

**AKHIL BANSAL, Appellant v. SERVER BEACH; REYNOLDS &
REYNOLDS; MICROSOFT CORPORATION**

No. 07-4476

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIR-
CUIT**

285 Fed. Appx. 890; 2008 U.S. App. LEXIS 16020

July 22, 2008, Submitted Pursuant to Third Circuit LAR 34.1(a)

July 24, 2008, Opinion Filed

NOTICE: NOT PRECEDENTIAL OPINION UNDER THIRD CIRCUIT INTERNAL OPERATING PROCEDURE RULE 5.7. SUCH OPINIONS ARE NOT REGARDED AS PRECEDENTS WHICH BIND THE COURT.

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

SUBSEQUENT HISTORY: US Supreme Court certiorari denied by *Bansal v. Beach*, 2009 U.S. LEXIS 983 (U.S., Jan. 26, 2009)

PRIOR HISTORY: [**1]

On Appeal from the United States District Court for the Eastern District of Pennsylvania. (D.C. Civil Action No. 06-cv-03932). District Judge: Honorable Norma L. Shapiro.

COUNSEL: AKHIL BANSAL (# 59593-066), Plaintiff - Appellant, Pro se, Minersville, PA.

For SERVER BEACH, Defendant - Appellee: Renee F. Bergmann, Esq., Nixon Peabody, New York, NY; John P. Hutchins, Esq., Troutman Sanders, Atlanta, GA.

For REYNOLDS & REYNOLDS, Defendant - Appellee: Jennifer A. Diamantis, Esq.,

Schnader Harrison Segal & Lewis, Philadelphia, PA.

For MICROSOFT CORP, Defendant - Appellee: Jeremy D. Mishkin, Esq., Montgomery, McCracken, Walker & Rhoads, Philadelphia, PA.

JUDGES: Before: RENDELL, JORDAN and VAN ANTWERPEN, Circuit Judges.

OPINION

[*891] PER CURIAM

Akhil Bansal is confined at the Federal Detention Center in Philadelphia. In 2007, proceeding *pro se* and *in forma pauperis* ("IFP"), he filed a lawsuit against Server Beach, Reynolds & Reynolds, and Microsoft, alleging that they unlawfully gained access to his e-mail account in violation of the Stored Communications Act, 18 U.S.C. β 2701 *et seq.* ("SCA" or "the Act"), the Pennsylvania Wiretapping Act, 18 Pa.C.S. 5741 *et seq.*, and his right to privacy under common law. Bansal now appeals [**2] the District Court's dismissal of his action.

Because we write for the parties, we state only the facts most pertinent to our decision. At some point, Bansal set up an e-mail account with Microsoft's "Hotmail" service. In 2006, he was convicted in federal court of multiple counts related to his illegal, internet sales of

pharmaceuticals. In the course of the criminal investigation, the government sought several subpoenas and warrants, ordering Microsoft to divulge emails and to furnish information regarding Bansal's account. Microsoft complied with the resulting court orders. In February 2006, evidently through the discovery associated with his criminal trial, Bansal learned that Server Beach and Reynolds had accessed his email account. Apparently, the defendants' Internet Protocol ("IP") addresses appeared on a registration sheet detailing all the addresses that had accessed his Hotmail user account. Thereafter, he brought the instant lawsuit.

The defendants filed motions to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)*. Microsoft argued that it was excepted from liability under the SCA, because it was the communications service provider for his user account, and because it divulged **[**3]** emails and account information pursuant to a court order. Server Beach and Reynolds argued that Bansal's complaint failed on its face, because it failed to allege that they accessed his account "with a knowing or intentional statement of mind." *See 18 U.S.C. §§ 2701(a) & 2707*. As to Microsoft, **[*892]** the District Court dismissed the action as frivolous pursuant to *28 U.S.C. § 1915(e)*. Moreover, concluding that Bansal failed to state a claim under the SCA, and declining to exercise supplement jurisdiction pursuant to *28 U.S.C. § 1367* over his remaining state law claims, the District Court granted the motions to dismiss as to Server Beach and Reynolds. Bansal filed motions for reconsideration, but they were denied. Thereafter, he timely filed a notice of appeal.

We have jurisdiction pursuant to *28 U.S.C. § 1291*. We exercise plenary review over the District Court's order dismissing claims under *Fed. R. Civ. P. 12(b)(6)*. *See Sands v. McCormick*, *502 F.3d 263, 267 (3d Cir. 2007)*. In order to survive a motion to dismiss, a plaintiff must allege in his complaint "enough facts to raise a reasonable expectation that discovery

will reveal evidence of the necessary element[s]" of a cause of action. *Phillips v. County of Allegheny*, *515 F.3d 224, 234 (3d Cir. 2008)*(quoting **[**4]** *Bell Atlantic Corp. v. Twombly*, *550 U.S. 544, 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929 (2007)*). "[A] formulaic recitation of the elements . . . will not do." *Id.* at 231.

The SCA prohibits a party from "intentionally access[ing] without authorization a facility through which an electronic communication service is provided; . . . or intentionally exceed[ing] an authorization to access that facility; . . . thereby obtain[ing] . . . access to . . . [an] electronic communication while it is in electronic storage" *18 U.S.C. § 2701(a)*. The Act authorizes a private right of action for any person "aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing and intentional state of mind." *See id.* However, it excepts "entit[ies] providing a wire or electronic communications service," and we have interpreted the Act as exempting searches of stored electronic communications by the party providing the communications service. *See 18 U.S.C. § 2701(c)*; *Fraser v. Nationwide Mutual Insurance Co.*, *352 F.3d 107, 115 (3d Cir. 2003)*. Furthermore, parties acting pursuant to a court order are not liable under the statute. *See 18 U.S.C. § 2707(e)*.

As to Microsoft, we agree with **[**5]** the District Court that it has a complete defense against Bansal's claims, because it divulged his emails pursuant to a court order arising from his criminal prosecution. *See 18 U.S.C. § 2707(e)*. Moreover, as the communications service provider for Bansal's email account, Microsoft is excepted from liability under the SCA. *See Fraser*, *352 F.3d at 115*. Accordingly, the District Court correctly dismissed Bansal's claims against Microsoft as frivolous pursuant to *28 U.S.C. § 1915(e)*.

Furthermore, Bansal's lawsuit cannot succeed against Server Beach or Reynolds, be-

cause his complaint fails to allege that these defendants accessed his account "with a knowing and intentional state of mind." *See 18 U.S.C. § 2701(a)*. Bansal baldly asserts that the defendants "unlawfully" accessed his account. But, he sets forth no facts that, taken as true, would raise a reasonable expectation that discovery would reveal evidence that Server Beach and/or Reynold "knowingly or intentionally" accessed his Hotmail user account. Moreover, we agree with the Appellees that Bansal did not properly request leave to amend his complaint, see *Ranke v. Sanofi-Synthelabo, Inc.*, 436 F.3d 197, 206(3d Cir. 2006), and, as

this [**6] is not a civil rights case, the District Court was not obligated to *sua sponte* grant him leave to amend prior to dismissing the case for failure to state a claim. *See Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 253 (3d Cir. 2007). Accordingly, we affirm the District Court's dismissal of Bansal's complaint [*893] for failing to state a claim against defendants Server Beach and Reynolds.

1 Bansal's Motion to Strike Supplemental Appendix is denied as moot.