

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) civil action number: 2020-CP-23-01364  
JOSH HAWKINS, )  
) )  
Plaintiff, )  
v. )  
AMERICAN AIRLINES, THE QANTAS )  
GROUP d/b/a QANTAS AIRLINES, )  
EXPEDIA, and TRAVEL GUARDIAN )  
INSURANCE, )  
) )  
Defendants. )

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**RECEIVED**

AUG 24 2020

ORDER

SO Court of Appeals

THIS MATTER came before the Court for a hearing on July 21, 2020. The Court has available to it the file in this matter and is familiar with the applicable jurisprudence and facts.

**I. WEBEX HEARING**

At the outset of the hearing, all parties agreed to conduct the hearing via Webex. The Court was able to hear, speak with, and observe counsel during the hearing. The Webex use did not impede the Court’s ability to conduct the hearing. The Court finds and orders that it was appropriate for the hearing to be conducted via Webex.

**II. PARTIES AND SUBJECT**

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<sup>1</sup> was William S. F. Freeman, Esq. Counsel for Defendant Travel Guard Insurance was aware of but declined to attend the hearing.

Before the Court were two motions: (1) Defendant American Airlines, Inc.'s Motion to Dismiss Pursuant To Rule 12(b)(6), SCRCF; and (2) Expedia's Notice Of Motion And Motion To Compel Arbitration And Dismiss. The motion filed by American Airlines, Inc. is addressed in a separate order. This order relates to the motion filed by Expedia.

### III. APPLICABILITY OF EXPEDIA'S TERMS OF USE

This litigation centers around issues involving interstate and international travel by the Plaintiff in 2019. The complaint alleges in "February of 2019 the plaintiff traveled to New Zealand. The plaintiff booked an American Airlines Trip through Expedia..." (Complaint, ¶9). The flight connected through Dallas (complaint, ¶11), a city in Texas.

In connection with its motion, Expedia filed the affidavit of Sibel Abreu. The affidavit avers customers "must agree to the attached Terms of Use in order to utilize Expedia's website in the manner described in the litigation" and further avers the "Plaintiff agreed to be bound by the attached Terms of Use." (affidavit, ¶¶ 6-7). The Terms of Use are attached to the affidavit.

At the hearing the Plaintiff orally denied he was required to agree to the Terms of Use. The Court has reviewed the affidavit of Sibel Abreu filed by Expedia. The Court, in the exercise of its discretion, accepts the affidavit of Sibel Abreu. The Court, in the exercise of its discretion, finds the affidavit serves as a reply to the Plaintiff's statements. The Court

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<sup>1</sup> The Defendant denominated "Expedia" by the Plaintiff has averred its correct identification is "Expedia, Inc." For purposes of this Order, the Court refers to Expedia, Inc. as "Expedia."

is not persuaded by the Plaintiff's statements denying he was required to agree to the Terms of Use for two reasons. Each reason is a separate and independent ground supporting the Court's determination.

First, the South Carolina Code provides where a party "denies the existence of the agreement to arbitrate" then "the court shall proceed summarily to the determination of the issue so raised." S.C. Code Ann. §15-48-20(a). For purposes of this determination only, the Court accepts the statement of the Plaintiff and weighs it against the affidavit. In weighing the matter, the Court notes South Carolina Courts have expressed awareness of online arbitration agreements that are agreed to via website use. See Doe v. TCSC, LLC, appellate case 2017-001216, \_\_\_ S.C. \_\_\_, 2020 WL 3551780 (Ct.App. July 1, 2020). This is echoed in the local District Courts as well, including unrelated cases involving Expedia. See, e.g., Kraft Real Estate Investments, LLC v. HomeAway.com, Inc., No. 4:08-CV-3788, 2012 WL 220271 (D.S.C. Jan. 24, 2012) and Church v. Hotels.com L.P.; Expedia, Inc.; et al., No. 2:18-0018, 2018 WL 313061 (D.S.C. June 26, 2018). Having weighed the matter on the merits, the Court finds the affidavit of Sibel Abreu to be persuasive, credible, sensible, comport with case law, and believable. The Court finds Expedia has proven the Terms of Use apply. The Court, having weighed the conflicting evidence, determines and finds the Plaintiff agreed to and is bound by the Terms of Use.

Second, the Court finds the Plaintiff's denial was made to the Court only after commencement of the hearing. The Plaintiff's denial should have been brought to the Court's attention prior to the start of the hearing. The Plaintiff therefore cannot refute the assertions made by Expedia. Therefore, the Plaintiff is bound by the Terms of Use.

The Court finds and orders that the Terms of Use constitute a valid and enforceable agreement between Expedia and the Plaintiff.

#### IV. EFFECT OF THE TERMS OF USE

The “Disputes” section of the applicable Terms of Use provides in part: “Any and all Claims will be resolved by binding arbitration, rather than in court, except you may assert Claims on an individual basis in small claims court if they qualify.” The Plaintiff essentially argued that even if the Terms of Use did apply, this requirement should not be enforceable. The Court disagrees. For the reasons set forth below, the Court finds and orders that the Terms of Use do not allow the Plaintiff to maintain this litigation against Expedia in the Court of Common Pleas.

##### A. ARBITRATION

The Plaintiff challenged the submission of this matter to arbitration. The Plaintiff’s arguments against arbitration have been rejected by the courts and do not persuade this Court. Any analysis of enforceability must be viewed through the “strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration.” Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 455 (2012).

As an initial matter, the Court finds the Federal Arbitration Act (the “FAA”) applies to this matter. The Courts have applied the FAA to activities “‘affecting commerce,’ which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interest commerce to its full extent.” Bradley v. Brentwood Homes, Inc., 398 S.C. 447 (2012). In determining whether a matter “affects commerce” such that the FAA applies, the Court “must examine the agreement, the complaint, and the surrounding facts.” Bradley at

454. In the present case, the Plaintiff traveled within the United States (from South Carolina to Texas) and thereafter to New Zealand, a foreign country. Travel is a quintessential activity affecting interstate commerce. Also, funds necessarily traveled across state lines. (Abreu affidavit, ¶8). Per the complaint, the parties to the litigation are alleged to be based in South Carolina, Delaware, Wisconsin, and Washington state, in addition to the country of Australia. (Complaint, ¶¶-5). Accordingly, the present case affects commerce and the FAA applies.

Given that the FAA applies to this case, the arbitration agreement is enforceable. The FAA is intended to ensure that arbitration will proceed in the event a state law would have preclusive effect on an otherwise valid arbitration agreement. Marmet Health Care Ctr., Inc. v. Brown, 565 U.S. 530 (2012). Further, “the FAA will preempt any state law that completely invalidates the parties’ agreement to arbitrate.” Zabinski v. Bright Acres Assocs., 346 S.C. 580, 592 (2001).

Given that the arbitration agreement is enforceable, the Court looks to what matters are subject to arbitration. Per the Terms of Use, the Plaintiff agreed to submit to arbitration “Any and all Claims” including “any disputes or claims relating in any way ... [including] any dealings with [Expedia’s] customer service agents, any services or products provided, [and] any representation made by [Expedia]...” The claims made in the complaint are easily encompassed within the broad language of matters that are required to be submitted to arbitration.

The Court finds and orders that the matters set forth in the complaint are subject to submission to arbitration in accordance with the Terms of Use.

## B. MAGISTRATE COURT

The Plaintiff argued the requirement his claims against Expedia be submitted to “small claims court” was vague. This argument does not persuade the Court.

The South Carolina Supreme Court has found that “small claims court” is “equivalent to our magistrate’s court.” Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 334 S.C. 649, 652 (1999). This is in keeping with the definition of a small claims court as one which “provides expeditious, informal, and inexpensive adjudication of small claims.” (Black’s Law Dictionary, 6th ed.). In fact, the Court has looked favorably on agreements that permit dispute resolution via either arbitration or small claims court. See, Herron v. Century BMW, 387 S.C. 525 (2010).

The Court finds and orders that the language permitting resolution in “small claims courts” is not vague and shall mean the South Carolina Magistrate’s Court.

## V. CONCLUSION

The Court finds that the Terms of Use constitute a valid, binding, and enforceable agreement between the Plaintiff and Expedia. The Plaintiff’s case against Expedia is hereby dismissed. This dismissal is with prejudice. Notwithstanding that this dismissal is with prejudice, the Plaintiff is free to bring these claims either: (a) in arbitration in accordance with the Terms of Use and governed by the Terms of Use; or (b) on an individual basis in the South Carolina Magistrate’s Court in accordance with the Terms of Use and governed by the Terms of Use.

IT IS SO ORDERED.

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Perry H. Gravely  
Presiding Judge

\_\_\_\_\_, 2020



Greenville Common Pleas

**Case Caption:** Josh Hawkins vs. American Airlines Inc , defendant, et al  
**Case Number:** 2020CP2301364  
**Type:** Order/Dismissal

So Ordered

s/ Honorable Perry H. Gravelly, #2755

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Josh Hawkins,

Plaintiff,

vs.

American Airlines, The Qantas Group d/b/a  
Qantas Airlines, Expedia, and Travel Guard  
Insurance,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2020-CP-23-01364

**MOTION TO RECONSIDER**

The plaintiff respectfully requests that the Court reconsider its ruling and alter or amend the judgments related to August 5, 2020 at 10:46 a.m., and August 5, 2020 at 10:47 a.m., which dismissed claims against American Airlines and Expedia<sup>1</sup>, respectively. The plaintiff respectfully submits that it was reversible error to dismiss defendants in this action since the plaintiff stated causes of action against them for which the plaintiff can recover at trial. The plaintiff wishes to preserve for appeal all issues contained in or referred to in the pleadings, all filings in this case, and referred to during oral arguments<sup>2</sup>.

Respectfully submitted,

HAWKINS & JEDZINIAK, LLC

s/ Joshua T. Hawkins

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August 7, 2020  
Greenville, South Carolina

<sup>1</sup> The plaintiff previously filed a Rule 59(e) motion, but the Court entered a corrected order, so the plaintiff files this motion in an abundance of caution to preserve for appeal all appealable issues as to the dismissal of American Airlines and Expedia.

<sup>2</sup> The plaintiff files this motion to preserve all issues for appeal related to all motions including dispositive motions, and all other issues related to these motions or any related hearing in any way. The plaintiff moves under SCRCP 54, 59, including subpart (e), 60, and all other applicable Rules. The plaintiff preserves for appeal all federal questions and constitutional issues, including Equal Protection violations, Due Process violations, and violations of the plaintiff's right to a trial by jury

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Attorneys for Plaintiff

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