



Sosa v. Onfido, Inc., No. 21-1107 (7th Cir. 2021)

Justia Opinion Summary

Onfido provides biometric identification software that is incorporated into its customers' products and mobile apps for verifying users' identities. Onfido partnered with OfferUp—an online consumer marketplace—to verify users' identities. Sosa verified his identity with OfferUp using the technology provided by Onfido—the app's TruYou feature. To complete the verification process, Sosa uploaded a photograph of his driver's license and a photograph of his face. Sosa alleges that Onfido then used biometric identification technology without his consent to extract his biometric identifiers and compare the two photographs.

Sosa brought class action claims against Onfido under the Illinois Biometric Information Privacy Act. Onfido moved to stay the case and to compel individual arbitration based on an arbitration provision in OfferUp's Terms of Service. The district court rejected each of Onfido's nonparty contract enforcement theories and denied Onfido's motion. The Seventh Circuit affirmed. Onfido failed to establish that there was an outcome-determinative difference between Illinois and Washington law, and the district court properly applied Illinois law—the law of the forum state—to determine that Onfido failed to establish that it was a third-party beneficiary of the Terms of Service or that it could otherwise enforce the contract's arbitration provision either as an agent of OfferUp or on equitable estoppel grounds.

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In the
United States Court of Appeals
For the Seventh Circuit

No. 21-1107

FREDY SOSA,

Plaintiff-Appellee,

v.

ONFIDO, INC.,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:20-cv-04247 — **Marvin E. Aspen**, *Judge*.

ARGUED MAY 27, 2021 — DECIDED AUGUST 11, 2021

Before KANNE, SCUDDER, and KIRSCH, *Circuit Judges*.

KIRSCH, *Circuit Judge*. Plaintiff Fredy Sosa, a user of the marketplace application OfferUp, registered his identity to become a verified user on the app. The verification process involved using the app's TruYou feature with technology provided by defendant Onfido, Inc. Sosa has since sued Onfido under the Illinois Biometric Information Privacy Act alleging that the TruYou feature used facial recognition technology to collect his biometric identifiers without his consent.

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