

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF ORANGEBURG )

Case No.: 2015-CP-38-00354 )

Cortland James Eggleston, )

Plaintiff, )

vs. )

United Parcel Service, Inc. and Rick Fogle, )

Defendants. )

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

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MAY 06 2016

SC Court of Appeals

FILED FOR RECORDS WINNIFER B. CLARK 2016 MAR - 5 P 3:13 CLERK OF COURT ORANGEBURG, SC

This matter came before the Court on Monday, September 28, 2015. Upon Motion of Defendants United Parcel Service, Inc. ("UPS") and Rick Fogle (together, the Defendants) for an Order pursuant to Rules 12(b)(1) & 12(b)(6) of the South Carolina Rules of Civil Procedure dismissing Plaintiff's Complaint in its entirety on the grounds that Plaintiff's state law tort action is preempted by federal statute 49 U.S.C. §14501(c) (the Federal Aviation Administration Authorization Act of 1994). Defendants and Plaintiff filed memorandums of law in support and opposition to Defendants' Motion, and present for the hearing was counsel for the Defendants, G. Troy Thames and Ryan R. Corkery, and counsel for Plaintiff, Shane M. Burroughs and Justin T. Bamberg. For reasons which will be fully explained below, the Court grants Defendants' Motion and dismisses Plaintiff's Complaint with prejudice.

FINDINGS OF FACT

The above-captioned personal injury tort action was initiated by Plaintiff Eggleston against United Parcel Service, Inc. and its driver employee, Rick Fogle. Plaintiff alleges that Defendants negligently delivered a package, shipped from the Veterans Administration Hospital in Charleston, South Carolina and containing Plaintiff's thyroid medication, late to him, which resulted in personal injuries to him. (Plaintiff's Complaint at ¶ 9). Specifically, Plaintiff alleges that Defendants' failure to timely deliver the package containing medication resulted in Plaintiff's thyroid condition worsening "to the point where he entered into a thyroid storm, causing seizures, congestive heart failure, extremely elevated blood pressure, hospitalization and surgical

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CLERK OF COURT ORANGEBURG COUNTY, SC

intervention.” (*Id.* at ¶ 15). Plaintiff initiated the action on April 1, 2015, and Defendants filed a Motion to Dismiss on May 4, 2015.

### CONCLUSIONS OF LAW

The Federal Aviation Administration Authorization Act of 1994 (“FAAAA”), codified at 49 U.S.C. §14501(c), provides:

[A] State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier ... or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(1). The United States Supreme Court has further clarified that the FAAAA preempts state laws “related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.” *Dan’s City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769, 1772 (2013) (quoting 49 U.S.C. § 14501(c)(1)).

As pled in the Complaint, the subject package was shipped by the VA Hospital in Charleston, South Carolina, to Plaintiff’s home in Orangeburg, South Carolina. As such, the package constitutes an intrastate shipment. All of the state tort law claims set forth in Plaintiff’s Complaint are based upon an allegation that UPS, a motor carrier, negligently delivered the package untimely. These claims are based solely upon the specific service that UPS provides – delivery of packages. Pursuant to the plain language set forth in the FAAAA, all of the state law claims set forth in Plaintiff’s Complaint, which relate directly to the “service” provided by UPS, a motor carrier, are preempted. *See* 49 U.S.C. § 14501(c)(1).

Because the FAAAA expressly preempts the state law tort claims set forth in Plaintiff’s Complaint, this Court lacks subject matter jurisdiction over Plaintiff’s claims insofar as it lacks the statutory power to adjudicate those claims which have been preempted by federal law. As such, Plaintiff’s Complaint is dismissed pursuant to SCRPC 12(b)(1). Moreover, and as an alternative grounds for dismissal, because the FAAAA expressly preempts the state law tort claims set forth in Plaintiff’s Complaint, Plaintiff has failed to state any facts sufficient to constitute a valid cause of action under South Carolina state law. As such, Plaintiff’s Complaint is dismissed pursuant to SCRPC 12(b)(1).

IT IS THEREFORE ORDERED that the above-entitled action against United Parcel Service, Inc. and Rick Fogle be hereby dismissed with prejudice and forever ended.

IT IS SO ORDERED.

St. George, South Carolina

Date Feb. 2, 2016

Maite Murphy  
Maite Murphy  
Presiding Judge

First Judicial Circuit