

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERTO MATA,		:	
	Plaintiff,	:	
		:	Case No.: 22-CV-1461 (PKC)
	- against -	:	
		:	
AVIANCA, INC.,		:	
		:	
	Defendant.	:	
		:	
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**DECLARATION OF BARTHOLOMEW BANINO
IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS**

I, BARTHOLOMEW BANINO, declare as follows:

1. I am an attorney with the law firm of Condon & Forsyth LLP, attorneys for Defendant AVIANCA, INC. (“Avianca”) in the above-captioned action.

2. As such, I am familiar with the facts, pleadings and proceedings in this matter, and respectfully submit this Declaration in support of Defendant’s Motion to Dismiss for failure to state a claim upon which relief may be granted.

3. Plaintiff Robert Mata alleges that on August 27, 2019 he was traveling as a passenger on board Avianca flight 670 from San Salvador, El Salvador, to New York, when he allegedly sustained injuries to his left knee after it was struck by a metal serving cart. Plaintiff was traveling on a round-trip ticket from New York to San Salvador.

4. Avianca filed a Voluntary Petition for Bankruptcy in the United States Bankruptcy Court for the Southern District of New York in May 2020. Attached hereto as Exhibit A is a true and correct copy of the Voluntary Petition.

5. Plaintiff filed a complaint against Avianca in New York Supreme Court, County of New York on July 27, 2020.

6. Pursuant to 11 U.S.C. § 362(a)(1), the action filed on July 27, 2020, was void *ab initio* because it was commenced while the automatic stay was in effect. Upon information and belief, Plaintiff did not move before the bankruptcy court to seek relief from the automatic stay or file a claim with the bankruptcy court.

7. Plaintiff filed a Stipulation to Dismiss without prejudice on February 2, 2022.

8. Plaintiff commenced this personal injury action against Avianca by filing a Summons and Verified Complaint in the Supreme Court of New York, County of New York on February 2, 2022. Attached hereto as Exhibit B is a true and correct copy of the Summons and Verified Complaint.

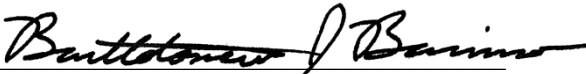
9. Avianca removed this action to this Court on February 22, 2022. Attached hereto as Exhibit C is a true and correct copy of Defendant's Notice of Removal, Docket Entry ("D.E.") 1.

10. As set forth fully in the Memorandum of Law submitted herewith, Avianca's Motion to Dismiss pursuant to Rule 12(b)(6) should be granted because Plaintiff's claims against Avianca fail as a matter of law because they are time-barred by the Montreal Convention.

11. No previous application has been made for the relief sought or for similar relief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 13, 2023
New York, New York


Bartholomew J. Banino