

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ROY STEWARY MOORE, et al

Plaintiffs,

v.

SASHA NOAM BARON COHEN, et al

Defendants.

Case No: 1:18-cv-02082

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER

Plaintiffs Roy Moore (“Judge Moore”) and Kayla Moore (“Ms. Moore”) (collectively “Plaintiffs”) submit the following in opposition to Defendants Sasha Noam Baron Cohen (“Defendant Cohen”), Showtime Networks, Inc. (“Defendant Showtime”) and CBS Corporation’s (“Defendant CBS”) (collectively “Defendants”) Motion to Transfer.

Dated: December 12, 2018

Respectfully Submitted,

/s/ Larry Klayman

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MEMORANDUM OF LAW

In their motion to transfer, Defendants grossly understate the severe level of fraud perpetrated by Defendant Cohen, in conjunction with Defendants Showtime and CBS, to try to save their fatally defective “Consent Agreement.” Exhibit 1. Indeed, there can simply be no consent, or legally binding agreement, when one party misrepresents not only their identity but also the purpose of the purported agreement, as Defendants have clearly and admittedly done here. As such, the venue clause in the purported “Consent Agreement” that Defendants wish to now enforce is clearly void and unenforceable along with the remainder of the “Consent Agreement.” Holding otherwise contravenes not only well established contract common law, but also the notions of justice and fundamental fairness.

I. STATEMENT OF RELEVANT FACTS

Judge Moore was fraudulently induced by Defendants to appear on Defendant Cohen’s show “Who is America?”. In order to fraudulently induce Plaintiffs to travel to Washington, D.C., where filming was to and did take place on or about February 14, 2018, Defendant Cohen and his agents falsely and fraudulently represented to Plaintiffs that Yerushalayim TV – which does not actually exist—was the producer and broadcaster of the show that Judge Moore would appear on, instead of the actual network that the show that later appeared on—Defendant Showtime. Comp. ¶ 15. In addition, Defendant Cohen and his agents falsely and fraudulently represented that Judge Moore and Mrs. Moore were both being invited to Washington, D.C., for Judge Moore to receive an award for his strong support of Israel in commemoration of its 70th anniversary as a nation state. Comp. ¶ 15. Plaintiffs had no knowledge that Defendant Cohen was in any way associated with the production that they were signing up for, nor that Defendants CBS and Showtime were involved. Plaintiffs also had no knowledge that the purpose of the

“Consent Agreement” was to feature them on “Who is America?” and not to receive an award for Judge Moore’s strong support of Israel. Had Plaintiffs known of these facts, they would never have signed the “Consent Agreement” and travelled to Washington D.C. Comp. ¶¶ 16 - 17.

II. THE LAW

First and foremost, it is indisputable that venue is proper in the District of Columbia. Defendants do not even attempt to argue otherwise, nor could they plausibly do so.

Under 28 U.S.C. § 1391(b)(2), venue is proper in “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred or a substantial part of property that is the subject of the action is situated.” When determining whether a substantial part of the events or omissions giving rise to the claim occurred in a district, a court should not look just to those events that directly underlie the claim at issue, but “should review ‘the entire sequence of events underlying the claim.’” *Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004) (quoting *Bramlet*, 141 F.3d at 264); *see also Reynolds Foil Inc. v. Pai*, 2010 WL 1225620, at *7 (E.D. Va. Mar. 25, 2010).

Here, Plaintiffs were flown to Washington D.C. by Defendants for Judge Moore to purportedly receive an award for his strong support of Israel. It is in this judicial district that “Who is America?” was filmed, and in this judicial district that Judge Moore was falsely portrayed as a pedophile, which gives rise to Plaintiffs’ claims. As such, a “substantial part of the events” giving rise to Plaintiffs’ claims occurred in Washington D.C., and this is where venue properly lies. Clearly recognizing, if not admitting, this fact, Defendants seek to enforce void and unenforceable forum selection clause in order to have this matter transferred to what they perceive to be a more favorable forum in New York. However, as set forth below, Defendant’s motion in this regard must be denied.

A. The “Consent Agreement” is Void for Fraud Under the Restatement

The Second Restatement of Contracts says “[i]f a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient.” Restat 2d of Contracts, § 164 (2nd 1981). The comments to the Restatement set forth four elements in this regard: (1) a misrepresentation that was (2) fraudulent or material that (3) induced the recipient to make the contract, and that the recipient was (4) justified in relying upon the misrepresentation.

Here, the facts squarely meet the elements set forth by the Restatement. There are at least two primary misrepresentations at issue¹. The first misrepresentation was that Judge Moore was being flown to Washington D.C. to receive an award for his support of Israel, when in actuality it was so that he could be falsely portrayed as a pedophile on national television. The second misrepresentation was that the television segment was being produced by Yerushalayim TV, and not Defendant Cohen, Showtime, and CBS. These misrepresentations were clearly and admittedly fraudulent and material, and they induced Plaintiffs to sign the “Consent Agreement” as it was pled in the Complaint that Plaintiffs would never have agreed to sign the “Consent Agreement” or fly to Washington D.C. had they had knowledge of either of these facts. Comp. ¶¶ 16-17. Lastly, Plaintiffs were clearly justified in relying upon these misrepresentations, as

¹ This is notwithstanding one of the other frauds committed once Plaintiffs arrived in Washington D.C., with Defendant Cohen compounding the prior frauds by showing up in disguise as “Erran Morad”, an Israeli Mossad agent, in an attempt to keep Judge Moore from seeing through Defendants’ other frauds. This additional fraudulent subterfuge is neither legal nor funny, as Judge Moore was then defamed as a pedophile, which constitutes defamation *per se*. Defendant Cohen and the other Defendants then broadcasted, promoted, and effectively later celebrated the defamation on national and international television and on the internet, to reap large profits for their misdeeds, at the expense of a distinguished former Chief Justice of the Alabama Supreme Court.

they had no possible basis for knowing that they were false at the time the purported “Consent Agreement” was executed.

Crucially, the Restatement does not state that where these elements are met, only the specific provisions touched by the fraud are voidable. Indeed, pursuant to the express language of the Restatement, when these elements are met, as they are here, the “[entire] contract” is voidable by the recipient. Thus, given that the entire “Consent Agreement” is void, there is simply no choice of venue clause to enforce.

B. The “Consent Agreement” is Void for Fraud Under Contract Law

It is well established that misrepresentation of material facts may be the basis for the rescission of a contract, even where the misrepresentations are made innocently, without knowledge of their falsity and without fraudulent intent. The rationale supporting this rule, which has its origins in equity, is that, as between two innocent parties, the party making the representation should bear the loss. Stated another way, the rule is based on the view that "one who has made a false statement ought not to benefit at the expense of another who has been prejudiced by relying on the statement." This rule may be employed "actively," as in a suit at equity or law for rescission and restitution, or 'passively,' as a defense to a suit for breach of contract. *In re Estate of McKenney*, 953 A.2d 336, 342 (D.C. 2008) (quoting *Barrer v. Women's Nat'l Bank*, 245 U.S. App. D.C. 349, 354-55, (1985)).

Here, not only were the material misrepresentations set forth in the preceding section made with knowledge of their falsity, they were also clearly made with fraudulent intent. This is evident from the face of the “Consent Agreement” alone. It is clear that Defendants knew that they had to disguise their identity, otherwise Plaintiffs would never have agreed to appear on “Who is America?” It is also clear that Defendants knew that Judge Moore would never have agreed to appear on national television to be falsely portrayed as a pedophile, which is why they had to lie about the purpose of the “Consent Agreement” and say that Judge Moore was to receive an award for his strong support of Israel.

As set forth above, the balance of equities is also at play here. Plaintiffs are truly victims in Defendant's sordid scheme for ratings and profit. There is no way that Plaintiffs could have known the true intent behind the "Consent Agreement" until it was much too late. Given that Judge Moore has already suffered irreparable injury by being falsely cast as a pedophile on national television, it is truly inequitable to allow Defendants to also enforce a fraudulently obtained contract to move this case to what they perceive to be a favorable venue and forum.

C. Even if the "Consent Agreement" Was Valid, Defendants Have No Basis to Enforce it

As set forth in the Complaint, the purported "Consent Agreement" was strictly between Judge Moore and Yerushalayim TV. There is zero mention of Defendant Cohen, Defendant CBS, or Defendant Showtime in the "Consent Agreement." Yerushalayim Television, LLC is incorporated in the state of Montana. Exhibit 2. There is no indication on its Articles of Organization or Annual Report that it is in any way affiliated with any of the Defendants. Exhibit 2. As such, even if the Consent Agreement were a valid binding agreement - which it is not, as set forth above – Defendants clearly have no basis upon which to enforce its terms.

"Generally, a stranger to a contract may not bring a claim on the contract." *Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1064 (D.C. 2008). "In order to sue for damages on a contract claim, a plaintiff must have either direct privity or third party beneficiary status." *Id.* Defendants' only possible hope is that this Court grants them third party beneficiary status, but such a conclusion is simply not supported by the facts. "Third-party beneficiary status requires that the contracting parties had an express or implied intention to benefit directly the party claiming such status." *Id.* As set forth above, not only did Plaintiffs never intend to benefit Defendants by signing the Consent Agreement, Plaintiffs would not have entered into any agreement at all had they known that Defendants were using a fake corporation.

As such, no third-party beneficiary status can be conferred, and Defendants, as strangers to the contract, have no standing or legal basis to enforce its terms.

D. The Court Should Deny Defendants' Motion in the Interest of Justice

As set forth above, basic and fundamental contract law mandates a finding that the "Consent Agreement" is void for fraud and, even if it was not, that Defendants, as strangers to the purported contract, have no grounds to enforce its terms.

Allowing Defendants to enforce the terms of a fraudulently obtained contract would create a terrible precedent that allows for parties to make express misrepresentations in the terms of a contract without any legal consequence. It is simply indisputable that Defendants engaged in material fraud to induce Judge Moore to sign the "Consent Agreement." It should not matter whether fraud is perpetrated to make a television program. Fraud is fraud, simply put, and as such it must be dealt with accordingly.

Indeed, Defendants' motion is purely tactical, as they clearly perceive New York to be a more favorable forum, where they will more than likely find a favorable left-leaning, pro-entertainment industry judge to rule in their favor. Defendants' clearly recognize that chances of success in a truly neutral forum, such as this one, are significantly diminished, which explains their attempt to "forum shop" with their instant motion. Allowing Defendants to do so would contravene notions of both fundamental fairness and justice, and would severely prejudice Plaintiffs, who pursuant to the federal venue statute, have every right to have their claims heard and adjudicated in this honorable Court.

III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court deny Defendants' motion to transfer, as the purported "Consent Agreement" was obtained fraudulently and

therefore must be voided. Even more, it is also clear that Defendants have no legal basis to enforce the terms of the “Consent Agreement,” as they are not parties therein.

This is really a simple matter of basic contract law. It is incumbent upon this Court to apply the same law to Defendants as to any other litigant and see through Defendants’ tactical motion to transfer this case to what they perceive to be a favorable forum.

Dated: December 12, 2018

Respectfully submitted,

/s/ Larry Klayman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served through the court's ECF system to all counsel of record or parties on December 12, 2018.

/s/ Larry Klayman
Larry Klayman, Esq.

Deadline