

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Mar 15 2021

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

appellate case number: 2020-001150

Josh 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.

MOTION OF RESPONDENT EXPEDIA, INC.
TO SUPPLEMENT THE RECORD ON APPEAL
AND EXTEND THE DEADLINE FOR EXPEDIA, INC.
TO FILE ITS FINAL BRIEF UNTIL SUCH TIME AS THE RECORD IS SETTLED

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YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for Respondent Expedia, Inc. (incorrectly denominated by the Appellant as “Expedia”) (hereinafter “Expedia”) hereby moves this Court for the relief set forth herein.

This matter is before this Court on the appeal of Josh Hawkins, the Plaintiff below and the Appellant before this Court (hereinafter “Mr. Hawkins”). Following a hearing in the Court of Common Pleas, the Trial Court issued a judgment dismissing Expedia from the litigation. At the hearing in question, the Trial Court had before it a motion, memorandum, and affidavit filed by Expedia.

Expedia’s Designation Of Matter To Be Included In The Record On Appeal was filed on December 18, 2020 (hereinafter the “Designation”). The Designation specifically identified said motion, memorandum, and affidavit as items to be included in the Record On Appeal for this case (the “Record”). In particular, Expedia’s ninth matter in the Designation was as follows: “Expedia’s Memorandum In Support Of Its Motion To Compel Arbitration And Dismiss and Affidavit of Sibel Abreu, with Exhibit, filed July 15, 2020.”

The Index to the Record filed by Mr. Hawkins on February 5, 2021 tracks this language and provides that the Record includes the following: “Expedia’s Memorandum in Support of Its Motion to Compel Arbitration and Dismiss and Affidavit of Sibel Abreu, with Exhibit, filed July 15, 2020,” starting at page 46.

However, due to what appears to be an inadvertent scrivener’s omission, the affidavit of Sibel Abreu was omitted from the Record filed with this Court. The affidavit in question was specifically accepted, referenced, and relied upon by the Trial Court. It is

cited in Expedia's Initial Brief and constitutes an important document for Expedia's case. Its absence would harm Expedia's ability to support its position on appeal. Expedia specifically identified the affidavit and is entitled to have it be included in the Record under the applicable jurisprudence, especially Rule 209, SCACR.

Expedia sought additional time to correct this omission and thereafter file its Final Brief. Since identifying the issue, counsel for Expedia has called and written counsel for the Appellant regarding the omission in an effort to resolve the matter by consent. As of the filing of this motion, Expedia has not received a response.

Expedia hereby moves this Court for an Order permitting the Record on Appeal to be supplemented with the attached pages, which represents a complete copy of all the documents identified in the ninth item of Expedia's Designation.

Expedia further moves this Court for a second extension of time to file its Final Brief. Expedia respectfully requests the deadline be moved to seven (7) days after the Court issues any Order with respect to Expedia's above motion to correct the omission from the Record. This will provide Expedia with sufficient time to electronically file its Final Brief with correct citations.

Respectfully submitted,

Greenville, South Carolina
March 15, 2021

/s/ William S. F. Freeman

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ATTORNEYS FOR EXPEDIA, INC.

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Josh HawkinsAppellant,

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.

SUPPLEMENTAL RECORD ON APPEAL

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Expedia’s Memorandum In Support Of Its Motion To
Compel Arbitration And Dismiss together with the
Affidavit Of Sibel Abreu and the Website Terms Of
Use exhibit thereto Supplemental Record p. 136

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	civil action number: 2020-CP-23-01364
JOSH HAWKINS,)	
)	
Plaintiff,)	
v.)	EXPEDIA’S MEMORANDUM
)	IN SUPPORT OF
AMERICAN AIRLINES, THE)	ITS MOTION TO COMPEL
QANTAS GROUP d/b/a QANTAS)	ARBITRATION AND DISMISS
AIRLINES, EXPEDIA, and TRAVEL)	
GUARD INSURANCE,)	
)	
Defendants.)	
_____)	

NOW COMES the Defendant incorrectly denominated “Expedia” by the Plaintiff and correctly denominated “Expedia, Inc.” (hereinafter “Expedia”) and files this memorandum in support of its motion to compel arbitration of Plaintiff’s claims and dismiss the Plaintiff’s Complaint.

I. INTRODUCTION

The Plaintiff’s complaint revolves around allegations of delayed flights and luggage on an international trip. Although Plaintiff ultimately reached his destination and was provided with his luggage, Plaintiff nevertheless seeks punitive, actual, and treble damages (in addition to attorneys’ fees and costs) from this Court. However, the Plaintiff agreed that any and all of his disputes and claims should be resolved via arbitration. Accordingly, the complaint should be dismissed or stayed and all the complaint’s allegations be resolved by arbitration.

II. FACTS

This case involves an interstate (complaint, ¶11) and international (complaint, ¶9) airline trip last year. The Complaint alleges in “February of 2019 the plaintiff traveled to New Zealand. The plaintiff booked an American Airlines Trip through Expedia and purchased Expedia’s travel insurance with Travel Guard...” (Complaint, ¶9). The flight connected through Dallas (complaint, ¶11), a city in Texas. While on the flight, the airplane was routed to a different city in New Zealand (complaint, ¶13) but the Plaintiff was able to make a connecting flight to his destination (Complaint, ¶14). The Plaintiff did not receive his luggage for three (3) days (complaint, ¶15) and “never received the miles he earned for buying the airplane ticket.” Complaint, ¶19.

When the Plaintiff “booked ... through Expedia” (complaint, ¶9), he agreed to be bound by Expedia’s Terms of Use. See affidavit of Sibel Abreu. All customers, including the Plaintiff, “must agree” to be bound by Expedia’s Terms of Use in order to use the website in the manner described in the complaint. Abreu Affidavit, ¶¶ 6, 7. The Terms of Use also provide: “If you do not agree to the Terms of Use, please do not use or book any reservations through this Website...”

Per the Terms of Use, the Plaintiff agreed to resolve “any disputes or claims relating in any way ... [including] any dealings with our customer service agents, any services or products provided, [and] any representation made by us...” via arbitration. The Terms of Use require “[a]ny and all Claims will be resolved by binding arbitration, rather than in Court” and informs users that Expedia requires “resolution of disputes through arbitration rather than in court.” (bold in original). Arbitrations

are “conducted by the American Arbitration Association (AAA) under its rules, includes the AAA Consumer Rules.”¹

¹ Without limiting the incorporation of all the Terms of Use, pertinent provisions are set forth below (bold in the original):

This Website is offered to you conditioned upon your acceptance without modification of all the terms, conditions, and notices set forth below (collectively, the “Terms of Use” or “Agreement”). **Please read these Terms of Use carefully, as they contain important information about limitations of liability and resolution of disputes through arbitration rather than in court.** ... If you do not agree to the Terms of Use, please do not use or book any reservations through this Website or our call center agents.

DISPUTES

Expedia is committed to customer satisfaction, so if you have a problem or dispute, we will try to resolve your concerns. But if we are unsuccessful, you may pursue claims as explained in this section.

You agree to give us an opportunity to resolve any disputes or claims relating in any way to the Website, any dealings with our customer service agents, any services or products provided, any representations made by us, or our Privacy Policy ("Claims") by contacting Expedia Customer Support or 1-877-787-7186. If we are not able to resolve your Claims within 60 days, you may seek relief through arbitration or in small claims court, as set forth below.

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. This includes any Claims you assert against us, our subsidiaries, travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement). This also includes any Claims that arose before you accepted these Terms of Use, regardless of whether prior versions of the Terms of Use required arbitration.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including statutory damages, attorneys' fees and costs), and must follow and enforce these Terms of Use as a court would.

Arbitrations will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA Consumer Rules. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, except as provided in this section. If your total Claims seek less than \$10,000, we will reimburse you for filing fees you pay to the AAA and will pay arbitrator's fees. You may choose to have an arbitration conducted by telephone, based on written submissions, or in person in the state where you live or at another mutually agreed location.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your Claims to "Expedia Legal: Arbitration Claim Manager," at Expedia, Inc., 333 108th Ave N.E. Bellevue, WA 98004. If we request arbitration against you, we will give you notice at the email address or street address you have provided. The AAA's rules and filing instructions are available at www.adr.org or by calling 1-800-778-7879.

Any and all proceedings to resolve Claims will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a Claim proceeds in court rather than in arbitration we **each waive any right to a jury trial.** The Federal Arbitration Act and federal arbitration law apply to this agreement. An arbitration decision may be confirmed by any court with competent jurisdiction.

These Terms of Use are governed by the Federal Arbitration Act, federal arbitration law, and for reservations made by U.S. residents, the laws of the state in which your billing address is located, without regard to principles of conflicts of laws. Use of this Website is unauthorized in any jurisdiction that does not give effect to all provisions of this Agreement, including, without limitation, this paragraph.

III. LAW

A. BINDING EFFECT OF THE TERMS OF USE

As an initial matter, the Terms of Use are binding on the Plaintiff. The Courts have not hesitated to enforce terms of use where (as here) use of a website is conditioned on acceptance of those terms.

Where a website requires affirmations of terms of use, the Courts have recognized these as valid and enforceable agreements. 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). In Church v. Hotels.com L.P.; Expedia, Inc.; et al., 2:18-0018-RMG, 2018 WL 313061 (D.S.C. June 26, 2018) Expedia was a named Defendant in a case pending in the District of South Carolina. In the context of a hotel reservation through a Hotels.com, the District Court found the terms of use are enforceable when “the customer is indeed required to accept those terms of part of making a reservation.” (p. 4). After determining the terms of use were binding, the Court required the case be arbitrated.

The State Court has noted the use of online arbitration agreements as well. In a case handed down earlier this month, the South Carolina Court of Appeals observed that “[t]oday, arbitration agreements pop up in almost every imaginable transaction...” and that “[a]s more and more transactions are conducted online, arbitration agreements are not presented face to face but digitally, in such forms as ‘browsewrap,’ ‘clickwrap,’ ‘scrollwrap,’ and ‘sign-on wrap.’” Doe v. TCSC, LLC, appellate case 2017-001216, ___ S.C. ___, 2020 WL 3551780 (Ct.App. July 1, 2020) (pp. 10-11).

In the present case, all customers, including the Plaintiff, “must agree” to be bound by Expedia’s Terms of Use in order to use the website in the manner described in the complaint. Abreu Affidavit, ¶¶ 6, 7. Accordingly, the Terms of Use constitute a valid and enforceable agreement between the parties.

B. ENFORCEABILITY OF THE ARBITRATION AGREEMENT

As a second matter, the arbitration requirement of the Terms of Use is enforceable for the following reasons.

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) (citation omitted). Further, “the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” Green Tree Fin. Corp. – Ala. v. Randolph, 531 U.S. 79, 91 (2000).

In the present case, the Terms of Use provide governance by the Federal Arbitration Act (the “FAA”). 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, 454 (2012) (citation omitted).

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 455. In the present case, the Plaintiff traveled within the United States and thence 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).

Accordingly, the arbitration agreement found in the Terms of Use is enforceable against the Plaintiff.

C. REFERRAL TO ARBITRATION IS APPROPRIATE

As set forth above, the Terms of Use are binding and the arbitration provision therein is enforceable. The Plaintiff agreed to resolve “any disputes or claims relating in any way ... [including] any dealings with our customer service agents, any services or products provided, [and] any representation made by us...” via arbitration. The Terms of Use require “[a]ny and all Claims will be resolved by binding arbitration, rather than in Court” and informs users that Expedia requires “resolution of disputes through arbitration rather than in court.” (bold omitted from original).

Nevertheless, the Plaintiff has refused to arbitrate. In such cases, the Code provides “the court shall order the parties to proceed with arbitration.” S.C. Code Ann. §15-48-20(a). Dismissal is appropriate under Rule 12, SCRCP, since no claim can be made in this Court. At the least, the present case should be stayed (S.C. Code Ann. §15-48-20(d)) and the Plaintiff obligated to submit his claims to arbitration.

IV. CONCLUSION

For the foregoing reasons, Expedia requests this case be stayed or dismissed and the Plaintiff required to submit his case to arbitration, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

July 15, 2020
Greenville, South Carolina

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ATTORNEY FOR EXPEDIA



S. Abreu affidavit.pdf

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E-Signature Summary

E-Signature 1: Sibel Abreu (SA)
July 15, 2020 12:39:11 -8:00 [88CEBB63D83B] [165.225.50.186]
sabreu@expediagroup.com (Principal) (ID Verified)

E-Signature Notary: Anna Armitage (aa)
July 15, 2020 12:39:11 -8:00 [F629F11F5F2C] [73.221.158.248]
anna.armitage@stokeslaw.com
I, Anna Armitage, did witness the participants named above electronically sign this document.



STATE OF WASHINGTON)
)
COUNTY OF SNOHOMISH) AFFIDAVIT OF SIBEL ABREU

I, Sibel Abreu, having been duly sworn, hereby make and declare under oath and penalty of perjury as follows:

1. My name is Sibel Abreu. I am competent, over the age of eighteen (18), *sui generis*, and freely and voluntarily give this affidavit. I understand this affidavit will be used in the case of *Josh Hawkins v. American Airlines, the Qantas Group d/b/a Qantas Airlines, Expedia, and Travel Guard Insurance*, a case pending in the South Carolina Court of Common Pleas and bearing civil action number 2020-CP-23-01364 (the “Litigation”).

2. The Plaintiff alleges in the Litigation that the “plaintiff booked an American Airlines Trip through Expedia” (Complaint, paragraph 9).

3. I am a Legal and Corporate Affairs paralegal for Expedia, Inc. (“Expedia”). I am a custodian of records for all Terms of Use for the Expedia website.

4. I am personally familiar with the Terms of Use that were effective on all dates pertinent to this matter. I have personally reviewed the records of Expedia that are relevant to the facts attested to herein, including the aforementioned Terms of Use. This declaration is based upon my personal knowledge of such facts to the best of my knowledge.

5. Attached hereto as Exhibit A is a true and correct copy of Expedia’s Terms of Use in effect at all relevant times. That document is incorporated herein by reference.

6. Customers *must* agree to the attached Terms of Use in order to utilize Expedia’s website in the manner described in the Litigation. The attached Terms of Use were available for review on the website.

7. The Plaintiff agreed to be bound by the attached Terms of Use.




8. The Complaint alleges interstate and international travel. Some of the actions and funds related to these activities would have therefore necessarily involved interstate commerce.

FURTHER AFFIANT SAYETH NAUGHT.


Signed on 2020/07/15 12:38:11 -8:00
Sibel Abreu

SWORN TO BEFORE ME THIS 15th
DAY OF JULY, 2020


Printed name: Anna Armitage
Notary Public authorized to administer oaths
in the State of Washington
My Commission Expires: 11-10-2023


ANNA ARMITAGE
NOTARY PUBLIC STATE OF WASHINGTON
Commission # 156569
My Commission Expires Nov 10, 2023
Notary Stamp 2020/07/15 12:38 11 PST





Website Terms of Use

Last Revised on February 21, 2018

AGREEMENT BETWEEN CUSTOMER AND EXPEDIA, INC.

Welcome to the Expedia.com website (the "Website"). This Website is provided solely to assist customers in gathering travel information, determining the availability of travel—related goods and services, making legitimate reservations or otherwise transacting business with travel suppliers, and for no other purposes. The terms "we", "us", "our", "Expedia" and "Expedia, Inc." refer to Expedia, Inc., a Washington corporation, and its subsidiaries and corporate affiliates, including Travelscape, LLC, (collectively, the "Expedia Companies"). "Expedia Partner" means any co-branded and/or linked website through which we provide links, content or service. The term "you" refers to the customer visiting the Website and/or booking a reservation through us on this Website, or through our customer service agents.

This Website is offered to you conditioned upon your acceptance without modification of all the terms, conditions, and notices set forth below (collectively, the "Terms of Use" or "Agreement"). **Please read these Terms of Use carefully, as they contain important information about limitations of liability and resolution of disputes through arbitration rather than in court.** You should also read our [Privacy Policy](#), which also governs your use of the Website, and is incorporated by reference in this Agreement. By accessing or using this Website, booking any reservations for travel products or services on this Website, or contacting our call center agents, you agree that the Terms of Use then in force shall apply. If you do not agree to the Terms of Use, please do not use or book any reservations through this Website or our call center agents.

USE OF THE WEBSITE

As a condition of your use of this Website, you warrant that:

1. you are at least 18 years of age;
2. you possess the legal authority to create a binding legal obligation;
3. you will use this Website in accordance with these Terms of Use;
4. you will only use this Website to make legitimate reservations for you or for another person for whom you are legally authorized to act;
5. you will inform such other persons about the Terms of Use that apply to the reservations you have made on their behalf, including all rules and restrictions applicable thereto;



6. all information supplied by you on this Website is true, accurate, current and complete; and
7. if you have an Expedia.com account, you will safeguard your account information and will supervise and be completely responsible for any use of your account by you and anyone other than you.

We retain the right at our sole discretion to deny access to anyone to this Website and the services we offer, at any time and for any reason, including, but not limited to, for violation of these Terms of Use.

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DISPUTES

Expedia is committed to customer satisfaction, so if you have a problem or dispute, we will try to resolve your concerns. But if we are unsuccessful, you may pursue claims as explained in this section.

You agree to give us an opportunity to resolve any disputes or claims relating in any way to the Website, any dealings with our customer service agents, any services or products provided, any representations made by us, or our Privacy Policy ("Claims") by contacting [Expedia Customer Support](#) or 1-877-787-7186. If we are not able to resolve your Claims within 60 days, you may seek relief through arbitration or in small claims court, as set forth below.

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. This includes any Claims you assert against us, our subsidiaries, travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement). This also includes any Claims that arose before you accepted these Terms of Use, regardless of whether prior versions of the Terms of Use required arbitration.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including statutory damages, attorneys' fees and costs), and must follow and enforce these Terms of Use as a court would.

Arbitrations will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA Consumer Rules. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, except as provided in this section. If your total Claims seek less than \$10,000, we will reimburse you for filing fees you pay to the AAA and will pay arbitrator's fees. You may choose to have an arbitration conducted by telephone, based on written submissions, or in person in the state where you live or at another mutually agreed location.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your Claims to "Expedia Legal: Arbitration Claim Manager," at Expedia, Inc., 333 108th Ave N.E. Bellevue, WA 98004. If we request arbitration against you, we will give you notice at the email address or street address you have provided. The AAA's rules

and filing instructions are available at www.adr.org or by calling 1-800-778-7879.

Any and all proceedings to resolve Claims will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a Claim proceeds in court rather than in arbitration **we each waive any right to a jury trial.** The Federal Arbitration Act and federal arbitration law apply to this agreement. An arbitration decision may be confirmed by any court with competent jurisdiction.

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PROHIBITED ACTIVITIES

The content and information on this Website (including, but not limited to, price and availability of travel services) as well as the infrastructure used to provide such content and information, is proprietary to us or our suppliers and providers. While you may make limited copies of your travel itinerary (and related documents) for travel or service reservations booked through this Website, you agree not to otherwise modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell or re-sell any information, software, products, or services obtained from or through this Website. Additionally, you agree not to:

1. use this Website or its contents for any commercial purpose;
2. make any speculative, false, or fraudulent reservation or any reservation in anticipation of demand;
3. access, monitor or copy any content or information of this Website using any robot, spider, scraper or other automated means or any manual process for any purpose without our express written permission;
4. violate the restrictions in any robot exclusion headers on this Website or bypass or circumvent other measures employed to prevent or limit access to this Website;
5. take any action that imposes, or may impose, in our discretion, an unreasonable or disproportionately large load on our infrastructure;
6. deep—link to any portion of this Website (including, without limitation, the purchase path for any travel services) for any purpose without our express written permission; or
7. "frame", "mirror" or otherwise incorporate any part of this Website into any other website without our prior written authorization.

If your booking or account shows signs of fraud, abuse or suspicious activity, Expedia may cancel any travel or service reservations associated with your name, email address or account, and close any associated Expedia accounts. If you have conducted any fraudulent activity, Expedia reserves the right to take any necessary legal action and you may be liable for monetary losses to Expedia, including litigation costs and damages. To contest the cancellation of a booking or freezing or closure of an account, please contact Expedia Customer Service.

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PRIVACY POLICY

Expedia Inc. believes in protecting your privacy. Please click [here](#) to review our current Privacy Policy, which also governs your use of the Website and, as stated above, is incorporated by reference, to understand our practices: [Privacy Policy](#).

SUPPLIER RULES AND RESTRICTIONS

Additional terms and conditions will apply to your reservation and purchase of travel—related goods and services that you select. Please read these additional terms and conditions carefully. In particular, if you have purchased an airfare, please ensure you read the full terms and conditions of carriage issued by the travel supplier, which can be found on the supplier's website. You agree to abide by the terms and conditions of purchase imposed by any supplier with whom you elect to deal, including, but not limited to, payment of all amounts when due and compliance with the supplier's rules and restrictions regarding availability and use of fares, products, or services. Airfare is only guaranteed once the purchase has been completed and the tickets have been issued. Airlines and other travel suppliers may change their prices without notice. We reserve the right to cancel your booking if full payment is not received in a timely fashion.

Expedia may offer you the opportunity to book a reservation for a combination of two one-way tickets instead of a roundtrip ticket. Combined one-way tickets may provide a greater choice of flights, are often cheaper and can be combined on the same airline or on different airlines. Unlike roundtrip tickets, each one-way ticket is subject to its own rules, restrictions, and fees. If one of these flights is affected by an airline change (e.g. cancellation or rescheduling) that causes a Customer to make changes to the other flight, the Customer will be responsible for any fees incurred for making changes to the unaffected flight.

For certain low-cost carriers, the price of your flight has been converted from a different currency for convenience purposes to provide you an estimate of the amount of the purchase in your local currency. As a result, when you book, the amount charged to your credit card by the airline may be slightly different due to currency fluctuations. Your statement may also include a fee from your card issuer to process the transaction plus any applicable taxes for international purchases.

Federal law forbids the carriage of hazardous materials aboard aircraft in your luggage or on your person. A violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124). Hazardous materials include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials. Examples: Paints, lighter fluid, fireworks, tear gases, oxygen bottles, and radio-pharmaceuticals. There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your luggage and certain smoking materials carried on your person.

You acknowledge that some third-party providers offering certain services and/or activities may require you to sign their liability waiver prior to participating in the service and/or

activity they offer. You understand that any violation of any such supplier's rules and restrictions may result in cancellation of your reservation(s), in your being denied access to the applicable travel product or services, in your forfeiting any monies paid for such reservation(s), and/or in our debiting your account for any costs we incur as a result of such violation.

Expedia is not liable for any costs incurred due to hotel relocation.

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Sort Order :

Travelers have many options on to help them find the perfect hotel, flight, car rental, cruise or activity. The “sort” settings at the top of the page allows travelers to order search results to their preference, whether based on price, verified review score, or other criteria. The “filter” settings also allow travelers to include or exclude various options to suit their travel needs. If no options are selected, we will show a range of relevant options in the search results, based on the criteria outlined below:

- **Lodging:** Our default sort order reflects the relevance of properties to your search criteria, as we want to make sure you are able to quickly and easily find the offer that is right for you. We measure relevance by taking into account factors like a property's location, its review scores, the popularity of the property (measured by how many travelers on our sites make bookings at that property), the quality of the content provided by the property, and the competitiveness of the property's rates and availability, all relative to other properties meeting your chosen search criteria. The compensation which a property pays us for bookings made through our sites is also a factor for the relative ranking of properties with similar offers, based on the relevance factors described above. On our non-default sorts (e.g., by price or by star rating), properties with similar results will be ordered based on the factors above.
- **Flights:** Our default sort order is based on lowest price. In cases where two flights have the same price, the shorter flight is listed first.
- **Car Rental:** Our default sort order is primarily driven by price, but we may consider other relevant factors such as popularity, customer reviews, convenience of pickup location, and car type or category.
- **Cruise:** Our default sort order is based on a number of relevant factors such as cruise line rating, ship rating, price per day, origin rating, destination rating, length of cruise, and booking window.
- **Activities:** Our default sort order is manually curated by Expedia's destination managers familiar with each market, taking into account such factors as price, popularity, distance from hotel options, and traveler feedback.
- **Vacation Packages:** When combining several different travel products into a vacation package, we use the criteria outlined above to determine the sort order for each product.

Additionally, we continually optimize our service to provide the best experience to travelers. Accordingly, we may test different default sort order algorithms from time to time.

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PREPAID HOTEL RESERVATIONS

You acknowledge that the Expedia Companies pre-negotiate certain room rates with hotel suppliers to facilitate the booking of reservations. You also acknowledge that the Expedia Companies provide you services to facilitate such booking of reservations for a consideration (the "facilitation fee"). The room rate displayed on the Website is a combination of the pre-negotiated room rate for rooms reserved on your behalf by the Expedia Companies and the facilitation fee retained by the Expedia Companies for their services. You authorize the Expedia Companies to book reservations for the total reservation price, which includes the room rate displayed on the Website, plus tax recovery charges, service fees, and where applicable, taxes on the Expedia Companies' services. You agree that your credit card will be charged by the Expedia Companies for the total reservation price. Upon submitting your reservation request you authorize the Expedia Companies, including Travelscape, LLC, to facilitate hotel reservations on your behalf, including making payment arrangements with hotel suppliers.

You acknowledge that except as provided below with respect to tax obligations on the amounts we retain for our services, the Expedia Companies do not collect taxes for remittance to applicable taxing authorities. The tax recovery charges on prepaid hotel transactions are a recovery of the estimated taxes (e.g. sales and use, occupancy, room tax, excise tax, value added tax, etc.) that the Expedia Companies pay to the hotel supplier for taxes due on the hotel's rental rate for the room. The hotel suppliers invoice the Expedia Companies for certain charges, including tax amounts. The hotel suppliers are responsible for remitting applicable taxes to the applicable taxing jurisdictions. None of the Expedia Companies act as co-vendors with the supplier with whom we book or reserve our customer's travel arrangements. Taxability and the appropriate tax rate vary greatly by location. The actual tax amounts paid by the Expedia Companies to the hotel suppliers may vary from the tax recovery charge amounts, depending upon the rates, taxability, etc. in effect at the time of the actual use of the hotel by our customers. We retain service fees as additional compensation in servicing your travel reservation. Service fees retained by the Expedia Companies for their services vary based on the amount and type of hotel reservation.

You may cancel or change your prepaid hotel reservation, but you will be charged the cancellation or change fee indicated in the rules and restrictions for the hotel reservation. If you do not cancel or change your reservation before the cancellation policy period applicable to the hotel you reserved, which varies by hotel (usually 24 to 72 hours) prior to your date of arrival, you will be subject to a charge equal to applicable nightly rates, tax recovery charges and service fees. In the event you do not show for the first night of the reservation and plan to check-in for subsequent nights in your reservation, you must confirm the reservation changes with us no later than the date of the first night of the reservation to prevent cancellation of your reservation.

You agree to pay any cancellation or change fees that you incur. In limited cases, some hotels do not permit changes to or cancellations of reservations after they are made, as indicated in the rules and restrictions for the hotel reservation. You agree to abide by the Terms of Use imposed with respect to your prepaid hotel reservations.

Sales, use and/or local hotel occupancy taxes are imposed on the amounts that we charge for our services (service fee and/or facilitation fee) in certain jurisdictions. The actual tax amounts on our services may vary depending on the rates in effect at the time of your hotel stay.

You may not book reservations for more than 8 rooms online for the same hotel/stay dates. If we determine that you have booked reservations for more than 8 rooms in total in separate reservations, we may cancel your reservations, and charge you a cancellation fee, if applicable. If you paid a non-refundable deposit, your deposit will be forfeited. If you wish to book reservations for 9 or more rooms, you must contact Expedia's group travel specialists by phone at (800) 916-3290 or by filling out the group travel form online. One of our group travel specialists will research your request and contact you to complete your reservation. You may be asked to sign a written contract and/or pay a nonrefundable deposit.

Some hotel suppliers may require you to present a credit card or cash deposit upon check-in to cover additional expenses incurred during your stay. Such deposit is unrelated to any payment received by Expedia, Inc. for your hotel booking.

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PAY NOW OR PAY LATER DETAILS

With certain hotels, you may be presented with the option to pay online now or pay later at the hotel. If you select the "Pay Online Now" option, Expedia will charge the amount to your credit card in US dollars immediately. If you select "Pay Later at the Hotel", the hotel will charge your credit card in the local currency at the time of your stay. Please note that taxes and fees vary between the two payment options. Tax rates and foreign exchange rates could change in the time between booking and stay. Expedia coupons may only be applied to "Pay Online Now" bookings.

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EXPEDIA UNPUBLISHED RATE RESERVATIONS

When available, Expedia, Inc.'s subsidiary, Hotwire, Inc., may offer additional, discounted hotel booking options on the Website. These hotels, called Expedia Unpublished Rate hotels, are different from other hotels offered on the Website in several important ways. The name and exact address of the hotel are not shown until after payment has been made for the booking. All bookings are final and cannot be changed, refunded, exchanged, cancelled, or transferred to another party. Your credit card will be charged for the amount shown even if you do not use the booking. Room type will be determined by the hotel based on the number of guests provided at time of booking. All reservations are booked for stays in non-smoking rooms (subject to availability). Hotel room assignments are determined at check-in and upgrades are not available. The maximum number of Expedia Unpublished Rate rooms that can be booked at one time is six. All Expedia Unpublished Rate rooms will be booked under the same name, and the guest under whose name the reservation is made must be present at check-in. Expedia Unpublished Rate hotels are not eligible for hotel reward or club programs. Upon check-in, guests must present a valid ID and credit card in their name (the amount of available credit required will vary by hotel). Debit cards may not be accepted. For information about tax recovery

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charges, service fees, and taxes on our services, where applicable, please see "Prepaid Hotel Reservations."

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BANK AND CREDIT CARD FEES

Your payment is processed in the United States, when we process your payment. When the travel supplier processes your payment, it will be processed in the country in which the travel supplier is based.

Expedia or the travel supplier may have to verify: (i) the validity of the payment card (through a charge of a nominal value that is either refunded within a few days or deducted from the final payment due to the travel supplier) and, (ii) the availability of funds on the payment card (to be confirmed by the bank issuing the your credit card).

Some banks and credit card companies impose fees for international or cross border transactions. For instance, if you are making a booking using a US-issued card with a non-US merchant, your bank may charge you a cross border or international transaction fee. Furthermore, booking international travel may be considered an international transaction by your bank or card company, since we may pass your card details to an international travel supplier to be charged. In addition, some banks and card companies impose fees for currency conversion. For instance, if you are making a booking in a currency other than the currency of your credit card, your credit card company may convert the booking amount to the currency of your credit card and charge you a conversion fee. The currency exchange rate and foreign transaction fee is determined solely by your bank on the day that they process the transaction. If you have any questions about these fees or the exchange rate applied to your booking, please contact your bank.

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CURRENCY CONVERTER

If a currency convertor is available on the Website, the following terms and conditions apply: Currency rates are based on various publicly available sources and should be used as guidelines only. Rates are not verified as accurate, and actual rates may vary. Currency quotes are not updated every day. Check the date on the currency converter feature for the day that currency was last updated. The information supplied by this application is believed to be accurate, but the Expedia Companies, the Expedia Partners, and/or our respective suppliers do not warrant or guarantee such accuracy. When using this information for any financial purpose, we advise you to consult a qualified professional to verify the accuracy of the currency rates. We do not authorize the use of this information for any purpose other than your personal use and you are expressly prohibited from the resale, redistribution, and use of this information for commercial purposes.

EXPEDIA REWARDS

The Expedia Rewards program ("Program") is offered to the Website's customers at the sole discretion of Expedia, Inc., and is open only to individuals who have reached the

legal age of majority in their respective province/territory of residence, have a valid email address, and have enrolled in the Program. Please click here to see the Terms and Conditions of the Program.

PAY WITH POINTS

Expedia allows points from selected loyalty programs (“Points Programs”) to be redeemed for certain travel-related goods and services on the Website. If you use or register to use any points on the Website these terms and conditions apply. To be eligible to use points on the Website, you must have an Expedia.com account, you must have an eligible account with the provider of the Points Program that is active and in good standing, and your purchase must exceed minimum transaction value for the use of your points (if any).

LINKING YOUR ACCOUNT: For Points Programs other than Expedia+ (Your Expedia+ account is automatically linked to your Expedia.com account), your Points Program account (“Account”) will be linked to your Expedia.com account during the registration process on the Website. Expedia reserves the right, in its sole discretion, to deny registration, de-link your Account, or terminate your ability to use points on Expedia.com for any reason. During and after registration, the Points Program provider may provide Expedia with information about your Account, including your points balance.

REDEEMING POINTS: There is no fee to redeem your points at Expedia.com. Points may only be redeemed for eligible purchases of Expedia travel-related goods and services that Expedia will determine in its discretion. Your Points Program provider will deduct from your Account balance the amount of points you elect to use toward your eligible purchase. You may not combine points from one Points Program provider with any other loyalty points from another provider to complete a single transaction. However, if you do not have enough points to complete an eligible purchase, you may use an eligible credit card associated with your Account to complete the transaction. Eligible cards for such transactions may be limited to cards associated with the Points Program used in the transaction. Expedia may, in its discretion, allow you to combine points with eligible coupons.

ADDITIONAL TERMS: Purchases made with points are subject to the point to dollar conversion rate set by the Points Program provider. The Points Program provider has the right to change the point to dollar conversion rates at any time. Also, some Points Program providers may set a minimum amount of points that may be redeemed in any transaction. Additional terms and conditions may apply and are available at the applicable Points Program provider’s website.

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INTERNATIONAL TRAVEL

You are responsible for ensuring that you meet foreign entry requirements and that your travel documents, such as passports and visas (transit, business, tourist, and otherwise), are in order and any other foreign entry requirements are met. Expedia has no special knowledge regarding foreign entry requirements or travel documents. We urge customers to review travel prohibitions, warnings, announcements, and advisories issued by the relevant governments prior to booking travel to international destinations.

Passport and Visa: You must consult the relevant Embassy or Consulate for this information. Requirements may change and you should check for up-to-date information before booking and departure. We accept no liability if you are refused entry onto a flight or into any country due to your failure to carry the correct and adequate passport, visa, or other travel documents required by any airline, authority, or country, including countries you may just be transiting through. This includes all stops made by the aircraft, even if you do not leave the aircraft or airport.

Health: Recommended inoculations for travel may change and you should consult your doctor for current recommendations before you depart. It is your responsibility to ensure that you meet all health entry requirements, obtain the recommended inoculations, take all recommended medication, and follow all medical advice in relation to your trip.

Disinsection: Although not common, most countries reserve the right to disinsect aircraft if there is a perceived threat to public health, agriculture or environment. The World Health Organization and the International Civil Aviation Organization have approved the following disinsection procedures: (1) spray the aircraft cabin with an aerosolized insecticide while passengers are on board or (2) treat the aircraft's interior surfaces with a residual insecticide while passengers are not on board. For more information, see: <http://ostpxweb.dot.gov/policy/safetyenergyenv/disinsection.htm>

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3. Your address, email address and telephone number.
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counsel prior to doing so. Please include the following details:

1. Identification of the specific content that was removed or disabled and the location that content appeared on Expedia's Website. Please provide the URL address if possible.
2. Your name, mailing address, telephone number and email address.
3. A statement that you consent to the jurisdiction of Federal District Court for the judicial district in which your address is located, or if your address is outside of the United States, for any judicial district in which Expedia, Inc. may be found, and that you will accept service of process from the party who reported your content, or that party's agent.
4. The following statement: "I swear, under penalty of perjury, that I have a good faith belief that the content identified above was removed or disabled as a result of a mistake or misidentification."

Sign the paper.

Send the written communication to the following address:

Expedia, Inc.

Attn: IP/Trademark Legal Dept., DMCA Complaints

333 108th Avenue NE

Bellevue WA 98004

OR you may fax it to: (425) 679-7251, Attn: IP/Trademark Legal Dept., DMCA Complaints
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

appellate case number: 2020-001150

Josh 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.

PROOF OF SERVICE

THE UNDERSIGNED hereby certifies that on March 15, 2021 the undersigned served the aforementioned motion and proposed supplemental record on appeal on all counsel via email and thereafter on all counsel the next day via the United States Post Office with sufficient first class postage to the following persons at the following addresses:

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