

20-1831(L)

*Olson v. Major League Baseball*

**United States Court of Appeals  
for the Second Circuit**

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August Term 2020

(Submitted: December 14, 2020    Decided: March 21, 2022)

Nos. 20-1831-cv; 20-1841-cv

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KRISTOPHER R. OLSON, CHRISTOPHER CLIFFORD, ERIK LIPTAK,  
CHRISTOPHER LOPEZ, WARREN BARBER, INDIVIDUALLY  
AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

*Plaintiffs-Appellants-Cross-Appellees,*

— v. —

MAJOR LEAGUE BASEBALL, MLB ADVANCED MEDIA, L.P.,

*Defendants-Appellees-Cross-Appellants,*

NEW YORK YANKEES PARTNERSHIP,

*Interested Party-Appellee-Cross-Appellant,*

BOSTON RED SOX BASEBALL CLUB, L.P., HOUSTON ASTROS, LLC,

*Defendants-Appellees.\**

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\* The Clerk of Court is respectfully directed to amend the official caption as set forth above.

Before: LIVINGSTON, *Chief Judge*, LYNCH and BIANCO, *Circuit Judges*.

Plaintiffs-Appellants Kristopher R. Olson, Christopher Clifford, Erik Liptak, Christopher Lopez, and Warren Barber appeal from the judgment of the United States District Court for the Southern District of New York (Rakoff, J.), granting the motion to dismiss all claims against Major League Baseball (“MLB”) entities and two teams. Plaintiffs, a putative class of fantasy sports players, assert claims for fraudulent misrepresentations and omissions, negligent misrepresentations, violations of various state consumer protection laws, and unjust enrichment. The gravamen of the lawsuit is that plaintiffs, along with a potential class of thousands of other contestants, paid to compete in fantasy baseball contests operated by non-party DraftKings Inc. (“DraftKings”), wrongly believing that they were engaging in “games of skill” based upon a fair gauge of player performance, while defendants fraudulently concealed that the player statistics were purportedly unreliable because of rule violations in the form of electronic sign-stealing by certain MLB teams during the 2017–2019 baseball seasons. Plaintiffs further allege that MLB intentionally took no action to address these rule violations in order to protect its financial interest and investment in DraftKings.

We affirm the district court’s dismissal of the First Amended Complaint and its denial of plaintiffs’ motion for reconsideration. At its core, this action is nothing more than claims brought by disgruntled fantasy sports participants, unhappy with the effect that cheating in MLB games may have had on their level of success in fantasy sports contests. We hold that alleged misrepresentations or omissions by organizers and participants in major league sports about the competition itself—such as statements about performance, team strategy, or rules violations—do not give rise to plausible claims sounding in fraud or related legal theories brought by consumers of a fantasy sports competition who are utilizing a league’s player statistics.

The MLB entities and the New York Yankees Partnership have filed a cross-appeal, challenging the district court’s separate order, which concluded that a September 14, 2017 letter from the MLB Commissioner to the New York Yankees General Manager should be unsealed. This letter related to the results of an internal investigation, which plaintiffs allege contradicted a subsequent MLB press release on the same subject. In light of plaintiffs’ attempted use of the letter in their proposed Second Amended Complaint and the district court’s discussion

of the letter in explaining its decision to deny plaintiffs' request for leave to amend in their reconsideration motion, and because MLB disclosed a substantial portion of the substance of the letter in its press release about the investigation, we conclude that the district court did not abuse its discretion in unsealing the letter, subject to redacting the names of certain individuals.

Accordingly, we AFFIRM the district court's dismissal of plaintiffs' First Amended Compliant without leave to amend and the district court's denial of plaintiffs' motion for reconsideration. We also AFFIRM the district court's unsealing order.

DAVID S. GOLUB (Steven L. Bloch, *on the brief*), Silver Golub & Teitell LLP, Stamford, Connecticut; John D. Radice, Kenneth Pickle, Natasha Fernandez-Silber, April Lambert, Radice Law Firm, P.C., Princeton, New Jersey (*on the brief*), for Plaintiffs-Appellants-Cross-Appellees.

JOHN L. HARDIMAN (Benjamin R. Walker, Hannah Lonky Fackler, *on the brief*), Sullivan & Cromwell LLP, New York, New York, for Defendants-Appellees-Cross-Appellants.

RANDY L. LEVINE, New York Yankees Partnership, Bronx, New York; Jonathan D. Schiller, Thomas H. Sosnowski, Boies Schiller Flexner LLP, New York, New York (*on the brief*), for Interested Party-Appellee-Cross-Appellant.

Katherine B. Forrest, Michael T. Reynolds, Lauren A. Moskowitz, Cravath, Swaine & Moore LLP, New

York, New York, for Defendant-Appellee Boston Red Sox Baseball Club, L.P.

HILARY L. PRESTON (Clifford Thau, Marisa Antos-Fallon, on the brief), Vinson & Elkins LLP, New York, New York; Michael C. Holmes, Vinson & Elkins LLP, Dallas, Texas (on the brief), for Defendant-Appellee Houston Astros, LLC.

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JOSEPH F. BIANCO, *Circuit Judge*:

Plaintiffs-Appellants Kristopher R. Olson, Christopher Clifford, Erik Liptak, Christopher Lopez, and Warren Barber appeal from the judgment of the United States District Court for the Southern District of New York (Rakoff, J.), granting the motion to dismiss all claims against Major League Baseball (“MLB”) and MLB Advanced Media, L.P. (“MLBAM,” and together with MLB, the “MLB Defendants”), as well as the Boston Red Sox Baseball Club, L.P. (the “Red Sox”) and Houston Astros, LLC (the “Astros,” and together with the Red Sox, the “Team Defendants”).

Plaintiffs assert claims for fraudulent misrepresentations and omissions, negligent misrepresentations, violations of various state consumer protection laws, and unjust enrichment. The gravamen of the lawsuit is that plaintiffs, along

with a potential class of thousands of other contestants, paid to compete in fantasy baseball contests operated by non-party DraftKings Inc. (“DraftKings”), wrongly believing that they were engaging in “games of skill” based upon a fair gauge of player performance, while defendants fraudulently concealed that the player statistics were unreliable because of rule violations in the form of electronic sign-stealing by certain MLB teams during the 2017–2019 baseball seasons. Plaintiffs further allege that MLB intentionally took no action to address these rule violations in order to protect its reputation and financial interests, as well as its investment in DraftKings.

Defendants moved to dismiss all the claims in this action, and the district court granted that motion, dismissing the First Amended Complaint (“FAC”) in its entirety without leave to amend. In a motion for reconsideration, plaintiffs moved to vacate the judgment and for leave to amend, attaching their proposed Second Amended Complaint (“SAC”) to the motion, which purported to cure the deficiencies in the FAC by, *inter alia*, adding new allegations drawn from materials obtained during discovery. The district court denied the motion for reconsideration for substantially the same reasons it dismissed the FAC.

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