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SC Court of Appeals

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, Inc., and Expedia, Respondents.

RESPONDENT EXPEDIA'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Should the dismissal of claims against Respondent Expedia be affirmed where the court below found that all such claims were derivative of claims against Respondent American Airlines which were due to be dismissed, such finding is supported by Appellants' own pleadings, and Appellant's brief does not make any factual or legal arguments disputing such finding?
2. Did the court below correctly hold that this case is barred by *res judicata* where Appellant filed and litigated two overlapping and virtually identical actions seeking damages against the same parties for the same alleged wrongs?
3. Should the dismissal of claims against Respondent Expedia be affirmed where Appellant claims *res judicata* does not apply because he was given leave to file a second case by the Circuit Court dismissing his first case, but his second case violates restrictions imposed by the same Circuit Court order?
4. Does a party who chooses to file two overlapping actions in defiance of established *res judicata* rules have a constitutional right to have such rules disregarded so he can obtain a decision on the merits in his second case?

STATEMENT OF THE CASE

Appellant booked an overseas trip through Expedia for travel in February 2019. Contending he was inconvenienced due to flight delays on that trip, he sued various entities he apparently believed were to blame for his travel problems in the South Carolina Court of Common Pleas ("*Hawkins P*"). Two of those entities, Expedia and Respondent American Airlines, moved to dismiss the case. Expedia's basis for dismissal was simple: Appellant agreed to litigate any disputes arising out of the relationship between the parties in arbitration or, to the extent the parties' agreement permitted, in small claims court.

The Circuit Court granted both Respondents’ motions to dismiss. The dismissal of claims against Expedia was largely based on the Circuit Court’s conclusion that the “Terms of Use” applicable to users of Expedia’s website formed a binding contract between Appellant and Expedia. (Circuit Court Order in *Hawkins I*, August 5, 2020, p. 4 (“The Court finds and orders that the Terms of Use constitute a valid and enforceable agreement between Expedia and the Plaintiff.”).) The Terms of Use did not permit Appellant to sue Expedia in Circuit Court. (Id.)

Following his loss at the Circuit Court level in *Hawkins I*, Appellant chose to split his claims into two overlapping actions. He appealed the dismissal of his claims to this Court. In addition, he filed a virtually identical action in Magistrate’s Court, adding an abuse of process cause of action (“*Hawkins II*”).¹ (Magistrate Court Complaint.)

In the *Hawkins I* appeal, this Court affirmed the Circuit Court’s dismissal of both Expedia and American Airlines in an unpublished opinion. (Op. No. 2024-UP-122.) Appellant then attempted to litigate the exact same claims – plus the abuse of process claim – in *Hawkins II*. The Magistrate Court was not fooled. It dismissed *Hawkins II* against both Defendants, ruling, *inter alia*, that Appellant’s attempt to litigate his claims in two separate actions was claim-splitting and thus barred by *res judicata*. (Magistrate Court Order, September 16, 2024.) Appellant challenged the Magistrate Court’s ruling in Circuit Court.

¹ As against Expedia, the abuse of process claim was based on the premise that “Expedia filed a motion to dismiss [*Hawkins I*] even though it knew that a purchaser of an American ticket was not required to view terms or an arbitration clause before purchasing a ticket.” (Magistrate Court Complaint ¶ 44.) This assertion is directly contrary to the Circuit Court’s ruling in *Hawkins I*, which ruling this Court affirmed on appeal. (Opinion No. 2024-UP-122.) In other words, the abuse of process claim is not even colorable. It appears Appellant has wisely abandoned it, as it is not addressed in his Brief.

After reviewing the materials considered by the Magistrate Court and the submissions of the parties, the Honorable R. Kirk Griffin ruled in *Hawkins II* that Appellant's case against Expedia should be dismissed for two independent reasons.

[1] Any duty Expedia owed Hawkins was derivative. That is, Expedia's only interaction with Hawkins was to sell him airline tickets. All of Hawkins' misfortunes on his travels were beyond Expedia's control. Expedia cannot be liable to Hawkins if American Airlines is not. All of the claims Hawkins asserted against American were without merit. He cannot proceed with those meritless claims against Expedia.

[2] I also find that this lawsuit, which Hawkins filed while the first suit was pending, is barred by res judicata as Magistrate Anders ruled. *See, Plum Creek Development Co., Inc. v. City of Conway*, 328 S.C. 347, 491 S.E.2d 692, 694 (Ct. App. 1997) *affirmed as modified* 334 S.C. 30, 512 S.E.2d 106 (1999).

(Griffin Order Affirming Dismissal of Expedia, July 14, 2025, p. 2-3.) (Judge Griffin also dismissed all claims against American Airlines.) This appeal followed.

STANDARD OF REVIEW

In reviewing a Circuit Court ruling affirming a Magistrate Court decision, this Court may defer to factual findings reached by the courts below, provided there is any evidence to support them. *1 Dragon's Ascent Video Gaming Mach. v. SLED*, 445 S.C. 252, 257-58, 912 S.E.2d 407, 410 (Ct. App. 2025), citing *Union Cnty. Sheriff's Off. v. Henderson*, 395 S.C. 516, 519, 719 S.E.2d 665, 666 (2011). This Court reviews *de novo* conclusions of law reached by the courts below. *Id.*, citing *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

To be considered by this Court, an issue must have been raised and ruled on by both the Magistrate Court and the Circuit Court. *Bowers v. Thomas*, 373 S.C. 240, 247, 644 S.E.2d 751, 754 (Ct. App. 2007); *A & I, Inc. v. Gore*, 366 S.C. 233, 242, 621 S.E.2d 383, 387 (Ct. App. 2005); *Indigo Assocs. v. Ryan Inv. Co.*, 314 S.C. 519, 524, 431 S.E.2d 271, 274 (Ct. App. 1993). It must

also appear in the appealing party's brief. *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993).

ARGUMENT

I. The Circuit Court Correctly Found that Expedia Cannot Be Liable If Appellant Cannot Establish That American Airlines is Liable

The Circuit Court correctly noted that Appellant's claims against Expedia are not premised on direct acts or omissions by Expedia. Rather, they are entirely derived from the alleged acts and/or omissions of American Airlines. (Griffin Order Affirming Dismissal of Expedia, July 14, 2025, p. 2-3.) For reasons articulated in American Airlines' Brief, which arguments are incorporated herein by reference, Appellant cannot prevail against American Airlines. The Circuit Court was therefore correct to conclude that no claim against Expedia remains viable.

Appellant's Brief did not dispute or even address this finding. Rather, Appellant reinforced it in his "Factual Background," asserting that Expedia merely sold him a ticket and then American Airlines was supposedly responsible for a series of subsequent mishaps during his travel, including flight delays, failure to award him "points," a change in destination for one of his flights, the issuance of a defective voucher for delay-related expenses, and the loss of his luggage. (App. Br. pp. 4-5.) The closest Appellant came to articulating any direct act or omission by Expedia was the conclusory and uncited assertion that he "set forth many facts about Expedia's conduct which support liability . . ." (Id., p. 8.) This is not sufficient to establish direct, rather than derivative, liability. The allegations against Expedia were clearly derivative. *See, e.g.*, Magistrate Court Complaint ¶¶ 7, 8 (alleging Expedia sold Appellant his plane tickets and should have known about various alleged problems with American Airlines' performance).

Appellant failed to present any argument in his Brief disputing the Circuit Court's finding that his claims against Expedia were entirely derivative of the claims against American Airlines

and thus were subject to dismissal. He has therefore abandoned any such argument. *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994); *Miller v. Dillon*, 432 S.C. 197, 207, 851 S.E.2d 462, 468 (Ct. App. 2020); *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691-92 (Ct. App. 2001). Because Appellant failed to address an independent basis for the decision on appeal, such decision must be affirmed. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 451-52, 814 S.E.2d 643, 653-54 (Ct. App. 2018) (articulating “two issue rule” requiring appellate courts to affirm lower court rulings supported by multiple independent grounds where not all are challenged on appeal).

II. Appellants’ Claims Against Expedia Are Barred by *Res Judicata*

The Circuit Court’s second basis for affirming the Magistrate Court’s dismissal of the claims against Expedia was that Appellant brought two overlapping cases, which amounted to impermissible claim splitting. This holding is amply supported by relevant authorities.

In *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999), our Supreme Court explained that “[r]es judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. 334 S.C. at 34, 512 S.E.2d at 109. Seeking different remedies in the second action does not change this rule so long as both cases address the same transaction or occurrence. *Id.* at 35, 512 S.E.2d at 109.

In this case, Appellant insisted on not only seeking damages from Expedia in Circuit Court but appealing the adverse result he obtained. He spent nearly four years pursuing a damage remedy against Expedia in *Hawkins I*. At the same time, perhaps knowing how unlikely he was to prevail in *Hawkins I*, he brought the overlapping claims in *Hawkins II*. Both cases involved the events of

Appellant's New Zealand trip in February 2019, both sought damages against Expedia and American Airlines, and both involved the same tort, contract, and South Carolina statutory remedies. The two Complaints were essentially copy-and-paste jobs. This is exactly what *Plum Creek* forbids.

Appellant seeks to distinguish *Plum Creek* by arguing that it involved a single cause of action being split, whereas his cases involved multiple causes of action. (App. Br. 11.) This is plainly wrong. *Plum Creek* expressly held that what cannot be split are claims arising from the same **transaction or occurrence**, regardless of how many different legal theories or remedies are pursued. 334 S.C. at 34, 512 S.E.2d at 109.

Appellant contends that *res judicata* bars the second case only when the first case is adjudicated on the merits. (App. Br. 12.) However, dismissal of an action with prejudice “indicates an adjudication on the merits and, operating as *res judicata*, precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication.” *Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986). Appellant admits that the dismissal of Expedia from *Hawkins I* was “with prejudice.” (App. Br. pp. 5 (fn. 3), 9.) The time to dispute the “with prejudice” dismissal in *Hawkins I* was when Appellant appealed that decision. Because this Court affirmed the dismissal in *Hawkins I* without converting it to a dismissal without prejudice, that dismissal operates as an adjudication on the merits pursuant to *Nunnery*.

Here, rather than voluntarily dismissing *Hawkins I* prior to adjudication so he could bring *Hawkins II*, Appellant brought *Hawkins II* while *Hawkins I* was in active litigation. He then pursued an appeal in *Hawkins I*. The consequence of these choices is that *Hawkins I* was adjudicated, and Appellant lost the right to bring *Hawkins II*. Once again, these were choices Appellant himself made with full awareness of the likely consequences.

With respect to Expedia in particular, Appellant argues he is exempt from the normal rules of *res judicata* because the Circuit Court in *Hawkins I* suggested he could file a Magistrate Court action pursuant to the Terms of Use. (App. Br. 7-8.)² This argument cannot succeed. The referenced language in *Hawkins I* was *dicta*. None of the parties argued or litigated the *res judicata* issue in *Hawkins I*. The Circuit Court did not have the authority to assess the viability of a hypothetical future Magistrate Court action, nor did it claim to have such authority. The Circuit Court was merely commenting on the Terms of Use, which permitted actions in “small claims court.” It was pointing out that such language created an exemption from the mandatory arbitration requirement. The Circuit Court was not purporting to anticipate and decide *res judicata* issues that might arise in the future.

The bottom line remains that the facts of this case fit squarely within the *Plum Creek* standards for applying *res judicata* to bar a second claim. Appellant made a strategic choice to pursue two actions against the same defendants based on the same transactions and occurrences. He must face the consequences of that choice according to the legal rules set forth in *Plum Creek*.

III. Appellants’ Claims Must Be Dismissed Due to His Failure to Adhere to His Contract with Expedia

Pursuant to Rule 220(c), this Court can affirm the court below for any reason appearing in the record. SCACR 220(c); *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420-21, 526 S.E.2d 716, 723 (2000). Appellant repeatedly insists that in the course of dismissing *Hawkins I*, the Circuit Court expressly recognized his right to bring *Hawkins II*. (App. Br. pp. 1, 2, 5, 6, 7, 9.) As discussed above, this is no answer to the *res judicata* problem because none of the parties in *Hawkins I* raised *res judicata* and the issue was not before the Circuit Court at that time. However,

² As explained below, Appellant disregarded this language and filed a Magistrate Court action that was prohibited under the plain language of the Terms of Use.

even setting aside the *res judicata* problem, Appellant’s Complaint in *Hawkins II* did not comply with the limitations imposed by the Circuit Court in *Hawkins I*.

The specific language of the *Hawkins I* Circuit Court’s Order is as follows (with the portion omitted by Appellant highlighted): “[n]otwithstanding that this dismissal is with prejudice, the Plaintiff is free to bring these claims . . . on an individual basis in the South Carolina Magistrate’s Court **in accordance with the Terms of Use and governed by the Terms of Use.**” (Gravely Order in *Hawkins I*, August 5, 2020, p. 6 (emphasis added).) The “Terms of Use” was a contract between Appellant and Expedia that the Circuit Court determined was binding on the parties, a determination upheld by this Court on appeal. (Circuit Court Order in *Hawkins I*, August 5, 2020, p. 4 (“The Court finds and orders that the Terms of Use constitute a valid and enforceable agreement between Expedia and the Plaintiff.”); Opinion No. 2024-UP-122.)

Among other things, the Terms of Use required Appellant to contact Expedia by phone to report any complaints and observe a 60-day right to cure period as a prerequisite to filing any legal claims. (Terms of Use, p. 2.) It further stipulated that both parties waived the right to a jury trial. (Terms of Use, p. 3.) Finally, the Terms of Use limit Expedia’s liability as follows:

The Expedia Companies and the Expedia Partners have no liability and will make no refund in the event of any delay, cancellation, overbooking, strike, force majeure or other causes beyond their direct control, and they have no responsibility for any additional expenses, omissions, delays, re-routing or acts of any government or authority.

(Terms of Use, p. 11.)

The Magistrate Court Complaint in *Hawkins II* violates each of these restrictions. It does not allege that Appellant contacted Expedia by phone or gave it 60 days to cure the alleged problem. It expressly demands a jury trial. (Magistrate Court Complaint, p. 8.) Moreover, as discussed above, all the claims against Expedia are derivative – all depend on establishing some

fault on the part of American Airlines. The Terms of Use clearly and expressly exempt Expedia from liability for matters not in its “direct control,” such as delays and cancellations. (Terms of Use, p. 11.) They plainly bar the claims raised against Expedia in this case.

The linchpin of Appellant’s argument against the application of *res judicata* is that he merely followed the path authorized by the Circuit Court in *Hawkins I*. But he did not. Instead, he tried to bring claims barred by the Terms of Use, which the Circuit Court expressly held would apply to any Magistrate Court action. Accordingly, the court below should be affirmed for the alternative reason that, even if the Circuit Court in *Hawkins I* had the power to exempt Appellant from normal *res judicata* principles, and even if its order purported to do so, Appellant’s Magistrate Court Complaint in *Hawkins II* violates the terms of the Circuit Court’s order in *Hawkins I*.

IV. Appellant’s Constitutional Claims Lack Merit

Appellant argues in boilerplate fashion that resolution of his claims without consideration of those claims on the merits is a violation of various constitutional rights, including the Seventh Amendment right to a jury trial, equal protection, and procedural and substantive due process. (App. Br. 13-16.) It appears these arguments apply primarily, if not exclusively, to Appellants’ claims against American Airlines. Nonetheless, out of an abundance of caution, Expedia submits this brief response.

As explained above, Appellant is the architect of his own downfall here. He was or should have been well aware that the Terms of Use, his binding contract with Expedia, imposed limits on his entitlement to bring a legal action, to obtain a jury trial, and to raise certain types of claims. This is not a novel or unusual arrangement in the e-commerce world. He chose to accept those

terms and book with Expedia knowing that he would be subject to them. That is beyond dispute – the binding nature of the Terms of Use was established in *Hawkins I*.

Knowing that he was not entitled to sue Expedia in Circuit Court, Appellant chose to hedge his bets. He proceeded with a lawsuit barred by the plain language of the Terms of Use. When Expedia pushed back, he filed a second, largely identical action in Magistrate Court. In other words, he split his cause of action voluntarily. He did so not out of necessity (he could have filed one action against Expedia in Magistrate Court) but because he wanted to try his luck on appeal in *Hawkins I* and then start all over in Magistrate Court if he lost. This gambit violated the claim-splitting rules, as both the Magistrate and Circuit Courts recognized in *Hawkins II*.

None of this subjected Appellant to any deprivation of rights. Had Appellant brought a viable claim against Expedia in arbitration or in Magistrate Court, without first seeking to litigate in Circuit Court, he would have been able to pursue any viable claims and obtain a decision on the merits. It was his own decision to hedge his bets by filing two overlapping cases that prevented him from obtaining a merits determination. Holding a litigant to the consequences of his own strategic choices does not implicate constitutional concerns.

CONCLUSION

The Circuit Court correctly applied the law in dismissing this case. Expedia respectfully requests it be affirmed.

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