1987). The Senate Foreign Relations Committee's report on the Montreal Convention explicitly concluded that the treaty provides the basis for a private right of action in U.S. courts and that no separate implementing legislation was required. *See* S. Exec. Rep. 108-8, at 3, 6 (2003). *See also* 149 Cong. Rec. S10870 (daily ed. July 31, 2003) (statement of Sen. Biden).

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 7

carriage or a transshipment, are situated either within the territories of two States [sic] Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party.

MC Art. 1(2).

Liability for personal injury under the Montreal Convention is governed by Article 17:

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.

MC Art. 17(1).

ANALYSIS

LIAT has moved for judgment on the pleadings on the grounds that the complaint is preempted by the Montreal Convention and does not sufficiently allege an "accident" within the meaning of the Montreal Convention.

Because Greig-Powell's claim arises from injuries sustained on a round-trip flight from St. Thomas, United States Virgin Islands--"a single State Party"--with an agreed stopping place in Trinidad--"another State"--the Montreal Convention applies. See e.g., *Blake v. Am. Airlines, Inc.*, 245 F.3d 1213, 1215 (11th Cir. 2001) (finding that a round-trip flight from Jamaica with an agreed stopping place in another State qualified as

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 8

international transportation if Jamaica was party to the Convention).

In order to allege a claim under Article 17 of the Montreal Convention, a claimant must establish the following elements:

(1) that there has been an accident; (2) that the accident caused the passenger's injuries; and (3) that the accident occurred while on board the aircraft or in the course of embarking or disembarking the aircraft. See *E. Airlines, Inc. v. Floyd*, 499 U.S. 530, 535-36 (1991).

In her complaint, Greig-Powell has alleged that an accident--the failure to provide her with food in light of her diabetic condition--occurred. Greig-Powell also alleges that she sustained an injury as a result of the accident. Finally Greig-Powell alleges that the injury occurred while on board her flight to Trinidad. On its face, Greig-Powell's complaint arguably alleges all of the elements necessary to plead a personal injury claim under the Montreal Convention. LIAT does not take issue with the sufficiency of Greig-Powell's allegations surrounding the location of the injury nor the causation of the injury. LIAT is not so amenable with respect to the allegation of an accident. Indeed, LIAT disputes the sufficiency of those allegations.

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 9

Neither the Montreal Convention nor the Warsaw Convention defines the term "accident."⁵ However, the Supreme Court defined the term accident in the context of the Warsaw Convention in *Air France v. Saks*, 470 U.S. 392, 394-95 (1985). In that case, the plaintiff alleged that she suffered hearing loss following the plane's ordinary descent to its destination due to negligent maintenance and operation of the aircraft's pressurization system. *Id.* at 394. Because the Convention requires that an accident cause the alleged injury, the Court concluded that liability "arises only if a passenger's injury is caused by an unexpected or unusual event or happening that is external to the passenger." *Id.* at 405. Thus, the Court concluded that an accident did not occur because the aircraft's pressurization system had operated in the usual manner. *Id.* at 395-96. The *Saks Court* noted that the definition of accident should be "flexibly applied after assessment of all the circumstances surrounding a passenger's injuries." *Id.* at 405. The Court further counseled that, "[a]ny injury is the product of a chain of causes, and we require only that the passenger be able to prove that some link

⁵ The Explanatory Note to the Montreal Convention states that "it is expected" that the provision of Article 17 governing carrier liability for passenger injury and death will be "construed consistently with the precedent developed under the Warsaw Convention and its related instruments." S. Treaty Doc. No. 106-45, 1999 WL 33292734 at *16.

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 10

in the chain was an unusual or unexpected event external to the passenger." *Id.* at 406.

The Supreme Court reaffirmed that principle in *Olympic Airways v. Husain*, 540 U.S. 644 (2004). *Husain* involved an asthmatic passenger who was seated three rows away from the aircraft's smoking section. *Id.* at 646-47. After boarding the plane, Rubina Husain ("Husain") informed a flight attendant that her husband, Abid M. Hanson ("Hanson"), must be moved to a new seat. *Id.* at 647. The flight attendant denied Husain's request. *Id.* Prior to takeoff, Husain asked a second time and explained that Hanson was "allergic to smoke." *Id.* The flight attendant again refused to reseat Hanson. *Id.* Shortly after takeoff, passengers in the smoking section began to smoke. Husain asked a third and final time that Hanson be resealed. *Id.* The flight attendant refused to provide any assistance and falsely stated that the flight was full. *Id.* Approximately two hours into the flight, Hanson went to the front of the plane to get fresher air. *Id.* Shortly thereafter, Hanson suffered an asthma attack. *Id.* Despite receiving two shots of epinephrine, CPR, and oxygen by an allergist traveling with him, Hanson died as a result of the asthma attack. *Id.*

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 11

The Court held that the flight attendant's refusal to help Hanson avoid exposure to cigarette smoke in the cabin qualified as an accident. The Court also held that an accident had occurred because "the carrier's unusual and unexpected refusal to assist a passenger [by moving his seat] is a link in a chain of causation resulting in a passenger's pre-existing medical condition being aggravated by exposure to a normal condition in the aircraft cabin." *Id.* at 646. The *Husain* Court noted that, in the Court of Appeals, the petitioner did not challenge the District Court's finding that the flight attendant's conduct was unusual or unexpected in light of the relevant industry standard or petitioner's own company policy. *Id.* at 652. Thus, the Court assumed the flight attendant's conduct qualified as "unusual or unexpected" for purposes of the opinion. *Id.* at 653.

Similarly, in *Langadinos v. Am. Airlines, Inc.*, 199 F.3d 68 (1st Cir. 2000), the First Circuit found that a claim for personal injury survived a 12(b)(6) motion. In that case, the First Circuit reasoned that the term "accident" is broad enough to encompass torts committed by other passengers. *Langadinos*, 199 F.3d at 70. Consistent with that view, the Court noted that "[s]erving alcohol to an intoxicated passenger may, in some instances, create a foreseeable risk that the passenger will cause injury to others." *Id.* at 71. *Cf. Bousignac v. United*

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 12

Cont'l Holding, Inc., 2012 U.S. Dist. LEXIS 190259, at *14 (D.N.J. 2012) (finding *Husain* distinguishable where a passenger did not inform the flight attendant of any medical conditions or issues).

Here, LIAT is alleged to have refused to provide food to Greig-Powell--a known diabetic passenger. As that refusal occurred after being informed of the medical necessity of such food, and before Greig-Powell sustained her injuries, it may be a link in a chain of causation leading to Greig-Powell's injury. Indeed, LIAT's refusal, under those circumstances, arguably, is an unexpected or unusual event. Significantly, giving Greig-Powell all favorable inferences, as the Court must at this stage, Greig-Powell has sufficiently alleged an accident. As she has sufficiently alleged the other elements for a personal injury claim under the Montreal Convention, LIAT may only prevail on its motion if no material issue of fact remains to be resolved. Upon review of all the pleadings, the Court is not persuaded that LIAT has clearly established that "no material issue of fact remains to be resolved and that [the movant] is entitled to judgment as a matter of law." *Society Hill Civic*

Greig-Powell v. LIAT (1974) Ltd.
Civ. No. 17-42
Order
Page 13

Ass'n v. Harris, 632 F.2d 1045, 1054 (3d Cir. 1980) (citation omitted).

The premises considered, it is hereby

ORDERED that the motion for judgment on the pleadings is
DENIED; and it is further

ORDERED that the motion to stay discovery is **DENIED**.

s\ _____
Curtis V. Gómez
District Judge