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Very nice: Borat takes glorious victory in federal court

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"[T]he movie employs as its chief medium a brand of humor that appeals to the most childish and vulgar in its viewer. At its core, however, Borat attempts an ironic commentary of 'modern' American culture, contrasting the backwardness of its protagonist with the social ills [that] afflict supposedly sophisticated society. The movie challenges its viewers to confront not only the bizarre and offensive Borat character himself, but the equally bizarre and offensive reactions he elicits from 'ordinary' Americans."

— *Psenicska v. Twentieth Century Fox*, No. 07 Civ. 10972 (S.D.N.Y. Sept. 3).

In 2006, the satirical documentary "Borat: Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan" appeared in movie theaters, to the great amusement of most Americans.

British comedian Sacha Baron Cohen portrayed Borat Sagdiyev, a flamboyant Kazakh television personality who traveled across the United States in search of Pamela Anderson, leaving a trail of befuddled and bemused citizens in his wake.

While the vast majority of people found Borat to be highly entertaining, a few unwitting participants were anything but amused. After learning they had participated in a film that would become a national phenomenon, they reinforced the very stereotypes Sacha Baron Cohen examines in the film. Angry and embarrassed, they called their lawyers.

Shortly thereafter, three separate lawsuits were filed in the U.S. District Court for the Southern District of New York on behalf of a driving school instructor and two etiquette training instructors. The complaints alleged the plaintiffs were fraudulently induced into signing an ambiguous agreement, which waived their right to pursue legal claims against the producer in relation to their voluntary participation in the film.

Notably, each agreement included a merger clause stating that: "[T]he Participant acknowledges that in entering into [the Agreement], the Participant is not relying upon any promises or state-

ments made by anyone about the nature of the Film or the identity of any other Participants or persons involved in the Film."

Unfortunately for the disgruntled plaintiffs, in early September U.S. District Court Judge Loretta A. Preska issued a memorandum and order granting the defendants' motion to dismiss the complaints. Judge Preska concluded "each Plaintiff has executed a valid agreement releasing the claims he or she now attempts to litigate."

Her decision was based in large part upon the New York State Court of Appeals decision, *Dannan Realty Corp. v. Harris*, 5 N.Y.2d 217 (1959). In *Dannan*, the court held that a party is precluded from alleging the defense of fraudulent inducement when the contract signed includes a disclaimer that no fraudulent statements were relied upon by the signor in entering into the contract.

Relying on *Dannan*, Judge Preska rejected the plaintiffs' claims that the merger clause was too general, and likewise concluded the terms of the contract were not ambiguous.

Interestingly, like the prejudices examined in Borat, the decision to file suit in this case is an example of another inexplicable American phenomenon: litigate first, think later.

Embarrassed and humiliated, the unwitting and willing participants signed away their rights and then, defying both common sense and the terms of the contract, sued the production company.

Ironically, the slew of unsuccessful lawsuits filed in the wake of the blockbuster movie served only to further highlight the plaintiffs' roles in the film.

So ended another chapter of Cohen's ridiculously accurate commentary on our culture. As always, Cohen was wildly successful at exposing the sometimes sordid, and always hilarious, underbelly of America.

Very nice.

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