

Op-Ed/Editorials - Gambling and the Law®: Read Those T&Cs

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Party Poker won a nice victory in federal court in Ohio, because its Terms and Conditions say that all disputes will be heard in the courts of Gibraltar.

The suit had the potential to be a major headache for Party Poker. The plaintiffs, Rose Wong and Patrick Gibson, had filed a class action, claiming they “and others similarly situated” had lost money because other players with multiple accounts had colluded against them. So why would Party Poker be liable? Wong and Gibson claimed Party Poker knew about the collusion and did nothing to prevent it.

The plaintiffs’ claim was weak from the start. They quoted from Party Poker’s “Collusion Prevention Statement” on its website, to prove that Party Poker did nothing to prevent collusion. Of course, the Statement actually warned about collusion and described the ways Party Poker was trying to identify and eliminate players who collude.

But we will never know if plaintiffs would have been able to convince an American jury to give them big bucks, because the Court dismissed the lawsuit and told them to refile in Gibraltar.

Party Poker’s Terms and Conditions clearly state that the law of Gibraltar applies to the players’ Agreement, and that players “irrevocably agree to submit, for the benefit of the Company, to the exclusive jurisdiction of the courts of Gibraltar for settlement of any disputes...”

Courts are split on whether forum selection clauses like this are enforceable. Ten years ago, a Texas player sued a California online gaming company operating Funscape’s Casino Royale in his local court. The federal court in Texas refused to enforce a clause that said all disputes would “be resolved exclusively by final and binding arbitration in the City of San Jose, County of Santa Clara, State of California.” The Judge, probably incorrectly, decided that this was not really a

forum selection clause, because it did not expressly say that all lawsuits must be filed in California.

More importantly, the Judge noted that the clause was “buried” in the site’s online Agreement, which nobody reads. And he went on to hold that the state of Texas’s interest in protecting its citizens outweighed the Agreement.

Courts will not enforce terms of contracts, like forum selection clauses, if a party has been induced to sign through fraud or misrepresentation. But this is difficult to prove.

The Ohio Judge, Ann Aldrich, also held that the plaintiffs did not claim Party Poker’s forum selection clause was unknown to them. She quoted the boilerplate clause found in all online Agreements that patrons are required to read and agree to the Terms and Conditions.

The proper procedure for enforcing a forum selection clause is a motion to dismiss under forum non conveniens, which requires the court to weigh all the interests at stake. Courts often seem to feel that corporations can fight lawsuits anywhere, while individuals cannot face the time and expense of going to another state, let alone another country.

But Judge Aldrich held the factors weighed in Party Poker’s favor. Besides the forum selection clause, she held that the plaintiffs would get a fair trial in Gibraltar, which has a court system similar to England’s. Most importantly, the Judge dismissed the U.S. suit, “because of the clear difficulties” Party Poker would have “in trying a case in a different country from where the business, its documents, and witnesses are likely located.”

Judge Aldrich’s decision can be persuasive for other online operators. And the most interesting factor that was conspicuous by its absence was the question of legality. Would the result have been the same if the plaintiffs had claimed that Party Poker, but not they, were violating Ohio’s anti-gambling laws?

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