

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

ALEXANDER MARYASIN and DAVID MARYASIN,

Plaintiffs,

COMPLAINT

-against-

Index No.

AMERICAN EXPRESS COMPANY and STARWOOD  
HOTEL & RESORTS WORLDWIDE, INC.,

Date Purchased:

Defendants.

The plaintiffs allege, by counsel, as follows:

1. The plaintiff ALEXANDER MARYASIN is, and, at all times mentioned in this complaint, was a resident of the County of Queens, State of New York.

2. The plaintiff DAVID MARYASIN is, and, at all times mentioned in this complaint, was a resident of the County of Queens, State of New York.

3. The plaintiff DAVID MARYASIN is a son of plaintiff ALEXANDER MARYASIN.

4. Upon information and belief, the defendant AMERICAN EXPRESS COMPANY is, and, at all times mentioned in this complaint, was a New York corporation with its principal place of business in the County of New York, State of New York.

5. Upon information and belief, the defendant STARWOOD HOTEL & RESORTS WORLDWIDE, INC., is, and, at all times mentioned in this complaint, was a Maryland corporation with its principal place of business in the County of Westchester, State of New York.

## FACTS

6. Upon information and belief, the defendants have entered into a cross-marketing program by which each defendant agrees to promote the products and services of the other.

7. Upon information and belief, this cross-marketing program was still in effect in July and August 2007.

8. Upon information and belief, defendant AMERICAN EXPRESS is a financial services company offering, among other things, a number of different types of credit cards.

9. Upon information and belief, among the credit cards that defendant AMERICAN EXPRESS offers is a card generally known as the "black card."

10. Upon information and belief, defendant AMERICAN EXPRESS offers holders of the black card the highest level of services, including travel services.

11. Upon information and belief, among the services that defendant AMERICAN EXPRESS offers the holders of its credit cards are travel services.

12. Upon information and belief, defendant AMERICAN EXPRESS's travel services arranges flights, hotel rooms and vacation packages for card holders.

13. Upon information and belief, holders of the black card are entitled to the highest level of services when using defendant AMERICAN EXPRESS's travel services, and are assigned to particular, individual travel agents to assure the delivery of the highest level of service.

14. Upon information and belief, because of the high level of service accorded to them, holders of the black card rely heavily upon the recommendations made to them by the travel agents assigned to them by defendant AMERICAN EXPRESS's travel services.

15. Upon information and belief, defendant AMERICAN EXPRESS invites and encourages the holders of its black card to rely heavily upon its travel agents.

16. This reliance placed in defendant AMERICAN EXPRESS's travel services by the holders of its black card creates a fiduciary relationship between each black card holder and defendant AMERICAN EXPRESS.

17. Upon information and belief, defendant STARWOOD is one of the world's largest hotel companies.

18. Upon information and belief, defendant STARWOOD owns, manages or franchises more than 900 hotel properties throughout the world, under various brand names, including Le Méridien, Sheraton, St. Regis and Westin.

19. Upon information and belief, among the hotels that defendant STARWOOD owns and operates is the Hotel Cala di Volpe on the Island of Sardinia in Italy.

20. Upon information and belief, the Hotel Cala di Volpe is part of defendant STARWOOD's Luxury Collection.

21. Upon information and belief, the cross-marketing agreement between the defendants requires or encourages the travel agents of defendant AMERICAN EXPRESS's travel services to recommend that card holders arrange stays at hotel properties belonging to or associated with defendant STARWOOD.

22. As a result of the cross-marketing arrangement between the defendants, the travel agents employed in the offices of defendant AMERICAN EXPRESS's travel services were agents not only of defendant AMERICAN EXPRESS but also of defendant STARWOOD.

23. Because of the contractual arrangements between defendant AMERICAN

EXPRESS and its black card holders, whenever defendant AMERICAN EXPRESS's travel services recommends a booking at a vacation destination associated with defendant STARWOOD, defendant STARWOOD becomes a fiduciary with respect to the black card holders booking those vacations.

24. The cross-marketing agreement between the defendants creates a conflict of interest in particular situations because the cross-marketing agreement causes the travel agents of defendant AMERICAN EXPRESS's travel services to recommend bookings which may not be in the interest or may not be the type of booking sought by card holders making travel arrangement through defendant AMERICAN EXPRESS's travel services.

25. With respect to black card holders, the cross-marking agreement may cause the defendants to breach their fiduciary responsibilities toward black card holders.

26. In July 2007, plaintiff ALEXANDER MARYASIN became a black card holder with defendant AMERICAN EXPRESS.

27. In late July 2007, plaintiff ALEXANDER MARYASIN sought to book a vacation for himself and his two sons, including plaintiff DAVID MARYASIN.

28. In July 2007, plaintiff DAVID MARYASIN was 21 years old.

29. Plaintiff DAVID MARYASIN was an intended beneficiary of any travel arrangements made by plaintiff ALEXANDER MARYASIN with the defendants.

30. In late July 2007, plaintiff ALEXANDER MARYASIN contacted defendant AMERICAN EXPRESS's travel services to arrange the vacation for himself and his two sons.

31. In July 2007, when plaintiff ALEXANDER MARYASIN contacted defendant AMERICAN EXPRESS's travel services, because he was a black card holder, defendant

AMERICAN EXPRESS's travel services assigned him to Gisel Perez.

32. Upon information and belief, Gisel Perez is a travel agent employed by defendant AMERICAN EXPRESS's travel services.

33. Upon information and belief, Gisel Perez is a travel agent especially trained and regularly assigned by defendant AMERICAN EXPRESS's travel services to service black card holders.

34. Upon information and belief, Gisel Perez was aware of the cross-marketing arrangement between the defendants.

35. Upon information and belief, as a result of the cross-marketing arrangement, Gisel Perez was required or encouraged by defendant AMERICAN EXPRESS's travel services to recommend bookings at hotels and resorts associated with defendant STARWOOD.

36. Upon information and belief, nearly all the contacts that plaintiff ALEXANDER MARYASIN had with defendant AMERICAN EXPRESS's travel services while booking his vacation in late July and early August 2007 was with Gisel Perez.

37. In booking his vacation in July and August 2007, plaintiff ALEXANDER MARYASIN notified defendant AMERICAN EXPRESS's travel services that he was traveling with his children and that one child was underage.

38. In booking his vacation in July and August 2007, plaintiff ALEXANDER MARYASIN notified defendant AMERICAN EXPRESS's travel services that he sought a vacation destination appropriate for a child of the age of about 11 years.

39. In booking his vacation in July and August 2007, plaintiff ALEXANDER MARYASIN notified defendant AMERICAN EXPRESS's travel services that he had concerns

with safety and security.

40. In booking his vacation in July and August 2007, plaintiff ALEXANDER MARYASIN inquired of defendant AMERICAN EXPRESS's travel services about the security and safety of the vacation destinations being recommended by this defendant.

41. When defendant AMERICAN EXPRESS's travel services recommended to plaintiff ALEXANDER MARYASIN a booking at the Hotel Cala di Volpe, plaintiff ALEXANDER MARYASIN asked defendant AMERICAN EXPRESS's travel services whether this vacation destination was appropriate for an eleven year old child.

42. When defendant AMERICAN EXPRESS's travel services recommended to plaintiff ALEXANDER MARYASIN a booking at the Hotel Cala di Volpe, plaintiff ALEXANDER MARYASIN asked defendant AMERICAN EXPRESS's travel services whether this vacation destination was safe and secure.

43. Because he was a black card hold, the defendants owed plaintiff ALEXANDER MARYASIN a fiduciary duty with respect to recommendations for vacation destinations.

44. Because plaintiff ALEXANDER MARYASIN had made specific inquiry as to the appropriateness of travel arrangements, the defendants had a duty of care to make recommendations which reasonably satisfied plaintiff ALEXANDER MARYASIN's concerns.

45. Because plaintiff ALEXANDER MARYASIN was a black card holder who had made specific inquiry as to the appropriateness of travel arrangements, the defendants had a duty of care to make recommendations which reasonably satisfied plaintiff ALEXANDER MARYASIN's concerns.

46. When defendant AMERICAN EXPRESS's travel services responded to plaintiff

ALEXANDER MARYASIN's concerns about a booking at the Hotel Cala di Volpe, defendant AMERICAN EXPRESS's travel services assured plaintiff ALEXANDER MARYASIN that this vacation destination satisfied all of his concerns.

47. Upon information and belief, the defendants knew or should have known that the Hotel Cala di Volpe was inappropriate for travelers accompanied by underage children.

48. Upon information and belief, the defendants knew or should have known that the Hotel Cala di Volpe was inappropriate for travelers with safety and security concerns.

49. Because the defendants owed the plaintiffs a fiduciary duty, the defendant had a duty to make appropriate inquiries concerning the appropriateness of arranging a stay for the plaintiffs at the Hotel Cala di Volpe.

50. Because the defendants owed the plaintiffs a duty of care with respect to recommendations, the defendant had a duty to make appropriate inquiries concerning the appropriateness of arranging a stay for the plaintiffs at the Hotel Cala di Volpe.

51. Upon information and belief, the defendants failed to make any inquiry concerning the appropriateness of arranging a stay for the plaintiffs at the Hotel Cala di Volpe.

52. Because he was a black card hold, the defendants owed plaintiff ALEXANDER MARYASIN a fiduciary duty with respect to their investigation of recommendations for vacation destinations.

53. Because plaintiff ALEXANDER MARYASIN had made specific inquiry as to the appropriateness of travel arrangements, the defendants had a duty of care to make reasonable inquiries concerning recommendations in order to satisfy plaintiff ALEXANDER MARYASIN's concerns.

54. Because plaintiff ALEXANDER MARYASIN was a black card holder who had made specific inquiry as to the appropriateness of travel arrangements, the defendants had a duty of care to make reasonable inquiries concerning recommendations in order to satisfy plaintiff ALEXANDER MARYASIN's concerns.

55. The defendants arranged a stay for plaintiff ALEXANDER MARYASIN and one son at the Hotel Cala di Volpe from August 16, 2007, to August 24, 2007.

56. The defendants arranged a stay for plaintiff DAVID MARYASIN at the Hotel Cala di Volpe from August 16, 2007, to August 20, 2007.

57. The stay at the Hotel Cala di Volpe was arranged under the defendants's "fine hotel and resort program."

58. Upon information and belief, the "fine hotel and resort program" was part of the cross-marketing arrangement between the defendants.

59. Because he was a black card hold, the defendants owed plaintiff ALEXANDER MARYASIN a fiduciary duty with respect to hotel arrangements made pursuant to their own recommendations.

60. Because plaintiff ALEXANDER MARYASIN has made specific inquiry as to the appropriateness of travel arrangements, the defendants had a duty of care to arrange accommodations satisfying plaintiff ALEXANDER MARYASIN's concerns.

61. Because plaintiff ALEXANDER MARYASIN was a black card holder who had made specific inquiry as to the appropriateness of travel arrangements, the defendants had a duty of care to arrange accommodations satisfying plaintiff ALEXANDER MARYASIN's concerns.

62. Under the "fine hotel and resort program," plaintiff ALEXANDER MARYASIN

was required to pay for his hotel using his black card.

63. Upon information and belief, the employees of the Hotel Cala di Volpe were aware of the cross-marketing arrangement between the defendants.

64. Upon information and belief, as a result of the cross-marketing arrangement, the employees of the Hotel Cala di Volpe were required or encouraged by defendants to have guests holding credits cards with defendant AMERICAN EXPRESS to maximize the number and amount of credit card charges and purchases.

65. On August 16, 2007, when plaintiff ALEXANDER MARYASIN checked into the Hotel Cala di Volpe with his sons, plaintiff ALEXANDER MARYASIN presented his black card to secure payment for the hotel.

66. Thereafter, the hotel manager, Michael Cantatore, and several others believed to be employees of the Hotel Cala di Volpe held the plaintiffs hostage until August 31, 2007.

67. Michael Cantatore, and the others who held the plaintiffs hostage were agents of defendant STARWOOD.

68. Because of cross-marketing arrangement between the defendants, Michael Cantatore, and the others who held the plaintiffs hostage were agents of defendant AMERICAN EXPRESS.

69. The defendants's agents took the passports of the plaintiffs, and refused to return them until August 31, 2007.

70. The defendants's agents on three occasions changed the departure arrangements of the plaintiffs without the knowledge or permission of the plaintiffs.

71. The defendants held the plaintiffs hostage by the use of intimidation and threats of

physical violence, including threats made at gunpoint.

72. The defendants's agents pushed and physically restrained Plaintiff ALEXANDER MARYASIN on a number of occasions, once pushing him into a hotel pool.

73. At various points in the plaintiffs's stay at the Hotel Cala di Volpe, plaintiff ALEXANDER MARYASIN asked the defendants's agents to call the police.

74. When plaintiff ALEXANDER MARYASIN requested the assistance of the police, the defendants's agents refused to contact the police, and refused to assist him in contacting the police.

75. When plaintiff ALEXANDER MARYASIN requested the assistance of the police, the defendants's agents threatened the plaintiffs with harm.

76. During their entire stay at the Hotel Cala di Volpe, the plaintiffs were under the constant watch of the defendants's agents.

77. Upon information and belief, the agents of the defendants twice broke into the plaintiffs's hotel room, and stole money and other valuable property.

78. While threatening the plaintiffs with harm, the agents of the defendants forced plaintiff ALEXANDER MARYASIN to make charges on his black card exceeding \$300,000, including approximately \$60,000 for merchandise from a jewelry store at the hotel which was taken by the defendants's agents and more than \$100,000 in hotel charges.

79. While threatening the plaintiffs with harm, the agents of the defendants twice forced plaintiff ALEXANDER MARYASIN to make and pay over to them cash advances on his black card of \$5,000.

80. While threatening the plaintiffs with harm, the agents of the defendants nightly

forced the plaintiffs into a car supplied by the hotel and billed to plaintiff ALEXANDER MARYASIN's account, took the plaintiffs to restaurants and night clubs, often inappropriate for an underage child, forced them to stay after closing, and forced plaintiff ALEXANDER MARYASIN to make additional charges on his black card.

81. Because he was a black card hold, the defendants owed plaintiff ALEXANDER MARYASIN a fiduciary duty with respect to hotel accommodations.

82. Because plaintiff ALEXANDER MARYASIN has made specific inquiry as to the appropriateness of travel arrangements, the defendants had a duty of care to operate the Hotel Cala di Volpe in a manner reasonably satisfying plaintiff ALEXANDER MARYASIN's concerns.

83. Because plaintiff ALEXANDER MARYASIN was a black card holder who had made specific inquiry as to the appropriateness of travel arrangements, the defendants had a duty of care to operate the Hotel Cala di Volpe in a manner reasonably satisfying plaintiff ALEXANDER MARYASIN's concerns.

84. The actions of the defendants's agents have caused the plaintiffs to suffer great psychological harm.

85. The harm caused by the actions of the defendants's agents have caused the plaintiffs to experience physical symptoms stemming from their psychological injuries.

86. These physical symptoms have cause plaintiff DAVID MARYASIN to undergo surgery.

87. The injuries experienced by plaintiff ALEXANDER MARYASIN have caused him to become unable to engage in employment.

88. The plaintiffs continue to suffer from their psychological injuries.

#### **FIRST CAUSE OF ACTION**

89. The plaintiffs repeat each allegation contained in paragraphs 1 through 88 as though fully set forth in this paragraph.

90. The defendants breached their fiduciary duty to the plaintiffs by recommending that plaintiff ALEXANDER MARYASIN arrange a stay for himself and his two sons, including plaintiff DAVID MARYASIN, at the Hotel Cala di Volpe.

91. As a result of this breach of fiduciary responsibility, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiff as a result of such breach, including but not limited to loss of earnings.

#### **SECOND CAUSE OF ACTION**

92. The plaintiffs repeat each allegation contained in paragraphs 1 through 91 as though fully set forth in this paragraph.

93. The defendants were negligent in recommending that plaintiff ALEXANDER MARYASIN arrange a stay for himself and his two sons, including plaintiff DAVID MARYASIN, at the Hotel Cala di Volpe.

94. As a result of this negligence, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

#### **THIRD CAUSE OF ACTION**

95. The plaintiffs repeat each allegation contained in paragraphs 1 through 94 as though fully set forth in this paragraph.

96. The defendants breached their fiduciary duty to the plaintiffs by failing to make inquiries concerning the appropriateness of recommending that plaintiff ALEXANDER MARYASIN arrange a stay for himself and his two sons, including plaintiff DAVID MARYASIN, at the Hotel Cala di Volpe.

97. As a result of this breach of fiduciary responsibility, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiff as a result of such breach, including but not limited to loss of earnings.

#### FOURTH CAUSE OF ACTION

98. The plaintiffs repeat each allegation contained in paragraphs 1 through 97 as though fully set forth in this paragraph.

99. The defendants were negligent in failing to make inquiry concerning the appropriateness of recommending that plaintiff ALEXANDER MARYASIN arrange a stay for himself and his two sons, including plaintiff DAVID MARYASIN, at the Hotel Cala di Volpe.

100. As a result of this negligence, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

#### FIFTH CAUSE OF ACTION

101. The plaintiffs repeat each allegation contained in paragraphs 1 through 100 as though fully set forth in this paragraph.

102. The defendants breached their fiduciary duty to the plaintiffs by arranging accommodations for plaintiff ALEXANDER MARYASIN and his two sons, including plaintiff DAVID MARYASIN, at the Hotel Cala di Volpe.

103. As a result of this breach of fiduciary responsibility, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

#### **SIXTH CAUSE OF ACTION**

104. The plaintiffs repeat each allegation contained in paragraphs 1 through 103 as though fully set forth in this paragraph.

105. The defendants were negligent in arranging accommodations for plaintiff ALEXANDER MARYASIN and his two sons, including plaintiff DAVID MARYASIN, at the Hotel Cala di Volpe.

106. As a result of this negligence, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

#### **SEVENTH CAUSE OF ACTION**

107. The plaintiffs repeat each allegation contained in paragraphs 1 through 106 as though fully set forth in this paragraph.

108. The defendants breached their fiduciary duty to the plaintiffs by their operation of the cross-marketing arrangement between themselves.

109. As a result of this breach of fiduciary responsibility, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

#### **EIGHTH CAUSE OF ACTION**

110. The plaintiffs repeat each allegation contained in paragraphs 1 through 109 as

though fully set forth in this paragraph.

111. The defendants were negligent in their operation of the cross-marketing arrangement between themselves.

112. As a result of this negligence, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

#### **NINTH CAUSE OF ACTION**

113. The plaintiffs repeat each allegation contained in paragraphs 1 through 112 as though fully set forth in this paragraph.

114. The defendants breached their fiduciary duty to the plaintiffs by the manner in which they operated the Hotel Cala di Volpe.

115. As a result of this breach of fiduciary responsibility, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

#### **TENTH CAUSE OF ACTION**

116. The plaintiffs repeat each allegation contained in paragraphs 1 through 115 as though fully set forth in this paragraph.

117. The defendants were negligent in the manner in which they operated the Hotel Cala di Volpe..

118. As a result of this negligence, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

**ELEVENTH CAUSE OF ACTION**

119. The plaintiffs repeat each allegation contained in paragraphs 1 through 118 as though fully set forth in this paragraph.

120. The defendants breached their fiduciary duty to the plaintiffs by the manner in which they supervised the operations of the Hotel Cala di Volpe.

121. As a result of this breach of fiduciary responsibility, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

**TWELFTH CAUSE OF ACTION**

122. The plaintiffs repeat each allegation contained in paragraphs 1 through 121 as though fully set forth in this paragraph.

123. The defendants were negligent in the manner in which they supervised the operations of the Hotel Cala di Volpe..

124. As a result of this negligence, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

**THIRTEENTH CAUSE OF ACTION**

125. The plaintiffs repeat each allegation contained in paragraphs 1 through 124 as though fully set forth in this paragraph.

126. The defendants breached their fiduciary duty to the plaintiffs by the manner in which they supervised the employees of the Hotel Cala di Volpe.

127. As a result of this breach of fiduciary responsibility, the defendants are liable to

the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

#### **FOURTEENTH CAUSE OF ACTION**

128. The plaintiffs repeat each allegation contained in paragraphs 1 through 127 as though fully set forth in this paragraph.

129. The defendants were negligent in the manner in which they supervised the employees of the Hotel Cala di Volpe..

130. As a result of this negligence, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

#### **FIFTEENTH CAUSE OF ACTION**

131. The plaintiffs repeat each allegation contained in paragraphs 1 through 130 as though fully set forth in this paragraph.

132. The defendants breached their fiduciary duty to the plaintiffs by the manner in which they hired the employees of the Hotel Cala di Volpe.

133. As a result of this breach of fiduciary responsibility, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

#### **SIXTEENTH CAUSE OF ACTION**

134. The plaintiffs repeat each allegation contained in paragraphs 1 through 133 as though fully set forth in this paragraph.

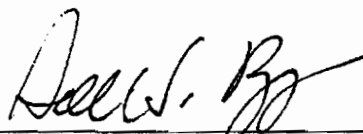
135. The defendants were negligent in the manner in which they hired the employees of

the Hotel Cala di Volpe..

136. As a result of this negligence, the defendants are liable to the plaintiffs for any injuries suffered by either plaintiffs as a result of such breach, including but not limited to loss of earnings.

WHEREFORE, the plaintiffs ask for a judgment of damages in an amount to be determined by a jury at the trial of this matter, and such other and further relief as may be just under the circumstances of this case.

Dated: April 20, 2009



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