No Joint Venture or Voluntary Undertaking in Stalking Case: Illinois Supreme Court Rejects Erin Andrews Appeal

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On January 25, 2017, the Illinois Supreme Court declined to review the First District Appellate Court's ("Court") decision to affirm the dismissal of television personality Erin Andrews's ("plaintiff") complaint against Preferred Hotel Group, Inc. ("Preferred"), a Chicago corporation, in her widely-publicized stalking case.

In exchange for a fee, Preferred provides marketing, sales, and reservation services to a network of hotels, including the Ohio State University (OSU)-owned Blackwell Inn ("Blackwell"). Preferred and Blackwell had a written agreement ("Agreement") under which Preferred would provide the aforementioned services and Blackwell would pay membership and booking fees and conform with Preferred's Standards of Excellence ("Standards"). There were two privacy-related Standards: a proof of identity requirement for issuance of duplicate keys, and required communication of the room number and rate at check-in.

Plaintiff stayed at Blackwell on February 4, 2008. Before her stay began, Illinois resident Michael David Barrett telephoned Blackwell and requested the room next to hers. Blackwell staff granted his request. On February 4, he took video of plaintiff doing things like getting dressed by retrofitting the peephole on the door to her room. After he posted the videos online, plaintiff sued Preferred for invasion of privacy and negligent infliction of emotional distress.

Preferred filed a motion to dismiss under § 2-619.1 of the Illinois Code of Civil Procedure. After extensive discovery, plaintiff filed a written response to Preferred's motion, asserting that Preferred owed her a duty of care because it was in a joint venture with Blackwell or it voluntarily assumed a duty of care. The circuit court granted Preferred's motion pursuant to § 2-619(a)(9) of the Code, because Preferred could not be held liable for the actions of Blackwell's staff. The circuit court provided that the Agreement did not cover the acts at issue and pointed out that Preferred's relationship with OSU "was limited to services provided for electronic transmittal of requests to Blackwell in transmission of confirmation numbers back to guests." Plaintiff appealed.

On appeal, plaintiff argued that Preferred could be held liable because it and Blackwell were members of a joint venture to operate the hotel. She asserted that the sharing of reservation fees and Preferred's control over Blackwell's policies and operations created a joint venture. Under Illinois law, joint venture members are vicariously liable for negligent acts that the joint venturers commit during the course of the venture. In Illinois, the existence of a joint venture is assessed under three factors: "(1) a community of interest in the purpose of the joint association, (2) a right of each member to direct and govern the policy and conduct of the other members, and (3) a right to joint control and management of the property used in the enterprise."

The Court was unpersuaded by plaintiff's contention that a joint venture relationship existed because Blackwell had access to Preferred's internet booking engine ("Engine") and was part of its hotel network. For several reasons, it concluded that Blackwell and Preferred "were nothing more than two separate entities contracting with one another for a particular service from which each would derive their own individual profit," which is not enough to establish a joint venture. First, the fact that they both expected to benefit from their arrangement was not indicative of an intent to form a joint venture. Second, the Agreement shows that Preferred and Blackwell had two different interests in doing business together. Third, the only financial benefit that Preferred would receive was its fee, and it would earn that fee regardless of whether Blackwell profited from the reservations made using the Engine.

The Court was equally unpersuaded by plaintiff's argument that the requirement that hotels in Preferred's network comply with its Standards constituted a right on the part of Preferred to exert control over Blackwell's operation and direct its conduct and policy. The Court responded by providing that, for the purpose of establishing a joint venture, a contractual agreement that requires or prohibits a party's performance of a specific act is not the equivalent of control of management. It went on to point out that under the Agreement, Preferred did not have any degree of joint control over Blackwell's operation. It further provided that Preferred did not: have any employees at the hotel; actually manage or control the hotel, its staff, or its operations; require complete compliance with its standards; handle phone calls to Blackwell; or have access to the assignment of room numbers or Blackwell's guest list.

Plaintiff also argued that Preferred and Blackwell shared in the latter's losses and profits, but no evidence in the record supported her contention. The Court first pointed out that the fact

that Preferred received a fee for its services did not mean that it had a common interest and shared profits in Blackwell's operation. It went on to provide that while Preferred may have hoped that Blackwell would continue succeeding, its mere interest in Blackwell's success was not enough to create a joint venture. It also provided that the fact that two businesses enter into a service agreement and seek to mutually profit from it does not transform a business relationship into a joint venture. The Court ultimately affirmed the circuit court's ruling that Preferred did not owe plaintiff a duty on the basis of the existence of a joint venture.

Plaintiff also argued on appeal that Preferred voluntarily assumed a duty to protect her privacy as a Blackwell guest. She specifically contended that Preferred breached a voluntary undertaking to protect guests' privacy by having the aforementioned two privacy-related Standards and not having a Standard related to putting one guest next to another on request or the disclosure of a guest's room number and identity. Under § 324A of the Restatement (Second) of Torts, which Illinois courts have adopted, "one may be liable to a third person for the negligent performance of a voluntary undertaking."

The Court concluded that Preferred's actions did not constitute a voluntary undertaking under the Restatement and that the circuit court properly dismissed plaintiff's complaint. It began by providing that the extent of Preferred's undertaking was issuing the aforementioned two privacy-related Standards and providing a reservation platform for booking rooms online. These Standards were unrelated to the conduct at issue and did not extend the duty of care to an act that Preferred did not voluntarily undertake. Preferred did not voluntarily undertake an additional duty to protect the privacy of Blackwell guests who did not make reservations using its Engine by publishing these Standards and providing its services. The Court finished by providing that Preferred could not have voluntarily undertaken a duty to protect plaintiff's privacy because she did not make her reservation using the Engine and, as a consequence, Preferred did not: have any contact with her; put forth any service for her benefit; or have access to Blackwell records containing her stay duration, room assignment, and identity.