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Business Law 1

Case Brief

Due Wednesday 8 April, 2015

Facts:

In the case of Robert Anthony vs. Yahoo! INC, 2006, Anthony (the Plaintiff) is suing Yahoo! Inc. (the Defendant) for 1) breach of contract, 2) fraud, 3) negligent misrepresentation, 4) deceptive and unfair practices under the Florida Deceptive and Unfair Trade Practices Act, 5) unjust enrichment, and 6) restitution. Yahoo! provides two online services, Yahoo! Premier, and Yahoo! Personals, which are services that are for those looking for “loving, lasting relationships”, and “for dates and fun” respectively. Yahoo! claims that with both of these services, subscribers will find better first dates that will lead to even more dates. In order to ensure this, Yahoo! warns the users to be truthful in the profiles they create, and that the creation of false profiles can result in a termination of the account by Yahoo!. This they say will ensure authenticity in the profiles people match with on their dating services. Anthony is suing Yahoo! for the issues listed above claiming that Yahoo! “Deliberately and intentionally originates, creates, and perpetuates false and/or non-existent profiles on its site” in order to get subscribers to believe they have a new match, therefore getting them to renew their subscription to the site. Anthony then provides twenty-three examples of these fake profiles, with evidence to support his claims that they are indeed fake. Yahoo! seeks to dismiss all of the claims made against them by Anthony.

Issue:

The issue in this case is whether or not Yahoo! did in fact breach their contract, commit fraud, and everything else that Anthony is claiming they did. In this

case, Anthony brings up a few different claims. His overall claim is that Yahoo! creates and forwards these false, expired, or otherwise untruthful profiles for the sole purpose of getting subscribers with accounts that are about to expire to re-subscribe to the services. First of all, Anthony says that users must agree to the terms and conditions of Yahoo!'s services upon registration, and that these terms and conditions enter Yahoo! into a fully integrated, valid contract that present their online dating services as totally legitimate and genuine. By creating and forwarding non-existent and/or false profiles, Anthony is claiming that Yahoo! is violating their terms of service and therefore breaching the contract they (the defendant) created. The premise, Anthony says, of the Yahoo! dating sites is that it lets paid subscribers talk to any other subscribers on the site, and by creating false profiles, does not allow users to do that. Secondly, Anthony claims that Yahoo! is violating part of their Personal Guidelines, which are *"Yahoo! Personals gives Yahoo! users a way to find and interact with other people who may share their interest and goals. Just like a real community, different people may have different opinions and personalities in Yahoo! Personals"* by creating and forwarding profiles that don't represent individuals who may share goals, interests, and other things in common and are not part of a legitimate, realistic community. Next, he claims that Yahoo! is directly violating their terms of service and personal guidelines by failing to remove expired profiles after being instructed to remove them and then sending them to current subscribers. He states that Yahoo! is contractually bound by their terms of service to remove profiles and its content upon request. Lastly, Anthony alleges that Yahoo's guidelines state *"You'll be happy to know that we do not allow spam, information*

gathering, or escort services”, and that by creating and forwarding these fake profiles, they are going against their “contractual obligation not to allow spam”. The court had to look at all of these claims the Plaintiff made and decide whether or not the claims against Yahoo! were valid and legitimate.

Decision

In the end of the case, the court reached two different conclusions, although they did not decide on exact punishments/settlements for either side in the case. They dismissed Anthony’s claims against Yahoo! of restitution, unjust enrichment, and breach of an express contract. They then denied Yahoo!’s motion to dismiss Anthony’s claims for negligent misrepresentation, fraud, and FDUTPA violations, which means they see Yahoo! is in violations of those claims. The court then gave Anthony (the Plaintiff) twenty days leave to amend, which means Anthony has twenty days to go and change the nature of his claims/adjust his argument.

Analysis

Anthony’s first claim was that Yahoo!’s Terms and Conditions created a fully integrated, valid contract, and that by creating false profiles Yahoo! was breaching that contract. However, Anthony cannot actually identify any terms in the supposed contract that explicitly require Yahoo! not to create and/or forward illegitimate profiles. This also goes for Anthony’s second claim of Yahoo! violating their Personal Guidelines of providing Yahoo! subscribers a way “to find and interact with other people who may share their interests and goals”. The language that Anthony uses in

his claims against Yahoo! merely state the dating services Yahoo! provides and doesn't give any legitimate reason for Yahoo! to perform or not perform a particular action. Anthony says that "the entire premise of the service is that it allows paid subscribers to get in touch with anyone on Yahoo! Personals". That statement is not a binding promise that causes Yahoo! to refrain from creating and/or forwarding these illegitimate profiles. His third claim is that Yahoo! failed to remove expired profiles even after being explicitly instructed to by the ex-subscriber. Yahoo's license provision states that "This license exists only for as long as you elect to continue to include such Content on the Service and will terminate at the time you remove or Yahoo! removes such Content from the Service" in regards to Content a subscriber submits (including graphics, audio, video, etc...). By agreeing to the Terms and Conditions upon registration the subscriber agrees to allow Yahoo! to use, distribute, modify, or adapt that content while it is on a publically accessible area of the Service, until the conditions listed in the license provision above. Anthony claims that Yahoo! is contractually bound to remove profiles upon request of the subscriber, and failure to do so is a breach of contract, but the license provision in question does not require Yahoo! to remove profiles, only the content made publically accessible when on the site. His last claim is that Yahoo! says in their "Guidelines for Posting Your Profile" that "you'll be happy to know that we do not allow spam, information gathering, or escort services", and by creating and forwarding the false profiles, Yahoo! is allowing spam. The issue with that statement is that Yahoo!'s guidelines online apply to what subscribers have the ability to do on the site and not what Yahoo! can do. The problem with all of Anthony's claims

versus Yahoo!'s terms is that the language in his claims do not accurately represent the terms presented by Yahoo!. From Anthony's (and maybe even the court's) standpoint, the terms of Yahoo!'s Terms and Conditions may be unclear, or may be able to be interpreted in a way other than was meant. This could potentially fall under the Plain Meaning Rule, in which a court needs to consider just that – the meaning of what the contract is stating. Some of the requirements of viewing a contract as ambiguous are that 1) When there is uncertainty about a provision, 2) When a term is susceptible to more than one interpretation, and 3) When the intent of the parties cannot be determined from its language. I believe that all of those requirements relate to the claims Anthony is making in this case because the terms and services provided by Yahoo! were obviously misinterpreted by Anthony.

The court denied Yahoo's motion to dismiss Anthony's claims of fraud and negligent misrepresentation for good reasons. The requirements of fraud (fraudulent misrepresentation) are as such – 1) A misrepresentation of a material fact must occur, 2) There must be an intent to deceive, and 3) The innocent party must justifiably rely on the misrepresentation. The courts most likely viewed this case as such - Yahoo! misrepresented a material fact when the terms in their Terms and Conditions contradicted the actions performed by Yahoo! (the creating and forwarding of false profiles when they promised subscribers authenticity). Yahoo! could very well have seemed as though they had an intent to deceive the subscribers by providing these fake profiles in order to keep membership even though the users believed they were matching with real people and profiles. And finally in Anthony, or any other subscribers case, they could claim they did justifiably rely on the

misrepresentation, because they relied on the fact they were paying for what they believed to be a service that would connect them with real people. Negligent Misrepresentation has most of the same requirements as fraud but without the intent to deceive, which Yahoo! could potentially argue they had no true intent to deceive the Plaintiff.

Conclusion

I fully believe that the courts made the right decisions in this case. Given all of the considerations of both Anthony's claims and Yahoo!'s defenses, they were able to determine which claims were legitimate given the language provided by the Plaintiff and which claims had no real support behind them. I would've been interested to see the end decision of the courts/what Yahoo! had to do after Anthony's amendments, but overall I was satisfied with the outcome.