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Match.com must face dispute over user

Judge rejects motion to dismiss suit for online dating service's failure to remove alleged rapist

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Lawyers representing online dating service Match.com must respond to a complaint it permitted an accused rapist to continue using the website, resulting in the sexual assault of a Chicago woman.

In the Daley Center on Tuesday, Cook County Associate Judge Moira Susan Johnson rejected Match's second motion to dismiss the lawsuit, ruling that immunity for websites under a federal communications law did not apply to its alleged conduct in this case.

The civil case stems from a December 2009 sexual assault of a woman, referred to as Jane Doe in the lawsuit, by Ryan Logan.

According to the complaint, a different Match user informed the website that Logan had allegedly raped her two years earlier. The site did not remove his profile and let him continue to use the service.

In November 2010 at a criminal bench trial, Cook County Associate Judge James B. Linn found Logan guilty of the 2009 criminal sexual assault of Jane Doe. Logan avoided a conviction for the other woman's allegations.

At the February 2011 sentencing hearing, Linn vacated that conviction and found Logan guilty of criminal sexual abuse and unlawful restraint. He received a 90-day sentence.

Doe filed a civil suit in 2011, alleging Match failed to remove Logan's profile, monitor his use of the site, contact police or warn other customers about him. It also alleged that Match did not abide by the Illinois Dating Referral Services Act.

Match first moved to have the lawsuit dismissed, citing a provision in its terms-of-use agreement that any litigation

against the service must be filed in state or federal court in Dallas County, Texas.

Circuit Judge Drella C. Savage instead granted summary judgment to Doe, ruling that the DRSA controlled the rights in the case and that it would stay in Illinois courts and be subject to Illinois law. The 1st District Appellate Court declined to accept Match's petition to appeal Savage's order.

In June, Match filed a second motion to dismiss the lawsuit in circuit court on the grounds that a federal law — the Communications Decency Act of 1996 — bars state-level claims against website operators for content posted by third-party website users.

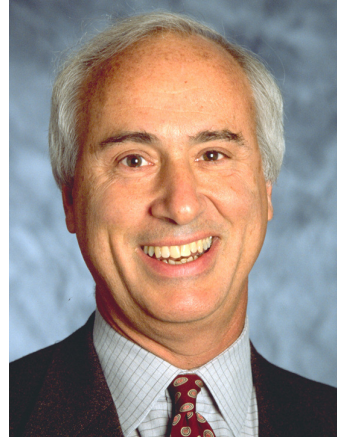
At Tuesday's hearing in front of Johnson, James K. Gardner — a partner at Neal, Gerber & Eisenberg LLP who represents Match — said the law arose to address the vastness of the Internet and to protect websites from the burden of screening content other users may post on their sites.

Gardner told the court that Internet service providers may opt to alter or reject third-party content, but as long as they don't mix in their own content, they are not responsible for what others say.

"To the extent that you've got a predator on your website, posting information, you have no obligation as the 'bulletin board' — for lack of a better term where that communication is taking place — to either monitor, to do anything about it," Gardner said in court.

Gardner provided examples from other cases, including a Las Vegas federal court case from May filed against Match, that harm inflicted by a website's users does not create liability for the site.

"Every single case that has



James K. Gardner

decided whether a website is responsible for harm inflicted on users by third parties has held, without exception, that there is no liability on the part of the website operator for refusing to remove profiles from the website," he said.

Gardner argued that Doe's claims were split between a common law negligence claim and a claim under the Dating Referral Services Act that Match misrepresented its services.

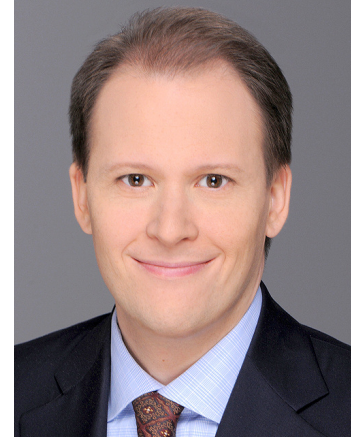
"This negligence claim does not survive the Communications Decency Act because it is premised entirely — even without regard to whatever prior knowledge Match had — on leaving his profile on the website," he said.

Representing Doe, Daniel S. Kirschner — a partner at Corboy & Demetrio P.C. — told the court that while other courts may apply that federal law broadly, Illinois courts and the 7th U.S. Circuit Court of Appeals do not see it the same way.

"It's a very, very narrow standard," Kirschner said.

Kirschner argued that a communications law would not apply because there was nothing offensive to be found in anything Logan posted through the site.

"What we're seeking to hold Match.com responsible for is knowing that he was a rapist and doing nothing about it," he said. "Sitting on that information,



Daniel S. Kirschner

taking his money to continue to be a member, allowing him to continue to troll the site and using their algorithm to be matched with other members."

He also questioned Match's dividing of the claims between a contestable common law claim and the DRSA claim.

Under Illinois Supreme Court rules, Match needed to notify the Illinois attorney general that it wanted to pre-empt a state law with a federal one.

"All of a sudden, I think Match.com was caught with its corporate pants down," Kirschner said. "Now they're in a position realizing bad politics makes bad business. You can't tell Lisa Madigan that we think we operate with impunity in the state of Illinois."

Rather, Kirschner said the counts Match moved to dismiss incorporate both common law and the state statute.

After about an hour of each side presenting its position, Johnson ruled in favor of Doe.

"The allegations do not support conduct that is immune under the act, the CDA," Johnson said.

She told Match it would have 28 days to respond to the complaint.

Match was also represented by Eric Y. Choi, an associate at Neal, Gerber & Eisenberg.

The case is *Jane Doe v. Match.com LLC*, No. 13 L 4197.