

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No. 2019-000189

RECEIVED
MAY 24 2019
SC Court of Appeals

Melvin Bannister and Virginia Ricker, ... Appellants,

v.

Delta Air Lines, Inc. Respondent.

**RESPONDENT’S MOTION TO STRIKE PORTIONS OF
APPELLANTS’ INITIAL BRIEF AND DESIGNATION OF MATTER,
AND REQUEST TO STAY TIME LIMITS FOR FILING
RESPONDENT’S INITIAL BRIEF**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF
SOUTH CAROLINA:

Pursuant to Rule 240, SCACR, Respondent Delta Air Lines, Inc.
 (“Respondent”) respectfully moves this Court of an Order striking certain
 portions of Appellants Melvin Bannister and Virginia Ricker (“Appellants”)
 initial brief filed with this Court on April 24, 2019. Specifically, this Court

should strike those portions of Appellants' initial brief on pages 2 and 9-14 that do not relate to the January 9, 2019, order entered by the Honorable Clifton Newman, which is only order properly before this Court on appeal. This Court should also strike the portion of Appellant's designation of matter listing the May 7, 2018, transcript of a hearing held before the Honorable Jocelyn C. Newman. Respondent further requests that the time limits for filing its' initial brief be stayed until after resolution of this motion and Appellants' providing Respondent with a copy of the transcript of the hearing before Judge Clifton Newman.

FACTUAL/PROCEDURAL BACKGROUND

This case arises from the purported loss of Appellant Bannister's luggage when he took a Delta airlines flight from Columbia Metropolitan Airport to Las Vegas, Nevada on July 7, 2014. Appellants filed their Complaint commencing the instant action in the Lexington County Court of Common Pleas alleging causes of action for breach of contract and negligence. Specifically, Appellants allege Respondent breached its contract with Appellants in losing and failing to deliver the subject luggage.

Respondent subsequently filed its Motion for Partial Summary Judgment, arguing that (1) Appellants failed to establish the existence of a duty

of care outside of the contract and (2) Appellants' damages are limited to the terms of the contract. (**Exhibit A**, Mot. for Partial Summ. Judgment).

A hearing on Respondent's partial motion for summary judgment was held before the Honorable Jocelyn Newman. Judge Jocelyn Newman entered a Form 4 Order granting summary judgment in part and denying summary judgment part. (**Exhibit B**, June 15, 2018, Form 4 Order). Shortly thereafter, the Court entered a substantive Order Granting in Part and Denying in Part Defendant's Motion for Summary Judgment, which expanded on its ruling in the previous order. (**Exhibit C**, June 20, 2018, Order). Specifically, the Court held that Appellants damages are limited by the Contract for Carriage, which provides, in relevant part, "[u]nder no circumstances shall the liability for loss of, damage to, or delay in the delivery of baggage exceed \$3,400 per fare-paying customers."

In light of the court's ruling on the limitation of damages, Respondent filed a motion to compel or enforce settlement in the amount of \$3,400.00. A hearing on the motion to compel was scheduled to be heard before the Honorable Clifton Newman on September 10, 2018. On September 7, 2018, Appellants filed a motion to amend their Complaint to add a cause of action for conversion. A hearing on both motions went forward before Judge Clifton

Newman on September 10, 2018, following which the Court allowed both parties ten days to submit a memorandum for the Court's additional consideration. Both Appellants and Respondent submitted memoranda in support of their positions.

Thereafter, Judge Clifton Newman entered simultaneous Form 4 and detailed orders, in which he denied the motion to compel settlement, denied the motion to amend the Complaint, and entered final judgment in favor of Appellants for \$3,400.00.

Appellants filed their notice of appeal on and February 6, 2019, respectively. The content of the notice of appeal provided:

Melvin Bannister and Virginia Ricker appeal the Order of the Honorable Clifton Newman, dated January 09, 2019. Appellants received electronic notice of entry of this judgment on January 09, 2019.

(Exhibit D, Notice of Appeal and Trial Court Orders filed with COA). Despite failing to reference or attach the June 15 or 20, 2018 Orders of Judge Jocelyn Newman in the notice of appeal, Appellants purportedly ordered the transcripts of both the May 7, 2018, hearing before Judge Jocelyn Newman and the September 10, 2018, hearing before Judge Clifton Newman. Additionally, both transcripts are listed in Appellants' Designation of Matter to be included

in the Record on Appeal. According to Appellants' initial brief, filed with this Court on April 24, 2019, the transcript of the hearing before Judge Clifton Newman was electronically received by him on March 27, 2019. There is no reference to if or when the transcript of the hearing before Judge Jocelyn Newman was received by Appellants.

This Court sent a letter to Appellants' counsel¹ on April 24, 2019, inquiring as to the status of the transcript in this case, in light of Appellants' failure to promptly notify the court or Respondent of the transcript's receipt. To date, Appellants have failed to provide Respondent with a copy of the relevant transcript of the September 10, 2018, hearing before Judge Clifton Newman. It is unclear and unknown at this time whether the May 7, 2018, hearing before Judge Jocelyn Newman was ever received by Appellants; if so, it has not been provided to Respondents. Appellants' brief does not include citations to any specific pages of either transcript in its statement of the case or argument.

¹ Appellant Melvin Bannister is a licensed attorney who is representing both himself and his co-Appellant, Virginia Ricker, in these proceedings.

LAW/ANALYSIS

- I. This Court Should Strike from the Appellant's the Initial Brief (i) the Appellants' Second Issue on Appeal (page 2); (ii) the Entirety of Appellants' Argument Contained Under the Heading of the Second Issue in Appellant's Initial Brief (pages 9-13); and (iii) the Second Paragraph of Appellants' Conclusion (pages 13-14).**

Rule 203 of the South Carolina Appellate Court Rules prescribes the requirements and method for serving and filing a notice of appeal. Rule 203(a), SCACR, provides that “[a] party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules.” Rule 203(d)(1)(B)(ii), SCACR, further provides that, amongst other things, the notice of appeal filed with the appellate court “shall be accompanied by the following:... A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing.” Appellants served and filed the requisite notice of appeal in this case on February 6, 2019. Notably, however, the notice references and attaches only the Form 4 order and detailed order entered by Judge Clifton Newman on January 9, 2019. Appellants’ notice made no reference to and failed to attach the June 15 and 20, 2018 Orders entered by Judge Jocelyn Newman. (**Exhibit D**, Notice of Appeal and Trial Court Orders filed with COA). As a result, the scope of Appellants’ appeal is limited to Judge Clifton Newman’s January 9, 2019 Order.

Here, Appellants' second issue in their brief appears, at first blush, to relate to Judge Clifton Newman's Order, as he broadly phrases it: "Did the Court err in granting a judgment, without having a trial on the contested matter?" (Appellants' Initial Br., p. 2). However, the entirety of the argument on the issue contained in the brief discusses the hearing before and order entered by Judge Jocelyn Newman, complaining about the evidence she considered at the hearing and the ruling on the limitation of damages in Judge Jocelyn Newman's June 20, 2018, Order. (Appellants' Initial Br., pp. 9-13, 14). There is no mention whatsoever of Judge Clifton Newman's Order in Appellant's argument on his second issue. Consequently, Appellants' second issue and the arguments related thereto should be stricken from Appellant's brief.

II. The Court Should Strike Appellants' Designation of the May 7, 2018, Hearing Transcript from the Designation of Matter to Included in the Record on Appeal.

Rule 208(b)(4), SCACR, prohibits a party from including any matter in his designation of matter to be included in the Record on Appeal "which is not relevant to the appeal." As discussed *supra*, argument related to the orders entered by Judge Jocelyn Newman on June 15 and 20, 2018, are not properly before this Court because they were not referenced or attached to Appellants'

Notice of Appeal. Consequently, the hearing held before Judge Jocelyn Newman on May 7, 2018, is not relevant to this appeal and should be stricken from Appellant's designation of matter to be included in the Record on Appeal.

III. This Court Should Stay the Time Limits for Filing Respondent's Initial Brief Pending the Court's Ruling on the Instant Motion and Appellant's Transmission of the Relevant Hearing Transcript.

Respondent cannot properly write its initial brief until both this court determines whether it will allow Appellant's second issue to go forward to final briefing, and the transcript of the hearing before Judge Clifton Newman is provided to Respondent by Appellants. Otherwise, Respondent does not know the scope of the issues to which it must respond and cannot support its argument with the requisite references to the record. See Rule 208(b)(4), SCACR (requiring briefs to include references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal to support the salient facts alleged and where relevant objections and rulings occurred in the transcript). Under these circumstances, Respondent respectfully requests that this Court stay the time limits for the filing of its initial brief until the latter of thirty (30) days after the Court's ruling on this motion or thirty (30) days after the Appellants' transmittal to Respondent of the relevant transcript.

CONCLUSION

Based on the foregoing, Respondent respectfully requests the Court strike the following portions of Appellants' initial brief and designation of matter: (i) Appellants' Second Issue on Appeal listed on page 2 of Appellant's brief; (ii) the entirety of Appellants' argument contained under the heading of the second issue on pages 9-13 of Appellant's brief; (iii) the second paragraph of Appellants' conclusion on pages 13-14 of Appellant's brief; and (iv) the "Transcript of Hearing, May 7, 2018" listed as item 6 in Appellant's designation. Respondent further requests that this Court stay the time limits for the filing of its initial brief of Respondent until the latter of thirty (30) days after the Court's ruling on this motion or thirty (30) days after Appellants' transmittal to Respondent of the relevant transcript.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

COLLINS & LACY, P.C.

A handwritten signature in black ink, reading "Kelsey J. Brudvig", written over a horizontal line.

KELSEY J. BRUDVIG

kbrudvig@collinsandlacy.com

COLLINS & LACY, P.C.

Post Office Box 12487

Columbia, South Carolina 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

ATTORNEY FOR RESPONDENTS

**RESPONDENT'S MOTION TO
STRIKE PORTIONS OF
APPELLANTS' INITIAL BRIEF
AND DESIGNATION OF
MATTER, AND REQUEST TO
STAY TIME LIMITS FOR FILING
RESPONDENT'S INITIAL BRIEF**

Columbia, South Carolina
May 24, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Melvin Bannister and Virginia Ricker,	)	Civil Action No.: 2017-CP-32-02349
	)	
Plaintiffs,	)	
	)	DEFENDANT'S NOTICE OF MOTION
vs.	)	AND MOTION FOR PARTIAL
	)	SUMMARY JUDGMENT
Delta Air Lines, Inc.,	)	
	)	
Defendant.	)	

TO: MELVIN BANNISTER, ESQUIRE, COUNSEL FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that Delta Air Lines, Inc. ("Delta"), by and through undersigned counsel, will move before the presiding Judge of the Eleventh Judicial Circuit in the Lexington County Court of Common Pleas, on the tenth (10th) day after service hereof or at such other time and place as shall be convenient to the Court and counsel, for an Order granting summary judgment in favor of Delta in the above-captioned matter. This Motion is based on the grounds that there exists no genuine issue as to any material fact and that Delta is entitled to judgment as a matter of law in its favor. Summary Judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Hunt v. Happy Valley Ltd. Partnership*, 315 S.C. 428, 434 S.E.2d 285 (Ct. App. 1993).

Plaintiffs Melvin Bannister and Virginia Ricker ("Plaintiffs") aver that on or about July 7, 2014, while traveling from Cayce, South Carolina to Las Vegas, Nevada, a piece of luggage did not arrive at their destination. Plaintiffs contend the luggage was never delivered.

Plaintiffs subsequently filed suit against Delta, asserting claims for breach of contract and negligence. Specifically, Plaintiffs aver Delta breached its contract with Plaintiffs in failing to

deliver and subsequently losing the luggage, resulting in Eight Thousand Three Hundred Seventy-Seven and 02/100 (\$8,377.02) Dollars in damages stemming from the cost of the replacement items of clothing within the lost luggage. Plaintiffs further aver that Delta was negligent, in certain particulars, in losing or misappropriating the Plaintiffs' luggage, resulting in \$8,377.02 in actual damages.

Delta is entitled to summary judgment on the following grounds:

1. Plaintiffs have failed to show that a "special relationship" exists that creates a duty of care outside the terms of the contract; therefore, Plaintiffs cannot establish a claim for negligence;
2. Plaintiffs' damages are limited pursuant to the explicit, conspicuous terms of the Contract for Carriage.

This Motion is based upon the pleadings in this action, the Affidavits attached hereto or which will be served prior to the hearing, upon the memoranda in support of this motion and attachments thereto, upon Rule 56 of the South Carolina Rules of Civil Procedure, and upon such additional law and argument as shall be appropriate.

Delta respectfully requests argument on its motion. Delta reserves the right to amend this motion prior to argument and disposition of the motion. Further, Delta reserves the right to supplement its argument by a written memorandum of law, affidavits, and other materials permitted under Rule 56, SCRPC.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.

By: S/Kelsey J. Brudvig
KELSEY J. BRUDVIG
Bar Number: 101680
kbrudvig@collinsandlacy.com
MEGHAN HAZELWOOD HALL
Bar Number: 77566
mhall@collinsandlacy.com
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, SC 29211
803.256.2660 (voice)
803.771.4484 (fax)

ATTORNEYS FOR DEFENDANT DELTA
AIR LINES, INC.

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Columbia, South Carolina
April 6, 2018

EXHIBIT B

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP3202349

Melvin Bannister et al
PLAINTIFF(S)

Delta Air Lines Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion for Summary Judgment filed on April 6, 2018 is Granted as to Negligence. Defendant's Motion for Summary Judgment filed on April 6, 2018 is Denied as to the remaining causes of action.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/15/2018 .

Virginia Ricker

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Lexington Common Pleas

Case Caption: Melvin Bannister , plaintiff, et al VS Delta Air Lines Inc

Case Number: 2017CP3202349

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Melvin Bannister and Virginia Ricker,	)	Civil Action No.: 2017-CP-32-02349
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER GRANTING IN PART AND DENYING IN
	)	PART DEFENDANT'S MOTION FOR SUMMARY
Delta Air Lines, Inc.,	)	JUDGMENT
	)	
Defendant.	)	
	)	
	)	
	)	

This matter comes before the court pursuant to Defendant's Motion for Summary Judgment, which was filed on April 6, 2018. A hearing was conducted at the Lexington County Judicial Center on May 7, 2018, at which time Plaintiffs were represented by Melvin Bannister, Esquire. Defendant Delta Air Lines Inc. was represented by Kelsey J. Brudvig, Esquire.

For the reasons set forth below, Defendant's Motion for Summary Judgment is GRANTED in part and DENIED in part.

RELEVANT FACTUAL and PROCEDURAL BACKGROUND

Plaintiffs alleges that on or about July 7, 2014, they departed from the Columbia Metropolitan Airport *en route* to Las Vegas, Nevada. Plaintiffs contend they checked luggage with Defendant to be transported on the flight to Las Vegas, Nevada. According to Plaintiffs, a piece of luggage did not arrive at their destination.

Plaintiffs contends they contacted Defendant to inquire about the luggage. According to Plaintiffs, Defendant informed Plaintiffs that the bag would be delivered to Plaintiffs at their hotel. Plaintiffs further contends that the subject bag did not arrive and Plaintiffs followed up with

Defendant. Plaintiffs were then informed that the luggage would arrive the following day; the luggage did not arrive.

Plaintiffs alleges an agent of Defendant was advised that Plaintiff Bannister needed clothing to participate in a convention. According to Plaintiffs, the agent “told Plaintiff Bannister to purchase items to replace the lost items,” and “that Plaintiff Bannister would not be limited to the disclaimer on the baggage ticket as to the amount of coverage.”

Plaintiffs asserts that as a result of his communications with Defendant and its’ agents, he purchased replacement items of clothing in the amount of \$8,377.02.

On July 3, 2017, Plaintiffs initiated a civil action against Defendant in the Lexington County Court of Common Pleas, asserting claims for breach of contract and negligence, both arising from the July 7, 2014, flight. Specifically, Plaintiffs contends Defendant breached the terms of the contract in failing to transport Plaintiffs luggage from the departure city to the destination city. Plaintiffs further contends that Delta was negligent in failing to transport Plaintiffs luggage to Las Vegas, Nevada.

CONCLUSIONS of LAW

1. Plaintiffs Failed to Establish the Existence of a Duty of Care Outside of the Contract.

Plaintiffs assert causes of action arising in both contract and tort. However, because Plaintiffs failed to establish the existence of a “special relationship” creating a duty of care outside the terms of the contract, Plaintiffs’ cause of action for negligence fails. *See McCullough v. Goodrich & Pennington Mortg. Fund, Inc.*, No. 26303, 2007 WL 1063314 (S.C., April 9, 2007) (“In order for liability to attach based on a theory of negligence, the parties must have a relationship recognized by law as providing a duty to prevent an injury.”).

In most instances, a negligence action will not lie when the parties are in privity of contract. The question of whether a plaintiff may maintain an action in tort for purely economic loss turns on the source of the duty plaintiff claims the defendant owed. “A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie.” *Koontz v. Thomas*, 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999). When, however, there is a special relationship between the alleged tortfeasor and the injured party not arising in contract, the breach of that duty of care will support a tort action. *South Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324 (1986); *see also Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, 159 Ill.2d 137, 201 Ill.Dec. 71, 636 N.E.2d 503 (1994) (“special relationship” creates a duty of care outside terms of contract).

In the present case, Plaintiffs failed to produce any evidence that there exists a special relationship between themselves and Defendant that arises separate and apart from the contract. Accordingly, the terms of this contract controls the relationship between Plaintiffs and Defendant, including the Defendant’s obligations as well as the available damages Plaintiffs are entitled to recover if Defendant fails to meet said obligations. Plaintiffs’ negligence claim is inherently flawed because this relationship is governed by the terms of the Contract. Therefore, this Court concludes that summary judgment is warranted as a matter of law in favor of Defendant as to Plaintiffs’ negligence claim.

2. Damages are Limited to the Terms of the Contract

A cause of action for breach of contract and any alleged damages flowing from the same are controlled by the clear and unambiguous language of the Contract for Carriage.

When the terms of a contract are clear and unambiguous, the terms are not up for interpretation. See *Holden v. Alice Mfg., Inc.*, 317 S.C. 215, 221, 452 S.E.2d 628, 631 (Ct. App. 1994) (when the contract language of a contract “is perfectly plain and capable of legal construction, it determines the rights and obligations of the parties.”); see also *U.S. Leasing Corp. v. Janicare*, 294 S.C. 312, 318, 364 S.E.2d 202, 205 (Ct. App. 1988) (stating that if “the writing on its face appears to express the whole agreement, parol evidence cannot be admitted to add another term thereto.”). Under the parol evidence rule, extrinsic evidence offered prior or contemporaneously to a written agreement being entered into by the parties is barred when a party seeks to introduce the evidence to “contradict, vary, or explain” the written agreement. See *Gilliland v. Elmwood Prop.*, 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990) (“The parol evidence rule prevents the introduction of [contradictory] extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument.”)(emphasis added).

In the present matter, the Contract language is unambiguous and can be interpreted in “its natural and ordinary sense.” *Twenty Ninth Ave. Corp. v. Great Atlantic & Pacific Tea Co., Inc.*, 311 S.C. 275, 277, 428 S.E.2d 734, 735 (Ct. App. 1993); see also *Bruce v. Blalock*, 241 S.C. 155, 161, 127 S.E.2d 437, 442 (1962) (“All contracts should receive sensible and reasonable construction, and not such construction as will lead to absurd consequences or unjust results.”).

The Contract provides, in relevant part, “[u]nder no circumstances shall the liability for loss of, damage to, or delay in the delivery of baggage exceed \$3,400 per fare-paying customer.” According to the Plaintiff, the terms of the contract were modified by an agent of Defendant that they spoke with. The Contract clearly provides that “no Delta employee or ticketing agent has the

authority to modify any provision of the Conditions of Carriage unless authorized by a Delta corporate officer.” The Plaintiffs have failed to adduce any evidence that any alleged terms of the Contract were modified or amended by Defendant’s corporate officer. Therefore, this Court concludes Plaintiffs’ damages are limited as a matter of law to the amount agreed upon in the Contract for Carriage, or \$3,400.00.¹

IT IS THEREFORE ORDERED that Defendant’s Motion for Summary Judgment is GRANTED as to Plaintiff’s cause of action for negligence.

IT IS FURTHER ORDERED that Defendant’s Motion for Summary Judgment is DENIED as to the cause of action for breach of contract.

AND IT IS SO ORDERED.

Jocelyn Newman
Presiding Judge

June 20, 2018
Lexington, South Carolina.

¹ The Court notes that Plaintiffs filed an Affidavit and exhibits attached to the same in opposition of Defendant’s motion for summary judgment. The Affidavit was filed on the morning of the hearing, May 7, 2018. Pursuant to Rule 6, SCRCP, Plaintiffs Affidavit was not timely submitted and is, therefore, not considered by this Court.

However, because the terms of the Contract are clear and unambiguous regarding damages, even to the extent Plaintiffs’ affidavit and supporting exhibits were timely submitted and considered by this Court, such evidence is inadmissible pursuant to the Parol Evidence Rule.



Lexington Common Pleas

Case Caption: Melvin Bannister , plaintiff, et al VS Delta Air Lines Inc

Case Number: 2017CP3202349

Type: Order/Other

So Ordered

Jocelyn Newman

Electronically signed on 2018-06-20 13:55:47 page 6 of 6

EXHIBIT D

MELVIN D. BANNISTER

Trial Lawyer
5115 Forest Drive, Suite G-1
Columbia, South Carolina 29206
Telephone: (803) 782-8688
Fax: (803) 782-8677
Email: sctriallawyer@bellsouth.net

Mailing Address:
Post Office Box 6833
Columbia, SC 29260

February 5, 2019

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

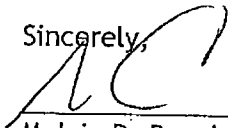
Re: Melvin Bannister and Virginia Ricker vs. Delta Air Lines, Inc.
2017-CP-32-02349

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

1. Proof of service of the notice of appeal on the respondent(s).
2. A copy of the Order on Motion to reconsider which is to be challenged on appeal.
3. A filing fee of \$250.00.

Sincerely,



Melvin D. Bannister
Post Office Box 6833
Columbia, South Carolina 29260
(803) 782-8688
Attorney for the Appellants

cc: Kelsey J. Brudvig, Esq. PO Box 12487, Columbia, SC 29211
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Civil Court

Clifton B. Newman, Circuit Court Judge

Case No. 2017-CP-32-02349

Melvin Bannister and Virginia Ricker

Appellants

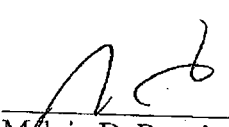
Delta Air Lines, Inc.

Respondent

NOTICE OF APPEAL

Melvin Bannister and Virginia Ricker appeal the Order of the Honorable Clifton Newman, dated January 09, 2019. Appellants received electronic notice of entry of this judgment on January 09, 2019.

February 5, 2019



Melvin D. Bannister
Post Office Box 6833
Columbia, South Carolina 29260
(803) 782-8688
Attorney for the Appellants

Other Counsel of Record:

cc: Kelsey J. Brudvig, Esq. PO Box 12487, Columbia, SC 29211
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Civil Court

Clifton B. Newman, Circuit Court Judge

Case No. 2017-CP-32-02349

Melvin Bannister and Virginia Ricker

Appellants

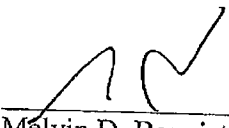
Delta Air Lines, Inc.

Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal, by depositing a copy in the United States Mail, postage prepaid, on February 5, 2019, addressed to the attorney of record, Kelsey J. Brudvig, Esq., located at PO Box 12487, Columbia, SC 29211, and the Clerk of Court, Lisa M. Comer, 205 East Main Street, Lexington, South Carolina 29072.

February 5, 2019


Melvin D. Bannister
Post Office Box 6833
Columbia, South Carolina 29260
(803) 782-8688
Attorney for the Appellants

MELVIN D. BANNISTER

Trial Lawyer
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Mailing Address:
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Columbia, SC 29260

February 5, 2019

Patricia A. Nye
1680 Shady Lane
Columbia, SC 29206

RE: Melvin Bannister and Virginia Ricker vs. Delta Air Lines, Inc.
2017-CP-32-02349

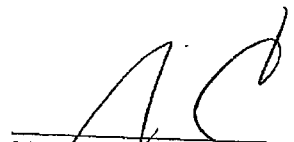
Dear Ms. Nye:

On September 10, 2018, a Motion hearing in the above referenced case was heard by the Honorable Clifton B. Newman, Circuit Court Judge, in Lexington County. My records indicate that you were the court reporter for the case.

I request that you provide me with a transcript of the proceedings.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,



Melvin D. Bannister
Post Office Box 6833
Columbia, South Carolina 29260
(803) 782-8688
Attorney for the Appellants

✓cc: Kelsey J. Brudvig, Esq. PO Box 12487, Columbia, SC 29211
Attorney for the Respondent

MELVIN D. BANNISTER

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February 5, 2019

Pamela Green
240 West Lakeview Drive
Duncan, SC 29334

RE: Melvin Bannister and Virginia Ricker vs. Delta Air Lines, Inc.
2017-CP-32-02349

Dear Ms. Green:

On May 7, 2018, a Motion hearing in the above referenced case was heard by the Honorable Joceyln Newman, Circuit Court Judge, in Lexington County. My records indicate that you were the court reporter for the case.

I request that you provide me with a transcript of the proceedings.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,



Melvin D. Bannister
Post Office Box 6833
Columbia, South Carolina 29260
(803) 782-8688
Attorney for the Appellants

cc: Kelsey J. Brudvig, Esq. PO Box 12487, Columbia, SC 29211
Attorney for the Respondent

MELVIN D. BANNISTER

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February 5, 2019

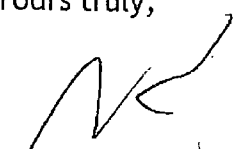
The Honorable Lisa Comer
Clerk of Court for Lexington County
205 East Main Street, Suite 146
Lexington, South Carolina 29072

Re: Melvin Bannister and Virginia Ricker vs. Delta Air Lines, Inc.
2017-CP-32-02349

Dear Ms. Comer:

Enclosed please find two (2) copies of the Notice of Appeal in the above captioned matter. Once clocked in, please return to me in the self-addressed stamped envelope.

Yours truly,



Melvin D. Bannister
MDB/sr

Enclosures

CC: Kelsey J. Brudvig, Esq. PO Box 12487, Columbia, SC 29211

Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-32-02349

Melvin Bannister and Virginia Ricker

Delta Air Lines, Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kelsey J. Brudvig, Esquire

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Melvin Bannister and Virginia Ricker	Delta Air Lines, Inc.	\$3,400.00
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Melvin D. Bannister, Esquire
Post Office Box 6833
Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kelsey J. Brudvig, Esquire
Collins & Lacy, PC
Post Office Box 12487, Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
Melvin Bannister and Virginia Ricker,
Plaintiffs,

vs.

Delta Air Lines, Inc.,
Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Civil Action No.: 2017-CP-32-02349

ORDER

This matter comes before the Court pursuant to Defendant's Motion to Compel Settlement, which was filed on August 21, 2018, and what the Court has construed as Plaintiff's Motion to Amend the Complaint, filed on September 7, 2018. A hearing on these motions was held on September 10, 2018. Present at the hearing were Melvin Bannister, Esquire, on behalf of Plaintiffs, and Kelsey J. Brudvig, Esquire, on behalf of Defendant Delta Air Lines, Inc. After consideration of the motions, the written memorandums of law, other materials submitted to the Court, and oral argument, the Court makes the following findings of fact and conclusions of law.

RELEVANT FACTUAL and PROCEDURAL BACKGROUND

Plaintiffs allege that on or about July 7, 2014, they departed from the Columbia Metropolitan Airport *en route* to Las Vegas, Nevada. Plaintiffs contend they checked luggage with Defendant to be transported on the flight. According to Plaintiffs, Melvin Bannister's luggage did not arrive at their destination. The bag was tagged with a temporary Delta luggage tag with the name Virginia Ricker.

Plaintiffs contend they contacted Defendant to inquire about the luggage. According to Plaintiffs, Defendant informed Plaintiffs that the bag would be delivered to the Plaintiffs at their hotel. Plaintiffs also contend that the subject bag did not arrive and the Plaintiffs followed up

with Defendant. Plaintiffs were then informed that the luggage would arrive the following day; the luggage did not arrive.

Plaintiffs contend they advised an agent of Defendant that Plaintiff Bannister needed clothing to participate in a convention. According to Plaintiffs, the agent "told Plaintiff Bannister to purchase items to replace the lost items," and "that Plaintiff Bannister would not be limited to the disclaimer on the baggage ticket as to the amount of coverage."

Plaintiffs allege that as a result of his communications with Defendant and its agents, he purchased replacement items of clothing in the amount of \$8,377.02.

On July 3, 2017, Plaintiffs initiated a civil action against Defendant in the Lexington County Court of Common Pleas, asserting claims for breach of contract and negligence, both arising from the July 7, 2014, flight. Specifically, Plaintiffs contend Defendant breached the terms of the contract in failing to transport Plaintiff Bannister's luggage from the departure city to the destination city. Plaintiffs further contend that Defendant was negligent in failing to transport Plaintiff Bannister's luggage to Las Vegas, Nevada.

On April 6, 2018, Defendant moved for summary judgment, arguing Plaintiffs' claims sound in contract and Defendant owed Plaintiffs no duty of care outside of the contract. The contract is formed at the purchasing of a ticket, when the passenger agrees to the terms of the contract of carriage. Within this contract, a cap on damages is provided in the amount of \$3,400.00 for lost, stolen, or damaged luggage. Defendant therefore asserted Plaintiffs' claim for negligence failed as a matter of law. Additionally, Defendant argued that the conspicuous terms of the contract provided for a cap on damages of \$3,400.00. By order filed June 20, 2018, the Court granted Defendant's motion with regard to the negligence cause of action. The Court

further found that Plaintiffs' recoverable damages were limited by the language of the contract to \$3,400.00.

Defendant subsequently filed a motion to compel or enforce settlement in the amount of \$3,400.00 pursuant to the ruling on Defendant's motion for summary judgment. Subsequent to the filing of Defendant's motion, Plaintiffs filed a motion to amend the complaint, purporting to amend the complaint to add a cause of action for conversion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendant's supporting memorandum of law represents that, in accordance with the Order on Defendant's summary judgment limiting damages to \$3,400.00, counsel for Defendant has extended verbal settlement offers to Plaintiffs in that amount. It appears that Plaintiffs have rejected the verbal offers of \$3,400.00.

During the September 10, 2018, hearing, counsel for Defendant argued that damages were limited to \$3,400.00 pursuant to the prior Order. While counsel acknowledged the unusual nature of the motion to compel settlement, defense counsel requested the enforcement of a \$3,400.00 settlement in light of the Court's order on summary judgment as well as the purposed settlement offers made to Plaintiffs.

In response, counsel for Plaintiffs argued that there were two ticketed passengers and that the \$3,400.00 cap was per ticketed passenger. In response, counsel for Defendant asserted that Plaintiffs' counsel previously relayed that Plaintiff Virginia Ricker did not incur any lost items. The Court finds Plaintiffs have adduced no evidence establishing that ticketed passenger Virginia Ricker incurred any damages in this case.

Further opposing Defendant's motion, Plaintiffs argued that in light of the Court's ruling on summary judgment, the Court should permit Plaintiffs to amend the complaint to assert a

cause of action for conversion. Plaintiffs contend that leave should be freely given to amend the complaint and that the new cause of action was based on the same allegations previously asserted in the original complaint.

In opposition to Plaintiffs' motion to amend the complaint, Defendant's counsel argued that justice does not so require the amendment of the complaint. The motion to amend was filed over two months after the order on summary judgment; the cause of action was known to Plaintiffs at the time this action was commenced; and Plaintiffs are merely seeking to avoid the consequences of the Court's ruling regarding capped damages. Counsel for Defendant further maintained that Plaintiffs' motion to amend the complaint was filed three days prior to the hearing and was, therefore, untimely.

The Court held the record open for ten (10) days following the hearing for the parties to submit any additional supporting documentation. During this ten (10) day period, defense counsel requested the Court construe the Motion to Compel Settlement as a request for entry of judgment in the amount of \$3,400.00 in favor of Plaintiffs, pursuant to Rule 54 of the South Carolina Rules of Civil Procedure.

Counsel for Plaintiffs further submitted a memorandum in support of their motion to amend the complaint, reasserting the arguments made at the hearing. Defendant submitted a memorandum of law in opposition of the motion to amend the complaint. Defendant avers that Plaintiffs' motion should be denied on the following grounds: (1) delay in bringing the new cause of action; and (2) no separate claim for conversion rests against Defendant where the same duties are controlled by contract.

Motion to Amend Complaint

Rule 15(a) of the South Carolina Rules of Civil Procedure provides:

A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

“It is well established that a motion to amend is addressed to the circuit court’s sound discretion[.]” Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235, 754 S.E.2d 714, 719 (Ct. App. 2014) (citing Foggie v. CSX Transp., Inc., 313 S.C. 98, 102, 431 S.E.2d 587, 590 (1993)). However, an amendment must be denied where the defendant would be prejudiced. Prejudice occurs when the proposed amended complaint states a new claim that would require the defendant to introduce additional or different evidence to prevail in the amended action. Holland ex rel. Knox, 407 S.C. at 235, 754 S.E.2d at 719.; see also Brown v. North Carolina Div. of Motor Vehicles, 155 N.C. App. 436, 573 S.E.2d 246 (Ct. App. 2002) (“Although the trial court is not required to make specific findings to support its denial of a motion to amend, reasons that would justify a denial include: undue delay, bad faith, undue prejudice, futility of amendment and repeated failure to cure defects through previous amendments.”); San Martin v. Dadeland Dodge, Inc., 508 So.2d 497 (Dist. Ct. App. Fl. 1987) (upholding denial of motion to amend complaint where “plaintiff, in the exercise of due diligence, should have been aware of the alleged basis for the proposed fraud count long before he sought to amend his complaint[.]”).

A motion to amend a complaint can also be denied where there was undue delay in bringing the amendment. See Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 632, 743 S.E.2d 808, 813 (2013) (finding circuit court did not err in denying plaintiff's motion to add a cause of action for violation of the South Carolina Unfair Trade Practices Act to its complaint because amendment did not occur until three years after filing of complaint and undertaking of extensive discovery, particularly when there were not significant factual developments that warranted the untimely amendment); see also House Healers Restorations, Inc. v. Ball, 112 N.C.App. 783, 437 S.E.2d 383 (Ct. App. N.C. 1993) ("If a counterclaim is omitted through 'oversight, inadvertence, or excusable neglect,' or if 'justice requires,' leave of Court *may* be granted to add the counterclaim through amendment.").

Plaintiffs' motion to amend was filed nearly fourteen (14) months after the action was commenced and only after summary judgment was granted on other claims. While Defendant served Plaintiffs with discovery requests, Plaintiffs have failed to serve Defendant with any discovery. Plaintiffs' new cause of action for conversion therefore does not arise from any evidence or materials unknown to Plaintiffs at the time the action was commenced or newly discovered facts. Accordingly, due to Plaintiffs' undue delay in bringing the cause of action, the Court finds Plaintiffs' motion to amend must be denied.

Further, a court has the authority to deny a motion for leave to amend the complaint if it would be futile. Where a cause of action cannot proceed, an amendment to the Complaint is "futile" and must be denied. See generally Health promotion Specialists, LLC v. South Carolina Bd. Of Dentistry, 403 S.C. 623, 743 S.E.2d 808 (2013) (Even if the motion had been timely, [the court] found the amendments involving civil conspiracy would be "futile" as the Board would be immune from suit for claims involving the commission of intentional torts under the TCA.").

A conversion claim lies against a contracting party independent of a breach of contract claim so long as the plaintiff alleges a breach of a duty owed separately from the obligations created by contract. See generally Kyle v. Apollomax, LLC, 987 F. Supp. 2d 519 (D. Del 2013); Lesti v. Wells Fargo Bank, N.A., 960 F. Supp. 2d 1311 (M.D. Fla. 2013). In determining whether a conversion claim is barred as duplicative of a breach of contract claim, courts have looked to the facts upon which the claims are based and the alleged injuries for which damages are sought. See Ellington Credit Fund, Ltd. V. Select Portfolio Servicing, Inc., 837 F. Supp. 2d 162 (S.D.N.Y. 2011) (applying New York law). Courts have rejected a claim for conversion where the claim is predicated on a mere breach of contract. See e.g., Cusano v. Klein, 280 F. Supp. 2d 1035 (C.D. Cal. 2003).

The Court finds that Plaintiffs' proposed amendment to add a cause of action for conversion is futile. Plaintiffs' amendment seeks to assert a tort cause of action, ostensibly as another ground for recovery of damages outside the \$3,400.00 cap specified in the contract. However, the prior Order on summary judgment has already provided that the damages are capped pursuant to the clear and unambiguous language of the contract. Additionally, Plaintiffs have failed to establish any additional duty owed separate and independent from the duties owed or provided for in the contract. Because the Court finds that there rests no independent cause of action for conversion separate from the breach of contract cause of action, the Court denies Plaintiffs' motion to amend on this alternative ground.

Motion to Compel Settlement

As an initial matter, the Court notes the entry of the prior Order regarding Defendant's motion for summary judgment and that the Court has already ruled damages are capped at \$3,400.00 pursuant to the clear and unambiguous language of the contract. This ruling is the law

of the case and this Court has no authority to overrule such Order and will not issue any ruling inconsistent therewith.

It is apparent that Defendant has attempted to resolve this matter for the capped damages. Plaintiffs have rejected such offer. The Court further notes, however, that because Plaintiffs have rejected such offer, there has been no agreement to settlement. This Court cannot compel or enforce settlement where there has been no initial agreement to settle.

However, this Court finds that Defendant has been a good faith effort to resolve this matter in light of the prior order capping damages to \$3,400.00 and has in fact, offered to take judgment against it in that amount. It is apparent that the full value of Plaintiffs' claim is \$3,400.00. Pursuant to the clear and unambiguous language of the contract, Plaintiffs cannot recover more than \$3,400.00. Pursuant to Rule 54 of the South Carolina Rules of Civil Procedure, the Court hereby enters judgment in favor of Plaintiffs for \$3,400.00. The Court directs entry of judgment for all claims as to all parties.

IT IS ORDERED that Defendant's motion to compel settlement is denied; Plaintiffs' motion to amend complaint is denied; and the Court enters a final judgment in favor of Plaintiffs for \$3,400.00 as to all of Plaintiffs' claims.

AND IT IS SO ORDERED.

JUDGE CLIFTON NEWMAN
PRESIDING JUDGE, ELEVENTH JUDICIAL CIRCUIT

Columbia, South Carolina
January ____, 2019



Lexington Common Pleas

Case Caption: Melvin Bannister , plaintiff, et al VS Delta Air Lines Inc
Case Number: 2017CP3202349
Type: Order/Judgment and Form 4

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2019-01-09 14:25:25 page 11 of 11

ELECTRONICALLY FILED - 2019 Jan 09 3:03 PM - LEXINGTON - COMMON PLEAS - CASE#2017CP3202349

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No. 2019-000189

RECEIVED
MAY 24 2019
SC Court of Appeals

Melvin Bannister and Virginia Ricker, ... Appellants,

v.

Delta Air Lines, Inc. Respondent.

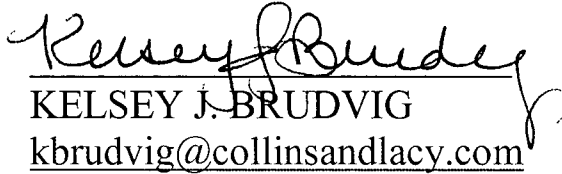
PROOF OF SERVICE

I hereby certify that I served Respondent's Motion to Strike Portions of Appellants' Initial Brief and Designation of Matter, and Request to Stay Time Limits for Filing Respondent's Initial Brief upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on May 24, 2019, addressed to the following:

Melvin D. Bannister
Post Office Box 6833
Columbia, SC 29260
Counsel for Appellants

[SIGNATURE PAGE FOLLOWS]

COLLINS & LACY, P.C.


KELSEY J. BRUDVIG
kbrudvig@collinsandlacy.com

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Columbia, South Carolina 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

ATTORNEY FOR RESPONDENTS

**PROOF OF SERVICE-
RESPONDENT'S MOTION TO
STRIKE PORTIONS OF
APPELLANTS' INITIAL BRIEF
AND DESIGNATION OF MATTER,
AND REQUEST TO STAY TIME
LIMITS FOR FILING
RESPONDENT'S INITIAL BRIEF**



Kelsey J. Brudvig | D: 803.255.0418 | E: kbrudvig@collinsandlacy.com

May 24, 2019

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
MAY 24 2019
SC Court of Appeals

Re: *Melvin Bannister and Virginia Ricker v. Delta Air Lines, Inc.*
Civil Action No. 2019-000189
Claim No. A5288
C&L File No. 001907-00102

Dear Ms. Kitchings:

Please find enclosed for filing the unbound original and seven (7) copies of Respondent's Motion to Strike Portions of Appellants' Initial Brief and Designation of Matter and Request to Stay Time Limits for Filing Respondent's Initial Brief in the above referenced matter. Also enclosed is our firm's check in the amount of \$50.00, representing the filing fee of same. Please file the original and return a clocked copy of same via our courier.

By copy of this letter and enclosure, we are serving same on counsel of record.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,


Kelsey J. Brudvig

KJB/mmm
Enclosures

cc: Melvin D. Bannister, Esquire