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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 Jessica A. Salvini, Circuit Court Judge

Joshua Hawkins.....Appellant,

v.

Delta Airlines.....Respondent.

Appellate Case No. 2025-001494

FINAL REPLY BRIEF OF APPELLANT

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INTRODUCTION

Over time, airlines have come to have the power to treat customers, their time, and their luggage how the airlines wish, with virtual impunity. The Airline Deregulation Act, the Montreal Convention, and airline-friendly litigation and case law has allowed the airline industry to have a projected revenue surpassing \$1trillion in 2026 while enjoying extremely limited liability and responsibility to customers. Airlines should not be able to cancel flights on whims, damage and lose luggage, and cause customers to sustain damages without accountability. Appellant brought an action pursuant to the limited redress remaining for airlines customers in Magistrate Court, and that remaining, limited redress should not be taken from him.

Delta's main points in all its filings are that Appellant is a lawyer and that he has sued another airline. Both are true. Lawyers use air travel just as non-lawyers do and American Airlines is no better than Delta in how it treats customers, hence the American lawsuit. That lawsuit, repeatedly referenced by Delta, has nothing to do with this one.

At the end of the day, Appellant's appeal to the Circuit Court of the Magistrate's Court's dismissal was timely by any calculation. Appellant set forth a claim with facts and allegations that allow him to recover, and the Magistrate Court should not have dismissed this case. For the reasons set forth in Appellant's Initial Brief and for the reasons set forth in this Reply Brief, Appellant respectfully requests that this case be sent back to the Magistrate Court for trial.

ARGUMENT

I. The Magistrate Court Rules require delivery of a Magistrate Court order to the parties to create a deadline to appeal that order.

Delta's initial brief begins with a factually incorrect statement in its counter-statement of the case. Delta states, incorrectly, that Appellant did not file a Notice of Appeal in the Magistrate Court. Of course, Appellant did file a Notice of Appeal with the Magistrate Court. Delta simply

wishes to calculate the timeliness of the filing based on receipt of an email instead of what is required by SCMCR 18(a) – delivery of the Magistrate Court’s decision. Delta follows that with another incorrect statement on the same page, and states “Appellant refused to take the next available flight Delta offered him.” This statement implies there was some choice to be made regarding whether to leave as scheduled to return to work and other responsibilities or to incur the costs of lodging, food, and other expenses for two unplanned days in New York City.

Delta repeatedly references Appellant being an attorney and the fact that Appellant has flown with Delta since the events giving rise to the complaint, as if either of those facts alter what SCMCR 18(a) requires, and what was never accomplished – delivery of the Magistrate Court order in this case before a deadline to file the Notice of Appeal could be created. Because the Magistrate Court has, to this day, never delivered a copy of its order, there has not been a deadline created pursuant to the plain language of SCMCR 18(a).

On page 8 of its brief, Delta again ignores the requirements of SCMCR 18(a), arguing that the time to file a Notice of Appeal began when Magistrate Court staff sent an email with a copy of Delta’s proposed order signed by Judge Hubbard. In searching emails, it does not even appear that Ms. Pegg sent the order via email to Appellant. It appears it was emailed to Delta’s attorney, who then sent a copy, but this is unclear. Appellant attempted unsuccessfully to clarify this in a December 19, 2025 email to Delta’s counsel:

Brian,

I never heard back from you on this.

Do you or anyone in your office have any proof or documentation that the Magistrate ever:

1. Provided any order as an attachment to an email?
2. Mailed a copy of the order to either of us?

I don’t want to misstate anything, but it appears that after you sent a copy of your proposed order, Ms. Pegg at the Magistrate Court emailed back and said that the Court would mail

the signed order. We do not see where the Magistrate Court ever delivered that order to either of us.

I don't want to misstate anything, so please let me know if there was ever a time the Magistrate Court emailed an order or mailed an order. If we do not hear back from you on this, we will reference this email in our filings so that the Court of Appeals can see that we did our due diligence on this crucial issue.

Sincerely,

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(R. pp. 559-560).

Appellant is currently unable to find an email where Ms. Pegg sent any version of the order to Appellant, but regardless, delivery, and not an email is required by SCMCR 18(a). The Magistrate Court Rules do not allow for email service of Magistrate Court orders, and whether Magistrate Court staff complied with Delta's request for a courtesy copy of the order is not relevant to what SCMCR 18(a) requires to create a deadline to file a Notice of Appeal – actual delivery of the order.

Ms. Pegg with the Magistrate Court did not even include Appellant in her initial response to Delta's inquiry about the order, so it is quite clear that the Magistrate Court had no intentions of its email to Delta's counsel serving as "delivery" pursuant to SCMCR 18(a). This is especially true if, as it appears, Ms. Pegg never sent a copy to Appellant. In fact, the only reason Appellant knew about the communications is because Delta added Appellant to the correspondence after Ms. Pegg responded to Delta only.

Delta does make an argument for the first time in Respondent's Initial Brief related to *In re Service by E-Mail in the Trial Courts*, Order No. 2022-05-06-04 (May 6, 2022). This argument is waived, but it also fails. Delta conflates the Supreme Court Order's rules for service with what is required for delivery by the Magistrate Court by SCMCR 18(a). More importantly, it ignores

Section (d)(5) of the Order, which adds five days to any computation of time related to the document served. Even assuming the Supreme Court Order on service should be applied to delivery, assuming the courtesy email was sufficient to satisfy SCMCR 18(a), and assuming Ms. Pegg sent a copy of the order to Appellant, Section (d)(5) of the Supreme Court Order requires five days to be added to the time calculated, which would make January 8, 2025, the deadline to serve the Magistrate Court with the Notice of Appeal. Again, the Magistrate Court never delivered its order to the either of the parties.

Delta argues that SCRCF 6(e) does not allow an additional five days if a paper is served by email. However, *In re Service by E-Mail in the Trial Courts* (d)(5) says the opposite:

In accordance with Rule 6(e), SCRCF, service by e-mail will be treated the same as service by U.S. Mail for purposes of determining the time to respond; therefore, five days shall be added to the prescribed period to respond from the date of transmission of the e-mail serving the document.

Delta then cites *Wells Fargo Bank, N.A. v. Fallon Props.*, 810 S.E.2d 856 (2018). Delta's reliance on *Wells Fargo* is misplaced for multiple reasons. Delta acknowledges in footnote 11 of its brief that *Wells Fargo* addressed application of SCACR 203(b)(1), which describes "receipt of written notice of entry of the order or judgment." The Magistrate Court requires *delivery*, not mere notice, and there is no evidence at all that the order has ever been entered. The Magistrate Court never delivered any copy to either party, and certainly not a file-stamped copy. The SCMCR 18(a) requirement of delivery and the fact that there has never been notice of a final order being entered demonstrates that Delta has misplaced its reliance on *Wells Fargo*.

It makes sense that the Magistrate Court rules require delivery. Many litigants in Magistrate Court are not lawyers, and allowing courtesy emails from Magistrate Court staff, especially to only one party, to begin deadlines to run would likely cause many deadlines to pass without litigants

knowing anything. This would be true, even adding five days to the computation of time pursuant to *In re Service by E-Mail in the Trial Courts*, Section (d)(5).

Chief Justice Beatty differentiated between when an email can trigger the time to appeal and when receipt of a physical document is required in *Wells Fargo*.

By way of background, unlike this case and *Canal, White* concerned, *inter alia*, the timeliness of a notice of appeal from a decision of the Administrative Law Court ("ALC"). Because the appeal arose out of the ALC, Rule 203(b)(6), SCACR controlled, not Rule 203(b)(1), SCACR. Rule 203(b)(6) provides: "When a statute allows a decision of the administrative law court ... to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on...the administrative law court ... and all parties of record within thirty (30) days after *receipt of the decision*." Rule 203(b)(6), SCACR (emphasis added). Therefore, when determining whether the service of a notice of appeal from the ALC is timely, the court is concerned with the date the party actually receives the decision, not the date the party receives written notice that an order or judgment has been entered.

SCMCR 18(a) contains the word "delivery," just as SCACR 203(b)(6) contains the words "receipt of the decision." As Chief Justice Beatty acknowledged, the decision in *White v. South Carolina Department of Health and Environmental Control*, 708 S.E.2d 812 (Ct. App. 2011) makes it clear that service by email does not start the clock running where a rule requires actual receipt of an order. Again, Ms. Pegg's December 4, 2024, email indicated the Court would comply with the requirement to "deliver" the order:

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

(R. p. 553)

II. Delta is mistaken in its belief that fraud is the same cause of action as breach of contract accompanied by fraudulent act.

Delta again sets forth an incorrect statement, stating that Appellant brought a claim previously dismissed with prejudice. It is not clear why Delta makes this statement since Court

filings show it is incorrect. It appears that Delta is taking the position that fraud and breach of contract with fraudulent intent are one and the same. Obviously, that is not true, and the two causes of actions have different elements. *Conner v. City of Forest Acres*, 560 S.E.2d 606 (2002) outlines the elements of breach of contract with fraudulent intent and defines fraud in the specific sense of that cause of action as something that “assumes so many hues and forms.” On the other hand, the cause of action of fraud has nine elements, must be proven by clear, cogent, and convincing evidence, and does not require the making of a contract. See *Ardis v. Cox*, 431 S.E.2d 267 (Ct. App. 1993). Appellant simply has not brought a cause of action previously dismissed with prejudice.

III. The Circuit Court improperly ignored the issue related to physical delivery.

Delta, again incorrectly, states that the physical delivery issue was not raised in the Circuit Court. Not only did the Circuit Court confirm that neither party had ever seen the Return that the Magistrate Court was required to file, but Appellant very clearly argued to the Circuit Court about the Magistrate Court’s failure to ever deliver any Notice of Judgment. Appellant told the Circuit Court “...they also never sent any notice of the Judgment. They never mailed anything out. They never physically delivered anything. So the clock still hadn’t started running for the appeal.” (R. p. 555, lines 19-22) Appellant also told the Circuit Court that even if the Magistrate Court had attempted to deliver the order by mail the same day as the email to Delta, which it did not, and even if the order arrived at Appellant’s office the following day, which it did not, the deadline would be the day the Magistrate Court received the Notice of Appeal, January 6, 2025, since January 4, 2025, was a Saturday. (R. p. 518, lines 6-17). Delta’s suggestion that the issue of the Magistrate Court’s failure to deliver its order to the attorneys was not raised and addressed prior to Appellant’s Motion to Reconsider is simply incorrect.

In citing SCRCF 5(e) Delta argues that to “deliver” a document to is to make it physically arrive at a given place, arguing “Appellant had to deliver the Notice of Appeal to the Magistrate Court.” Delta then argues out of the other side of its mouth that “deliver” means the opposite - a email to Delta from Magistrate Court staff with an unfilled copy of an order. As chief Justice Beatty pointed out in *Wells Fargo*, and as was made clear in *White*, where a rule requires something more than mere notice, a document must be actually delivered and received. The Magistrate Court never delivered its order to the parties, and delivery is what SCRCF 18(a) requires.

Delta incorrectly states that the Magistrate Court order “was entered on December 4, 2024. (Resp. In. Br. 25) As set forth above, the Magistrate Court never provided notice that the final order was stamped or filed, and it never delivered a copy to the parties to begin the time to appeal. It appears that the Magistrate Court merely sent a email to Delta’s counsel with an unfilled order attached, which is insufficient to begin the time to appeal under SCRCF 18(a) and *White*. By searching emails, it appears that Ms. Pegg sent the unfilled order to Delta, which then sent it to Appellant without the Magistrate Court ever delivering the order to either party. Of course, Appellant welcomes correction from Delta if Appellant is incorrect about emails.

IV. Subject Matter Jurisdiction

There is no prohibition on litigation of claims against airlines in Magistrate Court, and Delta does not attempt to prohibit litigation in that forum in its terms of service.¹ Additionally, venue is proper in Greenville County because 1) a significant portion of the events giving rise to the suit transpired in Greenville County and 2) portions of the GSP International Airport, where Delta conducts business and a significant portion of the events giving rise to this suit transpired, lie in

¹ The United States Department of Transportation offers help to the public about how to file claims in small claims court. See <https://www.transportation.gov/airconsumer/air-travelers-tell-it-judge>.

Greenville County. The plaintiff resides in Greenville County and Delta does business in every county in South Carolina. People in every county communicate with Delta via its mobile application, email, and telephone, and people frequently make Delta purchases in every county in South Carolina. Delta reaches out and advertises in every county. The common location to all the claims against Delta is Greenville County, and the communications, purchases, and other activity giving rise to the claims transpired in Greenville County. See *S.C. Code* 15-7-10(E)(2).

There is no question as to subject matter jurisdiction, and if Delta believed there was, Delta was required to file a motion to transfer venue, which it did not. See *State v. Gantt et al.*, 76 S.E.2d 674 (1953). Likely, Delta did not file such a motion because it is obvious to Delta that it does business in Greenville County, including business conducted at the GSP International Airport, portions of which lie in Greenville County, and likely Delta was as surprised as Appellant when the Magistrate Court told the parties the Court did not know where the action should be heard but it should be heard somewhere else.

As to the Magistrate Court's error in dismissing a case that set forth facts and allegations that allow Appellant to recover, Delta attempts to validate the error by relying on a Seventh Circuit case from Illinois. In South Carolina, however, it is still the rule that if a plaintiff may recover on the facts and allegations set forth in the complaint, with all facts and inferences weighed in his favor, a motion to dismiss must be denied. See *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).

At trial, Delta may be able to offer the weather reports it used, referenced and relied on during the hearing if it can lay the proper foundation. It was not proper, however, for the Magistrate Court to consider those reports, which are in conflict with Appellant's observations and allegation set

forth in the complaint. Delta brought these reports as what it believed to be smoking gun evidence outside of the pleadings, but was sure not to include reference to those reports in the proposed order it sent to the Magistrate Court. It cannot genuinely be disputed that Delta brought the reports to the hearing and referenced them at the hearing, which is improper for a motion to dismiss. Again, as set forth in the complaint, airplanes continued to come and go on the day in question, conditions were clear, and ample evidence suggest that Delta did not actually cancel flights due to weather, but merely used pointed to weather as an attempt to avoid the financial consequences of cancelling flights.

CONCLUSION

Delta's conduct is unconscionable. Appellant should have access to the limited relief available to him because he stated a cause of action for which he may recover. The Seventh Amendment of the United States and Article I of the South Carolina Constitution require that Appellant's right to a jury trial be preserved, notwithstanding the limitations on recovery in place.

When his case was dismissed in error, Appellant filed a notice of appeal, even though the Magistrate Court never delivered a copy of its order to the parties. Appellant respectfully requests that this case be remanded to the Magistrate Court for trial.

Respectfully submitted,

s/ Joshua T. Hawkins

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CERTIFICATE OF COUNSEL

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

The Table of Contents and Table of Authorities were inadvertently omitted from the Initial Reply Brief and are properly inserted in this Final Reply Brief.

Greenville, South Carolina
July 8, 2026

Respectfully submitted,

s/ Joshua T. Hawkins

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