



Lewis Roca Rothgerber Christie LLP

201 East Washington Street, Suite 1200
Phoenix, AZ 85004

Daniel P. Crane (State Bar No. 030623)
Direct Dial: 602.262.5774
Direct Fax: 602.262.5747
Email: DCrane@lewisroca.com

Catherine A. Macan (State Bar No. 038263)
Direct Dial: 602.262.5336
Email: CMacan@lewisroca.com

Attorneys for Paragon Skydive, LLC

**SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

Paragon Skydive, LLC,

Plaintiff,

v.

The State of Arizona, Arizona Department
of Transportation; Does 1 to 10, inclusive,

Defendants.

Case No.:

COMPLAINT

(Assignment to Commercial Court
Requested)

Plaintiff Paragon Skydive, LLC ("Paragon"), by and through undersigned counsel, hereby submits the following Complaint against Defendant State of Arizona, Arizona Department of Transportation ("ADOT"), and states and alleges as follows:

PARTIES

1. Plaintiff Paragon is an Arizona limited liability company, with its principal place of business in Coconino County, Arizona.

2. Defendant ADOT is an Arizona state government department charged with facilitating transportation within the state and is the owner and operator of the Grand Canyon National Park Airport ("GCNPA").

3. Paragon and ADOT are parties to that a Terminal Lease Agreement (the "Lease"), as amended from time to time, for lease premises at the GCNPA.

4. Paragon alleges that the entities named herein as Does 1 through 10 are



1 individuals, corporations, limited liability companies, partnerships, associations, or other
2 persons or entities who are responsible in some manner or capacity for the acts alleged
3 herein, but whose names are unknown to Paragon at this time. Paragon will seek leave to
4 amend this complaint to include the true names of Does 1 through 10 when the identities
5 of such defendants become known.

6 **JURISDICTION AND VENUE**

7 5. This Court has personal jurisdiction over the Defendant because the acts
8 alleged herein occurred in Arizona and/or caused damages to Plaintiff in Arizona.

9 6. This Court has subject matter jurisdiction pursuant to Ariz. Const., Art. VI,
10 § 14, and A.R.S. § 12-123.

11 7. Venue in this Court is proper pursuant to A.R.S. §12-401 and because the
12 Lease provides that “[a]ny litigation between the parties arising under this Lease shall be
13 brought in Maricopa County, State of Arizona.”

14 **GENERAL ALLEGATIONS**

15 8. In August 2013, shortly after establishing Paragon, Jason Theuma
16 (“Theuma”), as Paragon’s manager, applied to ADOT to open a commercial skydiving
17 operation at GCNPA.

18 9. ADOT initially responded positively to the Paragon’s proposal, with
19 skydiving at GCNPA not being a new concept as the military had previously jumped onto
20 GCNPA. Paragon received a copy of the draft initial lease in November 2013.

21 10. Shortly thereafter, ADOT changed its approach and, after a period of
22 refusing to communicate with Paragon, ADOT asserted shifting and stringent
23 requirements for skydiving access to GCNPA.

24 11. ADOT’s ever-shifting skydiving requirements included making Paragon
25 perform test jumps at GCNPA in 2014—even though that is not required by Federal
26 regulations—and requiring Paragon to obtain an FAA safety study, contrary to federal
27 requirements.
28



12. On September 17, 2015, the FAA issued its Skydiving Safety Risk Assessment report. In the report, the FAA concluded that skydiving at GCNPA fell within the “low” risk classification.

13. Even with a “low” risk classification, ADOT required more, and caused the FAA to convene a full Safety Risk Management Panel.

14. In February 2016, the FAA issued its Panel Review Draft of Grand Canyon National Park Airport Parachute Operations Safety Risk Management Document. The FAA concluded that skydiving at the GCNPA fell within the acceptable risk levels.

15. ADOT also sided with other GCNPA users (helicopter and fixed-wing air tour operators), who opposed allowing a diversity of airport users and sought to prevent Paragon from operating on GCNPA. This resulted in a frank reprimand by FAA personnel.

16. On March 1, 2016, delivered to Paragon a “take-it-or-leave-it” lease two days later (the “2016 Lease”).

17. Paragon, concerned with the three-year delay in commencing operations, noted numerous objections to the 2016 Lease, including that the lease appeared to violate FAA grant assurances and exceeded ADOT’s own statutory authority.

18. ADOT refused to allow Paragon to negotiate the lease and left Paragon in the position of having to accept ADOT’s unreasonable terms or be unable to open the skydiving business Paragon sought to conduct. So Paragon, under protest, signed the 2016 Lease.

19. Paragon’s troubles with ADOT continued even after entering into the 2016 Lease.

20. Once operating, Paragon and its employees dealt with unlawful threats of eviction, sexual harassment, bullying, and discrimination by ADOT.

21. ADOT also charged Paragon fees not charged to other commercial operators and imposed an unreasonable insurance requirement on Paragon.



22. As a result, in December 2016, Paragon filed a formal complaint against ADOT at ADOT's Civil Rights Office. The complaint was assigned File T6-088-12-16.

23. On February 15, 2017, ADOT's Investigative Report Office of Civil Rights issued a report in File T6-088-12-16. In that report, ADOT's Civil Rights Office found "reasonable cause to conclude that the allegations raised by Paragon Skydive are 'substantiated.'"

24. ADOT's Civil Rights Office's February 2017 report concluded that: (i) ADOT violated FAA grant assurances; (ii) ADOT charged Paragon a 3.3 times higher fuel flowage fee than the published fee schedule; (iii) ADOT improperly refused to negotiate the 2016 lease; (iv) ADOT lacked justification for charging Paragon higher fees than it did other commercial operators; (v) ADOT subjected Paragon to unjust and unfair terminal lease fees; (vi) ADOT should not have asked Paragon to conduct a "test jump"; (vii) ADOT acted dishonestly, deceptively and misled Paragon; (viii) ADOT improperly delayed Paragon's access to the Airport for more than two years due to influence of third parties; and, finally, (ix) ADOT retaliated against Paragon for filing its complaint.

25. ADOT promised to take corrective actions including nondiscrimination training, a review of the 2016 lease provisions, and addressing those concerns with Paragon.

26. ADOT also directed Paragon to "file a new complaint directly with the Federal Aviation Administration" should it have any further issues.

27. Thereafter, instead of correcting problems, ADOT delayed working with Paragon on a new (and appropriate) lease by extending out the 2016 lease term.

28. ADOT and Paragon met in May of 2017 where Paragon expressed its frustrations at ADOT's refusal to take the corrective actions it had promised.

29. ADOT and Paragon again met in September of 2017, at which meeting ADOT presented a draft new lease and promised to return the fees it inappropriately charged Paragon. But that did not happen either.



1 30. On October 2, 2017, the Interim Civil Rights Administrator to ADOT issued
2 a memorandum on Supplement to the Civil Rights Paragon Skydive Complaint
3 Investigation #T6-088-12-16. The Interim Civil Rights Administrator outlined the
4 improper conduct ADOT continued to engage in and called for an audit of the fees ADOT
5 charged Paragon.

6 31. Inexplicably, ADOT refused to conduct that audit. Instead, ADOT took half
7 measures, such as reducing the gross receipts fee from 5% to 3%, which was still 1.5%
8 higher than air tour operators.

9 32. And, just as it had done in 2016, ADOT rejected negotiating changes to the
10 lease with Paragon and sent Paragon another take-it-or-leave it lease and required
11 signatures to the unilaterally prepared lease in under two weeks.

12 33. Paragon pushed back on ADOT, which resulted in additional extensions
13 through the end of 2017, but yielded more changes to the lease by ADOT that were
14 inappropriate.

15 34. One of the new objectionable changes ADOT demanded was that Paragon
16 would have to have an unprecedented new insurance policy offered by only one broker.

17 35. Paragon pointed out that the insurance demanded by ADOT was not
18 feasible. When Paragon investigated the insurance demanded by ADOT, Paragon
19 discovered that the broker had never had a customer for the skydiving insurance ADOT
20 requested and, that the actual policy the broker had would not even satisfy ADOT's
21 requirements because the so-called skydiving policy excluded coverage for injuries "based
22 upon or arising out of an Insured's ownership, selection, chartering, use, operation, rental .
23 . . of aircraft"

24 36. Despite the impossibility of obtaining insurance that would satisfy ADOT's
25 requirements, ADOT continued to insist on its form of lease with the unattainable
26 insurance provision.

27 37. ADOT also falsely included a statement about the lease having been
28



1 negotiated by both parties and continued to threaten Paragon with eviction if it did not
2 sign the lease.

3 38. Paragon was again forced to sign a lease (the "Lease"), which has been
4 amended from time-to-time, under duress because Paragon would not be able to continue
5 to operate its business at the GCNPA without signing the draft lease demanded by ADOT.

6 39. In January 2018, given the continued issues with ADOT, Paragon sought
7 assistance from the FAA, as directed by ADOT, by filing a Part 13 Informal Investigation.

8 40. Within a few months ADOT began anew with threats of eviction based upon
9 more impossible insurance requirements that exceeded any industry norms.

10 41. On the eve of a June 8, 2018, eviction threat, the FAA responded to
11 Paragon's requests for assistance (including informal Part 13 Complaint) and requested
12 that Paragon and ADOT take no action until the FAA had concluded its analysis of the
13 issues presented by Paragon.

14 42. In October 2018, the FAA issued a letter to ADOT and concluded, "ADOT
15 may be in violation of Grant Assurance 22. Therefore, ADOT is requested to develop a
16 corrective action plan, which is consistent with Grant Assurance 22." The FAA requested
17 ADOT submit a corrective action plan in 30 days.

18 43. ADOT did not disclose what, if any, actions it took to create a corrective
19 action plan nor has ADOT's conduct demonstrated that it undertook any corrective
20 actions.

21 44. Paragon, having seen no change even after reprimand by the FAA on
22 Paragon's informal complaint, filed a formal Part 16 Complaint with the FAA on
23 December 12, 2019. The FAA assigned Paragon's complaint Docket 16-19-16, titled
24 "Jason Theuma and Paragon Skydive, LLC v. State of Arizona."

25 45. On January 21, 2022, the FAA issued its Director's Determination finding:

26 [T]he State of Arizona is in violation of its Federal obligations including
27 Grant Assurance 22, Economic Discrimination, unjustly discriminating
28 against Paragon by imposing high and unreasonable skydiving liability and



1 products and completed operations insurance; restricting solo skydiving
2 operations; and imposing higher 10% gross receipts fees on Paragon
3 compared to established 1.5% fee imposed on similarly-situated air tour
operators.

4 46. The FAA further required ADOT to “submit additional information . . . to
5 show its compliance regarding requirements” the FAA imposed because of ADOT’s
6 unlawful conduct.

7 47. ADOT’s primary defense asserted that Paragon agreed to the Lease, which
8 the FAA quickly disposed of by correctly finding, “there is evidence that Paragon was
9 forced to sign the lease as condition for access” and “there were extensive and long-term
10 exchanges between the parties over key differences regarding the lease terms and
11 conditions imposed by ADOT upon Paragon.”

12 48. On April 5, 2022, ADOT filed a Notice of Appeal of the FAA Director’s
13 Determination.

14 49. Given the FAA’s Director’s Determination and the continuing unlawful
15 conduct by ADOT, Paragon sent, among others, ADOT and GCNPA a Notice of Claim on
16 July 19, 2022, asserting, in part, that ADOT’s insurance requirements were unlawful, that
17 ADOT continued to unlawfully restrict the type of services Paragon offered (solo verse
18 tandem skydiving), that ADOT continued to charge unlawful and discriminatory fees.

19 50. On March 2, 2023, the FAA issued its Final Decision and Order. The
20 Associate Administrator affirmed the Director’s Determination which found ADOT in
21 violation of Grant Assurance 22 in relation to the skydiving liability insurance
22 requirement, the products completed operation insurance requirement, and limitation on
23 solo jumps. The Associate Administrator concluded that these findings were supported by
24 a preponderance of reliable, probative, and substantial evidence.

25 51. The sole finding that the Associate Administrator overturned was the
26 Director’s determination that the 10% gross receipts fee was unreasonable and in violation
27 of Grant Assurance 22.



1 to satisfy the ADOT-required insurance terms and the fee and service-related restrictions
2 the FAA held were unlawful.

3 63. ADOT has also breached the implied covenant by constantly threatening
4 eviction of Paragon based upon incorrect and improper accusations of breach.

5 64. ADOT also breached the implied covenant by continuing to fail and refuse
6 to reimburse Paragon for its fees, costs, and expenses incurred pursuing legal action with
7 the FAA, as required by the Lease, and by failing to provide Paragon quiet enjoyment of
8 the property, also required by the Lease.

9 65. ADOT's breach of the implied covenant has harmed Paragon in an amount
10 to be proved at trial.

11 66. Plaintiff is entitled to its attorneys' fees and costs pursuant to the Lease and
12 Arizona state law.

13 **COUNT TWO**

14 **(Economic Duress / Coercion)**

15 67. Plaintiff repeats and re-alleges all of the foregoing allegations and
16 incorporates the same by this reference.

17 68. ADOT forced Paragon to choose between "distasteful and costly situations",
18 namely, enter into a lease and pay fees that Paragon believed (correctly) were unlawful
19 and in violation of FAA grant assurances or cease Paragon's business.

20 69. The Director's Determination repeatedly notes that Paragon had to sign the
21 offending Lease under duress or face immediate eviction.

22 70. As a direct result of ADOT's coercion, Paragon had to seek a determination
23 from the FAA that ADOT violated FAA grant assurances and improperly discriminated
24 against Paragon in the Lease. Paragon has been forced to incur improper fees and costs
25 under the Lease.

26 71. ADOT continues to require compliance with unlawful provisions of the
27 Lease and continues to impose restrictions on the types of skydiving services Paragon can
28 offer to its skydiving customers.



72. Paragon has been harmed in an amount to be proved at trial by ADOT's economic coercion and imposition of improper and unlawful lease provisions.

73. Paragon is entitled to its attorneys' fees and costs pursuant to the Lease and Arizona state law.

COUNT THREE

(Unjust Enrichment – in the Alternative)

74. Plaintiff repeats and re-alleges all of the foregoing allegations and incorporates the same by this reference.

75. To the extent portions of the Lease are held to be unenforceable, ADOT was enriched because ADOT obtained money including improper fees and a deposit from Paragon by forcing compliance with unlawful provisions and requirements.

76. Paragon was impoverished by having to pay fees and costs that were unlawful and in violation of FAA grant assurances.

77. The enrichment and impoverishment are connected because Paragon would not have incurred unlawful fees and costs had it not been coerced by ADOT into paying those fees just so Paragon could operate its business at the GCNPA.

78. There is no justification for the enrichment of ADOT, and impoverishment of Paragon.

79. Paragon has no remedy provided by law if the Lease provisions at issue are held to be unenforceable and void.

80. Paragon has been harmed by ADOT's unjust enrichment in an amount to be proved at trial.

81. Paragon is entitled to its attorneys' fees and costs pursuant to the Lease and Arizona state law.

COUNT FOUR

(Conversion – in the Alternative)

82. Plaintiff repeats and re-alleges all of the foregoing allegations and



incorporates the same by this reference.

83. ADOT has converted Paragon's funds through application of provisions that violate FAA's Grant Assurance 22.

84. ADOT's conversion of Paragon's money has directly harmed Paragon.

85. Plaintiff is entitled to its attorneys' fees and costs pursuant to the Lease and Arizona state law.

COUNT FIVE

(Declaratory Relief—Unenforceability and Voidability of Provisions FAA Determined Violated Grant Assurance 22)

86. Plaintiff repeats and re-alleges all of the foregoing allegations and incorporates the same by this reference.

87. As described above more fully, the FAA held that ADOT violated Grant Assurance 22 in relation to several provisions of the Lease.

88. Paragon seeks a declaratory judgment from this Court confirming that the provisions the FAA determined violated Grant Assurance 22 are unenforceable and that ADOT cannot continue to impose unlawful restrictions on Paragon.

89. An actual and substantial controversy exists among the parties regarding their respective rights and duties and the occurrences described in this complaint because ADOT continues to require compliance with unlawful Lease provisions.

90. These rights and obligations can be finally determined through a declaratory judgment by this Court.

91. Plaintiff is entitled to its attorneys' fees and costs pursuant to the Lease and Arizona state law.

PRAYER

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant, as follows:

1. For compensatory damages in an amount to be proven at trial;
2. For the declaratory relief referenced above;



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. For injunctive relief should ADOT continue to seek to enforce unlawful
Lease provisions;

4. For interest at the rate allowed by applicable law;

5. For reasonable attorney fees according to proof;

6. For costs of suit incurred in this action; and

7. For such other and further relief as this Court may deem just and proper.

//

//

//

DATED this 18th day of July, 2023

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel P. Crane

Daniel P. Crane, Bar No. 030623

DCrane@lewisroca.com

201 East Washington Street, Suite 1200

Phoenix, AZ 85004

Tel.: 602.262.5774

Attorneys for Plaintiff