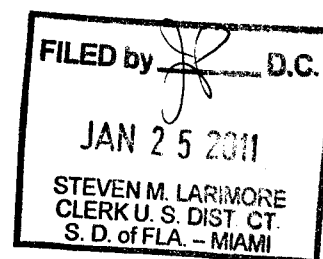


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 10-CIV-20718-COOKE/BANDSTRA



ALBERT SEGAL, and
MARIANNA CHAPAROVA,

Plaintiffs,

- vs. -

AMAZON.COM, INC.,

Defendant.

**PLAINTIFFS' MOTION TO RECONSIDER THIS COURT'S ORDER GRANTING
AMAZON.COM, INC.'S MOTION TO ATTEND MEDIATION BY TELEPHONE**

At issue here is Amazon.com, Inc.'s motion to permit its corporate representative to attend mediation by telephone ("Motion") [D.E. 46], which the Court has granted [D.E. 47]. *Pro se* Plaintiffs, Albert Segal and Marianna Chaparova ("Plaintiffs"), understand why the Court's initial inclination was to grant Amazon.com, Inc. ("Amazon") its request; however, Plaintiffs ask that the Court reconsider its Order granting Amazon's request for the following reasons:

(1) On November 2, 2010, Amazon's counsel, Mr. David B. Esau, emailed the Court's designated mediator, Mr. Mel Rubin, Esq., and in that email Mr. Esau stated the following:

Since my client is flying all the way here from Washington state, perhaps we should reserve at least the entire morning to make a good faith effort at resolving the dispute. Thanks.

In response to Mr. Esau's request, Mr. Rubin reserved four hours for the mediation conference.

See "Exhibit A." Conveniently enough, Mr. Esau neglected to mention about his scheduling request in his Motion. Mr. Esau's email of November 2nd is attached hereto as "Exhibit B."

(2) Immediately after receiving Mr. Esau's email regarding his intention to file a motion to permit Amazon's representative to attend the mediation by telephone, Plaintiffs emailed Mr. Esau their objection to his request, a copy of which is attached hereto as "Exhibit C."

(3) Amazon had previously refused to schedule a telephonic deposition of its corporate representative at 9:30 a.m. (EST) because of the three-hour time difference between Miami and Seattle. It is, therefore, rather puzzling how the time difference does not seem to affect Amazon in its request to attend the mediation telephonically at 9:00 a.m. (EST). The Plaintiffs will reply shortly, in a separate filing, to Amazon's most recent response [D.E. 44] to the Plaintiffs' motion to compel the deposition of Amazon's corporate representative on the topics that are relevant to this case [D.E. 43].

(4) Amazon is a major corporation, and is generating millions of dollars in profits from its business endeavors in this jurisdiction. At all relevant times, Plaintiffs have been upfront and honest with Amazon and the Court, while Amazon has acted like a company that has something to hide. Amazon has stonewalled the Plaintiffs' efforts to obtain discoverable information, even the most basic information, such as financial statements that relate to Amazon's handling of the Plaintiffs' funds during the months that it withheld these funds. *See* Plaintiffs' Motion to Compel Production of Documents [D.E. 39].

Plaintiffs have voluntarily produced almost five hundred pages of documents that are relevant to this case, while Amazon has refused to produce any of the documents that it is required to produce. Amazon has claimed that the requested documents are "irrelevant," "overbroad," and "privileged," and even asserted that the requested documents somehow relate to Amazon's "highly proprietary and sensitive commercial information." *Id.* Amazon's counsel, however, has never produced their "privilege log," and it is still a mystery exactly which

documents relate to Amazon's "highly proprietary and sensitive commercial information." There should be no doubt that Amazon will continue to refuse to produce relevant documents, unless and until it is ordered to do so by the Court. Hence, Plaintiffs remain hopeful that the Court will grant the Plaintiffs' Motion to Compel Production of Documents in time for the mediation in order to address the issues in this case in a meaningful way.

(5) Amazon had induced Plaintiffs to purchase merchandise for the sole purpose of selling it on Amazon.com. Plaintiffs also spent thousands of dollars on merchandise that they had purchased directly from Amazon for personal use, and therefore filed their Amended Complaint as both consumers and third-party sellers. To date, however, Amazon has not addressed the Plaintiffs' consumer-based causes of action at all, but has argued that Plaintiffs, like all the other honest folks whom Amazon has wronged, have allowed it to withhold their funds for four months without any justification, to make unrestricted use of their funds, and to force them out of business.

There is overwhelming evidence in this case of bad faith by Amazon. Therefore, *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991), and other similar cases that stand for the proposition that the forum selection clauses are subject to judicial scrutiny for "fundamental fairness," support the Plaintiffs' case, not Amazon's.

Mr. Esau's claim that requiring Amazon's representative to attend the mediation in Miami would deny Amazon "the benefit of its bargain to resolve this dispute in Washington State" is without merit for the reasons stated in the Plaintiffs' Memorandum in Opposition to Amazon's Motion to Dismiss [D.E. 29]. Plaintiffs would like to remind Amazon that, at least in this country, the judicial system treats fraudulent, deceptive and unconscionable business practices with aversion.

(6) It is a fact that Plaintiffs were completely unaware of Amazon's fraudulent scheme, and that Plaintiffs have lost their business and have suffered, and continue to suffer, as a result of Amazon's unlawful business conduct. Amazon has also defrauded, and continues to defraud, countless other Florida consumers who have done absolutely nothing wrong. Amazon is well aware of the issues in this case, and the Plaintiffs' Amended Complaint is very specific and detailed regarding the appropriate causes of action, and the relief to which Plaintiffs are entitled.

(7) Plaintiffs have very limited financial resources and have been relying on borrowed funds to survive. It would be fundamentally unfair to require Plaintiffs to bear the expense of attending the mediation conference in person, while allowing Amazon's representative to be physically absent from the mediation, especially since Amazon has been instrumental in unduly burdening the Plaintiffs and the Court in order to avoid having to answer for its unlawful business practices.

It is time for Amazon to account for its unlawful business practices and, under the circumstances, requiring its corporate representative to attend the mediation in person is the appropriate thing to do. Amazon is much more likely to take the mediation seriously if it is required by the Court to have its corporate representative physically present at the mediation. Plaintiffs lack the financial resources to engage with Amazon in less than serious discussions for which the Plaintiffs must pay hundreds of dollars an hour.

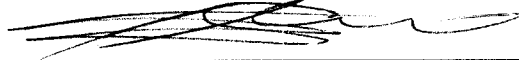
WHEREFORE, for the reasons stated above, Plaintiffs respectfully ask the Court to reconsider its previous Order granting Amazon's Motion to allow it to attend the mediation by telephone.

LOCAL RULE 7.1(a)(3) CERTIFICATION

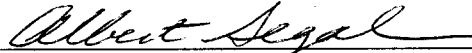
Pursuant to Local Rule 7.1(a)(3), Plaintiffs certify that they have conferred with Amazon's counsel of record on multiple occasions in an effort to resolve the issues raised in this Motion, but the parties were unable to resolve their differences.

This 25th day of January, 2011.

Respectfully submitted,



Marianna Chaparova, Plaintiff, *pro se*
E-mail: manach101@yahoo.com



Albert Segal, Plaintiff, *pro se*
10490 S.W. 12th Terr., #202
Miami, FL 33174
E-mail: alby1969_98@yahoo.com

CERTIFICATE OF SERVICE

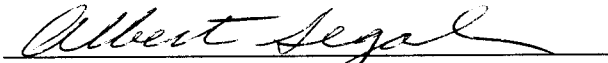
This is to certify that Plaintiffs, Albert Segal and Marianna Chaparova, have this day served upon Amazon's counsels of record the foregoing motion to reconsider, via the electronic mail and/or standard U.S. mail.

This 25th day of January, 2011.

Respectfully submitted,



MARIANNA CHAPAROVA, Plaintiff, *pro se*



ALBERT SEGAL, Plaintiff, *pro se*

MAILING LIST

Carlton Fields, P.A.
City Place Tower, Suite 1200
525 Okeechobee Blvd.
West Palm Beach, Florida 33401

Exhibit A

RE: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

From: Mel Rubin <mrubin@melrubin.com>

Add to Contacts

To: "Esau, David B." <desau@carltonfields.com>; alex siegal <alby1969_98@yahoo.com>

We'll then reserve 4 hours (half day). Thank you.

Marta Valdivia
Assistant to Mel Rubin, Esq.
MEDIATION SERVICES, INC.
111 Majorca Avenue
Coral Gables, FL 33134
(305) 446-4630

From: Esau, David B. [mailto:desau@carltonfields.com]

Sent: Tuesday, November 02, 2010 6:25 AM

To: alex siegal; Mel Rubin

Subject: RE: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

Since my client is flying all the way here from Washington state, perhaps we should reserve at least the entire morning to make a good faith effort at resolving the dispute. Thanks.

From: alex siegal [mailto:alby1969_98@yahoo.com]

Sent: Monday, November 01, 2010 1:00 PM

To: Mel Rubin

Cc: Esau, David B.

Subject: Re: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

Dear Ms. Valdivia:

We have not yet heard back from Amazon's counsel on this issue and on many others. For now, let's tentatively reserve 2 hrs (9 a.m. -11 a.m.).

Thank You!
Albert Segal

From: Mel Rubin <mrubin@melrubin.com>

To: alex siegal <alby1969_98@yahoo.com>

Cc: desau@carltonfields.com

Sent: Mon, November 1, 2010 9:53:14 AM

Subject: RE: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

Good morning, gentlemen:

We're in receipt of the Order Scheduling Mediation for February 15, 2011 at 9:00 am at our offices. Please advise how many hours (length of the mediation time) you would like us to reserve. Thanks so much.

Marta Valdivia
Assistant to Mel Rubin, Esq.
MEDIATION SERVICES, INC.
111 Majorca Avenue
Coral Gables, FL 33134
(305) 446-4630

From: alex siegal [mailto:alby1969_98@yahoo.com]
Sent: Tuesday, October 05, 2010 8:32 PM
To: Mel Rubin
Subject: Re: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

Thank you. So I will schedule the mediation conference to be held at your office on Feb. 15th. at 9 a.m.

From: Mel Rubin <mrubin@melrubin.com>
To: alex siegal <alby1969_98@yahoo.com>
Cc: desau@carltonfields.com
Sent: Tue, October 5, 2010 2:25:30 PM
Subject: RE: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

FEB 8,9,10, 15, 16, 17 2011 PLS ADVISE WITH ANY NEW DEVELOPMENTS THANKD YOU MEL RUBIN

From: alex siegal [mailto:alby1969_98@yahoo.com]
Sent: Tuesday, October 05, 2010 12:27 PM
To: Mel Rubin
Subject: Re: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

Thank you. I will file the proposed order as soon as I receive the dates from you later today.

From: Mel Rubin <mrubin@melrubin.com>
To: alex siegal <alby1969_98@yahoo.com>
Sent: Mon, October 4, 2010 3:37:42 PM
Subject: RE: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

WILL DO WILL SEND DATES TOMORROW MEL RUBIN

From: alex siegal [mailto:alby1969_98@yahoo.com]
Sent: Monday, October 04, 2010 10:42 AM
To: Mel Rubin
Subject: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

Dear Mr. Rubin:

I would like to have the mediation conference held in February, pref. mid-February, at your office, if possible. Amazon's counsel, Mr. David Esau, has indicated that he does not object to scheduling the mediation for February, although he suggested that we conduct it at his firm's Miami office. Please let me know exactly when in February you will be available to conduct the mediation conference and whether you mind conducting the conference at your office.

The proposed scheduling order must be submitted to Judge Marcia G. Cooke ASAP - it is currently past due.

I thank you and hope to hear from you soon!

Sincerely,

Albert Segal

From: Mel Rubin <mrubin@melrubin.com>
To: alby1969_98@yahoo.com
Sent: Tue, September 28, 2010 1:09:35 PM
Subject: From Mediator Mel Rubin

TO: ALBERT SEGAL

This is our contact information. Please confirm upon receipt. Mr. Rubin will be in touch with you soon. Thank you.

Marta Valdivia
Assistant to Mel Rubin, Esq.

Mel Rubin, Esq.
111 Majorca Ave.
Coral Gables, FL 33134
(305)446-4630 Phone.
(305)446-4978 fax.
www.melrubin.com
www.mediationtrainings.com
mrubin@melrubin.com

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Exhibit B

From: Esau, David B. [mailto:desau@carltonfields.com]
Sent: Tuesday, November 02, 2010 6:25 AM
To: alex siegal; Mel Rubin
Subject: RE: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

Since my client is flying all the way here from Washington state, perhaps we should reserve at least the entire morning to make a good faith effort at resolving the dispute. Thanks.

From: alex siegal [mailto:alby1969_98@yahoo.com]
Sent: Monday, November 01, 2010 1:00 PM
To: Mel Rubin
Cc: Esau, David B.
Subject: Re: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

Dear Ms. Valdivia:

We have not yet heard back from Amazon's counsel on this issue and on many others. For now, let's tentatively reserve 2 hrs (9 a.m. -11 a.m.).

Thank You!
Albert Segal

From: Mel Rubin <mrubin@melrubin.com>
To: alex siegal <alby1969_98@yahoo.com>
Cc: desau@carltonfields.com
Sent: Mon, November 1, 2010 9:53:14 AM
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Good morning, gentlemen:

We're in receipt of the Order Scheduling Mediation for February 15, 2011 at 9:00 am at our offices. Please advise how many hours (length of the mediation time) you would like us to reserve. Thanks so much.

Marta Valdivia
Assistant to Mel Rubin, Esq.
MEDIATION SERVICES, INC.
111 Majorca Avenue
Coral Gables, FL 33134
(305) 446-4630

Exhibit C

Tue, January 18, 2011 4:34:27 PM

Re: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

From: alex siegal
<alby1969_98@yahoo.com>
Add to Contacts

To: desau@carltonfields.com
Cc: Mel Rubin <mrubin@melrubin.com>

Mr. Esau -

You had previously requested, and we agreed, that "at least the entire morning" of February 15th should be reserved for the mediation conference because your client is "flying all the way from Washington" to make a good-faith effort to comply with the Hon. Judge Cooke's Order [D.E. 34]. See your email below. Therefore, Marianna Chaparova and I object to your new request for Amazon's representative to appear at the mediation by telephone.

Sincerely,

Albert Segal

From: Esau, David B. [mailto:desau@carltonfields.com]
Sent: Tuesday, November 02, 2010 6:25 AM
To: alex siegal; Mel Rubin
Subject: RE: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

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Sent: Monday, November 01, 2010 1:00 PM
To: Mel Rubin
Cc: Esau, David B.
Subject: Re: SEGAL/CHAPAROVA vs. AMAZON.COM, INC., Case No. 10-cv-20718, Mediation Conference

Dear Ms. Valdivia:

We have not yet heard back from Amazon's counsel on this issue and on many others. For now, let's tentatively reserve 2 hrs (9 a.m. -11 a.m.).