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Case law

Case Details

National ID: 553/2002

Member State: Spain

Common Name: José C. B, Mónica C. B. v “Guama S. A.”, “CWT Viajes de empresa S. A.”, “Iberojet S. A.”

Decision type: Other

Decision date: 24/07/2002

Court: Audiencia Provincial (Appellate court, Valencia)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Package Travel Directive, Article 4, 6. Package Travel Directive, Article 5, 1. Package Travel Directive, Article 5, 2.

Headnote

The joint and several liability of the organizer and the travel agency has to be understood as the rule despite of art. 11 of the law 21/1995 to prevent the consumer from trailing in search of liabilities as much as from the complexity of complaining against foreign or far away companies.

Facts

Two consumers agreed a packaged holiday to Cuba with a travel agency, “Resident Travel S. L.”, organized by the wholesaler “Guama S. A.”. The aforementioned agency, “Resident”, agreed the flights with another two travel companies “CWT” and “Iberojet S. A.”. The day to return to Spain, the defendants experienced overbooking, so they could not return that day, lost their connecting flight between Madrid and Seville and spent 2,183 euros (in accommodation, phone calls, hiring a vehicle, etc.). One of the defendants, “Guama S. A.”, claimed that since there were two wholesalers organizers involved, the liability should be shared and that it should not be its liability in any case, since it was an air company the reason for the damage. The other defendant claimed to be solely an intermediary.

Legal issue

The overbooking is a frequent occurrence and therefore predictable, so it is not considered under the concept of force majeur.

When there are two wholesalers organizers and two retailer agencies involved, as in this case, the complex network of companies makes it advisable to keep joint and several liability of all the companies involved: „To refer to the art. 11, 1st paragraph of the Law 21/1995, is to send the appellant into a kind of trail in search for the liabilities of the organizers. The tourist market, of great complexity, cannot operate as a shield against the claims of consumers that could end up having to accuse foreign companies or that have their base in far away places from their usual home. The criterion of solidarity has to be prevalent” as this very same court states in the judgment of 10th January 2001.

Decision

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