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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

Joshua Hawkins.....Appellant,

v.

American Airlines Inc., and Expedia.....Respondents.

Case No. 2025-002020

APPELLANT'S INITIAL REPLY BRIEF

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Appellant has appealed the orders dismissing his complaint containing claims as to Respondents American Airlines and Expedia. Both Respondents have filed briefs, and Appellant addresses each brief separately in this Reply Brief.

Reply to Expedia's Brief

The error in dismissal of Expedia is quite clear. Expedia's terms explicitly state that Expedia customers may litigate disputes against Expedia in Magistrate Court, and the Magistrate's dismissal of Expedia constituted reversible error.

That the Magistrate Court disregarded a Circuit Court order later affirmed by this Court specifically finding that Appellant may bring his claim in Magistrate Court is enough for this Court to send the case back to the Magistrate Court for trial. Should this Court look further, however, the Magistrate Court's error becomes even more clear. In its brief, Expedia argues that claims against it are derivative, and therefore the Magistrate was correct in disregarding the Circuit Court' order, this Court's affirmation of that order, and Expedia's own unambiguous terms allowing customers like Appellant to file suit against Expedia in Magistrate Court.

As Expedia is aware, several paragraphs of the complaint address Expedia specifically and do not even address American Airlines. Paragraph 8 describes the duty that Expedia breached, and specific facts related to the breach, and that paragraph does not mention American Airlines. Several subparts of Paragraph 22 describe duties of Expedia, including subpart b. Paragraph 24, subparts i., and k. state how Expedia breached duties owed to Appellant. Paragraph 28 describes in detail how Expedia was aware of the faulty product it held out for sale, and nevertheless, profited from sale of that product through unfair trade practices. Paragraph 29 described how Expedia's deceptive and unfair conduct giving rise to claims against it affects the public. The footnote on page 5 of the Complaint describes Expedia's conduct in selling defective products. Paragraph 37

describes how Expedia knowingly sold a problematic and faulty product. The assertion that Appellant's claims against Expedia are merely derivative simply lacks merit.

Next, Expedia borrows from American Airlines' claim-splitting and *res judicata* arguments. *Res judicata* only applies to "matters actually adjudicated in the former action." *Pye v. Aycock*, 480 S.E.2d 455 (Ct. App. 1997) citing *Surety Realty Corp. v. Asmer*, 153 S.E.2d 125 (1967). None of the claims against either of the Respondents have ever been litigated on the merits, and the Court may end its analysis there if it chooses to do so. If the Court reaches the second part of the argument related to claim splitting, Appellant submits that a cause of action must be brought before it can be split. See SCRPC 42(b): "The court...may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, **always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.**" Emphasis added.) As set forth in Appellant's Initial Brief, *Plum Creek Development v. City of Conway*, 512 S.E.2d 106 (1999) addressed a scenario where a single cause of action had been split, not a situation where causes of action were dismissed *without prejudice*, and then *different* cause of action were brought. In any event, no claims were adjudicated on their merits in the first case, so the adjudication element required for *res judicata* is absent.

Expedia completely ignores what the previous order, which was affirmed by this Court, says. The order reads:

The Plaintiff's case against Expedia is hereby dismissed. This dismissal is with prejudice. Notwithstanding that this dismissal is with prejudice, the Plaintiff is free to bring these claims either: (a) in arbitration in accordance with the Terms of Use and governed by the Terms of Use; or (b) 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.

Expedia argues that because “with prejudice” appears in the order, this Court should ignore the rest of the order, which reads: “the Plaintiff is free to bring these claims...on an individual basis in the South Carolina Magistrate Court in accordance with the Terms and Use and governed by the Terms of Use.” Expedia never challenged this portion of the order. Pursuant to the Circuit Court’s order, and pursuant to Expedia’s Terms and Service, Appellant may litigate claims against Expedia in Magistrate Court.

Expedia raises another argument for the first time on appeal that another term of its contract, which Expedia has never raised or argued, required Appellant to contact Expedia before filing suit. First, Expedia did not raise this issue prior to the Circuit Court’s ruling that Appellant may litigate claims against Expedia in Magistrate Court. Next, Expedia has not demonstrated that the term, not previously raised or referenced, existed at the time Expedia sold tickets to Appellant or that the term was provided to Appellant. In two different cases in three different courts, Expedia has never raised this issue or made any showing that this term existed at the time of sale or that it has ever been provided to Appellant. Regardless, Expedia never filed a SCRCP 59(e) to clarify the Circuit Court’s ruling and it never appealed the order.

Expedia argues that Appellant’s constitutional arguments are not sincere. The constitutional right to a jury trial is so important that it appears both in the body of the Constitution and in the Bill of Rights. See *Neder v. United States*, 527 U.S. 1, 30, 119 S.Ct. 1827, 1844 (1999). The Seventh Amendment does not merely mention the right to a jury trial; it *guarantees* that right. The Seventh Amendment *requires* that the right to a jury trial be preserved for any controversy exceeding twenty dollars. Regardless of rules of civil procedure, interpretations of those rules, or anything else, the Seventh Amendment does not reference or mention summary judgment or

arbitration. It makes a simple guarantee, and the South Carolina goes further by requiring that the right to a jury trial be preserved “inviolate.”

Appellant’s constitutional rights to a fair jury trial and Due Process will be violated if he is deprived of his right to litigate the controversies giving rise to this appeal, which exceed twenty dollars. Appellant respectfully requests that his constitutional rights be preserved.

Reply to American Airlines’ Brief

American Airlines begins its argument by essentially citing itself – American authored the proposed order that was entered by the Court. It does not appear the Court made any changes to the document before entering the order as American Airlines drafted it in a self-serving fashion. In any event, the proposed order drafted by American Airlines and adopted by the Court regarding claim-splitting is not final, and correction of the errors of law contained therein is the purpose of this appeal.

American Airlines goes on to ignore that Appellant has set forth in his Initial Brief that “No causes of action have been split.” Appellant’s Initial Brief, p. 9. Not only did Appellant set forth how claim-splitting was absent from this case, that was the subject of an entire section of Appellant’s Initial Brief.

American Airlines acknowledges in its brief that Appellant’s Montreal Convention claim has never been brought:

...I’m really not 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.”

American Airlines’ Initial Brief, p. 6, citing Transcript of Record, at 7-8 (July 21, 2020).

In addition to acknowledging that no Montreal Convention claim was brought prior to this action, American also acknowledges that it has previously taken a position contra to the position it now takes – that Appellant may not bring a Montreal Convention claim – when it previously argued Appellant *should* bring that claim in order to seek redress. American Airlines is forbidden from taking these inconsistent positions. *Quinn v. Sharon Corp.*, 540 S.E.2d 474 (Ct. App. 2000).

American Airlines belies its flawed position by citing a case from a jurisdiction which, unlike this one, actually has the rule American Airlines asks the Court to apply here. By citing *Carpenter v. Kenneth Thompson Builder, Inc.*, 186 So. 3d 820, 824 (Miss. 2014), American Airlines acknowledges that there is no South Carolina case applying the rule applied in the Mississippi case it cites. The absence of the kind of prohibition described in the Mississippi case cited by American Airlines is underscored by the fact that SCRCP 18(a) provides for permissive, not mandatory, joinder of claims: “A party asserting a cause of action as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, or equitable, as he has against the opposing party.” (Emphasis added.) Claims arising from same set of events are sometimes litigated in different cases and forums. See *Otis Owens v. Sheriff Michael Hunt, et al.*, 2017-CP-02-01413 and *Otis Owens v. Deputy Timothy Gibson*, 9:19-cv-03411-JD-MHC, cited in Appellant’s Initial Brief.

American Airlines then goes on to acknowledge that the previous case did not include a claim under the Montreal Convention: “Most of the stuff that’s in the complaint isn’t part of the Montreal Convention.” Transcript of Record, at 9 (July 21, 2020). A claim cannot have been split if it has not been brought. American Airlines argued to the Magistrate Court “only Montreal Convention claims as to [Appellant’s] travel delay and baggage delay claims and only a breach of contract claim as to his mileage claim” should be brought, acknowledging those claims had not

been brought or litigated. They still have not been litigated on their merits, and Appellant brought the cause of action American Airlines argued Appellant should bring in order to seek redress.

Because there are no cases applying the rule American Airlines argues the Court should apply, after citing the Mississippi case, American Airlines cites *R.C.R., Inc. v. Deline*, 2008 WY 96, ¶ 14, 190 P.3d 140, 152 (Wyo. 2008), a Wyoming case that prohibits splitting causes of action. As set forth above, and as acknowledged by American Airlines in open court, Appellant never brought a Montreal Convention claim before filing this lawsuit in Magistrate Court. Additionally, the Montreal Convention claim has never been split or litigated on its merits.

Appellant concedes his argument on abuse of legal process. American Airlines cites *Weber v. State*, 166 P.3d 899, 903 (Alaska 2007) in support of its argument. While this case has no precedential value in South Carolina, Appellant concedes this issue in an effort to narrow the issues before the Court, and because Appellant believes the Court should reverse the Magistrate Court and the Circuit Court as to the other issues, especially issues related to claim-splitting and *res judicata*.

American Airlines seems to argue that, in addition to arguing violation of Appellant's constitutional rights, Appellant must also argue that a constitutional right to litigate claims barred as a matter of law has been violated. Naturally, part of the purpose of this appeal is to correct the error of law arising from the dismissal of claims *not* barred as a matter of law, and the resulting violation of Appellant's constitutional right to a jury trial. American Airlines is right that jury trials governed by the Montreal Convention happen frequently. The problem is Appellant was stripped of that right in this case.

Additionally, damages should be decided by a jury, not unreasonably limited by airline-friendly legislation. The Montreal Convention violates the Seventh Amendment because it unfairly

and unreasonably limits citizen's constitutionally guaranteed right to have a jury, not the legislature or airlines, determine controversies exceeding twenty dollars. The Montreal Convention also violates other constitutionally protected rights, including rights guaranteed by the Equal Protection clause because airlines are allowed to litigate claims against citizens without being limited by the impositions and limits the Airline Deregulation Act and the Montreal Convention place on citizens. It is unclear why American Airlines describes the underlying facts of *Quevedo v. Iberia Lineas Aereas de Espana Sociedad Anonima Operadora Co.*, 811 F. App'x 559, 561 (11th Cir. 2020), a case where a plaintiff was injured by an airline meal, which is in no way similar to the facts of this case.

American Airlines also cites *Jack v. Trans World Airlines, Inc.*, 854 F. Supp. 654, 662 (N.D. Cal. 1994), which held there is no fundamental right to international travel. Appellant has not made that argument here, and that case from the Northern District of California has no bearing on this appeal. Appellant does argue that the ruling in *Scarlett v. Air Methods Corp.*, 922 F.3d 1053, 1069 (10th Cir. 2019), rejecting the argument that the Airline Deregulation Act violates procedural and Due Process, was incorrect. It appears that neither the South Carolina Supreme Court, the Fourth Circuit Court of Appeals, nor the United States Supreme Court have address whether the Airline Deregulation Act or the Montreal Convention violate the Fifth, Seventh, or Fourteenth Amendments. Appellant argues those Amendments are violated by the Montreal Convention and the Airline Deregulation Act for the reasons set forth herein and in prior submissions, and preserves these arguments for further appellate review.

Finally, American Airlines again cites itself with reference to an order it drafted that the Circuit Court adopted. Undoubtedly, American Airlines had such a citation in mind when it authored the self-serving document, which is unconstitutional in form and substance.

Conclusion

Because the Magistrate Court's orders and the Circuit Court's adoption of them conflict with South Carolina law, and because dismissal of causes of action that have never been litigated violate Appellant's constitutionally protected right to a fair jury trial, Appellant respectfully requests that this case be sent back to Magistrate Court for a trial on the merits.

Respectfully Submitted,

s/Joshua T. Hawkins

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