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Order on Defendants' Motion to Dismiss (DELTA
AIR LINES, INC.)

Alice D. Bonner
Superior Court of Fulton County

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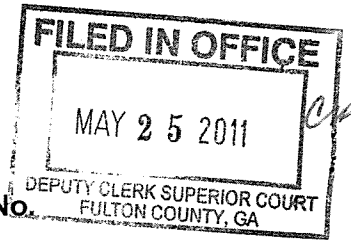
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY

DELTA AIR LINES, INC.,)
)
 Plaintiff,)
)
 v.)
)
 ATLANTIC SOUTHEAST AIRLINES,)
 INC., and SKYWEST AIRLINES, INC.,)
)
 Defendants.)
)

Civil Action File No.
2011-CV-196624



ORDER ON DEFENDANTS' MOTION TO DISMISS

On April 27, 2011, Counsel in the above-styled case appeared before the Court to present oral argument on the Motion to Dismiss of Atlantic Southeast Airlines, Inc. and SkyWest Airlines, Inc. After reviewing the record of the case, the briefs submitted on this Motion, and the arguments of Counsel, the Court finds as follows.

On February 1, 2008, Atlantic Southeast Airlines, Inc. ("ASA") and SkyWest Airlines, Inc. ("SkyWest," together with ASA, "Defendants") filed an action in this Court against Delta Air Lines, Inc. ("Delta") arising out of a dispute over the amount Delta is obligated to reimburse Defendants under the parties' agreements ("Connection Agreements"), which set forth the terms upon which Defendants operate as "Delta Connection" carriers. Under the Connection Agreements, Delta is required to reimburse Defendants for passenger amenity costs and other interrupted trip expenses ("IROP Expenses") that Defendants incurred "due to any action or omission principally caused by Delta or an affiliate of Delta." According to Delta, since the beginning of the parties' relationship under the Connection Agreements, Defendants have invoiced Delta on a monthly basis without making a determination of the amount incurred due to an action

or omission principally caused by Delta. In December 2007, Delta withheld approximately \$25 million from payments to Defendants to set-off the amount it claims it overpaid Defendants, and it continues to withhold payments for IROP Expenses it does not believe it principally caused. As a result, ASA and SkyWest initiated the 2008 action to force Delta to pay all of the IROP Expenses they charged to Delta. Specifically, they brought claims premised on the legal theories of mutual departure, the voluntary payment doctrine, bad faith, breach of contract and declaratory judgment, among other claims. On February 14, 2011, following the entry of two orders partially granting Delta's motions to dismiss the original and an amended complaint, Defendants voluntarily dismissed without prejudice the action pending in this Court. That same day, Defendants filed a new complaint in Fulton County State Court ("State Court Action") seeking largely the same relief against Delta as sought in the 2008 action, except that Defendants omitted their request for declaratory relief. On February 16, 2011, Delta initiated the instant action seeking a declaratory judgment that Defendants' calculation of IROP Expenses owed by Delta is incorrect and to recover for breach of contract arising out of Defendants' alleged disclosure of confidential communications prohibited by the Connection Agreements.

A court should grant a motion to dismiss when a plaintiff "would not be entitled to relief under any state of facts that could be proven in support of his claim." Northeast Georgia Cancer Care, LLC v. Blue Cross & Blue Shield of Georgia, Inc., 297 Ga. App. 28, 29 (2009). In ruling on such a motion, the Court must accept as true all of plaintiff's well-pleaded factual allegations, and draw all reasonable inferences in plaintiff's favor. Baker v. McIntosh County Sch. Dist., 264 Ga. App. 509, 509 (2003).

1. Declaratory Judgment


In Georgia, a prior pending action “for the same cause of action between the same parties in the same or any other court having jurisdiction shall be a good cause of abatement.” O.C.G.A. § 9-11-44(a). Under Georgia law, Defendants are statutorily permitted to dismiss the 2008 action and re-file in Fulton County State Court. O.C.G.A. § 9-11-41. Because the State Court action was initiated two days before the instant case, this Court must dismiss this action to the extent that this action “arise[s] out of the same transaction and if the second suit would resolve the same issues as the first pending suit and would therefore be unnecessary.” Atlanta Airmotive, Inc. v. Newnan-Coweta Airport Auth., 208 Ga. App. 906, 906-07 (1993). Delta argues that the cause of action at issue here, which involves a request for declaratory relief and an equitable claim to enjoin Defendants’ alleged breaches of the parties’ confidentiality provisions, is not the same as that pending in State Court, where such relief is unavailable. However, the Court finds that the State Court Action, which involves whether Delta’s payments based on its interpretation of the IROP provision amount to a breach of the Connection Agreements, will necessarily resolve the question at issue in Delta’s request for declaratory relief here—how to calculate the categories of IROP expenses owed by Delta under the Connection Agreements. For that reason, Delta’s claim for declaratory relief is unnecessary and must be dismissed. See also, Southeast Service Corp. v. Savannah Teachers Properties, Inc., 263 Ga.App. 513, 514 (2003) (“A declaratory judgment will not be rendered to give an advisory opinion in regard to questions arising in a proceeding pending in a court of competent jurisdiction, in which the same questions may be raised and determined.”)

2. Breach of Contract

Delta also seeks damages as well as injunctive relief in connection with Defendants' disclosure of alleged confidential communications in the State Court Complaint. The Court finds that this claim fails for two reasons. To the extent that this claim sounds in equity, the Court finds that Delta had an adequate remedy at law by virtue of its right to move the State Court to seal the State Court Complaint, which it has now apparently done thereby rendering its claim moot. As far as Delta's claim for monetary damages flowing from the alleged breach of the Connection Agreements, this claim, as it relates to the same transaction or occurrence at issue in the State Court Action, should be brought as a counterclaim in the State Court Action.

Accordingly, for the reasons set forth above, Defendants' Motion to Dismiss is hereby **GRANTED**.

SO ORDERED this 25TH day of May, 2011.



JOHN J. GOGER, JUDGE for
ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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