

E-Filed 2/1/2011

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11
12 DOMENIC TRICOME,

13 Plaintiff,

14 v.

15 eBAY, INC.,

16 Defendant.

Case Number 5:10-cv-03214-JF (HRL)

ORDER¹ DISMISSING CASE
WITHOUT PREJUDICE FOR LACK
OF PROSECUTION

17
18 Plaintiff Domenic Tricome (“Tricome”), a former eBay account holder, brought the
19 instant action against Defendant eBay, Inc. (“eBay”) in the United States District Court for the
20 Eastern District of Pennsylvania, alleging: (1) fraud; (2) breach of contract; (3) negligence; (4)
21 gross negligence; (5) negligent infliction of emotional distress; and (6) violation of the Sherman
22 Antitrust Act, 15 U.S.C. § 1, *et seq.* The matter was transferred to this Court on October 19,
23 2009, pursuant to the forum selection clause included in the eBay User Agreement.

24 Tricome subsequently moved for sanctions and for transfer of venue back to the Eastern
25 District of Pennsylvania. After Tricome failed to appear at a case management conference on
26 December 3, 2010, this Court ordered Tricome to show cause as to why the instant action should
27

28 ¹ This disposition is not designated for publication in the official reports.

1 not be dismissed for failure to prosecute.² The Court directed Tricome to file a response on or
2 before January 28, 2011. Tricome failed to respond by that date, and accordingly the action will
3 be dismissed without prejudice. Because Tricome's motions for sanctions and for transfer of
4 venue were without any apparent legal basis, eBay will be awarded its reasonable attorneys'
5 fees.

6 **ORDER**

7 IT IS HEREBY ORDERED that the instant case be dismissed without prejudice for lack
8 of prosecution. All scheduled dates in this matter are VACATED, and all pending motions are
9 TERMINATED. eBay is awarded all attorneys' fees and expenses reasonably incurred in the
10 preparation of its opposition to Tricome's motions for sanctions and transfer of venue. Counsel
11 for eBay shall file a declaration itemizing such fees and expenses within seven (7) days from the
12 date of this order.

13
14 DATED: February 1, 2011

15 
16 JEREMY FOGEL
17 United States District Judge

18
19
20
21
22
23
24
25
26
27
28

² Order to Show Cause dated December 20, 2010, Dkt. 80.