

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Aug 16 2024

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Perry H. Gravely

Josh HawkinsAppellant,

v.

American Airlines and
ExpediaRespondents.

Appellate Case No. 2020-001150

RETURN TO MOTION FOR COSTS

Petitioner respectfully requests that American’s motion for costs be denied. To the extent Expedia has made any motion for costs, Petitioners also respectfully requests that motion be denied.

SCACR 222(b) allows a party to move for appellate costs and attorney’s fees “to the extent the party actually incurred these costs,” and Respondent has requested costs and the maximum amount of fees allowed by the Rule. SCACR 222(d) allows a party responding to such a motion to file a return opposing the motion, and Petitioner opposes Respondent’s motion pursuant to that Rule.

Petitioner respectfully submits that this appeal was made in good faith, was not frivolous, and sought reversal of Circuit Court order which Petitioner genuinely believes was in error and contra to the spirit of fairness outlined in *Ex Parte Dibble*, 310 S.E.2d 440 (Ct. App. 1983).

Moreover, the Court of Appeals decided this case without oral argument pursuant to SCACR 215, and Respondents have not incurred any attorney's fees from preparing for, traveling to, or participating in an oral argument.

Petitioner respectfully submits that an award of the maximum amount of attorney's fee recoverable under SCACR 222 would violate Due Process and Equal Protection guaranteed by the Constitutions of South Carolina and the United States. See *Broome v. Truluck*, 241 S.E.2d 739 (1978). An award of the maximum amount recoverable, which is sought by American, would be punitive in nature, and disproportionate, considering American only submitted a Respondent's Brief which mirrored the arguments it submitted to the Circuit Court in its motion to dismiss. The fact that American's motion to dismiss was granted means that it did not even bear the costs of engaging in discovery before the appeal, plus it has never been held accountable for the damages it caused Petitioner to sustain.

"The constitutional guarantee of equal protection of the laws requires that all persons be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." *Thompson v. S.C. Commission on Alcohol & Drug Abuse*, 267 S.C. 463, 229 S.E.2d 718 (1976). To levy costs and fees against Petitioner while American enjoys the limitation on liability and attorney's fees awards provided by the Airline Deregulation Act violates Equal Protection. American should not be allowed to use the ADA to avoid accountability and responsibility for attorney's fees on one hand, such as statutory liability under our Unfair Trade Practices Act, and then collect attorney's fees on the other. If the ADA prevents any attorney's fees by state rule or statute, it should be equally applied both to customers and the airlines themselves.

Petitioner submits that the outcome sought by Respondent – for Petitioner to pay the maximum amount available pursuant to our Supreme Court's January 17, 2018, Order – in a case

where there was no oral argument would be punitive in nature and violate Due Process. “The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor.” *State Farm Mut. Ins. Co. v. Campbell*, 538 US 408 (2003). Petitioner respectfully submits that in this case the award sought would be grossly excessive and should be even more closely scrutinized than the award in *State Farm* because the award is not against a “tortfeasor,” but rather, an appellant in a good faith appeal.

Petitioner, of course, acknowledges he is at the mercy of the Court. Petitioner respectfully requests that Respondent’s motion for costs be denied.

Respectfully submitted,

HAWKINS & JEDZINIAK, LLC

s/ Joshua T. Hawkins

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PROOF 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 August 16, 2024.

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Attorneys for Plaintiff