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F I L E D	FEDERAL COURT		D É P O S É
	COUR FÉDÉRALE		
	October 06, 2023		
	06 octobre 2023		
Court File No.:			
John Gornick			
TOR		1	

FEDERAL COURT

B E T W E E N :

BRINK'S, INCORPORATED, BRINK'S GLOBAL SERVICES INTERNATIONAL
INC. and BRINK'S SCHWEIZ AG

Plaintiffs

- and -

AIR CANADA

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: October 6, 2023

Issued by _____
Local registrar

Address of 180 Queen St. W, Toronto,
court office ON M5V 3L6

TO: **AIR CANADA**
7373 Cote-Vertu Blvd.
West Saint-Laurent, QC.
H4Y 1H4

CLAIM

1. The plaintiffs claim:
 - (a) damages for breach of contract in an amount of Canadian dollars equivalent to:
 - (i) 13,612,696.75 CHF (Swiss Francs); and
 - (ii) \$1,945,843 USD
 - (b) special damages in an amount to be determined prior to trial;
 - (c) pre-judgment and post-judgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7;
 - (d) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity; and,
 - (e) such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

The Parties

2. The plaintiff, Brink's, Incorporated ("Brink's"), is a Delaware corporation which conducts business as a global provider of cash and valuables management, digital retail solutions, and ATM managed services.

3. The plaintiffs, Brink's Global Services International, Inc. ("Brink's Global") and Brink's Schweiz AG ("Brink's Switzerland"), are subsidiaries of Brink's. Brink's Global is a Delaware corporation with its principal place of business located in Miami, Florida.

Brink's Switzerland is a corporation organized under the laws of the Canton of Zurich in Switzerland.

4. Brink's, Brink's Global and Brink's Switzerland (hereinafter collectively referred to as "Brink's") provide, among other things, logistics and security solutions for the transportation of high value cargo.

5. The defendant, Air Canada ("AC"), is a corporation carrying on business pursuant to the laws of Canada. Air Canada maintains business throughout Canada as a commercial air carrier.

The AC Secure Program

6. The AC Secure program ("AC Secure") provides special handling for high-value cargo.

7. According to the AC website, AC Secure "ensures the safe and secure transportation of specific commodities" through various enhanced safety features, including:

- (a) Extra Security (as shipments are purportedly "kept in secured holding areas" and supervised by "third-party security guards"); and
- (b) Priority Service (as shipments purportedly "receive higher load priority and shorter tender and retrieval times").

8. In describing the types of shipments which qualify for AC Secure, the AC website lists a number of commodities which, “regardless of the declared value or the amount of insurance purchased”, constitute “high-value shipments”, including (Emphasis added):

Artwork, firearms and weapons, furs, **gold**, silver, and gems, jewellery, pearls, and watches, narcotics and controlled drugs, and **negotiable paper including money or currency notes**, stocks and bonds, and travelers’ cheques.

9. Until the events described below, Brink’s standard practice was to require that certain high-value shipments transported via AC were handled through AC Secure.

Purported Improvements to AC Secure

10. In or around March 2023, AC advised Brink’s of ongoing upgrades designed to “build an improved process” for AC Secure, including “better technology enhancements, handovers and [an] improved tracing method” (the “AC Secure Improvements”).

11. As detailed below, AC failed to implement the AC Secure Improvements properly or at all.

The Cost of AC Secure

12. AC charges higher shipping rates for the AC Secure service than it does for the shipment of regular cargo. According to the AC website, “all valuable shipments are assessed a flat valuable handling fee” in addition to a “valuation charge that is calculated as a percentage of the declared value for air transport”.

The Shipments

13. In or around April 2023, Raiffeisen Schweiz (“Raiffeisen”), a leading Swiss retail bank, contracted for Brink’s to transport a shipment of Banknotes with a gross weight of 53.18 kilos and a value of \$1,945,843 USD, from Zurich, Switzerland to Toronto, Ontario (the “Banknotes Shipment”).

14. Also in or around April 2023, Valcambi SA (“Valcambi”), a precious metals refining company based in Switzerland, contracted for Brink’s to transport a shipment of Gold with a gross weight of 400.19 kilos and a value of 13,612,696.75 CHF (Swiss Francs), from Zurich, Switzerland to Toronto, Ontario (the “Gold Shipment”).

15. Raiffeisen and Valcambi both contracted for Brink's to provide security and logistics services for the Banknotes Shipment and the Gold Shipment (collectively the “Shipments”) and to indemnify Raiffeisen and Valcambi for any associated losses.

The Waybills

16. On or about April 14, 2023, Brink’s arranged for AC to transport the Shipments by air from Zurich to Toronto. The Shipments were to be made with AC Secure protocols in place.

17. AC international air waybill number 014 ZRH 6290 1193 was produced as a record of the Banknote Shipment (the “Banknote Waybill”). The Banknote Waybill identified Brink’s as the Shipper and the Vancouver Bullion and Currency Exchange as the Consignee. It described the cargo as “BANKNOTES” with a gross weight of 53.18 kilos. Inserted on the face of the Banknote Waybill was the following words: “BRINK’S

SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO”.

18. AC international air waybill number 014 ZRH 6290 1182 was produced as a record of the Gold Shipment (the “Gold Waybill”). The Gold Waybill identified Brink’s as the Shipper and The Toronto Dominion Bank as the Consignee. It described the cargo as “GOLDBARS” with a gross weight of 400.19 kilos. Inserted on the face of the Gold Waybill was the following words: “BRINK’S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO”.

19. In the process of generating the Banknote Waybill and the Gold Waybill (collectively the “Waybills”), Brink’s electronically and contemporaneously transmitted the declared value of the Banknotes (\$1,945,843 USD) and the Gold (13,612,696.75 CHF) to AC.

Brink’s Books the Shipments

20. On or about April 14, 2023, a Brink’s Export Agent sent booking confirmation emails to AC (the “Booking Confirmation Emails”).

21. The subject line of the first booking confirmation email was “VAL BOOKING BRINK’S” followed by the air waybill number for the Banknote Waybill (the “First Booking Confirmation Email”). The body of the First Booking Confirmation Email contained, among other things, a description of the nature and approximate weight of the cargo.

22. The subject line of the second booking confirmation email was “Brink's VAL Booking” followed by the air waybill number for the Gold Waybill (the “Second Booking Confirmation Email”). The body of the Second Booking Confirmation Email contained, among other things, a description of the nature and approximate weight of the cargo, followed by the acronym “VAL”.

AC Confirms Receipt and Acceptance of the Shipments

23. AC acknowledged receipt and acceptance of the Shipments via reply emails dated April 14, 2023 (the “Acceptance Emails”). The Acceptance Emails confirmed, among other things, that:

- a. The Shipments would be transferred from Zurich to Toronto via AC flight number AC881 (the “Flight”) on April 17, 2023, with a scheduled departure time of 13:25 and a scheduled arrival time of 16:05;
- b. The Shipments would be handled with AC Secure protocols;
- c. In the field labeled “Description”, the Acceptance Emails indicated that the Shipments contained: “Banknotes” and “Gold”;
- d. In the field labeled “Commodity Code”, the Acceptance Emails contained the acronym “VAL”, meaning Valuable; and
- e. In the field labeled “Special Handling Codes”, the Acceptance Emails contained the acronyms “VAL”, meaning Valuable, and “PRI”, meaning Priority.

Brink's Pays Supplementary Fees

24. As noted above, AC charges a supplementary fee for the shipment of valuable cargo transported through AC Secure. According to AC, all such shipments are assessed supplementary fees, including a flat valuable handling fee and a valuation charge that is calculated as a percentage of the declared value for air transport. Brink's paid supplementary fees for both Shipments, as evidenced by the Waybills.

The Shipments Are Stolen

25. On April 17, 2023, the Shipments were delivered to AC and loaded aboard the Flight.

26. The Shipments landed in Toronto at approximately 15:56 on April 17, 2023. They were offloaded at approximately 16:20 and were deposited at the AC Bonded Warehouse in Toronto at approximately 17:50.

27. At approximately 18:32, an unidentified individual gained access to AC's cargo storage facilities. No security protocols or features were in place to monitor, restrict or otherwise regulate the unidentified individual's access to the facilities.

28. Once inside, the unidentified individual presented to AC personnel the copy of an airway bill respecting an unrelated shipment (the "Fraudulent Waybill").

29. Upon receipt of the Fraudulent Waybill, AC personnel released the Shipments to the unidentified individual, following which the unidentified individual absconded with the cargo.

30. A police investigation is ongoing. To date, there have been no arrests or convictions and the Shipments have not been recovered.

31. AC accepted the Fraudulent Waybill from the unidentified individual without verifying its authenticity in any way. Had AC made the necessary and appropriate inquiries in the circumstances, the unidentified individual's ability to steal the cargo entrusted to its care would have been entirely avoided.

AC Fails to Comply with AC Secure Protocols

32. AC was reckless in its operation of the AC Secure program. Despite contracting to provide "secured holding areas" and "special handling" for all high-value shipments, AC failed to enlist reasonable and appropriate security measures and protocols to prevent the theft of the Shipments.

33. In negligently and carelessly implementing the AC Secure Program, AC breached its contractual commitments to Brink's. Particulars of AC's negligence and carelessness include, but are not limited to, the following:

- (a) failing to ensure that its cargo storage facilities offer acceptable and sufficient levels of security and protection;
- (b) failing to offer services specially designed to protect high-value items (like gold and banknotes) including, *inter alia*, storing facilities equipped with effective vaults and cages, constant CCTV surveillance and active human surveillance patrols;

- (c) failing to implement sufficient safeguards in its software/hardware systems and business processes to prevent unauthorized transactions, detect unusual patterns, and avoid excessive losses and damage to the high-value cargo entrusted in its care;
- (d) failing to ensure that employee credentials are not susceptible to fraud and/or misuse;
- (e) failing to verify the trustworthiness and proper training of all personnel and third-parties who maintain access to high-value shipments on its behalf, including through appropriate vetting and screening processes; and
- (f) failing to ensure that the specific security measures it advertised and marketed were effectively in place.

34. As a direct result of AC's failure to comply with the terms of its contractual commitments, as set out above, the Shipments were stolen.

35. In accordance with the terms of the Montreal Convention, 1999 (formally, the *Convention for the Unification of Certain Rules for International Carriage by Air*), which governs the contractual relationship between the parties (as detailed below), AC is liable to Brink's for the full value of the Shipments.

The Montreal Convention

36. As noted above, the rights and obligations of Brink's and AC are governed by the Montreal Convention, 1999 (the "Montreal Convention" or the "Convention"), which is

an international treaty incorporated into the laws of Canada by the *Carriage by Air Act*, as amended, R.S.C. 1985, Chapter C-26.

37. The Montreal Convention entered into force in Switzerland on September 5, 2005, and in Canada on November 4, 2003. It applies to “all international carriage of persons, baggage or cargo performed by aircraft for reward”. It defines “international carriage” as a shipment whose place of departure and place of destination “are situated ...within the territories of two States Parties”. It further specifies that “carriage by air” includes “the period during which the cargo is in the charge of the carrier”.

38. The Montreal Convention applies to the facts of this case. The Shipments took place after the Convention was signed and, therefore, satisfy the requirement that the place of departure and the place of destination be situated “within the territories of two State parties”.

Article 22(3) of the Convention

39. Article 22(3) of the Convention provides that “in the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogram [increased to 22 Special Drawing Rights per kilogram effective as of December 28, 2019], unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires” (Emphasis added).

40. In the event that the pre-conditions set out in Article 22(3) are satisfied, the Convention provides that “the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor’s actual interest in delivery at destination”.

41. The Special Drawing Right (“SDR”) referenced in Article 22(3) is an artificial currency set by the International Monetary Fund (the “IMF”). Its value is based on a basket of five currencies – the U.S. dollar, the euro, the Chinese renminbi, the Japanese yen and the British pound sterling. As of September 21, 2023, 1 SDR = USD 1.316620. Accordingly, if the Convention’s recovery limits were to apply to Brink’s claim (which, for the reasons set out below, they do not), Brink’s would only be able to recover approximately \$1,540.39 USD for the Banknotes Shipment (which is less than 1% of the actual value of the Banknotes Shipment) and \$11,591.75 USD for the Gold Shipment (which is less than 1% of the actual value of the Gold Shipment).

No Limitation to Brink’s Right to Recovery

42. The Montreal Convention does not limit Brink’s recovery under the terms of its contract with AC. Brink’s complied with both pre-conditions of Article 22(3) of the Convention, namely, it (a) provided a special declaration of interest in delivery at destination; and (b) paid a supplementary sum.

The Special Declaration of Value

43. Brink’s made a special declaration of interest in delivery at the time that the Shipments were handed over to AC as, among other things:

- (a) the Waybills confirmed that the nature of the cargo included over 400 kg of “GOLD” and over 50 kg of “BANKNOTES”, both of which are classified as “high-value goods” according to AC;
- (b) the monetary and declared value of the cargo, which totalled more than 15 million CHF (Swiss Francs), was disclosed to and known by AC;
- (c) the face of the Waybills included the following notation:

“BRINK’S SECURED AIRFREIGHT SPECIAL SUPERVISION
IS REQUESTED VALUABLE CARGO”.

- (d) the Booking Confirmation Emails and the Acceptance Emails both expressly confirmed the valuable nature of the Shipments and the need for special safety handling features.

44. In the circumstances, there can be no question that AC had actual knowledge of both the high-value nature and monetary value of the Shipments and Brink’s special interest therein at the time that they were handed over for transportation.

The Supplementary Sum

45. As stated above and throughout, AC charged (and Brink’s paid) supplementary freight rates for the Shipments, which both exceeded AC’s standard rates for general cargo. Furthermore, with respect to the Gold Shipment, Brink’s paid a higher freight rate than the rate set forth in the governing VAL (meaning “valuable”) freight rate table that AC provided to Brink’s.

46. As noted, AC's website states that "[a]ll valuable shipments are assessed a flat valuable handling fee and a valuation charge that is calculated as a percentage of the declared value for air transport." For the Banknote Shipment, Brink's was charged a higher freight rate than the rate imposed for general cargo. For the Gold Shipment, Brink's was charged a higher freight rate than the flat valuable handling fee and the standard air freight rate combined.

AC is Liable for the Value of the Shipments

47. In light of the foregoing, AC's liability is not limited pursuant to Article 22(3) of the Montreal Convention.

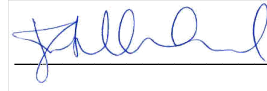
48. AC is liable to Brink's for the full amount of the value of the Shipments.

Brink's Provides Notice of Loss

49. On April 27, 2023, Brink's provided written notice to AC of the loss it sustained as a result of the theft of the Shipments entrusted to AC's care. Brink's demanded full reimbursement for all losses and damages sustained by it as a result of the theft.

50. As of the date of this Statement of Claim, there has no response from AC.

51. Brink's proposes that this action be tried in Toronto, Ontario.



October 6, 2023

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