

CAUSE NO. \_\_\_\_\_

EASTHAM AVIATION, INC.	§	IN THE DISTRICT COURT OF
	§	
V.	§	HARRIS COUNTY, T E X A S
	§	
HAWKER BEECHCRAFT CORPORATION,	§	
F/K/A RAYTHEON AIRCRAFT COMPANY	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION SEEKING RESCISSION OF CONTRACT  
AND REQUESTS FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Eastham Aviation, Inc. (hereinafter, “Eastham”), Plaintiff herein, complaining of Hawker Beechcraft Corporation, f/k/a Raytheon Aircraft Company (hereinafter, “HBC” or “Defendant”), and respectfully shows the Court the following:

**I.  
Level Two Case**

Plaintiff requests that this case be designated as a Level Two case for discovery purposes pursuant to TEX. R. CIV. P. 190 *et. seq.*

**II.  
Parties**

Plaintiff is a Texas corporation with principal offices at 4710 Bellaire Blvd, Ste. 350, Bellaire, Tx 77401-4531.

HBC is a foreign corporation with some of its offices in Texas, is authorised to conduct business in Texas, and may be served with process by serving its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, Texas 75201.

Plaintiff requests that the Clerk of the Court issue Citation in this matter, and serve the Defendant with process via certified mail, return receipt requested.

**III.  
Jurisdiction and Venue**

The Court has jurisdiction over the Defendant because the Defendant is a foreign corporation doing business in Texas.

Venue is proper in Harris County, Texas, because all or a substantial part of the events giving rise to this lawsuit occurred in Harris County, and one of Defendant's principal offices is located in Harris County.

The Court has jurisdiction over the controversy because the amount in controversy is within the jurisdictional limits of this Court.

**IV.  
Background Facts**

HB is a manufacturer of corporate jet aircraft. A related entity provides aircraft inspection and maintenance services for such aircraft.

Eastham purchased a certain Raytheon Aircraft Company Premier aircraft, Registration Number N14EA, Serial Number RB-119 (hereinafter, the "Aircraft") on or about April 10, 2006, and has owned the Aircraft since then, having it operated under Parts 91 and 135 of the Federal Aviation Regulations (the "FARs"). The Aircraft was used a part of HB's demonstration fleet of such aircraft, and was sold to Eastham with several hundred hours of flight time on it. Eastham, with its acquisition of the Aircraft, also entered into a Raytheon Support Plus+ maintenance agreement (the "Maintenance Agreement"), essentially providing for nose to tail maintenance of the Aircraft by Aircraft's manufacturer in exchange for an hourly rate paid by Eastham. The Maintenance

Agreement has been in full force and effect throughout Eastham's ownership of the Aircraft, without interruption, and is scheduled to expire on December 28, 2010. The Aircraft has at all times been maintained either by HBC or by a service facility fully authorized by HBC to maintain the Aircraft.

The Aircraft is a recently developed aircraft that features technology and methods of construction not commonly utilized in corporate jets previously. The Premier line of aircraft was first announced by HBC during 1995, it received its type certificate during 2001, and the first delivery of the aircraft took place the same year. HBC delivered the 100<sup>th</sup> Premier during 2004. During Eastham's operation of the Aircraft it experienced various malfunctions from time to time that required maintenance and repair, and such events would not be considered unusual in connection with the operation of such an aircraft, although it did experience many problems with the Aircraft's engines. The relief requested herein is not based upon the Aircraft's engines or their operation. Eastham operated the Aircraft for approximately 1600 hours over four years, then, during November and December, 2009, the following inexplicable events transpired.

The Aircraft was subjected to an 800 hour inspection during November, 2009, and was returned to service by HBC on or about November 24, 2009<sup>1</sup>. During the first flight out of maintenance, the Aircraft was being repositioned from Houston's Hobby Airport to Conroe, Texas, for an intended trip to El Paso. The first leg, being a repositioning flight, was also used to verify normal system operation. The pilot flying ("PF") reported a need for differential rudder input as the Aircraft accelerated for departure. After rotation, the PF reported using full right rudder to maintain

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<sup>1</sup>This is a maintenance event that takes place approximately every two (2) to four (4) years, and could be considered a relatively invasive procedure, with much of the aircraft disassembled for inspection purposes.

directional control.<sup>2</sup> The non-flying pilot (“NFP”) examined the rudder trim indicator and confirmed an indication of un-commanded full left rudder trim. The NFP selected right hand trim until the trim indicator was centered. During the short flight to CXO, it was thereafter confirmed that the rudder trim system would actuate the rudder in both directions, with and without the auto-pilot engaged, signaling normal operation. The flights to and from Conroe and El Paso were normal. During taxi for the return flight to Houston, the rudder trim indicator was once again observed to be fully deflected to the left. This time, however, the rudder trim would not respond to any inputs. The flight crew shut the engines down, disconnected the ship’s battery, and reversed the process to establish a “baseline”, since the Aircraft is heavily dependent upon electrical circuitry and computers. A walk-around examination of the Aircraft confirmed that the trim was in the full left position. Upon restart of the engines and all other systems, the rudder trim remained inoperative. HBC’s Houston service center (Hawker Beechcraft Services, or “HBS”) was contacted and sent a team to work the problem. HBS removed and replaced the rudder trim actuator, the rudder trim control switch, and the rudder trim position indicator, thereafter signifying that the Aircraft was returned to service for normal flight operations with respect to the work performed. No explanation was provided as to why the rudder trim traveled to the full left position with no command input from the flight crew. The Aircraft was relocated to Hobby Airport on or about November 27, 2009, with no apparent difficulty.

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<sup>2</sup>The Aircraft’s rudder controls an aircraft around the vertical axis, the resulting movement being described in aviation terminology as “yawing” the aircraft left and right, where the aircraft’s nose moves left and right. The rudder “trim” is a small but important adjustable tab mounted on the rear of the rudder that assists the flight crew in positioning the rudder in something other than a neutral position. A properly functioning and predictable rudder and rudder trim system is absolutely critical to safe flying, which, amongst other functions, must be used to overcome adverse yaw in the event of an engine failure. Un-commanded full rudder trim results in substantial rudder forces, and even though it can allegedly be “overcome” by the flight crew, is such an infrequent event and so surprising that it could very easily result in complete loss of control of the aircraft.

Following a number of charter trips flown under Executive Jet Management's ("EJM") air carrier operating certificate, with just a few minor discrepancies noted, there was a trip planned for December 11, 2009. Prior to taxi, the rudder trim was once again observed to be in the full left position (un-commanded), and could not be re-trimmed. Several more weeks of maintenance ensued, during which the Aircraft's rudder trim actuator, switches, pins, plugs, and wiring related thereto, were checked for integrity, the rudder trim indicator was replaced once again, the rudder trim interrupt relay was removed and replaced, the rudder servo bridle cable tension was adjusted, and other operational checks related to the operation of the rudder trim were conducted, all of which being reported as satisfactory. Once again, the Aircraft was returned to service for normal flight operations with respect to the work performed. Once again, no definitive or even probable cause for the rudder trim malfunction was identified either at the time or since the exploratory but inconclusive "maintenance" was performed.

On information and belief, HBC has experienced a runaway trim malfunction in at least one other Premier type of aircraft. That incident reportedly involved a Premier operating in or near Temple, Texas, wherein the rudder trim ran full deflection, un-commanded, and the aircraft went out of the flight crew's control, resulting in damage to the aircraft. The owner of that aircraft exchanged its Premier for a later model aircraft, and the damaged aircraft became part of HBC's demonstrator or test fleet of Premier aircraft.

Eastham made repeated inquiries with HBC, through its counsel, seeking to learn what could possibly cause the un-commanded travel of the rudder trim into a full deflection position, either specifically with regard to the Aircraft or to any other aircraft in the fleet, followed by the complete failure of the rudder trim system. Eastham has been provided with no plausible explanation

whatsoever, with HBC essentially asking Eastham, its flight crews, and its owners and family members to assume the role of unwitting test subjects in determining if and when the Aircraft's rudder trim system will travel full left, un-commanded, which by any account is an event of catastrophic proportions that could easily result in the loss of the Aircraft and the gruesome deaths of all aboard.

Eastham has determined the following: First, the malfunctioning rudder trim is not an "indication" problem. On all three failures the rudder trim went full left deflection with no command from the flight crew. On two of the three failures the rudder trim remained immovable and could not be returned to anything other than remaining in the fully deflected position. Secondly, HBC has yet to identify any potential cause(s) for the failures, other than suggesting that, since it has not failed again, it must be fixed. This is a sophomoric and potentially fatal line of reasoning, as it should be clear that the observed malfunction, in most cases, will almost certainly cause the loss of the Aircraft and all aboard. The fact that the first failure occurred during departure when the flight crew could maintain directional control (at a relatively low airspeed) and override the un-commanded full deflection of the rudder is a matter of fortuity only.

Even though the Aircraft had been utilized for revenue generating flight operations with EJM, Eastham has made the incredibly responsible decision to ground the Aircraft unless and until HBC can definitively explain the observed malfunction, and has elected not to market or sell the aircraft to any other potential owner who may experience the same catastrophic malfunction in the future.

EJM will in all likelihood be required to issue a Service Difficulty Report with regard to the ongoing, unexplained failure of the Aircraft's rudder trim system, and has agreed that the Aircraft should not be flown unless and until the malfunction is fully explained.

The foregoing events have given rise to the following causes of action:

**V.  
Causes of Action**

**Suit for Rescission of Contract**

Eastham will show that the foregoing fully supports its request to rescind the aircraft purchase agreement (the “Contract”) under which it purchased the Aircraft from HBC. The preceding is incorporated by reference the same as if fully copied and set forth at length.

In pertinent part, the Contract pertained to the sale of the Aircraft that was both expressly and implied capable of being normally operated and maintained, such that Eastham would not be required to “guess” as to whether the Aircraft was capable of normal and routine flight operations, and was not required to “wonder” whether the rudder trim would once again run un-commanded to the full left position, with the potential loss of the Aircraft and all aboard. The facts and circumstances described herein reveal that HBC has no clue whatsoever as to the cause of the particular malfunctions found to exist with the Aircraft rudder trim system, not once, not twice, but three times, with the failure occurring in the exact same direction and substantially the same mode.

**Suit for Rescission Under the Doctrine of Mutual Mistake**

Eastham is entitled to rescission of the contract under the doctrine of mutual mistake. Eastham seeks to avoid the Contract, seeks the return of consideration from HBC, and is willing to return the Aircraft to HBC to do with as it sees fit, returning the parties to the Contract to their earlier positions as if no Contract existed. By reason of the uncertain condition of the Aircraft, Eastham has no adequate remedy available to it at law. Eastham is not in breach of the Contract. HBC’s inability to diagnose and explain the previous malfunctions goes to the very essence of the Contract. This

mutual mistake by HBC and Eastham requires that the Contract be set aside to avoid unjust enrichment.

### **Suit for Rescission Under the Doctrine of Unilateral Mistake**

In the alternative to, and/or in addition to, and without prejudice to the foregoing, Eastham is entitled to rescind the Contract under the doctrine of unilateral mistake. The facts herein go to a material part of the Contract. The mistake under which the Aircraft was purchased is so great that enforcing the Contract would be unconscionable. Eastham utilized ordinary care in entering into the Contract with HBC, despite which the unilateral mistake occurred. Rescission of the Contract will not prejudice HBC except for the loss of the bargain it entered into with Eastham. Eastham learned of the grounds for the rescission of the Contract, has not utilized the Aircraft since, and has offered to return the Aircraft to HBC in exchange for the consideration paid.

### **VI. Attorneys' Fees**

Eastham is entitled to recover the reasonable and necessary attorneys' fees and legal expenses incurred in prosecuting this lawsuit because this is a claim on a written contract within the meaning of Texas Civil Practice and Remedies Code §38.001 *et. seq.* As a result of the events giving rise to this complaint, Eastham has been required to retain the services of counsel to prosecute this action. Eastham additionally sues for reasonable attorneys' fees and legal expenses for the prosecution of this action to judgment and for any appeal therefrom.

**VII.**  
**Conditions Precedent**

All conditions precedent have been performed or have occurred prior to Eastham bringing suit as required by Texas Rule of Civil Procedure 54.

**VIII.**  
**Amend Pleadings**

Eastham reserves the right to amend these pleadings.

**IX.**  
**Demand for Jury Trial**

Eastham hereby makes demand for jury trial, as is its right under the Constitution and laws of the State of Texas, in accordance with Tex. R. Civ. P. 216 (a), and tenders the required jury fee concurrently herewith.

**X.**  
**Requests for Disclosure**

HBC is hereby requested to disclose, within 50 days of service of these requests, the information or material described in Rule 194.2(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l):

- (a) the correct names of the parties to the lawsuit;
- (b) the name, address, and telephone number of any potential parties;
- (c) the legal theories and, in general, the factual bases of the responding party's claims or defenses;
- (d) the amount and any method of calculating economic damages;
- (e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;
- (f) for any testifying expert;

- (1) the expert's name , address, and telephone number;
- (2) the subject matter on which the expert will testify;
- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party;
  - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
  - (B) the expert's current resume and bibliography;
- (g) any indemnity and insuring agreements described in Rule 192.3(f);
- (h) any settlement agreements described in Rule 192.3(g);
- (i) any witness statements described in Rule 192.3(h);
- (j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;
- (k) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party; and
- (l) the name, address, and telephone number of any person who may be designated as a responsible third party.

**XI.**  
**Prayer**

WHEREFORE, PREMISES CONSIDERED, Eastham Aviation, Inc. respectfully requests that Hawker Beechcraft Corporation, f/k/a Raytheon Aircraft Company, be cited to appear and answer and that, upon final trial hereof, Plaintiff have the following:

1. Rescission of the Contract under which the Aircraft was sold from Defendant to Plaintiff, including any ancillary agreements related thereto;
2. Prejudgment interest as provided by law;
3. Post judgment interest as provided by law;
4. Costs of suit;
5. Attorneys' fees and legal expenses to the maximum extent permitted by law; and
6. All such other and further relief, general or special, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

**COATS & EVANS, P.C.**

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