

Garcia v. Suda

United States District Court for the Eastern District of Virginia, Alexandria Division

July 1, 2016, Decided; July 1, 2016, Filed

Civil Action No 1:15-cv-01000

Reporter

2016 U.S. Dist. LEXIS 194373 *

RICARDO GARCIA, Plaintiff, v. BURKE E. SUDA,
Defendant.

Core Terms

emails, storage, electronic communication, electronic,
stored, expectation of privacy, transmission, backup

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Judges: CLAUDE M. HILTON, UNITED STATES
DISTRICT JUDGE.

Opinion by: CLAUDE M. HILTON

Opinion

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS CASE was tried before the Court on June 22,
2016 and after hearing all the evidence, the Court
makes the following findings of fact and conclusions of
law.

I. FINDINGS OF FACT

1. Burke Suda is the daughter of the now deceased
Donald J. Suda, who lived at 911 Riva Ridge Drive,
Great Falls, Virginia. The Plaintiff, Ricardo Garcia, was
the life partner of Donald J. Suda and resided for a
number of years at the same address.

2. Donald J. Suda owned a personal computer which he

kept in his home located at 911 Riva Ridge Drive, Great
Falls, Virginia ("Suda Home").

3. Donald J. Suda was admitted to the hospital on or
about March 15, 2014 and was, during periods
thereafter, in a coma. Ms. Suda had permission to enter
into the Suda Home while Donald J. Suda was in the
hospital through either express permission of Donald J.
Suda [*2] or by and through a general durable power of
attorney.

4. On or about March 26, 2014, while at the Suda
Home, Ms. Suda used the computer as she had on
other occasions.

5. While using the computer, Ms. Suda double clicked
on a Yahoo! icon on the computer desktop with the
intention of opening a web browser. When the Yahoo!
icon was double clicked, Mr. Garcia's email appeared on
the screen without the entry of a password or username
by Ms. Suda.

6. Ms. Suda noticed that a number of messages, readily
apparent to be of a sexually explicit nature, had been
exchanged with another man. The messages had been
delivered, previously opened, and responded to by the
Plaintiff. Most of these emails were stored in a folder
labeled "Mark" or "Mark Snyder."

7. Ms. Suda read a number of these emails and printed
approximately twelve of them. Ms. Suda did not show
these emails to any third party except for her attorneys.

8. The Plaintiff presented no evidence of damage as a
result of Ms. Suda's viewing of the emails.

II. CONCLUSIONS OF LAW

1. Ms. Suda did not intentionally access, without
authorization, a facility, through which an electronic
communication service is provided in violation of [18
U.S.C.A. § 2701](#) (the "Stored Communication [*3] Act"

or the "SCA").

2. The Stored Communication Act does not apply to every email in a web-based email account. To be protected by [§ 2701](#), the email, when accessed, must be in "electronic storage" as that term is defined in the SCA:

(a) Offense-- except as provided in [subsection \(c\)](#) of this section whoever--

- 1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or
- 2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication **while it is in electronic storage** in such system shall be punished as provided in [subsection \(b\)](#) of this section.

[18 USCA § 2701 \(a\)](#) (emphasis added).

3. The SCA defines "electronic storage" as:

any temporary, intermediate storage of a wire or electronic communication **incidental to the electronic transmission** thereof; and

any storage of such communication by an electronic communication service **for purposes of backup protection of such communication**.

4 [SCA § 2510\(17\)](#) (emphasis added).

4. Any emails viewed by Ms. Suda were not in temporary, intermediate storage of a wire or electronic communication that were incidental to their electronic transmission or in the storage of [*4] an electronic communication service for purposes of backup protection. Rather, the emails viewed by Ms. Suda had already been delivered to their intended recipient. The Stored Communications Act applies only to those electronic communications stored for a limited time in the middle of a transmission, when an electronic communication service temporarily stores a communication while waiting to deliver it.

5. Ms. Suda did not obtain, alter, or prevent authorized access to a wire or electronic communication while it was in electronic storage in violation of the Stored Communication Act. Emails viewed by Ms. Suda were not in electronic storage at the time they were viewed.

No electronic communications were unlawfully accessed by Ms. Suda while they were in "temporary electronic storage incident to their transmission." [Anzaldúa v. Ne. Ambulance & Fire Prot. Dist.](#), 793 F.3d 822, 840 (8th Cir. 2015).

6. The emails viewed by Ms. Suda were in "post-transmission storage" because they had been delivered to the recipient but not deleted from the email account. [Fraser v. Nationwide Mut. Ins. Co.](#), 135 F. Supp. 2d 623, 636 (E.D. Pa. 2001). See also [United States v. Weaver](#), 636 F. Supp. 2d 769, 772-73 (C.D. Ill. 2009); [In re DoubleClick Inc. Privacy Litig.](#), 154 F. Supp. 2d 497, 512 (S.D.N.Y. 2001).

7. The emails viewed by Ms. Suda were not stored by or for the provider for the purposes of "backup protection" as specifically required by part (B) of the definition of electronic storage. The emails viewed [*5] by Ms. Suda were stored by Ricardo Garcia by saving those emails after they had been received and/or opened.

8. Retaining an opened or delivered email is "not storage by the provider for the purpose of backup protection under the Stored Communications Act." [Jennings v. Jennings](#), 401 S.C. 1, 736 S.E.2d 242 (2012). See also [Anzaldúa v. Ne. Ambulance & Fire Prot. Dist.](#), 793 F.3d 822, 840-42 (8th Cir. 2015) (discussing the varying definitions courts apply to whether an email has been stored as a "back-up" as set forth in the SCA).

9. Individuals do not enjoy "an expectation of privacy in transmissions over the Internet or e-mail that have already arrived at the recipient. See [Guest v. Leis](#), 255 F.3d 325, 333 (6th Cir. 2001) ("Users . . . would lose a legitimate expectation of privacy in an e-mail that had already reached its recipient; at this moment, the e-mailer would be analogous to a letter-writer, whose expectation of privacy ordinarily terminates upon delivery of the letter.") (internal citations and quotation marks omitted). See also [United States v. Lifshitz](#), 369 F.3d 173, 190 (2d Cir. 2004).

10. "Emails are comparable to letters sent using the United States mail. Letters are protected by the [Fourth Amendment](#), but the sender's reasonable expectation of privacy ends upon delivery of the letter." [United States v. King](#), 55 F.3d 1193, 1195-96 (6th Cir. 1995) (internal citation omitted).

11. The Plaintiff does not have a reasonable expectation of privacy to emails after they have been delivered.

12. The [*6] Plaintiff was not damaged by Ms. Suda's actions. Statutory damages are only available to plaintiffs who have first proved that they suffered actual damages. [*Van Alstyne v. Elec. Scriptorium, Ltd.*, 560 F.3d 199, 205 \(4th Cir. 2009\)](#). Statutory damages are not available to the Plaintiff because he has suffered no actual damage. Ms. Suda did not unlawfully publish any electronic communication to a third party. Ms. Suda did not act with actual malice toward the Plaintiff. Ms. Suda's actions were not wrongful and in all events were not willful, wanton, or committed with such recklessness as to evince a conscious disregard of the rights of the Plaintiff, and Judgment should be entered in favor of Defendant Burke Suda.

/s/ Claude M. Hilton

CLAUDE M. HILTON

UNITED STATES DISTRICT JUDGE

Alexandria, Virginia

July 1, 2016

ORDER

THIS MATTER comes before the Court on the bench trial held before the Court on June 22, 2016. In accordance with the accompanying Findings of Fact and Conclusions of Law, it is hereby

ORDERED that judgment is entered in favor of the Defendant and this case is DISMISSED.

/s/ Claude M. Hilton

CLAUDE M. HILTON

UNITED STATES DISTRICT JUDGE

Alexandria, Virginia

July 1, 2016