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SC Court of Appeals

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Josh Hawkins )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 American Airlines Inc. and Expedia )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 Civil Case No. 2024-CP-23-06027

**ORDER AFFIRMING  
 MAGISTRATE’S COURT’S ORDER  
 AS TO DEFENDANT AMERICAN  
 AIRLINES, INC.**

This appeal of a Magistrate’s Court’s Order came before the Court for argument on May 28, 2025. Plaintiff Josh Hawkins (“Plaintiff”), an attorney, had filed the appeal and was present for the hearing and represented himself. Present for Defendant American Airlines, Inc. (“American”) were John L. McCants, Esq. and Kenneth S. Nankin, Esq. Present for Defendant Expedia, Inc. (“Expedia”) was Palmer Freeman, Esq. Upon consideration of the foregoing argument and the full record in this appeal, the Court finds as follows:

1. On March 3, 2020, Plaintiff filed a Complaint in this Court, thereby commencing *Hawkins I* (Case No. 2020-CP-23-01364), naming American, the Qantas Group d/b/a Qantas Airlines, Expedia and Travel Guard Insurance as defendants. As against American, Plaintiff alleged causes of action for common law negligence and recklessness, violation of the South Carolina Unfair Trade Practices Act (“UTPA”), insurance bad faith and breach of contract accompanied by fraudulent act, all arising from events that allegedly took place in connection with Plaintiff’s air travel from Greenville-Spartanburg International Airport to New Zealand in February 2019.

2. On April 21, 2020, American filed in *Hawkins I* its Motion to Dismiss the Complaint as to American pursuant to Rule 12(b)(6), SCRCPP, and supporting Memorandum of Law. Among other arguments, American contended that the Montreal Convention, an international treaty, expressly preempted Plaintiff's state law claims.

3. Plaintiff did not file a response to American's Motion to Dismiss or a motion seeking leave to file an amended complaint adding a Montreal Convention cause of action. After a hearing in *Hawkins I* at which Plaintiff appeared, on August 5, 2020 the Court entered its Order Granting Defendant American Airlines, Inc.'s Motion to Dismiss in its entirety ("the August 5 Order").

4. In the August 5 Order, the Court held in *Hawkins I*, among other things, that Plaintiff's Complaint "fails to state facts sufficient to constitute any cause of action against American" for the reasons set forth therein and "ORDERED that Plaintiff's Complaint is DISMISSED in its entirety as to American." By an Order entered on August 11, 2020, the Court in *Hawkins I* denied Plaintiff's Motion to Reconsider the August 5 Order ("the August 11 Order"). In addition, the Court in *Hawkins I* entered an Order granting Expedia's Motion to Dismiss and an Order denying Plaintiff's Motion to Reconsider such Order.

5. On August 20, 2020, Plaintiff filed a Notice of Appeal as to "the Orders of the Honorable Perry H. Gravely, dated August 11, 2020, denying plaintiff's Motions to Reconsider the Judge's Orders dismissing American Airlines and Expedia." By an Opinion issued in Appellate Case No. 2020-001150, the South Carolina Court of Appeals affirmed the Orders

entered in *Hawkins I* granting American and Expedia's Motions to Dismiss. Unpublished Opinion No. 2024-UP-122 (filed April 17, 2024).

6. On September 15, 2020, Plaintiff filed a Complaint with the Magistrate's Court, thereby commencing Case No. 2020CV2310700911 ("*Hawkins II*"). Plaintiff's Complaint in *Hawkins II* named American and Expedia as defendants and alleged causes of action for common law negligence and recklessness, violation of the UTPA, breach of contract accompanied by fraudulent act and abuse of process and, as to American only, for violation of the Montreal Convention.

7. On August 17, 2022, the Magistrate's Court heard argument in *Hawkins II* on Defendants' Motions to Dismiss. By its Order entered September 19, 2024, the Magistrate's Court granted both motions, with prejudice. In its Order, the Magistrate's Court properly ruled that Plaintiff had split his claims by alleging causes of actions in the Magistrate's Court in *Hawkins II* based on the same set of underlying events as in *Hawkins I*. The Magistrate's Court properly ruled that Plaintiff's claim-splitting violated South Carolina law. *Plum Creek Development Co. v. City of Conway*, 328 S.C. 347, 351, 491 S.E.2d 692, 695 (Ct. App. 1997).

8. By filing the Complaint in *Hawkins II* while appealing the Court's decision in *Hawkins I*, Plaintiff impermissibly split his claims. In *Hawkins I*, Plaintiff took the position that the Montreal Convention did not apply to his claims. Yet, less than a month after noting an appeal in *Hawkins I*, Plaintiff alleged in *Hawkins II* a separate Montreal Convention cause of action in his Complaint, thereby affirmatively alleging that the Convention did in fact apply to his claims. By his claim-splitting, Plaintiff created the intolerable situation in which

different courts could have issued conflicting rulings on the applicability of the Montreal Convention to the same events. Thus, the Magistrate's Court correctly dismissed *Hawkins II* due to Plaintiff's claim-splitting.

9. The Magistrate's Court also properly ruled in its Order entered September 19, 2024 that Plaintiff's abuse of process cause of action, the fourth cause of action in Plaintiff's Complaint in *Hawkins II*, is invalid and fails as a matter of law. In his Complaint in *Hawkins II*, Plaintiff alleged that American engaged in abuse of process by filing a Motion to Dismiss that the Court in *Hawkins I* granted and upheld in its entirety in its August 5 Order and August 11 Order, after a hearing at which Plaintiff appeared.

10. "The abuse of process tort provides a remedy for one damaged by another's perversion of a legal procedure for a purpose not intended by the procedure." *Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 69, 567 S.E.2d 251, 253 (Ct. App. 2002) (citation omitted). Plaintiff's abuse of process cause of action against American fails as a matter of law because Plaintiff failed to plead facts showing that, by filing a Motion to Dismiss that was granted in its entirety by the Court in *Hawkins I*, American somehow misused that Court's motion to dismiss procedures. *Id.*, 351 S.C. at 77, 567 S.E.2d at 257 ("A complaint which neglects to allege a perversion or misuse of the process by omitting facts necessary to show an *improper* willful act in the use of the process has not stated a cause of action for abuse of process and fails as a matter of law.") (emphasis in original; citations omitted).

11. By Orders filed on October 23, 2024, the South Carolina Court of Appeals entered awards in Appellate Case No. 2020-001150 in favor of American and Expedia and against Plaintiff for costs of \$2,557.67 and \$2,615.99, respectively, pursuant to Rule 222, SCACR. On November 6, 2024, both Orders were docketed as judgments in this Court, in *Hawkins I*. To date, Plaintiff has failed to satisfy either judgment. For this separate and independent reason, Plaintiff's appeal fails as a matter of law, as Plaintiff is not entitled to obtain relief from this Court when he has failed to comply with its judgments.

The Court, having made the foregoing findings, hereby ORDERS as follows:

The Order of the Magistrate's Court, entered September 19, 2024 in Case No. 2020CV2310700911, is hereby AFFIRMED in its entirety as to American;

Plaintiff's appeal in the above-captioned case is DISMISSED in its entirety as to American; and

This is a final Order of the Court.

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The Honorable R. Kirk Griffin  
Circuit Court Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina

\_\_\_\_\_, 2025



Greenville Common Pleas

**Case Caption:** Josh Hawkins vs. American Airlines Inc , defendant, et al

**Case Number:** 2024CP2306027

**Type:** Order/Other

So Ordered

s/ R. Kirk Griffin 2768