

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
83-CP-10-819

STATE OF SOUTH CAROLINA)
Ex Relatone, T. TRAVIS)
MEDLOCK, ATTORNEY GENERAL,)

Plaintiff,)

vs.)

O R D E R

ECONOTOURISTIC ASSOCIATES,)
INCORPORATED, VICTOR D.)
BARKER, BEVERLY T. BARKER,)
MERRILL ANTHONY COX,)
ROBERT E. SMITH, JAMES M.)
CODY, JET CHARTER SERVICE,)
INC., NANCY C. HEWITT, and)
THE FIRST NATIONAL BANK OF)
SOUTH CAROLINA,)

Defendants.)

This matter was heard by me on Monday, August 20, 1984,
at 10:00 o'clock A.M. at the Charleston County Courthouse.

The trial on the merits was had as to Defendants, Victor
Barker and EconoTouristic Associates, Inc. and a hearing to
determine damages was held as to the Defendant Jet Charter,
Inc. which had previously been held to be in default.

Representing Defendants Victor Barker and EconoTouristic
Associates, Inc. was Paul Uricchio, Jr. of the Charleston
Bar. Representing the State was Assistant Attorney General
C. Richard Kelly. No one appeared to represent the Defendant
Jet Charter, Inc.

The State put into evidence a check from EconoTouristic
Associates, Inc. to Jet Charter for \$5,000 as payment on a
contract between these two companies for a flight which was

to leave Charleston March 26, 1983. The State put into evidence without objection the depositions of various witnesses to the facts of this case. It is clear from this evidence that the trip scheduled for March 26, 1983, was cancelled. There is no evidence that Jet Charter, Inc. incurred any expenses as to that trip. Therefore, I find that the \$5,000 deposit which was paid to Jet Charter, Inc. for the trip should be paid over to the State to be used to repay those persons who had paid EconoTouristic Associates, Inc. for the March 26, 1983, trip and other trips which were cancelled.

In a separate Order of this Court, Attorneys for the State and for Defendants Beverly Barker, Merrill Cox, Robert Smith, and James Cody stipulated as to the accuracy of a list giving the names of persons who had paid EconoTouristic Associates, Inc. for travel or accommodations which they had not received and the amounts which they had paid and not been reimbursed from any source. At the trial of this matter, the attorney for Victor Barker and EconoTouristic Associates, Inc. joined in this stipulation of facts on behalf of his clients. This list is attached hereto and incorporated by reference as Attachment A.

The attorneys for the State and for Victor Barker and EconoTouristic Associates, Inc. also stipulated that Victor Barker had pled guilty to breach of trust with fraudulent intent for taking payments as President of EconoTouristic Associates, Inc. for trips for sixty-nine persons and for using the money for other purposes. While the State put

into evidence depositions of the Defendants and several witnesses for the purpose of showing the details of how the allegations contained in its complaint actually occurred, the State's basic argument for civil penalties was based on Mr. Barker's conviction of sixty-nine counts of breach of trust. I agree that such evidence is sufficient for this Court to make its determination as to civil penalties.

I find that this Court has the power and duty to set a civil penalty of up to \$5,000 for each occurrence of a willful violation of an unfair trade practice and that the principal, (in this case EconoTouristic Associates, Inc.) and the agent, (in this case Victor Barker as President of EconoTouristic Associates, Inc.) are jointly and severally liable for such penalties as the intent of the agent is attributable to the principal. See State ex rel. McLeod v. C & L Corp., Inc., et al., 313 S.E.2d. 334 (SC App.1984). As the crime of breach of trust with fraudulent intent is obviously a willful unfair trade practice and as it is stipulated that there were at least sixty-nine instances of such violations in this case, I find that this Court could levy a civil penalty of up to \$345,000.

Considering the facts before the Court, I find that Victor Barker and EconoTouristic Associates, Inc. should be held jointly and severally liable for a civil penalty of \$175,000 in this case. I further find that the State is entitled to recover from Mr. Barker and EconoTouristic Associates, Inc. its costs in this case as outlined in the Affidavit attached hereto and incorporated herein by reference as Attachment B.

I find that in view of the Consent Order dated August 20, 1984, signed by Judge Smith which allows restitution as requested by the State in this case and in view of the aforementioned findings of fact, I find that the monies of EconoTouristic Associates, Inc. held by the Clerk of Court pursuant to a prior Order in this case should be paid over to the Attorney General's Office to be used to make a pro rata distribution to those persons listed in Attachment A. I find that it is appropriate for this Court to order such restitution on its own motion under §39-5-50(b), CODE OF LAWS OF SOUTH CAROLINA (1976) as well as under the equitable theory that these monies constitute a constructive trust held for the benefit of those persons who had paid money in trust to the corporation.

IT IS THEREFORE ORDERED that the Clerk of Court pay to the South Carolina Attorney General's Office all monies of EconoTouristic Associates, Inc. held by it and that Jet Charter, Inc. pay to the South Carolina Attorney General's Office the sum of \$5,000 with these monies to be used to make a pro rata distribution to those persons listed in Attachment A.

IT IS FURTHER ORDERED that judgment be entered in favor of the State against Victor D. Barker and EconoTouristic Associates, Inc. jointly and severally for civil penalties of \$175,000 and for costs of \$1,242.80 with interest at the legal rate from the day of this Order.

151

ROBERT H. CURETON
SPECIAL CIRCUIT COURT JUDGE
NINTH JUDICIAL CIRCUIT

August 23rd 1984.
Charleston, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

State of South Carolina ex)
relatione T. Travis Medlock,)
Attorney General,)
Plaintiff,)

83-CP-10-819

vs.)

STIPULATION

EconoTouristic Associates,)
Incorporated, Victor D. Bar-)
ker, Beverly T. Barker.)
Merrill Anthony Cox, Robert)
E. Smith, James M. Coov. Jet)
Charter Service, Inc., Nancy)
C. Hewitt, and The First)
National Bank of South)
Carolina,)
Defendants.)

CRK
p. 6

For the purposes of this action, it is stipulated by the parties to this action that the following persons paid the indicated amounts to Econotouristic Associates for travel or accomodations which they did not receive and have claims against ETA for the indicated amounts:

TRIP LEAVING MARCH 26, 1983

AMOUNT

Margaret Montgomery
1446 Barbara Street
Mt. Pleasant, SC 29464

695.00

James T. Humphries 780.00
12 Ashland Drive
Charleston, SC 29407

Ann Axene 1,250.00
46 Kinston Road
Hilton Head, SC 29928

Sarah Bryson 1,250.00
Star Route 1
Box 50 RR
Bluffton, SC 29910

Jeannie Roberts 1,250.00
39 St. Andrews Palce
Hilton Head, SC 29928

Margaret Payne 1,276.00
c/o Mr. & Mrs. Thomas Payne
30 Cedar Lane
Hilton Head, SC 29928

Tommy Heyward 1,250.00
c/o Tom G. Heyward
PO Box 353
Bluffton, SC 29910

Colleen Forbeck 1,250.00
c/o Mr. & Mrs. George Forbeck
709 S. Shore Drive
Lake Geneva, Wisconsin 53147

Incorporated herein by specific reference are those individuals and amounts listed in the Plaintiff's Request for Admissions, dated January 31, 1984, beginning on page 2 and continuing through page 7.

CRK
p.7

TRIPS AFTER MARCH 26, 1983

	<u>AMOUNT</u>
Donald & Terrill Rainey 421 Venning Street Mt. Pleasant, SC 29464	150.00
Gladys Hilton 538 Wampler Drive Charleston, SC 29412	250.00
Mrs. W. E. Nicoll 1380-8 Trailmore Drive Charleston, SC 29407	250.00
Elna Kennedy 546 Goddard Park Charleston, SC 29407	250.00
Katherine & Cecilia Black 6 Moore Drive Charleston, SC 29407	500.00
Lois Kendricks c/o Gaines W. Smith Legare, Hare, Smith 63 Broad Street Charleston, SC	250.00
Mrs. Epps Brentwood Middle School 2685 Leeds Avenue Charleston, SC 29405	270.00
Susan Ostendorf 761 Condon Drive Charleston, SC 29412	200.00
Thomas & Mary Bellemare 6701 Dorchester Road Apartment 212 Charleston Heights, SC 29418	200.00
Dr. Roland F. Crane 765 Creekside Drive Mt. Pleasant, SC 29464	300.00

CR/K
p. 3

Ms. Lillian Merritt 100.00
PO Box 248
Bloomingdale, Georgia 31302

Ms. Donna Swartz 100.00
124 Regent Street
Summerville, SC 29483

Ms. Blanche Murray 100.00
216 Ellen Street
Goose Creek, SC 29445

Ms. Margain Cain 100.00
1221 Winston Avenue
Savannah, Georgia 31404

Ms. Francesca Zavoita 630.00
15 Trumbo Street
Charleston, SC 29401

Ms. Marta Conlon 640.00
2 Weins Court
Charleston, SC 29401

Ms. Ruth B. Young 100.00
1480 Harbourgate Shore Blvd.
Mt. Pleasant, SC 29464

Terry Deer 400.00
272 D Fleming Road
Charleston, SC 29412

Ms. Kathy Higgins 1,000.00
Brentwood Middle School
2685 Leeds Avenue
Charleston, SC 29405

Incorporated herein by specific reference are
those individuals and amounts listed in the Plaintiff's
Request for Admissions, dated January 31, 1984, beginning on

CRK
p.9

page 8 and continuing through page 9.

C. Richard Kelly
C. RICHARD KELLY
Assistant Attorney General
Attorney for the State

Wilbur E. Johnson
WILBUR E. JOHNSON
Assistant Attorney General
Attorney for the State

Patrick Michael Duffy
PATRICK MICHAEL DUFFY
Attorney for James M. Cody

James E. Gonzales
JAMES E. GONZALES
Attorney for Merrill A. Cox

Joseph S. Mendelsohn
JOSEPH S. MENDELSON
Attorney for Robert E. Smith

Paul W. Uricchio, Jr.
PAUL W. URICCHIO, JR.
Attorney for Beverly Barker

CRK
p.10

_____, 1984
_____, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

State of South Carolina ex)
relatione T. Travis Medlock,)
Attorney General,)

83-CP-10-819

Plaintiff,)

vs.)

REQUEST FOR ADMISSIONS

EconoTouristic Associates,)
Incorporated, Victor D. Bar-)
ker, Beverly T. Barker,)
Merrill Anthony Cox, Robert)
E. Smith, James M. Cody, Jet)
Charter Service, Inc., Nancy)
C. Hewitt, and The First)
National Bank of South)
Carolina,)

Defendants.)

TO: Barry Krell, Esquire
James E. Gonzales, Esquire
Joseph S. Mendelsohn, Esquire
Mr. Gabriel D' La Rota
Paul N. Uricchio, Jr., Esquire
Patrick Michael Duffy, Esquire
ATTORNEYS FOR DEFENDANTS

The Plaintiff hereby requests, pursuant to Circuit Court Rule 89, that the Defendants admit the truth of the following matters of fact within thirty (30) days of service of this request or failing to admit the truth of these matters (1) that the Defendants set forth in detail the reasons why they cannot truthfully admit or deny the matter(s), (2) when good faith requires that the Defendants qualify their answers or deny only a part of the matter(s),

that they specify so much, as is true, and qualify or deny the rest, (3) that the Defendants not give lack of information or knowledge as a reason for failure to admit or deny unless they state that they have made a reasonable inquiry and that the information known or readily obtainable by them is insufficient to enable them to admit or deny and (4) that the Defendants not object to the request on the sole grounds that the matter presents a genuine issue for trial.

THEREFORE, Plaintiff requests that Defendants remit:

1. That the following persons actually paid the indicated amounts to EconoTouristic Associates, Inc. for a trip to various destinations in Europe which was scheduled to leave on March 26, 1983, and which trip never took place; and that these persons have not received their monies back from any source to this date.

Brad Anderson
1005 ChamberLane
Mt. Pleasant, SC 29464 \$ 635.00

Diane Back
207 Forest Trail
Isle of Palms, SC 29451 \$ 806.00

Mr. Beauston
1025 Tall Pine Road
Mt. Pleasant, SC 29451 \$ 780.00

Mrs. Beauston
1025 Tall Pine Road
Mt. Pleasant, SC 29451 \$ 780.00

CRK
p.12

Bill Boan
86 Nightingale Manor
Charleston, SC 29405 \$ 780.00

Cheryl Boan
86 Nightingale Manor
Charleston, SC 29405 \$ 780.00

Mary Boyd
3252 Starlett Avenue
N. Charleston, SC 29405 \$ 806.00

Patricia Brooks
7529 Stafford Street
Charleston Heights, SC 29405 \$ 806.00

Jonathan Brubaker
3011 Palm Boulevard
Isle of Palms, SC 29451 \$ 780.00

Rebecca Chesney
7015 Oldwanus Drive
Mt. Pleasant, SC 29464 \$ 855.00

Wade Clark
1271 Oldwanus Drive
Mt. Pleasant, SC 29464 \$ 780.00

Mr. Dandridge
123 Woodland Drive
Summerville, SC 29483 \$ 780.00

Mrs. Dandridge
123 Woodland Drive
Summerville, SC 29483 \$ 780.00

Lori Dandridge
c/o Nancy Schleimer
157 Heritage Circle
Mt. Pleasant, SC 29464 \$ 806.00

Peggy Fetter
Box 327
Sullivans Island, SC 29482 \$ 806.00

Susan Fetter
Box 327
Sullivans Island, SC 29482 \$ 806.00

CRK
p.13

Ann Gunter 6934 Whitcomb Drive Charleston Heights, SC 29405	\$ 806.00
Bonnie Hern 4318 Purdue Drive Charleston, SC 29405	\$ 806.00
Josh Hertel 8 Lamboll Street Charleston, SC 29401	\$ 780.00
Eileen Hortman 102 Greendall Court Quail Arbor V Summerville, SC 29483	\$ 628.00
David Hudgens 414 Woodvale Drive Florence, SC 29501	\$ 835.00
Roy Hudgens 414 Woodvale Drive Florence, SC 29501	\$ 835.00
Lee Hughes 214 Hobcaw Drive Mt. Pleasant, SC 29464	\$ 780.00
Didi Koger 979 Scottland Drive Mt. Pleasant, SC 29464	\$ 780.00
Herb Koger 979 Scottland Drive Mt. Pleasant, SC 29464	\$ 780.00
Melissa Koger 979 Scottland Drive Mt. Pleasant, SC 29464	\$ 806.00
Trey Koger 979 Scottland Drive Mt. Pleasant, SC 29464	\$ 806.00
Jewel Loman 104 Charter Oak Court Summerville, SC 29483	\$ 780.00

CRK
-P.H

Ralph Loman
104 Charter Oak Court
Summerville, SC 29483 \$ 780.00

Kim Martin
1218 Calais Drive
Mt. Pleasant, SC 29464 \$ 780.00

Pat Mason
673 Pawley Road
Mt. Pleasant, SC 29464 \$ 780.00

Laney Mills
169 Queen
Charleston, SC 29401 \$ 780.00

Wynona Mills
169 Queen
Charleston, SC 29401 \$ 780.00

Anna Moessner
840 Kincade Drive
Mt. Pleasant, SC 29464 \$ 200.00

Robert Nuttal
915 Austin Square
Mt. Pleasant, SC 29464 \$ 695.00

Rebecca Lee Owen
125½ Tradd Street
Charleston, SC 29401 \$ 721.00

Beth Payne
924 Royal Oak
Virginia Beach, Virginia 23452 \$ 780.00

Tom Payne
924 Royal Oak
Virginia Beach, Virginia 23452 \$ 780.00

David Pettus
21 Rivers Row, Apt. 138
Charleston, SC \$ 695.00

Peter Pinckney
1328-A Lieben Road
Mt. Pleasant, SC 29464 \$ 695.00

CRK
P. 15

Donna Risinger
154 San Joquin Court
W. Pittsburg, California 94565 \$ 806.00

Robert Roberts
1275 Fort Laman Road
Charleston, SC 29412 \$ 721.00

Jill Silber
189 Riversoaks Drive
Plymouth, Mississippi 48170 \$ 795.00

Teresa Silber
189 Riveroaks Drive
Plymouth, Mississippi 48170 \$ 795.00

Mr. Albert Spalviero
1085 Woodside Drive
Charleston, SC 29412 \$ 721.00

Mrs. Albert Spalviero
1085 Woodside Drive
Charleston, SC 29412 \$ 721.00

Louise Stamp
1729 Pennacle Road
Elmira, New York 795.00

CRK

Jewell Thompson
12 Broughton Road
Charleston, SC 29407 \$ 300.00

Lee Thompson
12 Broughton Road
Charleston, SC 29407 \$1,490.00

Bill Todd
208 Ventura Place
Mt. Pleasant, SC 29464 \$1,560.00

John Thorpe
3951 Arbor Way
Charlotte, NC 28211 \$ 855.00

Walter Wall
119 W. Lake Avenue
Summerville, SC 29483 \$ 806.00

CRK
p. 16

C. J. Welborn
2308 Atlantic Avenue
Sullivans Island, SC 29482 \$ 780.00

Bubba Weston
110 Morrison Street
Mt. Pleasant, SC 29464 \$ 780.00

Bonnie Williams
24 Chalmers Street
Charleston, SC 29401 \$ 695.00

Jennifer Williams
431 Carriage Lane
Mt. Pleasant, SC 29464 \$ 580.00

Dr. Michael Williams
1065 Hwy. 17 By Pass
Mt. Pleasant, SC 29464 \$ 780.00

Mrs. Michael Williams
1065 Hwy. 17 By Pass
Mt. Pleasant, SC 29464 \$ 780.00

~~Constance Wilson~~
1234 Old Towne Road
Charleston, SC 29407 \$ 0.00

CRK

CRK
p. 17

~~Robert Wilson~~
1234 Old Towne Road
Charleston, SC 29407 \$ 0.00

2. That Victor D. Barker was convicted of Breach of Trust With Fraudulent Intent for converting said monies of each of the above individuals.

3. That the following persons actually paid the indicated amounts to EconoTouristic Associates, Inc. for various trips which were to begin at various dates and that they were given a contract by EconoTouristic which stated that their monies would be placed in an escrow account at

South Carolina National Bank and that these persons have not received their trip or their monies back from any source to this date.

Mrs. Charlie Duscheque
Plantation Apartments
Apt. 273, Building 1
1840 Carriage Lane
Charleston, SC 29407 \$ 250.00

Naomi Kennedy
28 Oakdale Drive
Charleston, SC 29407 \$ 250.00

Mr. and Mrs. Charles Bloom
25 Cross Creek Drive, Apt. F-2
Charleston, SC 29412 \$ 100.00

Penelope M. Bekken
Erik O. Sandburg
c/o Penny Bekken
Carroon and Black Benefits
2900 Chamblee - Tucker Road
Building 9
Atlanta, Georgia 30341 \$1,240.00

Colleen Kerns
55 Turner Road, Nimity Hill
F.P.O. San Francisco, CA 96634 \$ ~~100.00~~ ^{\$100}

CRK

CRK
p.18

Michael and Wanda Scott
969 Sequoia Drive
Winter Springs, Florida 32708 \$ 200.00

Dermot C. Peacock
Mary Ann Young
104 Point Cover Road
Savannah, Georgia 31410 \$ 200.00

Charles and Loretta Aldridge
106 Tyvola Drive
Summerville, SC 29483 \$ 200.00

David and Sanna Carrico
Route 1, Box 237
Jefferson, Sc 29718 \$1,360.00

Margaret Hammer
Julia Hammer
Dawn Hammer
22 Rumson Road
Goose Creek, SC 29445 \$1,800.00

Amelea Kissler
1544A Chance Drive
Charleston Air Force Base
Charleston, SC 29404 \$ 100.00

Drew Clearie
Post Office Box 206
Denmark, SC 29042 \$ 100.00

Tommy and Mrs. Crain
105 Steeple Chase Court
Simpsonville, SC 29681 \$ 300.00

Jasper and Margaret Summers
522 St. Andrews Boulevard
Charleston, SC 29407 \$ 200.00

Diane Gowder
1023 Wheeler Drive
Hanahan, SC 29406 \$ 100.00

Anya Winocour
48 Tweedsmuir Avenue
Dundos, Ontari, Canada \$ 656.00

Martha Brunnemer
168 Tradd Street
Charleston, SC 29401 \$ 640.00

David O'Kelly
4775 Apartment Boulevard
Apartment G-9
N. Charleston, SC 29418 \$ 890.00

~~Michael and Carol Pierce
1 Myrtle Lane
Isle of Palms, SC 29451~~ ~~\$1,340.00~~

CRK

CRK
p. 19

4. That EconoTouristic Associates, Inc. did not open or maintain an escrow account or a bond to cover deposits taken for trips.

T. TRAVIS MEDLOCK
Attorney General

W. JOSEPH ISAACS
Senior Assistant Attorney General

C. RICHARD KELLY
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211

By: C Richard Kelly
ATTORNEYS FOR PLAINTIFF

January 31st, 1984

Columbia, South Carolina.

CRK
p.20

This request is made in good faith; the subject hereof is genuinely relevant to the case; and evidence of the subject hereof is necessary to the establishment of my client's cause.

Defendants' attention is directed to Circuit Court Rule 89(c) which provides:

(c) Refusal to Admit. If a party serves a sworn denial of a request and the party requesting the admission thereafter proves the genuineness of any document or the truth to any matter of fact so denied, he may apply to the Court for an Order requiring the other party to pay him the reasonable expenses incurred in making such proof. Unless the Court advises that there were good reasons for the denial or that the admissions sought were of no substantial importance, the Order shall be made.

T. TRAVIS MEDLOCK
Attorney General

W. JOSEPH ISAACS
Senior Assistant Attorney General

C. RICHARD KELLY
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211

By: C. Richard Kelly
ATTORNEYS FOR PLAINTIFF

January 31st, 1984

Columbia, South Carolina.

CRK
p. 21

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
83-CP-10-819

STATE OF SOUTH CAROLINA)
Ex Relatone, T. TRAVIS)
MEDLOCK, ATTORNEY GENERAL,)

Plaintiff,)

vs.)

A F F I D A V I T

ECONOTOURISTIC ASSOCIATES,)
INCORPORATED, VICTOR D.)
BARKER, BEVERLY T. BARKER,)
MERRILL ANTHONY COX,)
ROBERT E. SMITH, JAMES M.)
CODY, JET CHARTER SERVICE,)
INC., NANCY C. HEWITT, and)
THE FIRST NATIONAL BANK OF)
SOUTH CAROLINA,)

Defendants.)

PERSONALLY appeared before me, C. RICHARD KELLY, Assistant
Attorney General, who being duly sworn, deposes and says:

That he is Attorney for the State in this case and

That the State incurred the following costs in this case:

(1) Depositions of:

Nancy Hewitt Brannen
Merrill Anthony Cox
Appearance Fee
Copy of 137 Pages of Exhibits \$449.30
Taken 9/9/83

Robert E. Smith
Victor D. Barker
Beverly T. Barker
Appearance Fee \$422.95
Taken 9/29/83

ATTACHMENT B

James M. Cody
Dwight L. Moody, Jr.
Olin Hammond
Appearance Fee
1 Copy of 55 Pages of Exhibits \$275.55
Taken 10/21/83

TOTAL - DEPOSITIONS	\$1,147.80
(2) FILING FEE	25.00
(3) SERVICE OF PROCESS	-0-
(4) WITNESS FEES	15.00
(5) TRANSCRIPT OF HEARING HELD 2/29/84	<u>55.00</u>
GRAND TOTAL	\$1,242.80

CR Kelly
C. RICHARD KELLY
Assistant Attorney General

SWORN to before me
this 22nd day of August, 1984.

Francis A. Cova (L.S.)
Notary Public for S. C.

My Commission Expires: 12-14-87.