

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

INA STEINER, DAVID STEINER, and STEINER ASSOCIATES, LLC,)	
)	
Plaintiffs,)	Civil Action No. 21-CV-11181-DPW
)	
v.)	Leave to File Granted
)	October 22, 2021
EBAY INC., et al.,)	
)	ORAL ARGUMENT
Defendants.)	REQUESTED
)	

DEFENDANT EBAY INC.’S PARTIAL MOTION TO DISMISS THE COMPLAINT

Defendant eBay Inc. (“eBay”) hereby moves, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss, in part, the complaint filed in this action. As grounds for this motion, eBay states as follows:

1. Many of the claims in the complaint are not legally viable, either because the complaint’s allegations fail to establish essential elements of the claims or because the claims are not available under Massachusetts law. Specifically:

- the RICO claim (Count III) fails because eBay cannot be both an alleged enterprise and a RICO defendant and because the complaint’s allegations establish neither continuity nor that the defendants acted on behalf of the alleged enterprise;
- the vandalism claim (Count VIII) fails because there is no vandalism tort in Massachusetts;
- the false imprisonment claim (Count VII) fails because it does not adequately allege that Plaintiffs were confined or that any defendants intended to confine them;
- the Chapter 93A claim (Count X) fails because Plaintiffs allege no commercial transaction between themselves and the defendants as the statute requires;

- the tortious interference claim (Count XI) fails because the complaint does not allege facts showing that the defendants induced a party to breach a contract or not enter into or continue a business relationship with Plaintiffs;
- the stalking claim (Count II) under California law fails because Massachusetts law applies here, and Massachusetts does not provide an independent cause of action for stalking; and
- the ratification claim (Count XII) fails because Plaintiffs' allegations do not support a reasonable inference that eBay ratified the other defendants' conduct, particularly given that the complaint acknowledges that within weeks of discovering the conduct, eBay had terminated six involved employees.

2. The grounds for this motion are set forth further in eBay's accompanying memorandum of law, which eBay references and incorporates fully herein. eBay further notes that the Court granted it leave to file an oversized memorandum on this motion on October 22, 2021. (Dkt. 67).

WHEREFORE, Defendant eBay respectfully requests that the Court dismiss Counts II, III, VII, VIII, X, XI, and XII of the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), eBay respectfully requests oral argument in connection with this Partial Motion to Dismiss. The motion raises significant questions about whether the complaint has adequately stated certain claims upon which relief can be granted. Oral argument will allow the parties to address this issue fully and to respond to any questions the Court may have.

Dated: October 29, 2021

Respectfully submitted,

/s/ Jack W. Pirozzolo

Jack W. Pirozzolo (BBO #564879)

Kathryn L. Alessi (BBO #651110)

SIDLEY AUSTIN LLP

60 State Street, 36th Floor

Boston, MA 02109

Telephone: (617) 223-0300

Facsimile: (617) 223-0301

jpirozzolo@sidley.com

kalessi@sidley.com

Scott T. Nonaka (*pro hac vice*)

SIDLEY AUSTIN LLP

555 California Street, Suite 2000

San Francisco, CA 94104

Telephone: (415) 772-1285

snonaka@sidley.com

Counsel for eBay Inc.

CERTIFICATION PURSUANT TO L.R. 7.1(a)(2)

I, Jack W. Pirozzolo, counsel for eBay, hereby certify that, in accordance with Local Rule 7.1(a)(2), I have conferred with counsel for Plaintiffs and have attempted in good faith to resolve or narrow the issues subject to this Motion. Plaintiffs' counsel stated she opposes this Motion.

Dated: October 29, 2021

/s/ Jack W. Pirozzolo

Jack W. Pirozzolo

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2021, this document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: October 29, 2021

/s/ Jack W. Pirozzolo
Jack W. Pirozzolo