

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Apr 26 2024

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Perry H. Gravely

Josh HawkinsAppellant,

v.

American AirlinesRespondent.

Appellate Case No. 2020-001150

PETITION FOR REHEARING

Pursuant to SCACR Rule 221(a), the appellant respectfully moves for rehearing or en banc review so the ruling of the Court of Appeals may be corrected to adhere to existing law, or in the alternative, so the ruling may be clarified. The Court of Appeals’ ruling conflicts with the law because it incorporates arguments made by American Airlines and Expedia which were submitted to the lower court and made into an order, even though the order was merely language the appellees wanted, not necessarily to comply with the law, but to assist them in avoiding liability or responsibility under the law. The appellant respectfully submits that the ruling should be changed and that the lower court’s decision should be reversed.

The appellant also respectfully submits that if the Court of Appeals does not alter or amend its ruling, it should clarify its order and acknowledge that the appellant may bring claims 1) pursuant to the Montreal Convention and other claims not part of this appeal as to American Airlines and 2) litigate claims in Magistrate Court as to Expedia. American Airlines has argued in Court, and

cannot genuinely contest, that the appellant may bring claims pursuant to the Montreal Convention. Based on American's arguments and the law, the appellant filed such a claim in Magistrate Court after the lower court's dismissal while this appeal was pending. The Magistrate Court case has been stayed pending this appeal. See *Air Evac EMS, Inc. v. Cheatham*, 910 F. 3d 751 (4th Cir. 2018) and authorities contained in the appellant's submissions. Likewise, the language relied on by Expedia in its efforts to compel arbitration states that a claimant may elect between arbitration and bringing a claim in Magistrate Court. The appellant therefore included claims against Expedia in the case pending in Magistrate Court so that claims against both parties could be litigated – complying with 1) American's own argument that a claim must be brought pursuant to the Montreal Convention and 2) Expedia's own language in its terms that allow litigation in Magistrate Court as an alternative to arbitration.

Importantly, none of the claims have been litigated on the merits. Upon receipt of this Court's decision, the appellant emailed counsel for American and Expedia to make sure that everyone agreed the pending claims in Magistrate Court could move forward since the claims are brought in the way the appellees assert the claims should be brought, and since the case in the Court of Appeals is no longer pending. Both appellees took the untenable and disingenuous position that this Court's decision means claims against them can never be litigated, even though they have been brought in Magistrate Court pursuant to the terms and causes of action that fit the appellees' arguments. To rob the appellant of any recourse whatsoever would rob the appellant of Due Process and his right to a jury trial under the Seventh Amendment of the United States Constitution and Article I, Section 14 of the South Carolina Constitution.

Finally, in an abundance of caution, the appellant respectfully submits that the lower court's decision was flawed because a litigant is not required to make arguments before a hearing on a

matter. The fact that the appellant made arguments during a hearing, where the appellees had the burden of persuading the court to take desired action does not mean the appellant's arguments and the law should not be considered. Evidence and law submitted by the appellant to the lower court via email, during argument, or by any other means should have been considered.

Conclusion

The appellant respectfully requests that the Court of Appeals alter its ruling and reverse the lower court's decision. In the alternative, the appellant requests that the Court of Appeals' ruling clarify that the appellant may move forward with his claims, which have not been litigated, pending in Magistrate Court as to American Airlines and Expedia. In an abundance of caution, the appellant incorporates and preserves for appellate review and any petition for certiorari, all arguments made in the lower court and in the Court of Appeals.

Respectfully submitted,

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Attorneys for Plaintiff

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April 26, 2024

Certificate of Service

I, the undersigned, affirm that the foregoing motion to consolidate appeals was served on William Freeman, John Cants, and Kenneth S. Nankin, attorneys for defendants American Airlines, by the CM/ECF system on April 26, 2024.

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