THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Jessica A. Salvini, Circuit Court Judge

Joshua Hawkins…….....Appellant,

v.

Delta Airlines…….....Respondent.

Appellate Case No. 2025-001494

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Does an email from Magistrate Court staff, which indicates a filed order will be mailed to the parties, constitute delivery of the order, when delivery of the order is required to begin the time to appeal the Magistrate Court order?

2. Did the Magistrate Court err in dismissing the plaintiff's entire case where the defendant only requested a partial dismissal?

3. Was jurisdiction proper in the Magistrate Court?

STATEMENT OF THE CASE

This case turns on whether an email from Magistrate Court staff indicating that a signed order will be mailed to the parties satisfies "delivery of written notice of judgment to the parties" to begin the 30-day clock to appeal the order. SCRMC 18(a). It is uncontested that the Magistrate Court never mailed or delivered the signed and filed order in this case to either party. SCRMC 18(a) does not mention email, and Respondent cites no authority supporting its argument that an email indicating a proposed order will be signed and delivered satisfies actual "delivery." Appellant respectfully submits that the Magistrate Court never delivered notice of judgment, that the notice of appeal was timely, and this case should be remanded to the Circuit Court for a decision on the merits.

STANDARD OF REVIEW

The issues on appeal involve questions of law. Questions of law are decided *de novo*, meaning that "a review in court is free to decide questions of law with no particular deference to the trial court." *Personal Care, Inc. v. Theo*, 426 S.C. 78 S.E.2d 281 (Ct. App. 2019). In reviewing a South Carolina Rule of Civil Procedure, the Court applies the same rules of construction used in interpreting statutes. *Green v. Lewis Truck Lines, Inc*., 314 S.C. 303 (1994). "If the rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary, and the stated meaning should be enforced." *Maxwell v. Genez*, 356 S.C. 617 (2003).

FACTUAL BACKGROUND

Appellant filed suit in Magistrate Court, setting forth several causes of action against Respondent Delta. The claims stemmed from three trips. First, Appellant alleged that Respondent violated its own terms related to Appellant's trip to New York. Respondent's terms acknowledge customers may bring claims for violations of its own terms, and Appellant asserted a claim consistent with those terms. Second, Appellant asserted a claim under the Montreal Convention for baggage damage occasioned by delay associated with a trip to New Zealand. Third, Appellant asserted a claim under the Montreal Convention for baggage damage occasioned by delay associated with a trip to Portugal. Appellant pled sufficient facts for each claim, and asserted recognized, viable causes of action.

Respondent then moved to dismiss certain portions of the suit, but acknowledged at the hearing on Respondent's motion that Respondent did not seek dismissal of the entire suit. Even though Respondent did not seek a dismissal of the entire case, the Court indicated it would dismiss the entire case, and indicated the case should be heard in some other Court, somewhere, without specifying which Court or where. The Court then instructed Respondent to submit a proposed order, which Respondent did. After Respondent submitted the proposed order[1], Respondent emailed the Magistrate Court inquiring about whether the order was ever signed. On December 4, 2024, Michelle Pegg with the Magistrate Court responded to that inquiry with the following email to the office for Respondent's counsel at 12:43 p.m.:

> Judy,
>
> Going forward please mail all correspondence into our office at the address below.
> I will not be accepting any further emails.

[1] Appellant objected to the proposed order, which is reflected in the emails submitted herewith. (R. __)

> Michelle Pegg
> East Greenville Summary Court
> 320 W. Main Street
> Taylors, SC 29687
> 864-467-4625

On December 4, 2024, at 1:17 p.m., Ms. Pegg from the Magistrate Court sent the following email to Respondent only, without copying Appellant:[2]

> I have provided Judge Hubbard with the papers that were emailed.
> **I will mail a copy of the signed Order**.
>
> Michelle Pegg
> East Greenville Summary Court
> 320 W. Main Street
> Taylors, SC 29687
> 864-467-4625
>
> Emphasis added. December 4, 2024, email from East Greenville Magistrate Court.

Notwithstanding the email indicating an executed order would be mailed, the Magistrate Court never mailed or delivered the order to either party as required by SCRMC 18(a) to start the 30-day to time to file a notice of appeal. In an abundance of caution, Appellant filed a notice of appeal with the Circuit Court on December 26, 2024, and mailed copies of the notice of appeal to the Magistrate Court and to the Respondent on December 30, 2024. (R. ___). Electronic filing is not yet available in Magistrate Court.

The Magistrate Court was required to file a Return to the Notice of Appeal "[w]ithin thirty (30) days of the date of filing the notice of appeal with the Circuit Court." SCRMC 18(b). The Magistrate Court did not file any Return within thirty days, and neither Appellant nor Respondent was aware a Return had ever been filed until the Circuit Court advised the parties at the hearing

[2] Respondent then added Appellant to its response to Ms. Pegg's email.

on the notice of appeal that a Return was filed, but unavailable on the public index. The Return was both untimely[3] and unavailable on the public index. (R. __).

Despite the fact that the Magistrate Court never delivered notice of judgment to the parties, Respondent moved to dismiss the appeal based on timeliness. Respondent argued that the Magistrate Court's courtesy email to the parties satisfied delivery and service of notice of judgment on the parties. Respondent then used the date of the email in which Court staff indicated an order *would be* delivered to calculate when thirty days had passed, and argued that it did not matter that Appellant had already served both the Magistrate Court and Respondent.

Respondent argued that because the Magistrate Court physically received the Notice of Appeal in the mail 33 days after Magistrate Court staff sent an email indicating that an order *would be* delivered, the appeal should be dismissed. The public index for the Magistrate Court does not provide when the order was filed. Appellant believes he first received a copy of the signed and filed order on April 4, 2025, when Respondent emailed it.[4] Presumably, Respondent obtained the order after traveling to the Magistrate Court to retrieve it since the Magistrate Court never delivered notice of judgment and a signed, filed order to either party.

Either the South Carolina Magistrate Court Rules require physical delivery of documents to start the appeal clock, in which case this appeal is timely because no notice of judgment has ever been physically delivered to the parties, or, if the South Carolina Rules of Civil Procedure

[3] The public index indicates the Return was filed with the Circuit Court on May 9, 2025, but the uploaded copy is not stamped.

[4] Appellant has searched for earlier emails with the order attached, so far unsuccessfully. Presumably, Respondent will reference any earlier email if one exists, but regardless of whether any earlier email with the order attached was sent, an attachment does not constitute "delivery" under SCRMC 18(a).

and the Appellate Court Rules apply, the appeal is timely because the Magistrate Court was served by mail less than thirty days after it dismissed the case.

Appellant made these arguments to the Circuit Court and submitted a brief on the issues, but the Circuit Court granted Respondent's motion to dismiss the appeal. Appellant preserved all substantive and procedural issues for review, and timely filed a SCRCP 56(e) motion with the Circuit Court following the Circuit Court's hearing on the appeal from the Magistrate Court. The Circuit Court denied Appellant's SCRCP 59(e) motion, and Appellant then timely filed this appeal.

ARGUMENTS

I. The appeal is timely.

a. The appeal is timely under the Magistrate Court Rules.

South Carolina Magistrate Court Rule 18(a) states:

> Within thirty (30) days after **delivery** of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for appeal with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered.

South Carolina Rules of Magistrate's Court, Rule 18(a). (emphasis added).

The plain language of SCRMC 18(a) does not mention or authorize email, with or without attachments, to satisfy "delivery of written notice of judgment to the parties." In *Robinson v. Hassiotis*, 364 S.C. 92, 610 S.E.2d 858 (Ct. App. 2005), this Court examined a case where a litigant in Magistrate Court received oral notice of a trial date when written notice was required by the Magistrate Court Rules. The held "In this case, Hassiotis received oral notice concerning his trial date prior to the time that he filed his answer. But oral notice is not sufficient under the Magistrate's Courts Rules. The rules contemplate *written* notice of trial and contemplate delivery of the notice after the filing of the answer." *Id.* The Court of Appeals also explained that "Rule 6(b) SCRMC, requires service to be made 'by personal service, or service by publication in a manner provided

for in Title 15 of the South Carolina Code of Law or by mail….'" *Id.* It is uncontested that the Magistrate Court never served or delivered anything personally or by mail to Appellant or Respondent, and "delivery of written notice of judgment to the parties" is required to begin the time to file a notice of appeal. SCRMC 18(a). The plain language of the Rule does not mention courtesy emails, and Respondent cites no law allowing a courtesy email to substitute for what the plain language of the Rule requires – actual "delivery of written notice of judgment." *Id.*

The Magistrate Court seemed to acknowledge the delivery requirement in the courtesy email itself: "I have provided Judge Hubbard with the papers that were emailed. I will mail a copy of the signed Order." (R. __. Michelle Pegg email, December 4, 2024.) However, it appears that "written notice of judgment" was never "deliver[ed]" "to the parties."[5]

The email from the Magistrate Court does not constitute service under the Magistrate's Courts Rules. Under *Robinson*, the Magistrate Court Rules require delivery of a *written notice* to the parties. No such *written notice* was delivered to the Appellant or Respondent. In fact, Rule 8(b) of the SCRMC provides the process of delivery stating:

> Delivery of a copy within this rule means: **handing it** to the attorney or party; or **leaving it** at the office; or, if there is no one in charge, leaving it at the party's usual place of abode **with a resident of suitable age and discretion**; or **mailing it** to the last known address of that party.

South Carolina Rules of Magistrate's Court, Rule 8(b). (emphasis added)

The language of SCRMC Rules 8(a) and 18(b), in combination with *Robinson*, contemplate delivery of a physical written notice. Respondent has taken the position that "delivery" of documents means physically delivery when that position helps Respondent, arguing that the

[5] Appellant is aware there is a possibility he is wrong. However, Appellant has no evidence that any notice of judgment was ever received in his office, and has inquired of Respondent's counsel whether that office ever received a mailed copy of the order from the Magistrate Court. By all indications, the Magistrate Court never mailed or delivered the order to either party.

delivery time for the notice of appeal is when it was physically received by the Magistrate Court. If Respondent's rationale for the physical delivery requirement is applied to the Magistrate Court's order, then Appellant's appeal is timely because the Notice of Appeal was delivered "[w]ithin thirty (30) days after delivery of written notice of judgment to the parties…" In fact, the "thirty…days after delivery of…judgment" still has not lapsed because the Magistrate Court never "delivered" notice of judgment to Appellant or the Respondent. If the word "delivered" means physical delivery, the clock cannot have started because no notice of judgment or order has ever been physically delivered to Appellant or anyone else. All of this was disclosed in open court. R. __).

Although Respondent homed in on the word "delivery," and insisted it means physical receipt by the Magistrate Court for the notice of appeal to the Circuit Court, the Respondent was adamant that "delivery…to the parties" is satisfied by a courtesy email for the Magistrate Court's order. Both cannot be true. If "delivery" is physical, then the parties are still waiting on the Magistrate Court to deliver notice of the judgment and start the clock running to file the Notice of Appeal.

Even if the Magistrate Court had mailed notice of judgment to the parties the very same day it sent the email, it could not have been physically delivered until the next day, which would make the deadline for the appeal January 6, 2025, which is when the Magistrate Court received it (January 4, 2025 is a Saturday.) Appellant served the Magistrate Court and Circuit Court via certified mail on December 30, 2024, within the statutory deadline. (R. __). The Magistrate Court did not submit rationale for its decision within 30 days as required by SCRMC 18(b).

b. The appeal is timely under the Rules of Civil Procedure.

SCRCP 6(e) provides:

> Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

South Carolina Rules of Civil Procedure, Rule 6(e).

As set forth above, the Magistrate Court never served or delivered notice of judgment on either of the parties. Rather, the Magistrate sent a courtesy email and informed the parties that the final order would be mailed. Where the Magistrate Court delivers notice of judgment, as required by SCRMC 18(a), five days must be added to the time for Appellant to file any appeal if the South Carolina Rules of Civil Procedure are applied. With this calculation, Appellant filed and served the appeal with several days to spare because SCRCP 5(b)(1) provides that "service by mail is complete upon mailing."

Assuming, arguendo, the Magistrate Court mailed its order the same day it sent a courtesy email indicating the order would be mailed, the order could not arrive at the Appellant's office until December 5, 2024, the time to serve and file the notice of appeal would be January 8, 2025, 35 days after the Magistrate Court mailed the order. Appellant mailed the notice of appeal to the Magistrate Court on December 30, 2024, and it was received in the Magistrate Court on January 6, 2025.

c. The appeal is timely under the Appellate Court Rules.

SCACR 262(a) provides that filing may be accomplished by "(2) **[d]epositing the document in the U.S. mail**, properly addressed to the clerk of the appellate court, with sufficient first-class postage attached. **The date of filing shall be the date of mailing**." *South Carolina Appellate Court Rules*, Rule 262(a) (emphasis added). Even if the Magistrate Court's informal email had satisfied the requirement for the Magistrate Court to "deliver[] written notice of judgment to the parties," and started the clock running for Appellant to file his Notice of Appeal,

by the plain language of the Appellate Court Rules, Appellant's Notice of Appeal was filed well before the thirty-day deadline. The Magistrate's Court's email was sent on December 4, 2024, and even without adding five days for mailing (again, the Magistrate Court never mailed, delivered, or served notice of judgment), Appellant mailed the Notice of Appeal to the Magistrate Court 26 days later, on December 30, 2024.

d. **The appeal is timely by any calculation.**

Respondent has advanced the argument that Appellant's appeal is untimely even though the Magistrate Court never delivered notice of judgment to the parties, which must happen to start the thirty (30) day clock for the Notice of Appeal to be filed. The Circuit Court committed reversible error when it adopted that argument, and the Circuit Court should have amended or altered its order to conform to the law and the Rules. Adoption of Respondent's flawed argument ultimately punished Appellant for filing and serving the Notice of Appeal within 30 days of the informal email in an abundance of caution. There is no Rule or case that allows a Magistrate Court's informal email to start the clock to file a Notice of Appeal or which cures failure to meet that requirement that the order be "deliver[ed]" under SCRMC 18(a).

Under the strictest possible analysis – if the Magistrate Court had mailed notice of judgment the same day it sent the email, and without adding five days for mailing – Appellant's appeal is still timely. But because the Magistrate Court has still never delivered notice of judgment to the parties, the clock has never started running, and Appellant's appeal is also timely for that reason.

II. The Magistrate Court erred when it granted Delta's motion to dismiss.

a. The Magistrate Court's dismissal of the entire case was contra to well-established law.

"If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe v. Marion*, 645 S.E.2d 245 (2007); *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995). Respondent acknowledged the plaintiff could recover on some of the allegations and causes of action set forth in the complaint, and Respondent did not request a total dismissal. The Magistrate Court seemed to acknowledge the complaint's viable causes of action, but asserted the Court should not dismiss some claims and retain others. The Magistrate Court seemed to indicate the case should be heard in another Court, but did not indicate which Court.

Appellant's complaint cites portions of Delta's terms that Delta violated, and several facts related to Delta's conduct, breaches of duties, and breaches of contractual obligations, which proximately caused Appellant's damages. (R. _). Cases like *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999), *Doe v. Marion*, 645 S.E.2d 245 (2007), *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995), a whole host of other cases, and the Rules of Civil Procedure all required the Magistrate Court to deny Respondent's motion to dismiss.[6]

Appellant set forth facts and allegations that, if assumed true, allow recovery under the Montreal Convention. "A circuit court must deny a motion to dismiss under Rule 12(b)(6) 'if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.' *Flateau v. Harrelson,* 355 S.C. 197, 203, 584 S.E.2d 413, 415 (Ct. App.

[6] Delta also moved pursuant to SCRCP 12(b)(1) and 10(c). However, is undisputed that Delta does business in South Carolina and that subject matter jurisdiction and personal jurisdiction were proper as to at least some of the claims dismissed by the Magistrate Court.

2003)."[7] "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Plyler v. Burns,* 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). (Emphasis added.)

Appellant alleged "damage occasioned by delay," contract non-performance, and pled ample, specific facts supporting those claims. (See Montreal Convention Article 19: "The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo." See also, *Paradis v. Ghana Airways Ltd*, 348 F. Supp. 2d 106 (So. Dist. N.Y. (2004).) Because the law – the Montreal Convention and the cases interpreting it – allow Appellant to recover for the conduct described and alleged in the complaint, the Magistrate Court should have denied Respondent's motion to dismiss.

Appellant claimed that Respondent violated its own terms and engaged in conduct that proximately caused Appellant to sustain identifiable money damages, which of course allows recovery. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991). Respondent's motion seemed more like a summary judgment motion than a motion to dismiss, which is illustrated by the fact that Respondent block quoted Delta's terms: "Delta will exercise **reasonable** efforts to transport you and your bags…" In so doing, Respondent urged the Magistrate Court, instead of a jury, to summarily decide the following fact questions:

1. Was it reasonable for Delta – to Appellant and thousands of other people – to unilaterally decree Respondent and other customers were stuck in New York for days, without any compensation for food lodging, or anything whatsoever, with no visible signs of the mysterious weather described by Delta?

[7] This is a quote from *Watkins v. Hall*, Unpublished Opinion No. 2017-UP-298 (Ct. App. 2017). While *Watkins* has no precedential value, its rationale is based on *Flateau* and other binding authority.

2. Was it reasonable to tell Appellant his bags were in one location, when they were in fact on a different continent, so that Appellant spent hours searching for bags containing thousands of dollars' worth of equipment?

3. Was it reasonable to give Appellant the name of the wrong third party vendor possessing the bags, when in fact another company held the bags, so that Appellant spent hours looking for the bags in vain (Appellant never even agreed to entrust the bags to a third-party vendor, and in fact had never heard of either the company Delta told him about or the company that actually had the bags.)?

4. Was it reasonable for Delta to mishandle Appellant's bags, causing damage and delay (which is absolutely covered under the Montreal Convention) while Appellant repeatedly called Delta, trying desperately to find the bags?

5. Were the raft of other outrageous and costly misdeeds, breaches of duties, and breaches of contractual obligations by Delta described in the complaint reasonable?

The reasonableness of Respondent's conduct is a fact question. *Mitchell, Jr. v. Fortis Ins. Co*., 686 S.E.2d 176 (2009). Article I, Section 14 of the South Carolina Constitution and the Seventh Amendment of the United States Constitution require that a jury decide disputed facts[8] such as whether "Delta…exercise[d] reasonable efforts to transport [the plaintiff's] bags." Beyond that, Respondent's obligation to act reasonably in the transportation of bags like Appellant's bags, which Delta damaged and delayed, is contained in its own terms, which must be construed against Delta as the drafter of the terms. *Mathis v. Brown & Brown of SC*, 689 S.E.2d 773 (2010).

Respondent claims, citing its terms, that because cancellations were due to "weather," it cannot be held responsible, no matter how egregious its conduct. The problem for Respondent, legally

[8] The Magistrate Court's dismissal of this case violated Appellant's State and Federal constitutional rights, including the right to Due Process, rights under the Equal Protection Clause, specifically, the right to a jury trial under the South Carolina Constitution and the right to a jury trial under the United States Constitution. Although the Seventh Amendment has never been fully incorporated against the States, it is clear from the language of the Amendment that the jury trial guarantee contained in the Seventh Amendment applies to all controversies exceeding twenty dollars, regardless of where they are litigated. Appellant preserves all constitutional arguments for further appellate review.

speaking, is that Appellant has alleged the cancellation was *not* due to weather, and Appellant's allegations must be taken as true. *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999). Respondent goes on to cite the portion of its terms that read "when a passenger's travel is interrupted for more than four hours…as a result of flight cancellation or delay on the date of travel other than from force majeure, Delta will provide the passenger with…hotel [and] ground transportation." Appellant has alleged both that Respondent did not actually cancel due to weather and that Respondent did not compensate Appellant for hotel or transportation, which is required by Delta's own terms. Because Appellant's allegations must be taken as true, pursuant to *Baird* and a litany of other cases, the Magistrate Court should have denied Respondent's motion to dismiss.

At the hearing, Respondent argued, in error, that fraud is the same cause of action as breach of contract accompanied by fraudulent act. It is black letter law in South Carolina that the two causes of action are not the same, and our courts have repeatedly articulated the differences between the two. The former has nine elements, while the latter has three. *Conner v. City of Forest Acres*, 560 S.E.2d 606 (2002); *Harper v. Ethridge,* 290 S.S. 112, 348 S.E.2d 374 (Ct. App. 1986); *Sullivan v. Callhoun,* 117 S.C. 137, 139, 108 S.E. 189, 189 (1921). If everything Appellant alleged is true, all elements of fraud are established, and Appellant can recover. In any event, *res judicata* requires that an issue be fully adjudicated in a prior suit. *Plum Creek Development v. City of Conway*, 512 SD.2d 106 (1999). None of Appellant's claims have been fully adjudicated in any suit.

b. The Circuit Court should have sent the case back to the Magistrate because it was reversible error for the Magistrate Court to consider evidence outside the pleadings without converting the motion to dismiss to a motion for summary judgment.

Respondent styled its motion as a motion to dismiss, but it submitted and relied on materials outside the pleadings. When matters and evidence outside the pleadings are submitted and

considered, a motion to dismiss must be converted to a motion for summary judgment. SCRCP 12(b); *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999); *Brown v. Leverette,* 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987); *Johnson v. Dailey,* 318 S.C. 318, 457 S.E.2d 613 (1995). Respondent relied on weather reports and other evidence outside of the complaint and even handed up materials at the hearing which were outside of the complaint. Appellant, of course, objected to the consideration of materials outside the complaint. Notwithstanding, the Magistrate Court considered materials outside the complaint and dismissed the entire case.

Appellant set forth facts and described evidence in a signed pleading which directly contradicts the evidence outside of the complaint relied on by Respondent. To the extent the Magistrate Court weighed and determined the factual disputes related to the weather, that determination was the function of a jury, and it was improper for the Magistrate Court to decide those disputed facts. *Kitchen Planners v. Friedman*, 892 S.E.2d 297 (2023). If the facts pled by Appellant in the complaint are true, which they are assumed to be, then Appellant may recover, and resolution of fact questions and dismissal based on those determinations was improper.

In its motion, Respondent stated "Plaintiff refused to take the next available flight Delta offered him, which was scheduled to depart two days later," as if Appellant "refused" a valid or reasonable option. Obviously, most people, like Appellant, have jobs and responsibilities. The scenario in this case was no different, and waiting for days in New York because Delta refused to follow its own terms and cover lodging, food, or any other expenses, was not a reasonable option by any standards. Besides all that, Appellant offered conflicting evidence and allegations that the Magistrate Court was required to take as true over Respondent's inaccurate and conflicting version of the facts. *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999).

III. **Jurisdiction was proper in the Magistrate Court, there is no requirement that the case be litigated in federal court, and the Magistrate Court should have denied Respondent's SCRCP 12(b)(1) motion to dismiss.**

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *Skinner v. Westinghouse Elec. Corp.,* 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008). South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, § 11." *Dema v. Tenet Physician Services-Hilton*, 678 S.E.2d 430 (2009). Jurisdiction over Appellant's claims was proper in Magistrate Court, and there is certainly no exclusive jurisdiction for federal court as to any of the claims dismissed by the Magistrate Court.

The Magistrate Court has subject matter jurisdiction over claims related to international travel pursuant to the Montreal Convention, which does not contain any requirement that the relief it provides be sought in federal court. The Magistrate Court also has subject matter jurisdiction over any other claims which are not preempted by federal law. Appellant's claims that Respondent violated its own terms and engaged in conduct which proximately caused identifiable money damages is not barred or preempted. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991). "A federal statute preempts state action in fields of traditional state regulation only if the clear and manifest intent of Congress in passing the federal statute was 'to occupy the field to the exclusion of the States.'" *Medical Park OB/GYN, PA*, 467 S.E.2d 261 (Ct. App. 1996). See also, *Allis-Chalmers Corp. v. Lueck,* 471 U.S. 202, 209, 105 S.Ct. 1904, 1910, 85 L.Ed.2d 206 (1985); *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.,* 471 U.S. 707, 719, 105 S.Ct. 2371, 2378, 85 L.Ed.2d 714 (1985); *Jones v. Rath Packing Co.,* 430 U.S. 519, 525, 97 S.Ct. 1305, 1309-10, 51 L.Ed.2d 604 (1977). Not only are some of Appellant's claims specifically created for redress

against airlines, but Respondent cannot show any congressional intent for federal law to preempt them.

Respondent was required to show a conflict between state and federal law for preemption to apply at all. *Murphy v. Nat'l collegiate Athletic Ass'n*, 584 U.S. 453 (2018); *Mutual Pharmaceutical Co. v. Bartlett,* 570 U.S. 472, 33 S. Ct. 2466, 186 L.Ed.2d 607 (2013); *Morales v. Trans World Airlines, Inc*., 504 U.S. 374, 112 S. Ct. 2031, 119 L.Ed.2d 157 (1992). There is no conflict between any of the laws under which Appellant seeks relief and any federal law, and none of the relief sought by Appellant has any state-created regulatory effect as to airlines.

To its credit, Delta does admit that it can be held liable when it breaches one or more of its own terms. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). Because Appellant has alleged this as part of the suit, and because that allegation must be taken as true, the Magistrate Court should have denied Respondent's motion.

Lastly, the suggestion that Appellant cannot have any relief under the Uniform Declaratory Judgments Act is incorrect. It is well-settled that the Act creates "the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Sunset Cay, LLC v. City of Folly Beach*, 593 S.E.2d 462 (2004). There is no conflict between a statute allowing the Magistrate Court to declare the rights of the parties and any federal law on which Respondent relies. In fact, there is a federal analogue which provides the same relief our state Declaratory Judgments Act statute provides.

CONCLUSION

No South Carolina case has ever held that an email from Magistrate Court staff is a substitute for the requirement that a Magistrate Court "deliver[]…written notice of judgment to the parties" to start the thirty-day time to appeal a decision to the Circuit Court. It is undisputed

that the Magistrate Court never delivered physical written notice of judgment to the parties and electronic filing is not available for Magistrate Court, so the parties must use U.S. Mail for filing.

It is undisputed the Magistrate Court failed to file a Return with the Circuit Court within 30 days of its judgment. It is undisputed that the appeal was timely filed with the Circuit Court, timely served on Respondent, and sent by U.S. mail well under thirty days from the date of the Magistrate Court's email.

Substantively, airlines are not immune from suit, and the Magistrate Court's ruling is inconsistent with the law. Neither equity nor the law (including basic contract law and the Montreal Convention) allow dismissal where the allegations of the complaint allow Appellant to recover.[9] Most importantly, dismissal of this action violates Appellant's constitutional rights, including the right to a fair trial by jury. Appellant therefore respectfully requests that the Court of Appeals remand this case back to the Magistrate Court for trial.

Respectfully submitted,

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March 12, 2026

[9] As previously stated, the law governing motions to dismiss required the Magistrate to deny Delta's motion to dismiss. *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999), *Doe v. Marion*, 645 S.E.2d 245 (2007), *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995)

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CERTIFICATE OF COUNSEL

.

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

Greenville, South Carolina
March 12, 2026

Respectfully submitted,

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