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**Dec 18 2020**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2020-001150

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Joshua Hawkins, .....Appellant,

v.

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

Of Which American Airlines and Expedia are the.....Respondents.

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**REPLY BRIEF OF APPELLANT**

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## REPLY

On page 3 of its brief, American takes the position that the Montreal Convention does not infringe on the constitutional right to a jury trial. It is hard to imagine how though, since the convention seriously limits the jury's right to determine the factually controlled concept of damages. Airlines should not get to break the rules – or circumvent the Constitution – simply because they are airlines. Then, on page 4, American implies that the plaintiff's argument during a hearing in the Circuit Court that the Montreal Convention violates the Equal Protection Clause and the Seventh Amendment was somehow made too late. The very purpose of a hearing is for parties to a lawsuit to make arguments about disputed issues, and the hearing at issue was no different. The appellant properly stated his arguments, and then properly preserved all issues related to those issues for appeal with a Rule 59(e) motion and then a notice of appeal. It is undisputed that all filings were timely made.

American fell short in its attempt to create a requirement that does not exist in Footnote 3. Memorandum Policies for Greenville County Court of Common Pleas set out timeframes for the submission of briefs prior to hearings; they do not prevent parties from orally defending against motions, and there is no waiver component to the policies at all.

American then points out that international travel is not a constitutional right, which is not an issue in this appeal. No argument has been made that there is a constitutional right to travel internationally. There is, though, a constitutional right to a jury trial and to be treated the same as other groups of people in similar circumstances. The Constitution is unambiguous “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved....” South Carolina's Constitution goes a step further and requires “...that the right of a trial by jury...be ‘preserved **inviolable**.’” *Lester v. Dawson*, 491 S.E.2d 240 (S.C.

1997) (Emphasis added).

It is interesting that American includes the language of the Convention that states American is not liable for delay "...if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damages...." A motion to dismiss, by definition, takes place before any proof is submitted to a jury. That makes American's argument doubly problematic. First, it has admitted by implication that nothing has been proved, and second, it has admitted by implication that its goal is to prevent what the Constitution requires – that a jury determine liability and damages.

American stated that the appellant somehow waived some of the issues related to this appeal, even though the issue was discussed at length during a hearing on the matter and even though appellant preserved "all issues contained in or referred to in the pleadings, all filings in this case, and referred to during oral arguments." Mot. to Reconsider, *Joshua Hawkins v. American Airlines, The Qantas Group d/b/a Qantas Airlines, Expedia, and Travel Guard Insurance*, Case No. 2020-CP-23-01364 (Court of Common Pleas, Greenville County). Of course, American does not want this Court to review the issue surrounding ADA because arbitration agreements are not always enforceable. See *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E. 2d 663 (Sup. Ct. 2007).

American goes on to argue that the appellant waived other appellate issues, despite the hearing transcript and despite the unambiguous language of the appellant's motion to reconsider. In short, American is grasping for procedural straws because its position is so substantively unconscionable.

**CONCLUSION**

For the foregoing reasons, the appellant respectfully requests the Court reverse the Circuit Court's dismissal of the appellant's claims against American Airlines and Expedia.

Respectfully submitted,

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