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RAZOR eNewsletter FROM O'Connor Carnathan & Mack

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NY Choice of Law Clause Did Not Bar Chapter 93A Claim

The First Circuit recently held that a choice of law clause stating that a contract was to be construed and governed according to New York law did not bar a plaintiff's Chapter 93A claim.

In *Kleiner v. Cengage Learning, Inc.*, et al., plaintiff Fred Kleiner ("Kleiner"), a Boston University professor, entered into a publishing agreement with the predecessor of defendants Cengage Learning, Inc. and Cengage Learning Holdings II, Inc. (collectively, "Cengage"). Kleiner subsequently brought a one-count proposed class-action complaint alleging that Cengage engaged in unfair and deceptive business practices by intentionally obfuscating information regarding sales of his books and, consequently, the amount of royalties to which he was entitled. The district court allowed Cengage's motion to dismiss the complaint based on the choice of law clause and interpreted that clause as mandating that "all disputes" be resolved under New York law.

On appeal, the First Circuit disagreed with the district court's conclusion and held that the clause did not bar Kleiner's Chapter 93A claim. The court explained that the clause only stated

that the *agreement* would be governed by New York law and did not select any law governing the parties' rights and obligations created by statute. The court also stated that the agreement's language was not a mandate that New York law should apply to all disputes between the parties. The court stated, "if Cengage deceived an author in reporting what royalties were due under the contract . . . nothing in the contract would dictate the choice of law to be applied in determining whether that alleged deception was actionable not as a breach of contract, but as a violation of Chapter 93A."

This case is a reminder that each choice of law clause must be evaluated carefully to determine if it encompasses the claims asserted in a particular case.

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