

Tinder Sex Assault Case Centers on Arbitration as #MeToo Barrier (1)

By Erin Mulvaney

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- Arbitration pacts can silence victims, worker groups say
 - Ninth Circuit considers whether lawsuit stays in court
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Rosette Pambakian, a former executive at Tinder, says she was forced out of the dating-app company she helped build after she accused then-CEO Greg Blatt of harassing her at work, making lewd remarks, and sexually assaulting her at a company holiday party in 2016.

But because of an arbitration agreement that she signed more than a year after the alleged incident, Pambakian's assault, harassment, and retaliation lawsuit against Blatt, Tinder's parent company Match Group Inc., and holding company IAC, may not see the inside of a courtroom.

Pambakian's attorneys on Thursday will ask the U.S. Court of Appeals for the Ninth Circuit to overturn a California federal court's December 2019 decision to send the case to private arbitration, arguing that the contract is unconscionable and shouldn't be enforced, including because it went into effect after the alleged assault.

Backing them are workers' rights proponents who say these agreements shield perpetrators of sexual harassment and assault.

"It's hard enough for victims of assault and abuse to come forward as is, and that is compounded with these agreements that take away their voice," said Kimberly Evans, an attorney with Grant & Eisenhofer P.A., who represents Pambakian. "It's a systemic problem."

The companies and Blatt have denied the assault and retaliation allegations, say that the arbitration agreement is enforceable, and contend Pambakian was never prevented from speaking out.

The federal appeals court in San Francisco also will consider Thursday a separate defamation case that Blatt filed against Pambakian and another former Tinder executive in the wake of the assault claims. A third lawsuit that was initially tied to the alleged assault—involving stock price valuation—also is pending in a New York court. A judge has since ruled that claims stemming from the holiday party are inadmissible in that litigation.

Business groups contend that arbitration doesn't harm victims, and provides a speedier process that doesn't bog down the court system. But since the #MeToo movement took hold several years ago, mandatory arbitration has been seen as a corporate practice that allows workplace harassment to persist by shuttling claims to private dispute resolution.

Although some of the biggest U.S. corporations—including Facebook Inc., Alphabet Inc.'s Google, and Wells Fargo & Co.—have ended forced arbitration for sexual harassment claims, the practice remains ubiquitous. Many lawsuits filed in the wake of #MeToo have been sent to arbitration, including against Fox News, Morgan Stanley, Best Buy Co., and Louis Vuitton.

Congress and states have taken aim at the issue, but those efforts have largely stalled or been stymied.

Tinder Case

Pambakian alleged in her lawsuit that Blatt made inappropriate sexual comments toward her and later pinned her down and forcibly kissed her all over her body at a 2016 holiday party where other workers were present. She said an internal investigation into the incident was a "sham," and she was later fired for reporting it and refusing to sign a non-disclosure agreement. She added that she was offered higher compensation if she signed the pact.

She sued not only Blatt, but the company for protecting him, retaliating against her, and enabling an environment that led to the harassment of women. Pambakian was a senior executive at Tinder from 2014 until she was terminated in December 2018. Blatt resigned in 2017.

At issue before the Ninth Circuit is whether a court or arbitrator should have decided the terms of Pambakian's January 2018 arbitration agreement, including its scope and whether it should be enforced, given the specific circumstances in the case. Pambakian's attorneys say the case has "far reaching public policy consequences," but the company argues that arbitration law should be recognized in this case.

The U.S. District Court for the Central District of California upheld the agreement and said it should apply retroactively to claims that predated the contract because it used broad language and didn't contain a time limit.

If the Ninth Circuit accepts Pambakian's arguments, it would require the court to "rewrite contract language, ignore plaintiff's own allegations, and adopt rules that distort or sweep aside binding precedent," the company's attorneys argued in appeals court filings.

Pambakian's attorney Evans said the most important argument to keep the case out of court is that the agreement isn't valid and is unconscionable.

"Here is a situation where my client had been assaulted, she raised it, they were on notice and supposed to be investigating, they tried to silence her, and then she's hit with an arbitration agreement in a stack of corporate documents she's required to sign on an annual basis," she said. "We don't believe that's how a contract gets formed between two parties. They are trying to retroactively cover claims they knew about to avoid litigation in court."

Company Response

Blatt has fiercely denied the allegations and said that the assault and retaliation lawsuit was an effort to bolster arguments in separate stock valuation litigation filed in New York by Sean Rad, a former manager at the company who had stock options, and Pambakian.

"I have said from the beginning that the accusations against me in this case were a craven tactic to help Sean Rad and Rosette Pambakian win their multibillion dollar lawsuit against Match and IAC," Blatt said in a statement. "I look forward to winning my defamation suit against Mr. Rad and Ms. Pambakian and establishing once and for all that these allegations against me are false."

When reached for comment, Match Group referred Bloomberg Law to a 2018 letter from then-CEO Mandy Ginsberg to Pambakian, which says that Pambakian wasn't terminated for reporting sexual harassment but because she couldn't fulfill her responsibilities as a spokesperson for the company due to her public position in the valuation lawsuit.

Ginsberg also said the arbitration agreements didn't preclude her from speaking to the public.

Arbitration Attention

The National Women's Law Center and dozens of other groups filed a friend-of-the-court brief to the Ninth Circuit, saying that the case crystallizes why arbitration is harmful to alleged victims of assault.

"Forced arbitration poses particular challenges and deterrents for survivors of sexual harassment," according to the brief. "The secret nature of arbitration proceedings—coupled with the confidentiality requirements that often accompany them—operate to both silence survivors and protect harassers from accountability for their actions."

The use of arbitration clauses in employment agreements has increased dramatically in the last 20 years, from only 2% of workers subject to forced arbitration in 1992 compared with 56% in 2018, according to a study from the Economic Policy Institute. The left-leaning think tank projects that this number will increase to 80% by 2024.

The U.S. Supreme Court also has bolstered the practice and the Federal Arbitration Act. A House committee recently debated changes to arbitration, and pointed to issues of silencing harassment victims.

Business groups and many employment attorneys have disputed that arbitration is harmful and slanted toward companies. It can be a speedier process and doesn't suppress victims' stories like a non-disclosure agreement might, said Roger King, senior labor and employment counsel at the HR Policy Association.

He said he supports more transparency to root out harassment, but focusing on arbitration is misguided.

"The arbitration process is more expeditious and less costly," King said. "If administered in a procedurally appropriate way, it's a better process. The courts are not equipped to handle a tremendous influx of additional cases that they can't even cope with their current case load."

Pambakian is represented by Grant & Eisenhofer P.A. Blatt is represented by Susman Godfrey LLP and Munger, Tolles & Olson LLP. Those firms also represent Match Group and IAC, alongside Wachtell, Lipton, Rosen & Katz.

The case is Pambakian v. Blatt, 9th Cir., No. 20-55076, oral argument 8/12/21.

(Updated with status of the stock valuation suit in the seventh paragraph.)

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