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2nd Circ. Revives Ex-Lover's Facebook Hack Claims

Share us on: By **Emily Field**

Law360, New York (August 4, 2015, 3:59 PM ET) -- The Second Circuit revived a New York woman's claims that her ex-boyfriend stole the password to her [Facebook](#) account and made malicious posts about her sex life, finding Tuesday that a lower court wrongly determined her claims were time-barred.

The lower court correctly applied a two-year statute of limitations to Chantay Sewell's claims that ex-lover Phil Bernardin impermissibly accessed her [AOL](#) email account and changed her password in violation of the Computer Fraud and Abuse Act and the Stored Communications Act, but erred with respect to her Facebook account claims, the Second Circuit said.

Sewell had discovered that she could not log into her AOL account in August 2011 because her password had been changed; six months later, she found out that someone changed her Facebook account password, according to the opinion.

She filed the instant suit against Bernardin in January 2014, which a New York federal judge dismissed later that year on the grounds that she missed the deadline to sue within two years of first discovering her AOL email account was accessed without her permission.

But on Tuesday the Second Circuit disagreed with the lower court's reasoning that Sewell's discovery that her AOL account had been tampered with gave her plenty of time to uncover the full scope of

Bernardin's alleged illegal activity.

"Both my client and I are ecstatic that the Second Circuit applied a sensible approach to the application of the statute of limitations for both of these very important federal statutes," Harvey S. Mars of Harvey S. Mars LLC, Sewell's counsel, told Law360 on Tuesday.

The lower court's conclusion could rest on the assumption that a plaintiff is on notice that all the passwords for her Internet accounts could be compromised, after the discovery that one account has been accessed without her permission.

"We do not think that that is a reasonable inference from the facts alleged in the complaint," the appellate panel said. "We take judicial notice of the fact that it is not uncommon for one person to hold several or many Internet accounts, possibly with several or many different usernames and passwords, less than all of which may be compromised at any one time."

There's nothing in Sewell's allegations that would lead to the inference that anyone gained unauthorized access to her Facebook account before February 2012, the circuit court said.

"Thus, taking these allegations as true, there would have been no damage, for CFAA purposes, or violation, for SCA purposes, for Sewell to discover with respect to her Facebook account before that date, which was less than two years before the suit was brought," the appeals court said.

The district judge had said that Sewell discovered her computer's integrity had been compromised in August 2011, but the circuit court ruled that the judge was mistaken.

"She discovered only that the integrity of her AOL account had been compromised as of that time," the appeals panel said. "Her CFAA claim accordingly is premised on impairment to the integrity of a computer owned and operated by AOL, not of her own physical computer."

Sewell and Bernardin, co-workers at a school in Queens, began a romantic relationship in 2002 that lasted for nine years, according to court documents.

In August 2011, Sewell claims that Bernardin stole her AOL email password, changed it then sent out emails to her contacts list, making malicious comments about her sex life, according to court documents.

In May 2013, Sewell filed a separate suit against Bernardin's wife, Tara Bernardin, and a number of anonymous defendants, making similar claims, according to the opinion. Tara Bernardin settled her suit with Sewell later that year, the panel said.

Representatives for the parties did not immediately respond to requests for comment Tuesday.

Sewell is represented by Harvey S. Mars of the Law Office of Harvey S. Mars LLC.

Bernardin is represented by Gary T. Certain of Certain & Zilberg PLLC.

The case is Sewell v. Bernardin, case number 14-3143, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Edrienne Su.

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