

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

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JUL 05 2019

SC Court of Appeals

Melvin Bannister and Virginia Ricker, Appellants,

v.

Delta Air Lines, Inc. Respondent.

**RESPONDENT’S REPLY TO APPELLANT’S RETURN IN
OPPOSITION OF MOTION TO STRIKE PORTIONS OF
APPELLANTS’ INITIAL BRIEF AND DESIGNATION OF MATTER**

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

Pursuant to Rule 240, SCACR, Respondent Delta Air Lines, Inc. (“Respondent”) respectfully moved 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, as well as certain portions of Appellants’ Designation of Matter listing the May 7, 2018, transcript of a

hearing held before the Honorable Jocelyn C. Newman. On or about June 18, 2019, Appellants filed their Response to Respondent's motion. Respondents submits this Reply.

LAW/ANALYSIS

I. Judge Jocelyn Newman's Order is the Law of the Case

Appellants appear to articulate that because Judge Jocelyn Newman's Order did not end the case, her ruling regarding damages was mere "dicta," and was therefore, not binding on Judge Clifton Newman. Regardless, it further appears that Appellants now agree that Judge Jocelyn Newman's Orders were not appealed. Rather, Appellants attempt to circumvent the rulings of Judge Jocelyn Newman by asserting that the entirety of the transcript of the hearing before Judge Jocelyn Newman is necessary for this Court to have a complete understanding of the issues presented not just before Judge Jocelyn Newman, but apparently with further regard to the pleadings, matter before Judge Clifton Newman, and Judge Jocelyn Newman's improper consideration of certain evidence and/or arguments.

As an initial matter, Respondent notes the simplicity of the issue before Judge Clifton Newman. Specifically, the only issue before Judge Clifton Newman with regard to the causes of action in Appellants initial pleadings was

the matter of liability with regard to the claim for breach of contract. Judge Jocelyn Newman previously determined that the cause of action for breach of contract was limited to a cap on damages of \$3,400. Of note, Respondent previously offered the same to Appellants in an attempt to resolve the matter in light of Judge Jocelyn Newman's orders. Respondent requested Judge Clifton Newman enter a judgment in favor of Appellants, ostensibly foregoing the defenses to the breach of contract claim, in the amount of the capped damages—the maximum amount recoverable by Appellants.

Appellants appear to argue that references to the cap on damages in Judge Jocelyn Newman's order is mere dicta and does not make reference to the Contract for Carriage. However, Judge Jocelyn Newman's order clearly states: "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 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.' ... The Plaintiffs have failed to adduce any evidence that the 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."

This ruling has become the law of the case due to Appellants' failure to appeal Judge Jocelyn Newman's Order. Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (S.C. 2012) ("While his calculation of damages may have been incorrect, an unappealed ruling, right or wrong, is the law of the case."). While the Order did not end the case, upon the entry of Judge Clifton Newman's Order, all prior Orders became appealable. Appellants failed to appeal Judge Jocelyn Newman's order and, therefore, the arguments before Judge Jocelyn Newman is irrelevant to the subject appeal. Accordingly, the following should be stricken from Appellants' 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).

II. Appellants Have Responsibility of Ordering Transcript from Lower Court and Providing the Same to Respondent

Appellants aver that because counsel for Respondent "was present at the hearings and, if Respondent's counsel wanted copies of the transcripts, counsel

would have requested them from the court reporters.” Appellants ignore the Appellate Court Rules, which provide that **“Appellant shall ... make satisfactory arrangements, including agreement regarding payment for the transcript, in writing with the court reporter for furnishing the transcript. ... Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below.”** Rule 207, SCACR (emphasis added). It is not the duty or responsibility of Respondent to make arrangements to secure a copy of the transcripts of the hearings below. Further, Appellants are tasked with serving a copy of the Record on Appeal, which contains all matters outlined in the parties’ Designations of Matter. Rule 210, SCACR. Appellants have designated two hearing transcripts—albeit, improperly. Regardless, Appellants have the obligations of providing the parties with copies of the transcripts prior to serving the Record on Appeal in order for Respondent to adequately respond to Appellants’ arguments in their initial brief. 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). The failure to provide Respondent with the hearing transcripts is

in direct violation of this Court's rules. Accordingly, Respondent requests the Court enter an order compelling Appellants to serve Respondent with a copy of the hearing transcript(s).¹

CONCLUSION

Based on the foregoing, as well as the arguments articulated in 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, Respondent respectfully requests the Court strike certain arguments contained in Appellants' Initial Brief, Strike the hearing transcript before Judge Jocelyn Newman from Appellants' Designation of Matter, Compel Appellants to serve the hearing transcripts on Respondents, and stay the briefing deadline for 30 days from the date of entry of any order entered in this matter.

[SIGNATURE ON FOLLOWING PAGE]

¹ Respondent maintains that the hearing transcript before Judge Jocelyn Newman is irrelevant to the subject appeal. Therefore, as articulated in Respondent's Motion to Strike, the hearing transcript before Judge Jocelyn Newman should be stricken from Appellants' designation of matter to be included in the Record on Appeal.

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEY FOR RESPONDENTS

**RESPONDENT'S REPLY TO
APPELLANT'S RETURN IN
OPPOSITION OF MOTION TO
STRIKE PORTIONS OF
APPELLANTS' INITIAL BRIEF
AND DESIGNATION OF
MATTER**

Columbia, South Carolina
July 5, 2019

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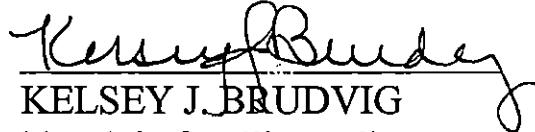
PROOF OF SERVICE

I hereby certify that I served Respondent’s Reply to Appellant’s Return in Opposition of Motion to Strike Portions of Appellants’ Initial Brief and Designation of Matter upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on July 5, 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.


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ATTORNEY FOR RESPONDENTS

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

July 5, 2019

VIA HAND DELIVERY

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

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 Reply to Appellant's Return in Opposition of Motion to Strike Portions of Appellant's Initial Brief and Designation of Matter. 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,

A handwritten signature in cursive script that reads "Kelsey Brudvig".

Kelsey J. Brudvig

KJB/mmm

Enclosures

cc: Melvin D. Bannister, Esquire

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1330 Lady Street, Sixth Floor (29201) Post Office Box 12487 | Columbia, SC 29211

The Honorable Jenny A. Kitchings
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