IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PATTI FRAZIER, RICKY L. MARTIN, and DAN BRIDGEMAN, individually and on behalf of others similarly situated,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 03-734 JJF
AMERICAN AIRLINES, INC. and TWA AIRLINES LLC,	:	
Defendants.	:	

BARBARA V. LEVY, individually and on behalf of others similarly situated,	:	
Plaintiff,	:	
v.	:	Civil Action No. 03-792 JJF
AMERICAN AIRLINES, INC. and TWA AIRLINES LLC,	:	
Defendants.	:	

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Attorneys for Defendants American Airlines, Inc. and TWA Airlines LLC.

O P I N I O N

September 30, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court are the Motions To Dismiss filed by American Airlines, Inc., and TWA Airlines, LLC, (collectively "American"). (D.I. 64 in C.A. No. 03-734; D.I. 45 in C.A. No. 03-792.) For the reasons set forth below, the Court will grant, in part, the Motions.[1]

BACKGROUND

In a January 16, 2004, Memorandum Opinion and Order (the "January 16 Opinion") (D.I. 61, 62), the Court denied American's motions to dismiss, which American based on collateral estoppel, law of the case doctrine, and principles of comity. In the January 16 Opinion, the Court granted American leave to renew its motions to dismiss because Plaintiffs' attorney indicated at oral argument that he did not understand American's motions to seek dismissal for failure to state a claim. American's renewed Motions are now before the Court.

The Court previously discussed the factual background of the instant cases in the January 16 Opinion and, therefore, will only provide here a brief history. Plaintiffs are past employees of the now bankrupt Trans World Airlines ("TWA"). In TWA's Chapter 11 bankruptcy, In re Trans World Airlines, Inc., Bankr. A. No. 01-0056

[1] In Barbara V. Levy v. American Airlines, Inc., C.A. No. 03-792 JJF, American filed a Joinder In Motion To Dismiss (D.I. 45) whereby it incorporated by reference the Motion to Dismiss in the related action Frazier v. American Airlines, Inc., C.A. No. 03-734 JJF. Accordingly, all citations to docket items in this matter will be to C.A. No. 03-734.

(PJW) (the "TWA Bankruptcy"), American purchased substantially all of TWA's assets. In relevant part, the terms of the purchase were set forth in a Sale Order and Asset Purchase Agreement ("APA") entered by the Bankruptcy Court. The parties agree that, according to the terms of the APA and Sale Order, any obligations alleged to be owed by American to Plaintiffs, must have been assumed by American independent of the TWA Bankruptcy; otherwise, they constitute impermissible collateral attacks on the APA and/or Sale Order. (D.I. 69 at 4; D.I. 72 at 1.)

Plaintiffs assert three claims for relief in their Complaints: breach of contract, tortious conduct, and in the alternative, violations of the Employee Retirement Income Security Act ("ERISA"). Plaintiffs contend that, under its three claims, American is liable for refusing to honor part a retirement benefit Plaintiffs had received from TWA—specifically, travel passes that enabled them to fly on TWA airplanes and receive reduced fares on other airlines (the "travel benefits"). By its motions, American moves to dismiss all three counts of Plaintiffs' Complaints.

STANDARD OF REVIEW

A motion to dismiss tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-56 (1957). In reviewing a motion to dismiss pursuant to Rule 12(b)(6), courts "must accept as true the factual allegations in the [c]omplaint and all reasonable inferences that can be drawn therefrom." Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000). A court will

grant a motion to dismiss only when it appears that a plaintiff could prove no set of facts consistent with the pleadings that would entitle him or her to relief. Id.

DISCUSSION

I. Whether The Complaint Is An Impermissible Collateral Attack On The Sale Order

A. Contentions

American contends that Plaintiffs' allegations are an impermissible collateral attack on the Sale Order. American maintains that Plaintiffs' contention that its claims are based on an agreement independent of the TWA bankruptcy is "groundless" because most of the allegations in the Complaints arose from or implicate the TWA bankruptcy.

In response, Plaintiffs maintain that they are not attempting to retry matters in the TWA bankruptcy because they agree that any such attempt would be impermissible. Instead, Plaintiffs contend that their claims are based on independent promises made by American.

B. Decision

The Court has considered the allegations of the Complaints and concludes that, at least for the purposes of the instant motions, Plaintiffs' alleged claims do not assert an impermissible collateral attack on the Sale Order. (D.I. 66, Ex. A at ¶ 4; Ex. B at ¶ 4.)[2]

[2] In the Complaints, Plaintiffs explicitly rely on a number of documents in support of their claims. Accordingly, the Court will reference these documents in resolving the instant motions. In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997).

The Sale Order entered by the Bankruptcy Court bars "all Persons ... from taking any action against [American] to recover any claim which such person had solely against [TWA]." Id. at Ex. J, ¶ 11. In the Complaints, Plaintiffs formulated their allegations to assert that American made offers to them "wholly independent" and "[s]eparate from" the TWA bankruptcy. Id. Thus, although American contends that Plaintiffs' claims are, in effect, asserting obligations from TWA bargaining agreements that American did not assume and are barred by the Sale Order, the Court concludes that the instant motions must be denied to the extent they seek dismissal of claims that Plaintiffs assert arise independent of the bankruptcy.

II. Whether Plaintiffs Have Stated A Claim For Breach Of Contract

A. Contentions

American contends that Plaintiffs have failed to state a claim for breach of contract because the statements alleged to constitute an offer by American constitute, at most, unilateral statements of future intention which cannot qualify as an enforceable offer. American further asserts that many of the statements relied upon by Plaintiffs may not be used to allege a claim for breach of contract because they arise from or are related to the TWA bankruptcy. Moreover, American contends that these statements cannot be an offer because they are insufficiently specific. Next, American contends that Plaintiffs have failed to plead that they provided any consideration to, or accepted an offer from, American.

Plaintiffs respond that the statements made by American and

cited in the Complaints satisfy the notice pleading standard of the Federal Rules of Civil Procedure for alleging breach of contract. Plaintiffs also maintain that discovery may lead to the uncovering of additional evidence of the offer by American to Plaintiffs.

B. Decision

The Court concludes that it would be premature to dismiss Plaintiffs' Complaints for failure to state a claim of breach of contract. A claim for breach of contract requires a plaintiff to prove the existence of a contract, which includes an offer, acceptance, and consideration. Careau & Co. v. Security Pacific Bus. Credit, Inc., 222 Cal. Rptr. 387, 395 (Cal. Ct. App. 1990); Hunter v. Diocese of Wilmington, 1987 WL 15555 (Del. Ch. Aug. 4, 1987); Savoca Masonry Co., Inc. v. Homes & Son Constr. Co., Inc., 542 P.2d 816, 819 (Ariz. 1975).[3]

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[3] When a case has been transferred pursuant to 28 U.S.C. § 1404(a), as in this case, the court must apply the choice-of-law rules of the state from which the case was transferred. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 244 n.8 (1981)(citing Van Dusen v. Barrack, 376 U.S. 612 (1946)). In this case, the two actions before the Court were transferred from Arizona and California. Thus, the Court must look to those states' rules for the choice-of-law analysis.

As American correctly argues, both California and Arizona follow the principle that if there is no conflict between the laws of the competing jurisdictions, the Court need not determine which state's substantive law applies. See Bruce Church, Inc. v. United Farm Workers of Am., AFL-CIO, 816 P.2d 919, 930 n. 8 (Ariz. Ct. App. 1991); Waggoner v. Snow, Becker, Kroll, Klaris & Krauss, 991 F.2d 1501, 1506 (9th Cir. 1993). In this case, it is not disputed by the partes that Arizona, California, and Delaware require the same elements for the formation of a contract, (See D.I. 79 at 37; D.I. 76 at 2) and, therefore, the Court need not decide which state's law applies. Compare Savoca Masonry Co., Inc. v. Homes & Son Constr. Co., Inc., 542 P.2d 816, 819 (Ariz. 1975), with Careau & Co. v. Security Pacific Bus. Credit, Inc.,

With respect to whether Plaintiffs sufficiently alleged an offer, the Court concludes that Plaintiffs have satisfied the requirements of notice pleading. A promise, which is a "'manifestation of intention to act,'" is an offer when it is extended in exchange for consideration. Hunter, 1987 WL 15555, at *5 (quoting Restatement (Second) of Contracts § 2). In the Complaints, Plaintiffs assert an offer by alleging that American agreed to be responsible for their travel benefits because it knew the benefits were necessary to obtain the cooperation of TWA unions in the purchase of TWA. (D.I. 66, Ex. A at ¶¶ 4, 24, 46, 47, 23; Ex. B ¶¶ 4, 21, 17.) In C.A. No. 03-792 JJF, the Plaintiffs also alleged that, after the Bankruptcy Court's entry of the Sale Order, American confirmed its intent to honor Plaintiffs' travel benefits. Id. Ex. B at ¶ 5.

The Court further concludes that Plaintiffs have sufficiently alleged that they provided consideration in exchange for American's offer to honor their travel benefits (D.I. 66, Ex. A at ¶¶ 23-24, 29; Ex. B at ¶¶ 16-17, 22) and acceptance, id. Ex. A at 29, Ex. B at 22, that precludes, at this juncture, the Court from dismissing the breach of contract claims.[4] Thus, although the Court agrees with

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222 Cal. Rptr. 387, 395 (Cal. Ct. App. 1990).

[4] In addition, even were the Court to conclude that Plaintiffs had not pled every element of breach of contract, the Court would be hesitant to grant dismissal because generally, to survive a Rule 12(b)(6) motion, a plaintiff need not plead every element of his or her prima facie case. Swierkiewicz v. Sorema, 534 U.S. 506, 512 (2002)(stating that a court should not transpose an evidentiary standard into a pleading standard);

American that some of the statements alleged in the Complaints and identified by Plaintiffs as establishing an offer, consideration, and acceptance, are, on their face, insufficient to constitute the elements of an enforceable contract, the Court will permit Plaintiffs to engage in discovery on these matters, after which time the Court will be able to more appropriately determine whether Plaintiffs' claims lack merit. Swierkiewciz, 534 U.S. at 514.

III. Whether Plaintiffs Adequately Alleged A Tortious Conduct Claim

A. Contentions

American contends that Plaintiffs have not stated a claim for fraud because they have not pled reasonable reliance. Specifically, American maintains that as Plaintiffs failed to plead a sufficiently definite offer in order to state a claim for breach of contract, Plaintiffs have, for the same reasons, failed to allege reasonable reliance. American also contends that Plaintiffs are attempting to "bootstrap" a breach of contract claim into a fraud claim and that Plaintiffs have not pled that statements allegedly made by American were made with knowledge of their falsity. In their reply brief, American further asserts that Plaintiffs' Complaints do not satisfy Rule 9(b)'s particularity requirements for pleading fraud.

Plaintiffs respond that, just as it pled an offer by American

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Menkowitz, M.D. v. Pottstown Mem'l Med. Ctr., 154 F.3d 113, 124 (3d Cir. 1998)("plaintiff[s] generally need not explicitly allege the existence of every element in a cause of action if fair notice of the transaction is given and the complaint sets forth the material points necessary to sustain recovery.")(citing 5 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1216, at 154-162 (2d ed. 1990)).

that satisfied its obligations of notice pleading, they have pled reasonable reliance. Also, Plaintiffs contend that they are not attempting to "bootstrap" a breach of contract claim into a fraud claim because they allege in the Complaints that American had no intention of honoring its promises.

B. Decision

In their opposition brief, Plaintiffs clarify that their tortious conduct claim is a claim for fraud. (D.I. 48 at 17.) The elements of fraud are 1) false representation of a material fact; 2) knowledge that the representation was false or made with reckless indifference to the truth; 3) intent to induce another to act; 4) a party's action based on reasonable reliance on the representation; and 5) damages. Lazar v. Superior Court, 49 Cal. Rptr. 2d 377, 380 (Cal. 1996); Browne v. Robb, 583 A.2d 949, 955 (Del. 1990)(citations omitted); Echols v. Beauty Built Homes, Inc., 647 P.2d 629, 631 (Ariz. 1982).

With respect to American's contention that Plaintiffs have not alleged reasonable reliance, because American relies upon its earlier arguments that Plaintiffs' allegations are not sufficiently definite that the Court rejected above, the Court will not dismiss Plaintiffs' tortious conduct claim for failure to plead reasonable reliance.[5] However, with regard to American's argument that Plaintiffs are

[5] To the extent American contends in its Reply Brief that the Complaints should be dismissed for failure to satisfy Rule 9(b)'s particularity requirements, the Court notes that American did not move to dismiss the Complaints based on Rule 9(b). American moved to dismiss pursuant to Rule 12(b)(6). (D.I. 64.)

attempting to "bootstrap" a contract claim into an action for fraud, the Court agrees with American that Plaintiffs are attempting to assert a fraud claim based on allegations that only support a breach of contract claim.

Plaintiffs maintain that their allegation that American never intended to keep its promise to honor the travel benefits demonstrates that they are not attempting to "bootstrap" a contract claim into a fraud claim. (D.I. 69 at 19.) Plaintiffs argue that the Court's decision in Red Mountain Holdings, Ltd. v. Stout Partnership, 2001 WL 34368400 (D. Del. March 30, 2001), supports the sufficiency of their allegations. (D.I. 69 at 19.) Close scrutiny of Red Mountain reveals, however, that the Court has previously rejected this argument.

In Red Mountain, the Court relied on the Delaware Chancery Court's decision in IOTEX Communications, Inc. v. Defries, Civ. A. No. 14817, 1998 WL 914265 (Del. Ch. Dec. 21, 1998). In IOTEX the Court of Chancery, when dismissing the plaintiff's complaint, remarked that a breach of contract claim "cannot be 'bootstrapped' into a fraud claim merely by adding the words 'fraudulently induced' or alleging that the contracting parties never intended to perform.'" Red Mountain, 2001 WL 34368400, at *4 (quoting IOTEX, 1998 WL 914265 at *5)(emphasis added). As indicated in their opposition brief (D.I. 69 at 19), Plaintiffs are attempting to do precisely what the court forbid in IOTEX and, accordingly, the Court will dismiss the tortious conduct claims.

IV. Whether Plaintiffs State A Claim For Violations Of ERISA

A. Contentions

American contends that travel privileges, such as those Plaintiffs are attempting to enforce in this case, are not covered by ERISA. American also asserts that, even were the Court to conclude that the travel benefits Plaintiffs seek are covered by ERISA, the allegations pled by Plaintiffs do not establish the essential elements of an ERISA benefit plan. Next, under ERISA, American maintains that it is permitted to eliminate the passes at any time. Finally, American contends that Plaintiffs are precluded from asserting their ERISA claim because they allege that it is part of a package of benefits they received from TWA which, as ordered in the APA, was not assumed by American.

In response, Plaintiffs contend that they are only asserting, in the alternative, that if the Court finds that ERISA applies, that ERISA provides Plaintiffs with their travel benefits. Plaintiffs also contend that the cases cited by American do not preclude ERISA from covering the travel benefits at issue because the travel benefits were part of an overall retirement package provided to Plaintiffs.

B. Decision

Based upon the parties' description of the travel benefits at oral argument, the Court understands that the travel benefits were only usable when seats were vacant——i.e. for standby seating. As such, the travel benefits do not qualify as pension benefits, and

therefore, are not covered under ERISA. See Musmeci v. Schwegmann Giant Supermarkets, Inc., 332 F.3d 339, 347 (5th Cir. 2003)(noting that travel benefits permitting retirees to fly free only when there were empty seats were not covered by ERISA because such benefits provided only a no-additional-cost-service)(citations omitted). Accordingly, the Court will dismiss Plaintiffs' ERISA claim.

CONCLUSION

For the reasons discussed, the Court will grant, in part, American's Motions to Dismiss.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PATTI FRAZIER, RICKY L. MARTIN, and DAN BRIDGEMAN, individually and on behalf of others similarly situated,	:	
Plaintiffs,	:	
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BARBARA V. LEVY, individually and on behalf of others similarly situated,	:	
Plaintiff,	:	
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AMERICAN AIRLINES, INC. and TWA AIRLINES LLC,	:	
Defendants.	:	

O R D E R

At Wilmington, this 30th day of September, 2004, for the reasons discussed in the Opinion issued this date;

IT IS HEREBY ORDERED that the Motions to Dismiss filed by American Airlines, Inc., and TWA Airlines, LLC, (collectively "American") (D.I. 64 in C.A. No. 03-734 JJF; D.I. 45 in C.A. No. 03-792 JJF), with respect to:

1) Plaintiffs' breach of contract claim is **DENIED**;

2) Plaintiffs' tortious conduct claim is **GRANTED**;

3) Plaintiffs' claim for violation of the Employee Retirement Income Security Act is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE