

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BARRY CONNELLY, PHYLLIS	§	
CONNELLY and BORDEN LIU on behalf	§	
of themselves and all other persons	§	Civil Action No. 4:08-CV-02987
similarly situated,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	CLASS ACTION
	§	
ROADTRIPS, INC.,	§	
	§	JURY TRIAL DEMANDED
Defendant.	§	

ORIGINAL CLASS ACTION COMPLAINT

COMES NOW Plaintiffs, Barry Connelly, Phyllis Connelly and Borden Liu, on behalf of themselves and for all other persons similarly situated, and for their original Class Action Complaint against the Defendant, allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs file this Class Action seeking damages on behalf of themselves and all others similarly situated for breach of contract. Plaintiffs and all Class Members purchased tickets to the Opening Ceremonies of the Beijing Olympics from Defendant Roadtrips, Inc. (“Roadtrips”). Roadtrips solicited numerous customers throughout the United States and the world to purchase “guaranteed” ticket and travel packages for the Beijing Olympics. Roadtrips failed to perform its end of the bargain, specifically by failing to provide tickets to the Olympic Opening Ceremonies. Roadtrips’ failure to provide the tickets caused Plaintiffs and the other Class Members to suffer direct and consequential damages.

THE PARTIES

2. Barry Connelly and Phyllis Connelly (“the Connellys”) are residents of Texas with a residence at 16827 Blue Shine Trail, Cypress, Texas, 77433.

3. Borden Liu (“Liu”) is a resident of California, with a residence at 400 Woodheaven Place, West Sacramento California, 95606.

4. Upon information and belief, Roadtrips, is a corporation organized and existing under the laws of Canada that engages in business throughout the United States, including in Texas, but does not maintain a regular place of business in Texas or a designated agent for service. Therefore, service is proper pursuant to the Hague Convention.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332(d). The Connellys are citizens of Texas, and Liu is a citizen of California. The Class is comprised of citizens of Texas, California and other states and is comprised of over 100 people. The Defendant is a Canadian corporation. The amount sought exceeds \$5,000,000.00.

6. Venue is proper in this Court pursuant to 28 U.S.C. 1391(d) as Roadtrips is an alien corporation and may be sued in any district. Venue is also proper in this district pursuant to 28 U.S.C. §1391(a) because a substantial part of the events giving rise to the claim occurred in this district.

7. This Court has jurisdiction over Defendant, based upon Defendant’s minimum contacts with this district. Defendant has conducted consumer transactions with residents of Texas and Defendant has committed such purposeful acts in Texas such that it reasonably knew and expected that it could be haled into court as a future consequence of such activity.

8. Upon information and belief at all times relevant, Defendant did and continues to

do business within this district.

9. Upon information and belief, Defendant's contacts within this district include: (i) actions specifically related to the products and services made the subject of the causes of action asserted herein; and/or (ii) continuous and systematic contacts with Texas that are unrelated to the asserted causes of action. For all of the foregoing reasons, personal jurisdiction exists.

CLASS ACTION ALLEGATIONS

10. This suit is brought as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a Class of:

All natural persons, excluding the Defendant, its officers, directors, and employees and any judge who may be assigned to hear this controversy, who purchased Beijing Olympics Opening Ceremony tickets from Roadtrips and did not receive them.

11. Plaintiffs do not yet know the exact size of the Class. Based upon the popularity of the Roadtrips' website, as well as correspondence from Roadtrips, Plaintiffs believe that there are at least 326 Class Members, and that the Class Members are geographically dispersed throughout the United States. Joinder of all Class Members, therefore, is not practicable. However, the Class Members are readily identifiable from the information and records in the possession or control of Roadtrips and/or the servicing agents of Roadtrips.

12. There are questions of law and fact common to the Class that predominate over any questions that may affect only individual Members of the Class, including, but not limited to:

- a. Whether Roadtrips breached its contracts with the Plaintiffs and other Class Members;
- b. Whether the Plaintiffs and other Class Members are entitled to the consequential damages of all amounts paid for their airfare, hotel, ground

transportation and other travel expenses, in addition to the amounts they paid for Opening Ceremony tickets; and

c. The type and measure of damages suffered by Plaintiffs and the Class Members.

13. Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiffs' claims are typical and representative of the claims of all Class Members, all of whom are victims of the Defendant's wrongful acts.

14. There are no defenses of a unique nature that may be asserted against Plaintiffs individually, as distinguished from the other Class Members, and the relief sought is common to the Class. Plaintiffs do not have any interests that are in conflict with, or are antagonistic to, the interests of the Class Members, and have no conflicts with any other Class Members. Plaintiffs have retained competent counsel experienced in class action litigation to represent them and the entire Class.

15. A Class Action is superior to other available methods for the fair and efficient adjudication of this controversy. In the absence of a Class Action, the Defendant will retain the benefits of its wrongful conduct. Prosecution as a Class Action will eliminate the possibility of repetitious litigation. The wrongs suffered and remedies sought by the representative Plaintiff and the other Class Members are identical. The prosecution of separate actions by individual Class Members would create a risk of:

Inconsistent or varying adjudications for individual Class Members which would establish incompatible standards of conduct for the Defendant; and;

Adjudications for individual Class Members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their individual interests.

16. A certification of the Class would allow litigation of claims that, in view of the expense of litigation, may be insufficient in amount to support individual actions. The individual Class Members are unlikely to be aware of their rights and may not be in a position, by way of experience or financial means, to commence individual litigation against the Defendant.

GENERAL ALLEGATIONS

17. Roadtrips is a travel agency based in Canada. Roadtrips maintains a comprehensive website that is fully interactive and allows users to browse travel packages, request information, obtain price quotations, create user profiles, register for newsletters and purchase travel packages. Upon information and belief, Roadtrips conducts approximately 45% of its business in the United States.

18. Prior to the Beijing Olympics, Roadtrips directly solicited numerous clients throughout the United States and the world to purchase a variety of Beijing Olympics travel packages. These packages included, among other things, tickets to the Opening Ceremonies.

19. Roadtrips' website, www.roadtrips.com, states, "we'll take care of all the arrangements to provide you with guaranteed tickets."

20. For Plaintiffs and the other Class Members, the Opening Ceremonies were the most significant event of the Olympics. Had Roadtrips not promised Plaintiffs and the other Class Members Opening Ceremony tickets, they would not have purchased the travel packages from Roadtrips and they would not have traveled to Beijing. As a result, tickets to the Opening Ceremonies were a material element of the contracts between the Class Members and Roadtrips.

21. The Plaintiffs and other Class Members entered into contracts with Roadtrips for various Olympic travel packages. These travel packages included tickets to the Opening

Ceremonies, which ranged in price from \$750 to \$1,850. The Plaintiffs and other Class Members also incurred expenses for travel to Beijing and accommodations in Beijing.

22. In 2008, Roadtrips sent emails to the Plaintiffs and other Class Members confirming their orders of Opening Ceremony tickets. In that email, Roadtrips told them that because of the high value of the Opening Ceremony tickets, Roadtrips could not mail the tickets ahead of time and as a result, Roadtrips would not be able to provide the Plaintiffs and other Class Members with their tickets until the individuals arrived in Beijing.

23. In reliance upon Roadtrips' promise to provide Opening Ceremony tickets, the Plaintiffs and other Class Members traveled to Beijing and did not make arrangements with other businesses to obtain Opening Ceremony tickets.

24. On or before August 6, 2008, Roadtrips discovered that it would not be able to deliver Opening Ceremony tickets to the Plaintiffs or any of the Class Members.

25. On August 7, 2008, the day before the Opening Ceremonies, Roadtrips informed the Plaintiffs and the other Class Members that it would not be able to deliver any Opening Ceremony tickets as promised. Roadtrips informed the Plaintiffs and the other Class Members of this news by a letter signed by its President, David Guenther. In the letter, Mr. Guenther explained that Roadtrips could not provide the tickets because its source for Opening Ceremony tickets failed to honor its obligation to Roadtrips. Mr. Guenther acknowledged that Roadtrips would not be able to deliver Opening Ceremony tickets to 326 of its clients. Finally, Mr. Guenther admitted in the letter that he had broken his promise to his clients and that he was personally responsible.

26. Having already spent non-refundable money to travel all the way to Beijing, the Plaintiffs and the other Class Members could not do anything to mitigate their damages.

INDIVIDUAL ALLEGATIONS – Connellys

27. The Connellys contracted with Roadtrips for an Olympic travel package, which included 2 tickets for the Opening Ceremonies. They paid \$1,850 for each Opening Ceremony ticket. They paid an additional \$17,880 for a hotel and sporting event package and used approximately \$20,000 in mileage credits for airfare to Beijing.

28. The Opening Ceremonies were the most important Olympic event for the Connellys. Had Roadtrips not promised them Opening Ceremony tickets, they would not have purchased the travel packages from Roadtrips and would not have traveled to Beijing.

29. In reliance upon Roadtrips' promises to provide Opening Ceremony tickets, the Connellys traveled to Beijing.

30. On August 7, 2008, the Connellys were handed the letter from Roadtrips, informing them that they would not receive any Opening Ceremony tickets.

31. Despite their attempts, the Connellys were unable to obtain Opening Ceremony tickets from any other source.

32. Roadtrips eventually refunded the Connellys \$3,700 for their undelivered Opening Ceremony tickets.

33. While in Beijing, the Connellys met 30 to 40 other individuals who also purchased Opening Ceremony tickets from Roadtrips that Roadtrips never delivered.

INDIVIDUAL ALLEGATIONS - Liu

34. In September 2007, Liu received an email from Roadtrips offering tickets to the Beijing Olympics Opening Ceremonies as well as complete travel packages.

35. Liu contracted with Roadtrips for an Olympic travel package, which included 2 tickets for the Opening Ceremonies. Liu paid Roadtrips \$1,450 for each Opening Ceremony ticket and an additional \$9,900 for a hotel package. Liu paid \$3,300 for airfare to Beijing.

36. The Opening Ceremonies were the most important event for Liu. Had Roadtrips not promised him Opening Ceremony tickets, he would not have purchased the travel packages from Roadtrips.

37. In reliance upon Roadtrips' promises to provide Opening Ceremony tickets, Liu traveled to Beijing with his wife, and arrived on August 5, 2008.

38. On August 7, 2008, Liu received the letter from Roadtrips, informing him that he would not receive any Opening Ceremony tickets.

39. Despite his attempts, Liu was unable to obtain Opening Ceremony tickets from any other source.

40. Roadtrips eventually refunded Liu \$2,900 for his Opening Ceremony tickets. While in Beijing, Liu met 30 to 40 other individuals who also purchased Opening Ceremony tickets from Roadtrips that Roadtrips never delivered.

COUNT I: BREACH OF CONTRACT

41. The Plaintiffs and other Class Members entered into valid and binding contracts with Roadtrips for complete travel packages, including Opening Ceremony tickets. Some of the Class Members also purchased hotel, airfare and/or ground transportation packages from Roadtrips.

42. The Plaintiffs and other Class Members performed all of their duties as required by the terms and conditions of the contracts, by paying all sums due to Roadtrips.

43. Roadtrips failed to perform its duties as required by the terms and conditions of the contracts by failing to provide Opening Ceremony tickets.

44. The Plaintiffs and other Class Members suffered damages as a result of Roadtrips' failures. These damages include all amounts paid for travel expenses incurred by the Plaintiffs and other Class Members, including, but not limited to their hotel, airfare and ground transportation expenses.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs, on behalf of themselves and all others similarly situated, pray that this Court:

- A. Certify this case as a Class Action under Rule 23 of the Federal Rules of Civil Procedure;
- B. Award Plaintiffs and the other Class Members their actual and consequential damages, in an amount to be determined at trial, for the wrongful acts of the Defendant;
- C. Award Plaintiffs and the other Class Members the costs of suit, including discretionary costs pursuant to Rule 54 of the Federal Rules of Civil Procedure;
- D. Award reasonable attorneys' fees pursuant to Section 38.001 of the Texas Civil Practice and Remedies code;
- E. Award Plaintiffs and the other Class Members pre-judgment and post-judgment interest;
- F. Award such other and further relief as the Court deems just and proper under the circumstances

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES

Filed October 7, 2008.

Respectfully submitted,

MORIARTY LEYENDECKER ERBEN PC

/s/ James R. Moriarty
James R. Moriarty
Texas Bar No. 14459000
Fed. ID No. 3369
Moriarty Leyendecker Erben, P.C.
1150 Bissonnet Street
Houston, Texas 77005
(713) 528-0700
(713) 528-1390 Facsimile
ATTORNEY-IN-CHARGE FOR PLAINTIFFS

OF COUNSEL
P. Kevin Leyendecker
Texas Bar No. 00784472
Fed. ID No. 28415
Hilary S. Greene
Texas Bar No. 24050688
Fed. ID No. 872137
Moriarty Leyendecker Erben, P.C.
1150 Bissonnet
Houston, TX 77005
(713) 528-0700
(713) 528-1390 Facsimile