

Lopez, Marcus H.
vs.
Compania Cubana de Aviacion Sa

Docket 118
Division MARSHALL C. WISEHEART - B
Page 75.
CASE NO. 59L 3437 12

COMMON LAW

IN CIRCUIT COURT

IN AND FOR
DADE COUNTY, FLORIDA

Marcus H. Lopez

Plaintiff.....

vs.

Compania Cubana de
Aviacion Sa

Defendant.....

Action for

Damages \$ 5,000.00

Alfred W. Caraval

Attorney.....for Plaintiff.....

This File Must Not Be Withheld from
Clerk's Office Without Leave of Court.
E. B. LEATHERMAN,
Clerk, Circuit Court

Index

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

THE STATE OF FLORIDA

TO THE DEFENDANT(S):

MR. DAVID W. DYER, resident agent
of **COMPANIA CUBANA de AVIACION, S.A.**
a/k/a **CUBANA AIRLINES**
c/o **SMATHERS, DYER & THOMPSON**
DuPont Building
~~Max~~ Miami, Florida

RECEIVED
OCT 21 10 01 12 1959
CLERK OF COURT
DADE COUNTY
FLORIDA

FILED RECORDS
NOV 10 11 20 AM 1959
CLERK OF COURT
DADE COUNTY
FLORIDA

You are hereby notified that a Common Law action has been filed against you in the Circuit Court for Dade County, Florida, by

MARCUS H. LOPEZ

You are hereby summoned and required to serve upon:

Plaintiff's Attorney, whose address is: **ALFRED M. CARVAJAL and
JOSEPH C. BRANNEN**
513 Ainsley Bldg.
Miami, Florida

and file with the Clerk of said Court, either before service or immediately thereafter, an answer to the Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

WITNESS my hand and seal of said Court at Miami, Dade County, Florida this 30
day of October, A.D., 19 59.

E. B. LEATHERMAN
as Clerk of said Circuit Court

By *Jean Sneider*
Deputy Clerk

(Court Seal)

Joe Brannen
Plaintiff's Attorney

COURT CIR STYLE S.A.R.

ATTORNEY: BRANNEN, & CRAVAJAL

ADDRESS:

PLAINTIFF: LOPEZ

DEFENDANT: COMPANIA CUBANA de AVIACION, S.A.

RECEIVED THIS WRIT ON THE 31st DAY OF Oct. A. D. 1959, AND SERVED

THE SAME ON COMPANIA CUBANA de AVIACION, S.A.
a/k/a CUBANA AIRLINES

A CORPORATION, THE WITHIN NAMED DEFENDANT, IN DADE COUNTY, FLORIDA, AT 10:10 a.m. ON THE 5th DAY OF Nov.

A. D. 1959, BY DELIVERING A TRUE COPY OF THE WRIT WITH THE DATE AND HOUR OF SERVICE ENDORSED THEREON BY ME, AND A COPY OF PLAINTIFF'S INITIAL PLEADING AS FURNISHED BY THE PLAINTIFF, TO

DAVID W. DYER, RES. AGENT, IN THE ABSENCE OF THE PRES., V. PRES. CASHIER, TREAS., SECY., GEN. MGR., DIRECTOR,

OF SAID CORPORATION.

WRIT \$ 3.50

EL
hw
11-6

THOMAS J. KELLY, METROPOLITAN SHERIFF OF DADE COUNTY, FLA.

BY Edward Lynch
METROPOLITAN DEPUTY SHERIFF.

RECEIVED
NOV 10 1959
DADE COUNTY
CLERK OF COURT

JOHN W. TOBEN

Received this Summons _____, 195____, and served the same
at _____ o'clock _____ M., on _____, 195____, by delivering a true copy
thereof with a copy of the Complaint of Initial Pleading to _____

RECEIVED
NOV 10 1959
DADE COUNTY
CLERK OF COURT

FILED FOR RECORD

OCT 30 4 49 PM 1959

E.S. LEATHERMAN
CLK. CT. CT. DADE CO. FLA.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA AT LAW

NO. 59L3437

MARCUS H. LOPEZ,)
Plaintiff,)

MARSHALL C. WISEHEART - B

-vs-

COMPANIA CUBANA de)
AVIACION, S.A., a corpor-)
ation, a/k/a CUBANA AIR-)
LINES,)
Defendant.)

COMPLAINT FOR WRONGFUL DEATH
AND DEMAND FOR JURY TRIAL

*Rep
12/59
Jaw*

THE PLAINTIFF, MARCUS H. LOPEZ, sues the captioned defendant for the wrongful death of LAURELINA MENA GONZALES de LOPEZ, and alleges:

I.

That the plaintiff, MARCUS H. LOPEZ, is a citizen and resident of the State of Florida and on or about November 1, 1958, and for some years prior thereto was the lawful husband of LAURELINA MENA GONZALES de LOPEZ, who received fatal injuries as a direct and proximate result of the airplane crash as hereinafter described.

II.

That on or about November 1, 1958, the said defendant, COMPANIA CUBANA de AVIACION, S.A., a/k/a CUBANA AIRLINES, a Cuban corporation, was a common carrier of passengers for hire by airplane, and in such capacity owned and operated a certain aircraft by and through their duly authorized agents, servants or employees and for a round trip ticket a valuable consideration was paid to the defendant, its agents, servants or employees by LAURELINA MENA GONZALES de LOPEZ and that at such time and place a contract was entered into between the defendant and the said deceased, in Miami Dade County, Florida

wherein the said defendant agreed to safely transport her from Miami, Florida to Cuba.

III.

That on or about the aforesaid date, the captioned defendant breached said contract in that the said defendant did willfully or wantonly or recklessly and/or negligently and carelessly control, maintain and operate said airplane so as to cause same to crash into the waters in and around Nipe Bay near Preston Airport in the province of Oriente, Cuba. The said defendant was guilty of negligence which proximately resulted in the death of LAURELINA MENA GONZALES de LOPEZ and that the defendant negligently inspected, maintained, operated and controlled its aircraft or aircraft system in which the said deceased was a passenger; or did so negligently maintain or manage its airline and transportation system or did so negligently fail to properly test its personnel and equipment or did so negligently fail to adopt and enforce proper rules for its operating personnel, aircraft maintenance or airway systems, that said aircraft was caused to crash into the waters in and around Nipe Bay, near Preston Airport in the province of Oriente, Cuba.

IV.

That at all times and at all places as aforesaid, the said defendant did violate its duty as a common carrier of passengers for hire for the reasons as aforesaid to the said deceased, who at all times and places as aforesaid was a passenger for hire in the aircraft owned and operated by the defendant as aforesaid.

V.

That as a direct and proximate result of the negligence of the said defendant as aforesaid and as a direct and proximate result of the breach of said contract as aforesaid, the said deceased was fatally injured.

VI.

That at the time of the death of said LAURELINA MENA GONZALES de LOPEZ she was thirty-six (36) years of age and left surviving her husband, MARCUS H. LOPEZ and her minor DAUGHTER, MARIA LOPEZ; that the said deceased had been a devoted and loving wife to the plaintiff, that she had provided for her home love and affection to her husband and to her minor daughter. That as a direct and proximate result of the said acts of the defendant as herein before alleged, which was the proximate cause of the death of the plaintiff's wife as aforesaid, the plaintiff had suffered the loss of services of his wife which had been prior to the death of his wife of great value to him, the plaintiff has been deprived of the affection, society, companionship and consortium of his wife and the plaintiff has been caused great mental pain and suffering and will be caused mental pain and suffering permanently in the future, and has suffered the loss of spiritual and financial support which his wife provided, and the plaintiff will, in the future, continue to suffer the loss of the affection, society, companionship, consortium, spiritual and financial support which his wife provided.

VII.

That as further direct and proximate result of the defendant's negligence and/or breach of its said contract of transportation, said minor child will be forever precluded from the intellectual, physical and moral training of her mother as well as the value of pecuniary contributions and accumulations which would have been acquired by the personal efforts of the decedent and inherited by the said minor child.

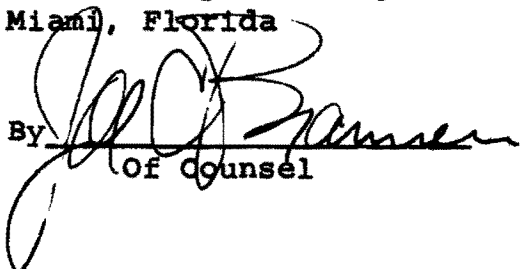
VIII.

That as a further direct and proximate result of the said acts of the defendant as herein above alleged, and of the death of the plaintiff's wife, the plaintiff was caused to

lay out and expend great sums of money for the funeral services for his wife and for other expenses incident to the proper burial of his wife.

WHEREFORE, the plaintiff demands judgment against the defendant for damages which the plaintiff avers are in excess of Five Thousand (\$5,000.00) Dollars exclusive of costs; together with the costs of this action and plaintiff demands a trial by jury of all the issues herein involved.

ALFRED M. CARVAL and
JOSEPH C. BRANNEN
Attorneys for Plaintiff
513 Ainsley Building
Miami, Florida

By 
Of Counsel

FILED FOR RECORD
IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA, IN AND
FOR DADE COUNTY 18-35 AM 1959 AT LAW

No.. 59L3437

E. B. LEVINSKY
CLK. CT. CL. D. FLA.

MARCUS H. LOPEZ,)

Plaintiff,)

vs.)

COPY OF PETITION FOR
REMOVAL

COMPANIA CUBANA DE)
AVIACION, S.A., a corpor-)
ation, a/k/a CUBANA AIR-)
LINES,)

Defendant.)
_____)

In accordance with Title 28, U. S. Code, Section 1446, the Defendant in the above cause files the attached copy of its Petition for Removal which has been filed this day in the District Court of the United States for the Southern District of Florida, Miami Division.

Dated this 20th day of November, 1959.

SMATHERS, THOMPSON & DYER

By

David W. Dyer
Attorneys for Defendant

I HEREBY CERTIFY that a true copy of the foregoing Copy of Petition for Removal was mailed this 20th day of November, 1959, to Messrs. Joseph C. Brannen and Alfred M. Carvajal, Attorneys for Plaintiff, 513 Ainsley Building, Miami, Florida.

David W. Dyer

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

No.

MARCUS H. LOPEZ,)	
)	
Plaintiff,)	
)	
vs.)	<u>PETITION FOR REMOVAL</u>
)	
COMPANIA CUBANA DE AVIACION,)	
S.A., a corporation, a/k/a)	
CUBANA AIRLINES,)	
)	
Defendant.)	
)	
_____)	

1. The Petitioner, COMPANIA CUBANA DE AVIACION, S.A., a Cuban corporation, by its undersigned attorneys, states that it is the Defendant named in Summons dated October 30, 1959 and served upon Defendant on November 5, 1959, issued out of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, No. 59L3437, in which MARCUS H. LOPEZ is Plaintiff and COMPANIA CUBANA DE AVIACION, S.A. is Defendant.

2. COMPANIA CUBANA DE AVIACION, S.A. is a corporation organized and existing under the laws of the Republic of Cuba with its principal place of business in Havana, Cuba, and not in the State of Florida, and was so organized and existing and had its principal place of business as above stated at the time of the commencement of this cause.

3. Plaintiff is a resident of a state other than the Republic of Cuba and Defendant alleges upon information and belief that he is a citizen and resident of the State of Florida.

A copy of the Summons referred to above is annexed to and made a part of this Petition together with a copy of the Complaint. No other papers or pleadings on behalf of the Plaintiff have been served upon or received by the Defendant.

5. As appears from the annexed Summons and Complaint, Plaintiff demands damages in excess of Five Thousand (\$5,000.00) Dollars and Defendant, upon information and belief, states that the matter in dispute exceeds the sum of Ten Thousand (\$10,000.00) Dollars, exclusive of interest and costs.

6. Petitioner is filing simultaneously with the Petition a Bond with good and sufficient surety conditioned as required by the Act of Congress in that behalf made and provided, in Title 28, United States Code, Section 1446.

WHEREFORE, Petitioner prays this Court that the Bond be accepted as good and sufficient and that this cause be removed to the District Court of the United States for the Southern District of Florida, Miami Division, in which District and Division this action is pending.

SMATHERS, THOMPSON & DYER

By David W. Dyer
Attorneys for Defendant

STATE OF FLORIDA)
)
COUNTY OF DADE)

Personally appeared before me, the undersigned authority, DAVID W. DYER, who being by me first duly sworn, deposes and says:

That he is a member of the law firm of Smathers, Thompson & Dyer, and that he is one of the attorneys of record for the Petitioner above named, and he is authorized to and does make this affidavit for and on behalf of said Petitioner.

That he has read the foregoing Petition and that the same is true and correct.

David W. Dyer

Sworn to and subscribed before me this _____ day of November, 1959.

My commission expires:

Notary Public, State of Florida at Large

WE HEREBY CERTIFY that a true copy of the foregoing
Petition for Removal was mailed to Joseph C. Brannen and
Alfred M. Carvajal, Attorneys for Plaintiff, 513 Ainsley
Building, Miami, Florida, this 20th day of November, 1959.

David W. Dyer

Of Counsel