

From Cameo to Courtroom: George Santos' Copyright Claims Fall Flat

October 17, 2025

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Despite the best efforts of the government, George Santos refuses to leave the public eye – for now, at least. On September 15, 2025, the Second Circuit affirmed the dismissal of former Congressman George Santos' copyright infringement and state law claims against late night show host and comedian, Jimmy Kimmel, as well as the Walt Disney Company. The case arose from Kimmel's use of personalized videos on his late-night show, Jimmy Kimmel Live! that Santos created through the Cameo platform. Kimmel and his staff submitted paid requests to George Santos through the popular app, Cameo, in which notable public individuals record and send personalized messages in exchange for money. Kimmel proceeded to air these recordings on his late-night show as part of "Will Santos Say It?" segments, which mocked Santos' willingness to create content for money. The district court dismissed all claims under Rule 12(b)(6), finding that the Fair Use doctrine barred the copyright claims, while the state law claims for breach of contract, breach of implied contract, and fraudulent inducement either failed on the merits or were preempted.

On the copyright claims, the Second Circuit conducted a thorough fair use analysis under 17 U.S.C. § 107, focusing primarily on the transformative nature of Kimmel's use of the materials for satirical purposes. The court rejected Santos' argument that the use wasn't transformative because Kimmel had "instigated" the videos' creation, emphasizing that transformativeness is judged by what a reasonable observer would think rather than the subjective intent of either party creating the work at issue. The court found Kimmel's use was clearly transformative commentary and criticism, noting that while Santos claimed Kimmel's purpose in soliciting the recordings was also to mock Santos and demonstrate Santos' willingness to say absurd things for money, a reasonable observer would view the videos as conveying "feelings of hope, strength, perseverance, encouragement, and positivity." The court also found no harm to the market, since Kimmel's use didn't usurp Santos' market by offering a competing substitute.

As for Santos' state claims, the court affirmed their dismissal on substantive grounds. Santos' direct breach of contract claim failed because he was not considered a party to Cameo's Terms of Service and could not establish third-party beneficiary status under Illinois state law, which requires implied terms to a contract to be "so strong as to be practically an express declaration." His implied contract claim failed under New York law for not pleading essential contractual terms or demonstrating a meeting of the minds. Finally, his fraudulent inducement claim failed because he could not allege actual out-of-pocket losses as required under New York law.

While Kimmel could have relied on commentary under Section 107 of the Copyright Act as a non-infringing use, this case reaffirms the power that satire also has to transform a work under the Fair Use doctrine. While deceit may not endear one to the deceiver, neither will it necessarily endanger them in a court of law (depending on the use, of course).