

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Josh Hawkins)
)
Plaintiff,)
)
v.)
)
American Airlines, Inc. *et al.*)
)
Defendants.)
)
_____)

IN THE COURT OF COMMON PLEAS
Case No. 2020-CP-23-01364

RECEIVED
Aug 20 2020
SC Court of Appeals

**ORDER GRANTING DEFENDANT
AMERICAN AIRLINES, INC.'S
MOTION TO DISMISS**

This matter comes before the Court upon various Motions filed by the parties which were heard by WebEx on July 21, 2020 with consent of all parties and with a Court Reporter. The Plaintiff Josh Hawkins (hereinafter "Plaintiff"), an attorney, was present for the hearing and represented himself. Present for Defendant American Airlines was John L. McCants, Esq. and Kenneth S. Nankin, Esq. Defendant The Qantas Group d/b/a Qantas Airlines has not been served with the litigation. Present for Defendant Expedia was William S. F. Freeman, Esq.

Upon consideration of Defendant American Airlines, Inc.'s ("American") Motion to Dismiss Plaintiff Josh Hawkins's Complaint pursuant to Rule 12(b)(6), SCRCP, the Memorandum of Law in support thereof, the argument of Plaintiff and counsel for American before the Court on July 21, 2020 and the full record in this case, the Court finds as follows:

1. "Under Rule 12(b)(6), a defendant may move to dismiss a complaint due to its 'failure to state facts sufficient to constitute a cause of action.' In considering a motion to dismiss under Rule 12(b)(6), a court must base its ruling solely on the allegations set forth in the complaint." *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 74-75, 753 S.E.2d 846, 850 (2014) (citation omitted). In reviewing the complaint, "[T]he facts alleged and inferences

reasonably deducible therefrom” must be “viewed in the light most favorable to the plaintiff.” *Id.* (citation omitted).

2. In his Complaint, Plaintiff alleges that he purchased a ticket for air transportation by American and Qantas Airways (“Qantas”) from Greenville-Spartanburg International Airport to Christchurch, New Zealand, via Dallas, Texas. Plaintiff alleges that there was (i) a delay in his transportation by American from Greenville to Dallas, (ii) a delay in his transportation by Qantas from Dallas to Christchurch, and (iii) a delay in the delivery of his checked baggage at Christchurch. Plaintiff alleges that, despite the alleged delay of American’s flight from Greenville to Dallas, he traveled on the connecting Qantas flight from Dallas to New Zealand.

3. Plaintiff alleges that American failed to credit his frequent flyer program account for the “miles he earned for buying the airplane ticket.”

4. As against American, Plaintiff alleges causes of action for common law negligence and recklessness (First Cause of Action), South Carolina Unfair Trade Practices Act (“UTPA”) violation (Second Cause of Action), insurance bad faith (Third Cause of Action) and breach of contract accompanied by fraudulent act (Fourth Cause of Action).

5. Plaintiff alleges that, for the ticket he purchased, the place of departure was the United States and the place of destination was New Zealand. Since 2003, the United States and New Zealand have been States Parties to the Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal on May 28, 1999, ICAO Doc. No. 9740 (entered into force on November 4, 2003), *reprinted in* S. Treaty Doc. No. 106-45, 1999 WL 33292734 (“the Montreal Convention”).

6. Because Plaintiff's air travel constitutes "international carriage" as defined in Article 1(2), the Montreal Convention applies to Plaintiff's travel delay claims and checked baggage delivery delay claims against American.

7. Plaintiff's travel and baggage delay claims against American are within the scope of Article 19 of the Montreal Convention because Plaintiff seeks damages for alleged delays in his travel from Greenville to Christchurch and an alleged delay in the delivery of his checked baggage at Christchurch.

8. Because Plaintiff's travel and baggage delay claims against American are within the scope of Article 19 of the Montreal Convention, pursuant to Article 29 therein the Convention exclusively governs Plaintiff's claims and American's liability (if any) and expressly preempts all of Plaintiff's travel and baggage delay claims against American.

9. The preemption provision of the federal Airline Deregulation Act of 1978, 49 U.S.C. § 41713(b)(1), states in part as follows: "[A] State . . . 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 an air carrier that may provide air transportation under this subpart."

10. All of Plaintiff's claims against American are based on state laws "having the force and effect of law" within the meaning of Section 41713(b)(1).

11. Through Plaintiff's state common law and UTPA causes of action, Plaintiff seeks to apply South Carolina common law and statutory law to American's alleged acts and omissions.

12. Section 41713(b)(1) expressly preempts Plaintiff's state common law and UTPA claims against American related to Plaintiff's travel and baggage delay claims because they constitute impermissible attempts to enforce South Carolina common law and statutory law

“related to” American’s flight operations, aircraft maintenance and checked baggage handling “service.”

13. Section 41713(b)(1) expressly preempts Plaintiff’s state common law and UTPA claims against American related to Plaintiff’s miles claims because they constitute impermissible attempts to enforce South Carolina common law and statutory law “related to” American’s frequent flyer program and thus to its “price” and “service.”

14. Plaintiff fails to state legally sufficient travel delay claims against American under South Carolina law. Despite the alleged delay of American’s flight from Greenville to Dallas, Plaintiff traveled on the connecting Qantas flight from Dallas to New Zealand. Thus, even assuming that Plaintiff’s travel to Dallas was delayed, Plaintiff sustained no loss arising from such delay and thus has no cognizable claim against American.

15. Plaintiff does not allege any basis under any law for attributing liability to American for the delay, allegedly caused by Qantas, in his travel from Dallas to Christchurch. Plaintiff’s conclusory assertion of American’s liability is insufficient.

16. Plaintiff’s breach of contract accompanied by fraudulent act cause of action against American is insufficient under South Carolina law because Plaintiff fails to adequately plead two of the three elements of the cause of action: “fraudulent intent relating to the breaching of the contract and not merely to its making” and “a fraudulent act accompanying the breach.”

17. Plaintiff fails to state facts sufficient to constitute any cause of action against American.

The Court, having made the foregoing findings, concludes that American’s Motion to Dismiss should be granted. It is therefore:

ORDERED that American’s Motion to Dismiss is GRANTED; and

ORDERED that Plaintiff's Complaint is DISMISSED in its entirety as to American.

Signature Page of Judge Gravely to Follow



Greenville Common Pleas

Case Caption: Josh Hawkins vs. American Airlines Inc , defendant, et al

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Type: Order/Dismissal

So Ordered

s/ Honorable Perry H. Gravely, #2755

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