THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2025-002020

Joshua Hawkins…..……Appellant,

v.

American Airlines and Expedia……..……Respondents.

INITIAL BRIEF OF RESPONDENT AMERICAN AIRLINES, INC.

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court correctly hold that Appellant had impermissibly split his claims against Respondent American Airlines, Inc. ("American") by simultaneously pursuing an appeal before this Court (Appellate Case No. 2020-001150) and a lawsuit before the Greenville County Magistrate's Court based on the same set of events?

2. Did the Circuit Court correctly hold that Appellant's cause of action for "Abuse of Process" against American failed as a matter of law because it is based on the untenable theory that American engaged in abuse of process by filing a Motion to Dismiss that the Circuit Court granted in a prior case?

3. By failing to present any argument as to Issue No. 2 in his initial Brief filed in this appeal ("Apt. Brief"), did Appellant abandon any appeal of the Circuit Court's holding as to such issue?

4. Was Appellant deprived of any constitutional rights because his legally insufficient claims were not tried before a jury?

5. Did the Circuit Court correctly hold that Appellant was not entitled to relief because he had failed to satisfy this Court's awards for costs in Appellate Case No. 2020-001150, in favor of American and Expedia and against Appellant, which awards were docketed as judgments in the Circuit Court?

6. By failing to present any argument as to Issue No. 5 in his Brief, did Appellant abandon any appeal of the Circuit Court's holding as to such issue?

STATEMENT OF THE CASE

On March 3, 2020, Appellant filed a Complaint with the Greenville County Circuit Court, thereby commencing *Hawkins I* (Case No. 2020-CP-23-01364), naming American, the Qantas Group d/b/a Qantas Airlines, Expedia, Inc. ("Expedia") and Travel Guard Insurance as defendants. As against American, Appellant 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 Appellant's air travel from Greenville-Spartanburg International Airport to New Zealand in February 2019.

On April 21, 2020, American filed in *Hawkins I* its Motion to Dismiss the Complaint as to American pursuant to Rule 12(b)(6), SCRCP, and supporting Memorandum of Law. Among other arguments, American contended that the Montreal Convention[1] expressly preempted Appellant's state law claims.

Appellant 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 Appellant appeared, on August 5, 2020 the Circuit Court entered its Order Granting Defendant American Airlines, Inc.'s Motion to Dismiss in its entirety ("the August 5, 2020 Order").

In the August 5, 2020 Order, the Court held in *Hawkins I*, among other things, that Appellant's Complaint "fails to state facts sufficient to constitute any cause of action against American" for the reasons set forth therein and "ORDERED that Appellant's Complaint is DISMISSED in its entirety as to American." August 5, 2020 Order, at 3-5. Contrary to Appellant's argument (Apt. Brief, at 5), the Circuit Court in its August 5, 2020 Order did not make a ruling that "the proper claim for Appellant to file against American is a claim under the Montreal Convention," *i.e.*, the Circuit Court did not give Appellant any form of leave or guidance as to any claim that Appellant should file against American. Instead, the Circuit Court ruled that the Convention expressly preempted Appellant's state law travel and baggage delay claims against American in that case:

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[1] The Montreal Convention is formally known as the Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal on May 28, 1999, ICAO Doc. No. 9740 (entered into force on November 4, 2003), *reprinted in* S. Treaty Doc. No. 106-45, 1999 WL 33292734.

> 7. Plaintiff's travel and baggage delay claims against American are within the scope of Article 19 of the Montreal Convention because Plaintiff seeks damages for alleged delays in his travel from Greenville to Christchurch and an alleged delay in the delivery of his checked baggage at Christchurch.
>
> 8. Because Plaintiff's travel and baggage delay claims against American are within the scope of Article 19 of the Montreal Convention, pursuant to Article 29 therein the Convention exclusively governs Plaintiff's claims and American's liability (if any) and expressly preempts all of Plaintiff's travel and baggage delay claims against American.

August 5, 2020 Order, at 3.

By an Order entered on August 11, 2020, the Court in *Hawkins I* denied Appellant's Motion to Reconsider the August 5, 2020 Order ("the August 11, 2020 Order"). In addition, the Court in *Hawkins I* entered an Order granting Expedia's Motion to Dismiss and an Order denying Appellant's Motion to Reconsider such Order.

On August 20, 2020, Appellant filed a Notice of Appeal as to "the Orders of the Honorable Perry H. Gravely, dated August 11, 2020, denying Appellant's Motions to Reconsider the Judge's Orders dismissing American Airlines and Expedia." By an Opinion issued in Appellate Case No. 2020-001150, this Court affirmed the foregoing Orders entered in *Hawkins I* granting American and Expedia's Motions to Dismiss. Unpublished Opinion No. 2024-UP-122 (filed April 17, 2024).

On September 15, 2020, Appellant filed a Complaint with the Greenville County Magistrate's Court, thereby commencing Case No. 2020CV2310700911 ("*Hawkins II*"). Appellant'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. 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.

Appellant noted his appeal to the Circuit Court, thereby commencing case No. 2024-CP-23-06027. After hearing argument on May 28, 2025, the Circuit Court issued its Order on July 16, 2025 affirming the Magistrate's Court's Order and dismissing the appeal as to American ("the July 16, 2025 Order"). The Circuit Court also issued an Order affirming the Magistrate's Court's Order as to Expedia. By its Order issued on September 8, 2025, the Circuit Court denied Appellant's Amended Motion to Reconsider pursuant to Rule 59, SCRCP.

STANDARDS OF REVIEW

"Section 18-7-170 of the South Carolina Code ([2014]) articulates the standard of review to be applied by the circuit court in an appeal of a magistrate's judgment. The circuit court, as the initial appellate court, must 'give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits.' § 18-7-170. 'In giving judgment[,] the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.' *Id*. Our review in this posture can be limited if factual findings are involved. . . . But when it comes to questions of law, and particularly questions of statutory interpretation, our review is de novo." *1 Dragon's Ascent Video Gaming Mach. v. South Carolina Enforcement Division*, 445 S.C. 252, 257-58,

912 S.E.2d 407, 410 (Ct. App. 2025) (citations omitted; cleaned up), *reh'g denied* (Mar. 12, 2025).

ARGUMENT

I. The Circuit Court Properly Ruled That Appellant Engaged in Prohibited Claim-Splitting

Appellant argues that "[n]o causes of action have been split" (Apt. Brief, at 9) but the reality is that Appellant clearly and unmistakably split his claims against American by simultaneously alleging claims – based on the same underlying events – in the Magistrate's Court in *Hawkins II* and on his appeal as to *Hawkins I*. The Circuit Court properly found as much:

> 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.

July 16, 2025 Order, at 3-4.

Appellant does not actually argue that he did not split his claims against American. What Appellant does argue is that his claim-splitting was supposedly lawful because (i) American's counsel had supposedly taken the position in *Hawkins I* that Appellant "should bring" a Montreal Convention claim before the Magistrate's Court (Apt. Brief, at 1, 2, 10), and

(ii) such claim-splitting is proper because "separate actions are sometimes litigated simultaneously, even if the cases stem from the same events" (Apt. Brief, at 12). Appellant is wrong.

Appellant's argument that American's counsel bestowed claim-splitting authority on him fails for two reasons. First, a party does not have the authority to allow another party to violate South Carolina pleading principles, such as the well-established prohibition against splitting claims. Second, contrary to Appellant's suggestion, American's counsel never suggested that Appellant allege a Montreal Convention claim by filing a *separate lawsuit*. The record makes it clear that American's counsel stated, in *Hawkins I*, that American would not oppose a request by Appellant to obtain the Circuit Court's leave to file an amended complaint *in that same case* alleging a Montreal Convention cause of action only:

> And, finally, again, as I pointed out earlier, I'm not really saying that the complaint should be dismissed here with prejudice. If -- if the [Appellant] -- has to have leave to replead and -- and to file an amended complaint making only Montreal Convention claims as to his travel delay and baggage delay claims and only a breach of contract claim as to his mileage claim, American wouldn't object to that request to replead. But as currently pled, his complaint is deficient and should be dismissed.

Transcript of Record, at 7-8 (July 21, 2020).

In *Hawkins I*, Appellant had the opportunity to seek the Circuit Court's leave to file an amended complaint alleging a Montreal Convention cause of action. And it is likely that leave would have been granted; Rule 15(a), SCRCP, provides in part that leave to amend a pleading "shall be freely given when justice so requires and does not prejudice any other party." But Appellant chose not to avail himself of that opportunity. Instead, Appellant pushed ahead in

Hawkins I with his original state law causes of action against American – all of which were held to be legally defective by the Circuit Court and then by this Court (in Appellate Case No. 2020-001150) – and also alleged a Montreal Convention cause of action against American in *Hawkins II*, a separate lawsuit.

As the Circuit Court properly ruled, Appellant's conduct violated the well-established prohibition against splitting causes of action. *Plum Creek Development Co. v. City of Conway*, 328 S.C. 347, 351, 491 S.E.2d 692, 695 (Ct. App. 1997) ("[A]lthough Rule 42(b), SCRCP, provides that once a cause of action has been pled, the court may order separate trials of multiple issues under certain circumstances, a party may not of his own volition split his cause of action so as to make it the subject of several causes of action without the consent of the opposing party.") (citations omitted), *aff'd as modified*, 334 S.C. 30, 512 S.E.2d 106 (1999); *Salley v. McCoy*, 189 S.C. 157, 200 S.E. 724, 726 (1939) ("The law abhors a multiplicity of suits, and there is no sound reason why this abhorrence should not be heeded in this case.").[2]

By filing his Complaint in *Hawkins II* while appealing the Court's decision in *Hawkins I*, Appellant impermissibly split his claims. In *Hawkins I*, Appellant took the position that the Montreal Convention did not apply to his claims:

> But there's a lot of problems – there's a lot of problems with trying to invoke the Montreal Convention in this particular set of facts. For one, the Montreal Convention applies to carriage, baggage. And if you look at what they cited as article one part two, it gives a definition. A lot of this complaint is not about

[2] *See also Carpenter v. Kenneth Thompson Builder*, Inc., 186 So. 3d 820, 824 (Miss. 2014) ("The rule against claim-splitting requires a[n] Appellant to assert all of its causes of action arising from a common set of facts in one lawsuit. By spreading claims around in multiple lawsuits in other courts or before other judges, parties waste scarce judicial resources and undermine the efficient and comprehensive disposition of cases.") (citations omitted).

> baggage or just them losing the bags. It's about a lot of other stuff.
>
> * * *
>
> Most of the stuff that's in the complaint isn't part of the Montreal Convention.

Transcript of Record, at 8, 9 (July 21, 2020).

However, less than a month after noting his appeal in *Hawkins I*, Appellant 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, Appellant created the legally repugnant situation in which different courts could have issued conflicting rulings on the applicability of the Montreal Convention to the same events; this is why the Magistrate's Court correctly dismissed *Hawkins II* due to Appellant's claim-splitting. *R.C.R., Inc. v. Deline*, 2008 WY 96, ¶ 14, 190 P.3d 140, 152 (Wyo. 2008) ("The purpose of the rule against splitting causes of action is to promote fairness to the parties by protecting defendants against fragmented, harassing, vexatious, and costly litigation, and the possibility of conflicting outcomes.") (citation omitted).

As to Appellant's argument that claim-splitting is allowable as a matter of South Carolina law, Appellant does not cite any authority for this proposition. Instead, Appellant argues that claim-splitting is supposedly permissible because "separate actions are sometimes litigated simultaneously, even if the cases stem from the same events" and cites the *Owens* cases as an example. Apt. Brief, at 12. Those cases prove nothing. The defendants in the two

Owens cases are not the same,[3] and the only reason that a separate *Owens* case is now pending in federal court is that the defendants chose to remove it to that court under 28 U.S.C. § 1331. For whatever reasons, the defendants in the federal *Owens* case, via removal, in essence consented to the splitting of claims in that matter. Under *Plum Creek*, claim-splitting can occur with "the consent of the opposing party." 328 S.C. at 351, 491 S.E.2d at 695. Here, American never consented to Appellant's claim-splitting and in fact objected to it.

II. The Circuit Court Properly Ruled That Appellant's Abuse of Process Cause of Action Fails as a Matter of Law

In his Complaint in *Hawkins II*, Appellant alleged that American engaged in abuse of process by filing a Motion to Dismiss that the Circuit Court in *Hawkins I* granted and upheld in its entirety in its August 5, 2020 Order and August 11, 2020 Order, after a hearing at which Appellant appeared. Appellant's abuse of process claim against American fails for two separate reasons.

First, Appellant abandoned any argument by failing to mention, let alone argue, his abuse of process claim in his Brief. *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 529 n.11, 753 S.E.2d 428, 434 (2014) ("We find Petitioners have abandoned the negligent misrepresentation claim by failing to set forth an argument on the issue in their brief. *See* Rule 208(b), SCACR (stating that, for appellate review of an issue to occur, the issue must be set forth in a statement and argument)[.]") (citation omitted).

[3] The defendants in the federal case include two individuals, Deputy Timothy Gibson and Deputy Erickson, who were not defendants in the state case.

Second, the Circuit Court properly ruled that Appellant's abuse of process claim against American is legally insufficient. July 16, 2025 Order, at 4. Appellant alleged that American is liable for abuse of process because it "knew that the Montreal Convention is not a total bar to actions brought pursuant to local law, but it filed a motion to dismiss the original suit in this action anyway." Complaint, at 7 ¶ 43. The Circuit Court in *Hawkins I* ruled in American's favor on this precise issue. August 5, 2020 Order, at 3 ¶ 8 ("Because Appellant's travel and baggage delay claims against American are within the scope of Article 19 of the Montreal Convention, pursuant to Article 29 therein the Convention exclusively governs Appellant's claims and American's liability (if any) and expressly preempts all of Appellant's travel and baggage delay claims against American."). This Court agreed: "Specifically, we hold the circuit court did not err in finding Hawkins's tort and Unfair Trade Practices Act (UTPA) claims for damages due to flight delays and delayed baggage were preempted by the Montreal Convention. . . . For all air transportation to which the Montreal Convention applies, if an action for damages, however founded, falls within one of the Convention's three damage provisions, the Convention provides *the sole cause of action* under which a claimant may seek redress for her injuries." Opinion No. 2024-UP-122, at 2 (citation omitted; emphasis in original).

"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). Appellant's abuse of process claim against American is insufficient as a matter of law because Appellant failed to plead facts showing that, by filing a Motion to

Dismiss that was granted in its entirety by the Circuit 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); *Weber v. State*, 166 P.3d 899, 903 (Alaska 2007) ("[F]iling a motion to dismiss a complaint initiated by Weber is a routine step taken in the course of litigation and in no way can be construed as an invalid use of the judicial process.").

III. Appellant Was Not Deprived of Any Constitutional Rights

Appellant argues that the Magistrate's Court's dismissal of his claims in *Hawkins II* violated his constitutional jury trial rights. Apt. Brief, at 13. First, Appellant cites no authority supporting the proposition that a plaintiff is entitled to proceed to a trial, jury or bench, on claims that fail as a matter of law and thus are properly dismissed under Rule 12(b)(6) or 12(b)(8), SCRCP. Second, the Montreal Convention does not address, let alone prevent, a party's right to a jury trial. Jury trials in cases governed by the Convention take place frequently. *See, e.g.*, *Quevedo v. Iberia Lineas Aereas de Espana Sociedad Anonima Operadora Co.*, 811 F. App'x 559, 561 (11th Cir. 2020) ("Quevedo sued Iberia for damages under Article 17 of the Convention for the Unification of Certain Rules Relating to International Carriage by Air ('Montreal Convention'). S. Treaty Doc. No. 106-45, 1999 WL 33292734. . . . After deliberations, the jury found that Quevedo and Iberia each were negligent but found Quevedo ninety-nine percent at fault."); *Schaefer-Condulmari v. U.S. Airways Group, LLC*, 547 F. App'x 123 (3d Cir. 2013) ("Judith Schaefer-Condulmari, who went into

anaphylactic shock after eating a meal provided to her on a flight operated by U.S. Airways Group, LLC, appeals the jury's verdict that she failed to establish by a preponderance of the evidence her claim under the Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal, May 28, 1999, S. Treaty Doc. No. 106-45, 1999 WL 33292734. For the reasons that follow, we will affirm.").

Appellant's argument that the Montreal Convention is unconstitutional (Apt. Brief, at 15) fails as well. *Jack v. Trans World Airlines, Inc.*, 854 F. Supp. 654, 662 (N.D. Cal. 1994) ("Appellants' contention that the Warsaw Convention is unconstitutional because it violates the right to international travel is also rejected. The assumption underlying Appellants' argument—that international travel is a fundamental right—is erroneous. The Warsaw Convention easily passes constitutional muster when evaluated under the proper test."). The Montreal Convention superseded the Warsaw Convention, which had previously governed an airline's liability related to international air transportation. *Coppens v. Aer Lingus Ltd.*, No. 14-6597, 2015 WL 3885742 at *7 (E.D.N.Y. June 22, 2015). Like the Warsaw Convention, the Montreal Convention is a treaty ratified by the United States and is thus "the law of this land." *El Al Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155, 167 (1999).

Finally, Appellant's argument that the federal Airline Deregulation Act (49 U.S.C. § 41713(b)(1)) is unconstitutional (Apt. Brief, at 15) also fails. *Scarlett v. Air Methods Corp*., 922 F.3d 1053, 1069 (10th Cir. 2019) (rejecting argument that "the ADA violates the procedural and substantive components of the Due Process Clause of the Fifth Amendment"); *Stout v. Med-Trans Corp.*, 313 F. Supp. 3d 1289, 1299 (N.D. Fla. 2018) ("Appellants' state-law claims

are preempted by the ADA and, based on established precedent, Appellants' constitutional attacks on the ADA are without merit and insufficient to breathe life back into their case.").

IV. Appellant's Failure to Comply With the Circuit Court's Judgments Prevented Appellant From Obtaining Relief in That Court

The Circuit Court held as follows in its July 16, 2025 Order, at 5:

> 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 Appellant 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, Appellant has failed to satisfy either judgment. For this separate and independent reason, Appellant's appeal fails as a matter of law, as Appellant is not entitled to obtain relief from this Court when he has failed to comply with its judgments.

The Circuit Court's holding is correct, as Appellant was not entitled to obtain relief from that Court when he had failed to comply with its judgments. *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 424, 746 S.E.2d 35, 37 (2013) ("We therefore reach the inescapable conclusion that [Petitioner] has come to court with unclean hands and is barred from seeking equitable relief.... [Petitioner's] legal causes of action are barred as well.") (citations omitted).").

To the extent that Appellant is contesting this issue at all, he has abandoned any argument by failing to even mention the issue in his Brief. *Woodson*, 406 S.C. at 529 n.11, 753 S.E.2d at 434.

CONCLUSION

For the foregoing reasons, the Circuit Court's Order Affirming Magistrate's Court's Order as to Defendant American Airlines, Inc., filed on July 16, 2025, and the Circuit Court's

Order denying Appellant's Amended Motion to Reconsider, filed on September 8, 2025, should be affirmed as to Respondent American Airlines, Inc.

Respectfully submitted,

Dated: April 10, 2026

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