



Almost Famous...on a Social Networking Site with a Forum Selection Clause

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The ease of creating a MySpace profile (or Twitter account) that impersonates a celebrity has to be nerve racking for actors, rock stars, and anyone else who is “famous.”

Riggs v. Myspace, Inc., 2009 U.S. Dist. LEXIS 37109 (W.D. Pa. May 5, 2009) is the story of a Plaintiff who created a “Celebrity Guardian Angel” profile to protect celebrities from online impersonators. The Plaintiff’s “Celebrity Guardian Angel” profile would confirm whether a celebrity’s profile was legitimate as a means to reduce the number of celebrity impostures.

MySpace deleted the Plaintiff’s account for violation of the MySpace account’s terms of use, after a celebrity imposture accused the Plaintiff of harassment and bullying. Several months after deleting the Plaintiff’s profile, MySpace started their own website for celebrities, which the Plaintiff claimed was her concept. *Riggs*, 2-3.

The Plaintiff sued MySpace in Pennsylvania for negligence, breach of implied contract, fraud and intentional infliction of emotional distress. *Riggs*, 2.

MySpace brought a motion to dismiss for improper venue or in the alternative, a motion to transfer to the United States District Court for the Central District of California, pursuant to MySpace’s terms of use agreement. *Riggs*, 2.

The Terms of Use provision was a click wrap agreement, which stated:

Disputes. If there is any dispute about or involving the MySpace Services, you agree that the dispute shall be governed by the laws of the State of California, USA, without regard to conflict of law provisions and you agree to exclusive personal jurisdiction and venue in the state and federal courts of the United States located in the State of California, City of Los Angeles. Either MySpace.com or you may demand that any dispute between MySpace.com and you about or involving the MySpace Services must be settled by arbitration utilizing the dispute resolution procedures of the American [*4] Arbitration Association (AAA) in Los Angeles, California, USA, provided that the foregoing shall not prevent MySpace.com from seeking injunctive relief in a court of competent jurisdiction. *Riggs*, 4.

The Plaintiff argued that MySpace breached the “Terms of Use” provision by failing to enter arbitration, thusly allowing the Plaintiff to sue MySpace in Pennsylvania, instead of California. *Riggs*, 4.

The Court stated MySpace “breaching” the contract by terminating the Plaintiff’s profile was immaterial. Additionally, arbitration was not a condition of performance and had no effect on the other stated remedies. *Riggs*, 5. Therefore, any breach of the arbitration clause did not invalidate the forum selection or choice of law provisions. *Riggs*, 5-6.

In language that would make the Supreme Court in *Carnival Cruise Lines, Inc. v. Shute* 499 U.S. 585, (U.S.Wash., 1991.) proud, the Court effectively stated that the purpose of adhesion contracts with forum selection clauses is to simplify the question of personal jurisdiction for MySpace. *Riggs*, 9. Moreover, there was no reason (or argument) that the forum selection clause establishing “exclusive personal jurisdiction” in Los Angeles, California, was in anyway unfair or unreasonable. *Riggs*, 9-10.

On the bright side, at least the Plaintiff can at least meet real celebrities while in Los Angeles.