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Past readers of this publication will know that we used to pride ourselves on our reports from what HHJ Saggerson always referred to as the “*front line*” of travel litigation: first instance appearances in the County Court. We are delighted to commence 2019 by reviving this tradition (with the assistance of **Dominique Smith, 1 Chancery Lane**).

Ladies and gentlemen, I give you, brawling passengers by air and food poisoning Claimants by land. It is difficult to imagine a finer way to start the New Year and to distract ourselves from the intricacies of Brexit.

Jet2.com Limited v Pauline Gordon

This case arose from a flight from Stansted to Gran Canaria. The Defendant was on board. As a result of events mid-flight between the Defendant, Ms Gordon, and a fellow passenger, Mr St Ville, the decision was made to divert the plane to land early in Faro, and to remove Ms Gordon and Mr St Ville.

The circumstances of this case were unusual, in that criminal proceedings had already taken place against Ms Gordon for endangering an aircraft (she had been acquitted). However, Jet2.com sought the costs of the diversion from Ms Gordon, as a consequence of her breaching their terms and conditions (“the Terms”). Ms Gordon brought a counter-claim for being de-planed. Both claims fell for decision by District Judge Hayes in Clerkenwell and Shoreditch County Court.

Facts

Ms Gordon was a passenger on board a Jet2.com flight in the summer of 2017. The flight was from Stansted to Gran Canaria. Upon booking the holiday, Ms Gordon had accepted the Terms, including those concerning her behaviour on board during the flight.

Ms Gordon was travelling with another individual, Mr St Ville, who was sat across the aisle from her. It was accepted by Ms Gordon that she and Mr St Ville had been arguing for approximately 30 minutes. There were reports from other passengers concerning offensive

language being used during the argument. As the cabin crew began to serve drinks, Ms Gordon and Mr St Ville became embroiled in a struggle over her handbag. It was alleged that Ms Gordon had struck Mr St Ville during the physical altercation.

Two witness reports were in evidence from a serving police constable who was on the flight and a retired police officer who was also on the flight. Those officers had detailed physically restraining both Ms Gordon and Mr St Ville. The cabin crew subsequently took the decision to move Ms Gordon to the back of the plane into an alternative seat.

It was alleged that Ms Gordon later moved out of her newly assigned seat and attempted to sit with Mr St Ville. She was again escorted to the back of the plane. Cabin crew notified the pilot of the ongoing difficulties with both passengers and the decision was made to divert the plane to Faro. Both Ms Gordon and Mr St Ville were offloaded.

Judgment

The Judge looked closely at the Terms Ms Gordon was bound by when deciding to travel with Jet2.com. Two of those terms obliged the contracting party to behave appropriately. The Terms specifically provided examples of inappropriate behaviour, including obstructing the crew, failing to comply with the orders of the crew, using threatening language and behaving in a disruptive manner.

The Terms further allowed Jet2.com to take steps if they were satisfied in their reasonable opinion that a contracting party had not behaved appropriately. Those steps included cancelling a passenger's flight and diverting the aircraft to offload a passenger. The Terms further included a paragraph stating that a contracting party would indemnify Jet2.com for any expenses arising from their improper conduct.

The Judge considered that the cabin crew witness who gave evidence had a sufficiently good view to see what happened in relation to the struggle over the bag. The Judge accepted that Ms Gordon and Mr St Ville struggled physically and that there was physical contact between them. He further accepted that the cabin crew did see Ms Gordon strike Mr St Ville, and that, on the balance of probabilities, Ms Gordon did get out of her seat and return to sit with Mr St Ville later in the flight.

The Judge considered that, for those reasons, Jet2.com were justified in finding that Ms Gordon acted improperly and in taking the decision to land in Faro. He noted that despite Ms Gordon's criminal acquittal for endangering an aircraft, the standard of proof in civil proceedings was indeed different. Jet2.com were therefore awarded their costs of the action in the sum of over £3,000 and the counterclaim failed.

**Dominique Smith, 1 Chancery Lane acted
for Jet2.com Limited**

Barry Jones v Jet2Holidays Limited

This was a claim for damages for personal injury and other losses arising out of a package holiday ("the Holiday"), which was supplied by the Defendant. The Claimant alleged that he had developed food poisoning during the Holiday, blaming inadequate standards of hygiene at his hotel.

The claim came before Her Honour Judge Sykes in Chester County Court for determination.

Facts

The Claimant went on holiday with his family to the Elba Carlota Hotel, Fuerteventura ("the Hotel") for 9 nights in August 2016. This was an all-inclusive holiday which cost the family £4,440.

On the third day of the holiday, the Claimant alleged that he became unwell. He said he suffered from a number of symptoms, including abdominal cramps, diarrhoea, nausea, dizziness and fatigue. His symptoms allegedly lasted for a period of approximately 8 days. Consequently, the Claimant visited a local doctor who carried out a blood test for various pathogens. No documentary evidence was put before the Court to confirm that a pathogen was ever identified. The Claimant alleged that he visited his General Practitioner upon his return to the United Kingdom, although there was no entry in his medical records to confirm his attendance.

Judgment

Her Honour Judge Sykes referred to the Court of Appeal decision in *Wood v TUI Travel plc*

(trading as First Choice) [2018] 2 WLR (CA), noting that a claimant must prove in such claims that food and drink was the cause of their troubles and that food was not satisfactory. If a claimant were to satisfy these two factors, a breach of the implied condition found in section 4(2) of the Supply of Goods and Services Act 1982 may be established.

The Judge noted that there was the very scantiest evidence in this case of anyone else being unwell. She noted that the Claimant's wife and his two children were not taken ill during the course of the Holiday. The only evidence before the Court on which the Claimant relied were some TripAdvisor entries in the Bundle, which reported that others had become unwell during the relevant period of the Holiday. The Judge expressed that these entries were of little use to the Court, as it was not known what symptoms those holidaymakers in the TripAdvisor entries were complaining of, nor what issues they had identified in respect of the food hygiene at the Hotel, if any.

The Judge also noted that there were inconsistencies in the Claimant's evidence in respect of his illness. She did not consider that he was an untruthful witness. However, she noted that in his first letter of claim, there was no mention of the Claimant suffering stomach cramps, nausea or vomiting. In his second letter of claim, worst symptoms were identified. The Claimant had also completed a Jet2 questionnaire shortly after the Holiday, which recorded that he did not have any nausea or

vomiting. Aside from the inconsistencies in his symptomology, there were further inconsistencies in respect of the onset of his illness throughout the documentary trail.

The Claimant was asked about his allegations in respect of food hygiene at the Hotel. He asserted that there was poor food hygiene, which was the basis upon which his medical expert gave his opinion. However, the Claimant's allegations were again inconsistent. He did not recall the Hotel staff failing to wear gloves, despite this being asserted in his witness statement. He further confirmed in oral evidence that he did not consider that food was undercooked.

It later became clear that the Claimant had not visited his General Practitioner, to which he asserted that this was a mistake made by his solicitors.

The Judge considered that the Claimant's medical report was flawed. It dealt with matters such as food being rarely served at the correct temperature, despite that being contrary to the Claimant's evidence. It also was inconsistent in respect of the Claimant's symptomology.

The Judge considered that the Claimant had failed to prove any causal link between his illness and any allegedly contaminated food. Consequently, the claim failed.

Dominique Smith, 1 Chancery Lane acted for Jet2Holidays