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UNEASY LIES THE TIARA: CROWNS, CONTRACTS, AND THE REBEKAH REVELS LITIGATION

AMANDA HARMON COOLEY*

*Uneasy lies the head, that wears a crown.*¹

*Beauty queens don't walk; they glide.*²

ABSTRACT

In the last five years, news of various scandals in the pageant industry has inundated media outlets. These recent incidents are by no means outliers in the history of pageantry. This article explores the significance of one of these controversies — the Rebekah Revels litigation, which stemmed from the disputed 2002 Miss North Carolina pageant.

For context, this article first outlines allegations of wrongdoing in early pageants. It proceeds with an analysis of how the Revels litigation serves as an exemplar of the types of contract lawsuits that may continue to entangle pageant organizations in the future. Finally, the article provides an examination of the specific legal, economic, and sociocultural effects that the Revels litigation has had, and likely will continue to have, upon the business model of the pageant industry.

INTRODUCTION

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CONCLUSION

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1. WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE FOURTH* act 3, sc. 1, line 34 *reprinted in* THE COMPLETE WORKS OF WILLIAM SHAKESPEARE 469 (Tally Hall Press 1911) (1864).

2. ELISSA STEIN, *BEAUTY QUEEN: HERE SHE COMES* 70 (2006).

INTRODUCTION

In November 2007, purported saboteurs allegedly covered the clothing and makeup of the eventual winner of the Miss Puerto Rico Universe Pageant, Ingrid Marie Rivera, with pepper spray or some other chemical irritant,³ causing an extreme allergic reaction for the contestant.⁴ An experienced pageant contestant, Rivera managed to retain her poise.⁵ The San Juan Police Department immediately opened a criminal investigation of the incident.⁶ This police inquiry was in addition to an already established criminal investigation of a bomb threat that “forced pageant officials to postpone the last day of competition.”⁷

As forensic analysis was conducted on Rivera’s pageant evening gown and makeup brush,⁸ rumors circulated throughout the media that her claims were dubious given her composure in front of the cameras and the judges of the pageant.⁹ These rumors were bolstered by the initial forensic analysis, which found “[n]o traces of capsaicin [sic], the active ingredient in pepper spray,” on Rivera’s gown or makeup brush; the items were not tested for any other chemicals.¹⁰ However, the criminal investigation continued with the submission of new evidence (an additional gown and swimsuit worn by Rivera during the pageant) to the police by the Miss Puerto Rico, Inc. franchise.¹¹

After two weeks and a forensic analysis that found positive results of pepper spray on the second gown and swimsuit, the police

3. Rebecca Banuchi, *Police Probing Alleged Sabotage Against Eventual Miss P.R. Universe*, SAN JUAN STAR, Nov. 27, 2007, at 6.

4. See Howard Gensler, *Pageant Borrows a (Tawdry) Page From a Script*, PHILA. DAILY NEWS, Nov. 26, 2007, at 40 (stating that, backstage, Rivera “had to strip off her clothes and apply ice bags to her face and body, which swelled and broke out in hives”).

5. *Pageant Sabotage?*, TIME, Dec. 10, 2007, at 28 (stating that Rivera’s poise throughout the incident led “some to question whether pepper spray was used after all”).

6. Banuchi, *supra* note 3, at 6. This investigation also included allegations that Rivera’s bag containing her credit cards had been stolen during the pageant. *Id.*; Editorial, *Ugly Side of Contest Nothing to Sneeze At*, CHI. SUN-TIMES, Nov. 27, 2007, at 27.

7. See Gensler, *supra* note 4, at 40.

8. *Forensics Receives Miss P.R. Universe’s Gown*, SAN JUAN STAR, Nov. 28, 2007, at 8; Manuel Ernesto Rivera, *New Evidence Submitted in Pageant Sabotage Case: Polygraphs May Be Used in Probe*, SAN JUAN STAR, Dec. 6, 2007, at 11.

9. Cloe Cabrera, *Doubts Tarnish Winner’s Tiara*, TAMPA TRIB. (Fla.), Dec. 10, 2007, § Baylife, at 1; *Miss Puerto Rico’s Spicy Night*, MIAMI HERALD, Nov. 29, 2007, at A8; *Rivera Tells Today: Pageant Perils ‘Not Made Up,’* SAN JUAN STAR, Nov. 29, 2007, at 9.

10. *No Pepper Spray Found on Miss P.R. Universe Dress*, SAN JUAN STAR, Dec. 1, 2007, at 5.

11. Rivera, *supra* note 8, at 11; see also Manuel Ernesto Rivera, *Toledo: Careless Guard May Have Caused Pageant Flap*, SAN JUAN STAR, Dec. 7, 2007, at 8 (explaining the circumstances of the investigation).

confirmed the validity of Rivera's allegations and began to focus their suspicions on a pageant volunteer as the potential culprit.¹² By January 2008, Puerto Rican officials had yet to determine whether there was enough evidence in the matter for the Justice Department to pursue a criminal prosecution against two pageant volunteer/employee suspects.¹³ Although the criminal prosecution remains uncertain, it seems that future civil litigation surrounding this incident is almost a guarantee. Magaly Febles, the franchise director of Miss Puerto Rico Universe who supported Rivera's allegations throughout the investigation, "has hired a battery of attorneys . . . to evaluate the possibility of filing lawsuits against those who accused her of fabricating the allegations."¹⁴

The Miss Universe Puerto Rico scandal was not the only pageant scandal that dominated media headlines and captured sensationalistic attention in the last two years.¹⁵ National and international pageant organizations have been entangled in claims of personal debauchery and geopolitical backlash.¹⁶ "[A]llegations of drinking, cocaine use, and sexual escapades" led to Miss USA 2006 Tara Conner's stint in rehab.¹⁷ During the 2007 Miss Universe Pageant, held in Mexico City, Miss USA 2007 Rachel Smith not only fell during the evening gown competition, but also was met by a constant chorus of boos reflecting anti-American sentiment throughout her month-long stay in Mexico.¹⁸

Recent controversy has not been limited to the national or international pageant stages. In 2006, "Miss Nevada USA Katie Rees was dethroned . . . after her racy pictures emerged on the [internet]."¹⁹

12. *Probe Confirms Foul Play at Miss P.R. Universe Pageant*, SAN JUAN STAR, Dec. 20, 2007, at 4 ("Miss Puerto Rico Universe was speaking the truth. She was being sincere about the allegations," said Lt. Eddie Hernández, head of the Police Department's Homicide Division in San Juan. Extensive interviews led police to focus their suspicions on [a pageant] volunteer and not a rival contestant . . .").

13. Xavira Neggers Crescioni, *Police Eye Two Possible Suspects in Miss P.R. Universe Sabotage Case*, SAN JUAN STAR, Jan. 9, 2008, at 8.

14. *Id.*

15. See, e.g., Stephen Castle, *Belgium: Loser To Lead Interim Government*, N.Y. TIMES, Dec. 18, 2007, at A22 (explaining that disputes between the Dutch-speaking community and the French-speaking area in Belgium "engulfed even the country's annual beauty pageant . . . when the new Miss Belgium, Alizee Poulicek, a blond 20-year-old from the French-speaking part of the country, was booed when she disclosed that she could not speak Dutch").

16. See, e.g., *id.*; Brian Everstine, *A Brutal but Effective Lesson*, MORNING NEWS TRIB. (Tacoma, Wash.), July 10, 2008, at A1 (discussing photos of a Miss America runner-up partying).

17. Mark Schwed, *The Ugly Side of Beauty Pageants*, PALM BEACH POST (Fla.), Jan. 25, 2008, at 1E.

18. Marc Lacey, *Why They Booed Her in Mexico*, N.Y. TIMES, June 3, 2007, § 4, at 7.

19. Julie Watson, *Trouble in Paradise — Miss Universe Criticism Mounts*, J. GAZETTE (Fort Wayne, Ind.), May 28, 2007, at 3D; see also Melanie Ave, *Dethroned Miss Nevada*

In a somewhat similar incident, Miss New Jersey 2007 Amy Pumbo was blackmailed with the threat of the public release of personal photographs if she did not surrender her crown.²⁰ In a bid to thwart the blackmailer and to avoid the fate of Rees, Pumbo took preemptive action, revealing her “unladylike” photographs on the Today show.²¹ Pumbo, unlike Rees, was allowed to keep her crown after the New Jersey chapter of the Miss America Organization determined that the photographs “did not violate the morals clause” that all contestants must sign in order to participate in the pageant.²²

Ironically, the Rees and Pumbo incidents coincided with the final chapters of a lengthy civil litigation involving another set of allegedly indecent photographs, contractual morals clauses, the Miss America Organization, and a battle over the throne worthy of a Shakespearean history play.²³ In 2006 and 2007, the North Carolina Court of Appeals issued two opinions in resolution of the fallout that occurred after the brief 2002 reign of former Miss North Carolina, Rebekah Revels, who resigned her crown after the pageant organization was made aware of the existence of some nude photographs of the beauty queen.²⁴ Both of Revels’s attempts to appeal these decisions to the North Carolina Supreme Court were denied, and this five-year struggle apparently came to an end.²⁵

However, from the criminal investigation of the Miss Puerto Rico Universe Pageant to the *Revels* civil litigation, these recent

USA Gives Public Apology, ST. PETERSBURG TIMES (Fla.), Dec. 24, 2006, at 1B (discussing Miss Nevada’s attempt to regain her crown).

20. *Miss New Jersey Complains of Blackmail Threat*, N.Y. TIMES, July 6, 2007, at B3; Jill Smolowe et al., *Blackmailed Beauty*, PEOPLE, July 23, 2007, at 80.

21. Rita Giordano, *There She Still Is: Miss N.J.; The New Garden State Queen Will Keep Her Crown, Despite Un-“ladylike” Blackmail Photographs*, PHILA. INQUIRER, July 13, 2007, at A1.

22. Tamer El-Ghobashy & Corky Siemaszko, *Jersey Will Keep Its Miss; Raunchy Pix Won’t Bar Her From National Pageant*, DAILY NEWS (N.Y.), July 13, 2007, at 12.

23. Media coverage of the controversy surrounding the 2002 Miss North Carolina pageant often painted former Miss North Carolina, Rebekah Revels, and her successor, Misty Clymer, as classically dramatic, archetypal rivals. *E.g.*, *Title in Doubt, Dueling Queens Head to Pageant*, N.Y. TIMES, Sept. 7, 2002, at A12. Some commentators even drew parallels, if not to Shakespeare’s history plays, at least to his comedies. Andrea Weigl, *Dethroned Miss N.C. Loses a Round in Court*, NEWS & OBSERVER (Raleigh, N.C.), July 18, 2006, at B5 (“[A]s Shakespeare wrote in ‘The Tempest’: ‘Our revels now are ended.’ What once appeared to be endless litigation between Rebekah Revels, the former Miss North Carolina who lost her crown in 2002 after topless photos surfaced, and the Miss North Carolina Pageant Organization seems to be over.”).

24. *Revels v. Miss Am. Org.*, 641 S.E.2d 721 (N.C. Ct. App. 2007), *petition for discretionary review denied*, 648 S.E.2d 844 (N.C. 2007); *Revels v. Miss N.C. Pageant Org.*, 627 S.E.2d 280, 282 (N.C. Ct. App. 2006), *petition for discretionary review denied*, 635 S.E.2d 288, 289 (N.C. 2006).

25. *Miss Am. Org.*, 648 S.E.2d at 844; *Miss N.C. Pageant Org.*, 635 S.E.2d at 289.

controversies are by no means outliers in the history of pageantry.²⁶ This is an industry that has faced scandal²⁷ and litigation²⁸ since its origin; yet, pageant organizations still remain markedly viable in the global business environment.²⁹ This paper will explore what impact recent litigation might have upon the future of the pageant industry and its overall business model. Specifically, this paper will briefly outline the history of alleged wrongdoing in the early pageant industry; will analyze the *Revels* litigation as an emblematic representation for the types of lawsuits that may entangle pageant organizations increasingly in the future; and will examine the legal, economic, and sociocultural effects that the *Revels* litigation has had, and likely will continue to have, upon the pageant industry.

I. A SCANDALOUS HISTORY: THE "DARK" SIDE OF THE EARLY PAGEANT INDUSTRY

The beauty pageant industry had humble beginnings, unlike the multi-billion dollar international business that it is today.³⁰ "Rehoboth Beach, a seaside resort town in Delaware, hosted the first documented beauty pageant in 1880. . . . Although this first Miss United States pageant proved to be great entertainment, it wasn't successful enough to warrant another contest the next year."³¹ The lack of success of this first pageant may reflect how closely tied the history of beauty pageants is with controversy; it has been argued

26. See, e.g., *People*, TIME, July 30, 1984, at 107 (discussing the 1984 resignation of Vanessa Williams as Miss America — a pageant first — after sexually explicit photographs of her appeared in Penthouse Magazine); see also Jack Kroll, *Success is the Best Revenge*, NEWSWEEK, Aug. 15, 1994, at 65 (outlining Vanessa Williams's successes in spite of the resignation of the Miss America crown).

27. See LOIS W. BANNER, AMERICAN BEAUTY 269 (1983) (discussing the salacious overtones in the pageant).

28. See Mark Washburn, *A Tiara Tussle? That's Nothing Compared to . . . Controversies Erupted over Claims of Payola, Nudity and Swimsuits*, CHARLOTTE OBSERVER (N.C.), Sept. 8, 2002, at 8B ("In 1924 came the first lawsuit. Miss Boston was found to be married and got the hook. She sued, but the pageant had a rule against matrimony and won.").

29. See, e.g., Colleen Ballerino Cohen et al., *Introduction: Beauty Queens on the Global Stage*, in BEAUTY QUEENS ON THE GLOBAL STAGE 1, 1-2 (Colleen Ballerino Cohen et al. eds., 1996) ("[B]eauty contests are everywhere: they take place around the world; draw local and international audiences; span every conceivable group, interest, and topic; and involve competitors ranging in age from infants to centenarians.").

30. Melissa Fletcher Stoeltje, *Anatomy of a Beauty Pageant*, SAN ANTONIO EXPRESS-NEWS, Jan. 21, 2007, at 8J (estimating the American pageant industry as a five billion dollar business).

31. STEIN, *supra* note 2, at 31.

that social conventions³² and class dynamics,³³ rather than economics,³⁴ trumped entertainment in Rehoboth Beach as the beach-side community was not quite ready for young women on display in bathing suits.³⁵

The next major pageant event in America was born out of a 1921 attempt to extend the summer tourist season in Atlantic City, New Jersey — a festival called Fall Frolic.³⁶ The festival culminated in the crowning of Margaret Gorman as Atlantic City's first Miss America.³⁷ Although the pageant was trumpeted as a success by certain business interests in town,³⁸ organizers also had to weigh the potential for a conservative backlash that could douse this relatively new economic engine.³⁹ Certain socio-cultural issues, such as class discrimination and 1920s indulgences, also permeated the environment.⁴⁰ In light of this, early publicity for the Miss America pageant emphasized the "wholesome, natural qualities [of the contestants] as well as their athleticism."⁴¹

While this balance was successfully maintained for about eight years, the pageant was cancelled from 1928 until 1933.⁴² This cancellation was a response to the "[s]candal [that] surrounded these contests almost every year during" the 1920s.⁴³ "[T]he cancellation had

32. *Id.*

33. See BANNER, *supra* note 27, at 265-66. The beauty pageant's predecessor, the beauty contest, also faced scrutiny with respect to its class issues. "Phineas T. Barnum encountered this [class] barrier when in 1854 he conceived what might be called the first modern beauty contest . . . [T]he only women who initially submitted entries to his contest were 'of questionable reputation,' . . . The respectable women that Barnum hoped to attract did not apply." *Id.* at 255-56.

34. See FRANK DEFORD, *THERE SHE IS: THE LIFE AND TIMES OF MISS AMERICA* 110 (1971) (stating that the first beauty contest, in Rehoboth Beach, Delaware, was not successful enough to be held again).

35. STEIN, *supra* note 2, at 31.

36. VICKI GOLD LEVI & LEE EISENBERG, *ATLANTIC CITY: 125 YEARS OF OCEAN MADNESS* 155 (2d ed. 1994); STEIN, *supra* note 2, at 35-37.

37. BANNER, *supra* note 27, at 249; STEIN, *supra* note 2, at 37.

38. See LEVI, *supra* note 36, at 155-56 ("The Chamber of Commerce kept close watch on the benefits of the pageant of '21. 'In the publicity gained for the resort,' its newsletter noted, 'direct results already are being reported throughout the hotel district.'").

39. See BANNER, *supra* note 27, at 266 (highlighting that the pageant carried with it a balance between "increasing tourism" and a potential "conservative protest . . . against . . . the first major national occasion in which young middle-class women would expose themselves in bathing suits before a panel of judges").

40. See Dawn Perlmutter, *Miss America: Whose Ideal?*, in *BEAUTY MATTERS* 155, 155 (Peg Zeglin Brand ed., 2000) (arguing that "[c]lass discrimination has been an intrinsic part of the Miss America Pageant from its very inception").

41. BANNER, *supra* note 27, at 268.

42. See LEVI, *supra* note 36, at 166 (mentioning that the pageant returned in 1933, but, without the support of the business community, it disappeared in 1934 and then resurfaced in 1935).

43. Cohen, *supra* note 29, at 4.

little to do with the coming of the Depression — as some would claim — and a lot to do with the fact that the affair had begun to generate bad press.”⁴⁴ Simply, the business interests in Atlantic City no longer championed the pageant because of its overtones of immorality.⁴⁵ Further, it was viewed as “a lower class carnival” and not a “high-class production.”⁴⁶ The pageant returned in 1933; disappeared in 1934; and reappeared in 1935, continuing as just one representative in this industry today.⁴⁷

Because the modern pageant industry is facing a current onslaught of allegations of immorality and controversy,⁴⁸ it is important to have a foundational grounding in the realities of the early pageant industry. All was not “sweetness and light” until 2002, the year of the Rebekah Revels scandal. However, a prominent organization of the modern pageant industry had not truly faced actual litigation, as a *defendant*, based on moral implications until the Revels case was filed.⁴⁹ Indeed, previous lawsuits had been filed that involved pageant organizations, but, for the most part, these cases involved intellectual property issues.⁵⁰ With the *Revels* litigation, ironically, given its somewhat “dark” origins, the modern pageant industry and its continued requirements of “morality” for all of its contestants were effectively put on trial.⁵¹ As such, an in-depth examination of the *Revels* litigation is merited, as this litigation serves as a quintessential example of the types of lawsuits that may increasingly entangle pageant organizations in the future.⁵² Further, the lens of the *Revels* litigation provides a clear perspective into the overall legal, economic, and sociocultural

44. LEVI, *supra* note 36, at 166.

45. See DEFORD, *supra* note 34, at 129-30 (stating that the hotels found the pageant “gave Atlantic City a bad name”).

46. BANNER, *supra* note 27, at 269.

47. See LEVI, *supra* note 36, at 166.

48. See *supra* notes 15-22 and accompanying text (recounting the stories of past beauty queens involved in scandal).

49. But see Washburn, *supra* note 28, at 8B (discussing the first lawsuit filed against a pageant organization in 1924).

50. See, e.g., *Miss World (UK), Ltd. v. Mrs. Am. Pageants, Inc.*, 856 F.2d 1445, 1447 (9th Cir. 1988) (involving allegations of service mark infringement and Lanham Act unfair competition claims); *Miss Universe, Inc. v. Patricelli*, 753 F.2d 235, 237 (2d Cir. 1985) (involving Lanham Act trademark claims). But see *Miss Am. Pageant, Inc. v. Penthouse Int'l Ltd.*, 524 F. Supp. 1280, 1281 (D.N.J. 1981) (alleging “that defendant falsely and with actual malice published certain false and libelous words about plaintiff’s contestant, Miss Wyoming”).

51. See Editorial, *Week’s End*, THE HERALD SUN (Durham, N.C.), Aug. 3, 2002, at A10 (characterizing the pageant’s position on morality as hypocritical).

52. See Editorial, *Pretenders to the Throne*, GREENSBORO NEWS & RECORD (N.C.), Sept. 14, 2002, at A10 (anticipating the next scandal to arise after the “legal cat fight” that followed the Revels scandal).

effects that recent high-profile scandals have had, and likely will continue to have, upon the pageant industry.⁵³

II. MISS AMERICA AND MORALITY: THE *REVELS* LITIGATION

The pageant industry has a long history of contractual relationships with its contestants.⁵⁴ In 1946, following the year of Bess Myerson's reign, the first and only Jewish Miss America, "[t]he new Miss America [was] required to sign a contract giving pageant officials the exclusive right to serve as her agent."⁵⁵ This was, in part, a reflection of the difficulties that Myerson faced during her reign in getting endorsements due to, according to Myerson, anti-Semitism.⁵⁶ These representation contracts soon became a central part of the contest-contestant relationship.⁵⁷ In addition to these representation contracts, many pageants also require that their participants agree to a contractual morals clause.⁵⁸ At the center of the *Revels* litigation was such a beauty pageant morals clause.⁵⁹

A. Background

Before the glimmer of protracted litigation occurred in June 2002, Miss Fayetteville, Rebekah Revels, won the Miss North Carolina

53. See *Revels v. Miss Am. Org.*, 599 S.E.2d 54 (N.C. Ct. App. 2004) (presenting the legal effects of the litigation); Notice of Removal at 1, *Revels v. Miss Am. Org.*, No. 7:02-CV-00140 (E.D.N.C. Sept. 5, 2002) [hereinafter Notice of Removal] (expressing the amount of damages Revels sought, therefore exhibiting the economic effect on the pageant industry) (on file with author); Schwed, *supra* note 17, at 1E (describing pageant scandals and an apparent departure from the sociocultural ideal of Miss America representing "the highest ideals" which consisted of "a real combination of beauty, grace, and intelligence, artistic and refined").

54. See, e.g., Estes Thompson, *Miss N.C. Case Exposes Contract*, CHARLOTTE OBSERVER (N.C.), Nov. 3, 2002, at 10B.

55. JENNIFER PRESTON, *QUEEN BESS: AN UNAUTHORIZED BIOGRAPHY OF BESS MYERSON* 39, 43 (1990).

56. *Id.* at 39; see also SUSAN DWORKIN, *MISS AMERICA, 1945: BESS MYERSON'S OWN STORY* 217 & n.4 (1987) (quoting the "Contract for the National Finals, Miss America Health, Beauty, and Talent Pageant for the Selection of Miss America, 1946," which states "[i]n the event I am selected Miss America 1946 . . . I hereby appoint the Miss America Pageant as my sole, exclusive, and only agent and attorney").

57. DWORKIN, *supra* note 56 at 216-17.

58. The *Revels* case was not the first incidence of a pageant organization enforcing its morals clause; Vanessa Williams was "asked" to renounce her crown pursuant to the Miss America Organization's morals clause in 1983. BRENDA FOLEY, *UNDRESSED FOR SUCCESS: BEAUTY CONTESTANTS AND EXOTIC DANCERS AS MERCHANTS OF MORALITY* 151 (2005). However, the *Revels* case is unique in that it appears to be the first litigation commenced in the United States regarding, in part, the validity of the clause and the propriety of its enforcement.

59. E.g., Jeffrey Gettleman, *One Miss North Carolina Pleads Her Case*, N.Y. TIMES, Sept. 11, 2002, at A30.

Pageant and the accompanying right to represent North Carolina in the Miss America Pageant.⁶⁰ Revels's win in the Miss North Carolina Pageant was not just a personal triumph.⁶¹ Revels's win signified something greater to the Lumbee Indian tribe, of which she is a member.⁶² With this win and Revels's subsequent application to the Miss America Pageant, the tribe saw the opportunity of the first Native American Miss America.⁶³ Little did Revels and her community know that this chance would be stifled pursuant to a contractual morals clause.⁶⁴

As a condition of competing in the Miss North Carolina Pageant, and pursuant to her win, Revels entered into a contract with the Miss North Carolina Pageant Organization, Inc.⁶⁵ This contract contained several key clauses that were the eventual foci of the subsequent litigation.⁶⁶ Ironically, as a method to avoid this type of litigation, the contract between Revels and the Miss North Carolina Pageant Organization contained a limitation of remedies clause in the form of an arbitration clause.⁶⁷ In addition to this procedural clause that would prove to be a pivotal point of debate in the case, the contract substantively contained a morals clause that "provided that Revels had not 'done any act or engaged in any activity which could be characterized as dishonest, immoral, immodest, indecent, or in bad taste.'"⁶⁸ This morals clause was supported by an enforcement clause, which "stated [that] if any of [Revels's] representations proved false, the contract would be terminated and Revels would forfeit her rights as Miss North Carolina."⁶⁹

Revels's right to compete in the Miss America Pageant was likewise accompanied by (purportedly) contractual clauses.⁷⁰ Similar to her application to the Miss North Carolina Pageant Organization, Revels also submitted a June 24, 2002 application to compete in the national pageant of the Miss America Organization,⁷¹ of which the

60. James Locklear, *Revels Resigns Miss N.C. Title*, FAYETTEVILLE OBSERVER (N.C.), July 24, 2002, at 1A.

61. *See Whose Ideal? An Ugly Side of Miss America*, GREENSBORO NEWS & REC. (N.C.), Aug. 11, 2002, at B1.

62. *Id.*

63. Jeffrey Gettleman, *In North Carolina, The 2-Tiara State, A Beauty of a Fight*, N.Y. TIMES, Sept. 6, 2002, at A18.

64. *See id.*

65. *Revels v. Miss N.C. Pageant Org.*, 627 S.E.2d 280, 282 (N.C. Ct. App. 2006).

66. *See id.* at 282-83.

67. *Id.* at 282.

68. *Id.*

69. *Id.*

70. *See Revels v. Miss Am. Org.*, 599 S.E.2d 54, 55 (N.C. Ct. App. 2004).

71. *Id.*

Miss North Carolina Pageant Organization is a franchisee.⁷² The Miss America Organization application contained an arbitration clause,⁷³ a good character clause, and a good prior conduct clause.⁷⁴ Specifically, Revels, as a pageant contestant, was prohibited “from ‘engaging in any activity that could reasonably be characterized as dishonest, immoral or indecent and from conducting [herself] in any manner that is inconsistent with the standards and dignity of the Miss America Program.’”⁷⁵

These morals clauses played a significant role in Revels’s resignation of the Miss North Carolina crown, shortly after her pageant victory.⁷⁶ For the first time in the then sixty-five-year history of the Miss North Carolina Pageant, Revels announced her resignation on July 3, 2002.⁷⁷ Specifics about the resignation of the beauty queen were not immediately released.⁷⁸ However, details soon emerged that Revels’s ex-fiancé had emailed the Miss America Organization on July 19, 2002 with information about the existence of several topless photographs of Revels,⁷⁹ and that the Miss America Organization had forwarded that email to North Carolina Pageant officials.⁸⁰ Although Miss America officials asserted that Revels’s resignation was one of her own free will, Revels claimed “she was told to resign,”⁸¹ as this conduct violated her morals clauses.⁸² Upon Revels’s resignation, the

72. *Id.* at 56.

73. *Id.* at 55-56.

74. See Memorandum/Order Denying Plaintiff’s Motion for Preliminary Injunction and Plaintiff’s Motion for Reconsideration at 4, *Revels v. Miss Am. Org.*, No. 7:02-CV-00140 (E.D.N.C. Oct. 2, 2002) [hereinafter Memorandum/Order] (on file with author).

75. *Miss N.C. Resigned Over Topless Photos: Revels Says She Was Asked to Quit After Former Fiancé E-mailed Pageant*, HERALD-SUN (Durham, N.C.), July 30, 2002, at C5. These morality requirements have a long history with the Miss America pageant. See, e.g., PRESTON, *supra* note 55, at 27 (noting that in the Miss America 1945 pageant, the contestants “were instructed not to smoke, drink, or speak with men (including their fathers) during pageant week, or they would face disqualification”).

76. Jaime Levy & Mark Washburn, *Clock Strikes 12:01; Revels Out, for Now Judge May Rule Today on Whether Pageant Must Let Her Back In*, CHARLOTTE OBSERVER (N.C.), Sept. 12, 2002, at 1B.

77. See Locklear, *supra* note 60, at 1A.

78. *Id.* at 1A, 4A.

79. *Former Boyfriend Turns Over Photos*, ST. PETERSBURG TIMES (Fla.), Oct. 16, 2002, at 2B; *Miss N.C. Resigned Over Topless Photos*, *supra* note 75, at C5.

80. *Revels v. Miss Am. Org.*, 599 S.E.2d 54, 56 (N.C. Ct. App. 2004).

81. *Nude Pictures Force Revels Out; 24-year-old Says Former Boyfriend Took Photos While She Changed*, CHARLOTTE OBSERVER (N.C.), July 30, 2002, at 1B (“[Revels] said Alan Clouse, executive director of the Miss North Carolina pageant, ‘told me I would not be able to compete in the national competition and needed to submit my resignation. If I did not, I would be terminated.’”).

82. See *Miss N.C. Walks Away*, GREENSBORO NEWS & RECORD (N.C.), Aug. 4, 2002, at H2.

2002 state pageant first runner-up, Misty Clymer, became the new Miss North Carolina.⁸³

B. The First Rounds of State and Federal Court Litigation

In the month after her resignation, Revels was notified by the attorney for the Miss North Carolina Pageant Organization that she would be entitled to keep the \$12,000 in scholarship money that she had received upon winning the pageant.⁸⁴ However, Revels wanted more than the retention of these scholarships — she wanted her crown back from the pageant.⁸⁵ On August 29, 2002, Revels filed a breach of contract suit, seeking damages, specific performance, and injunctive relief, in North Carolina state court against the Miss North Carolina Pageant Organization in an attempt to regain her former title.⁸⁶ On August 26, 2002, Wake County Superior Court Judge Abraham P. Jones issued a temporary restraining order that did just that — temporarily reinstating Revels's title and holding Miss North Carolina pageant officials to their original contract.⁸⁷

On September 1, 2002, Revels filed a similar breach of contract suit, seeking damages, specific performance, and injunctive relief, in North Carolina state court against the Miss America Organization.⁸⁸ On that same date, Robeson County Superior Court Judge Gary Locklear granted Revels's Motion for a Temporary Restraining Order and ordered the Miss America Organization to allow Revels to participate in the Miss America Pageant activities.⁸⁹ On September 3 and 4, 2002, respectively, "Chief Justice I. Beverly Lake of the North Carolina Supreme Court entered an order designating [both matters] as . . . exceptional case[s] . . . and assigned the case[s] to the Honorable Narley L. Cashwell of Wake County Superior Court."⁹⁰ Judge Cashwell heard testimony in the former case on September 3, 2002⁹¹ and granted Revels's motion for "a preliminary injunction to

83. See Gettleman, *supra* note 63, at A1.

84. James Locklear, *Former Miss N.C. to Keep Winnings*, FAYETTEVILLE OBSERVER (N.C.), Aug. 13, 2002, at 1A.

85. *The Court Battle for the Tiara*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 6, 2002, at A14.

86. *Id.*

87. James Locklear, *Contestants Await Judge's Decision; Revels Excited, Clymer Quiet Heading to Court*, FAYETTEVILLE OBSERVER (N.C.), Aug. 31, 2002, at 1A.

88. See Notice of Removal, *supra* note 53, at 10-14 (appending the original complaint).

89. See *id.* at 15-18 (appending the original Temporary Restraining Order).

90. Revels v. Miss Am. Org., 599 S.E.2d 54, 56 & n.1 (N.C. Ct. App. 2004) (stipulating that the Miss North Carolina Pageant Organization case was so designated on September 3, 2002, and the Miss America Organization case was so designated on September 4, 2002).

91. See Andrea Weigl, *The Battle Over the Tiara*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 4, 2002, at A1.

prevent the Miss North Carolina [Pageant] [O]rganization from taking her" title away on September 4, 2002.⁹²

"Separate from the lawsuits against the state pageant, the national Miss America organization [then] deemed Revels . . . ineligible to compete in its Sept. 21 pageant."⁹³ Although Judge Cashwell was set to hear testimony on September 5, 2002 in the Miss America Organization state case,⁹⁴ the Miss America Organization removed its case to the United States District Court for the Eastern District of North Carolina on the basis of diversity of citizenship.⁹⁵ Additionally, on September 5, 2002, the Miss America Organization publicly announced its recognition of Misty Clymer as Miss North Carolina.⁹⁶ In contrast, Judge Cashwell declared on this same date that both Revels and Clymer shared the crown, resulting in both women traveling to Atlantic City to compete in the national pageant's opening events.⁹⁷

On September 9, 2002, the United States District Court for the Eastern District of North Carolina began its evidentiary hearing on Revels's motion for a preliminary injunction, which sought to compel the Miss America Organization to uphold her contract and to allow her to compete in the Miss America pageant.⁹⁸ The hearing continued until September 12, 2002.⁹⁹ In the interim, both Revels and Clymer participated in the preliminary events of the Miss America Pageant.¹⁰⁰

On September 12, 2002, in open court, United States District Court Judge James C. Fox denied Revels's motion for preliminary injunction.¹⁰¹ This denial determined that Revels was not entitled to

92. See Andrea Weigl, *Revels' Reign Reinstated*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 5, 2002, at A1. This determination did not affect the Miss North Carolina Pageant Organization's recognition of Clymer's contract and Clymer's title as Miss North Carolina. See *id.*

93. Jaime Levy, *Miss N.C. Regains Title Despite Photos With National Pageant Near, Judge Will Hear More Issues Today*, CHARLOTTE OBSERVER (N.C.), Sept. 5, 2002, at 1A.

94. *Id.*

95. Notice of Removal, *supra* note 53, at 2-3.

96. Paul Woolverton, *Miss America Group Picks Clymer*, FAYETTEVILLE OBSERVER (N.C.), Sept. 6, 2002, at 1A, 4A.

97. Jaime Levy, *2 N.C. Tiaras En Route to Pageant Wake Judge Decides Revels Shares Crown*, CHARLOTTE OBSERVER (N.C.), Sept. 6, 2002, at 1B.

98. See Docket Report at 18-19, *Revels v. Miss Am. Org.*, No. 7:02-CV-00140 (E.D.N.C. 2002) [hereinafter Docket Report] (on file with author) (stating that both parties were present to give evidence).

99. See *id.* at 13-16, 18-19.

100. See John Curran, *N.C. Controversy Reigns in Pageant City; Miss America Officials Unable to Keep Spotlight Off Continuing Saga*, HERALD-SUN (Durham, N.C.), Sept. 9, 2002, at A3; Maryclair Dale, *Miss America, Contestants Back Both from N.C.; Pageant Recognizes Both as Contestants until Court Decides*, HERALD-SUN (Durham, N.C.), Sept. 8, 2002, at C8; Mark Schreiner, *One Miss N.C. to Testify; Judge Refuses to Decide Case Unless Rebekah Revels Appears in Courtroom*, MORNING STAR (Wilmington, N.C.), Sept. 10, 2002, at 1A.

101. A written order denying the motion for preliminary injunction was entered in the case on September 19, 2002. An October 1, 2002 Memorandum outlining the basis for the

injunctive relief on either of her theories of breach of contract against the Miss America Organization.¹⁰² Revels had claimed a breach of contract in the form of the application that she signed in order to participate in the national pageant with the Miss America Organization;¹⁰³ Revels also claimed that she was entitled to compete in the national pageant as she was an intended third-party beneficiary in the franchise agreement between the Miss America and Miss North Carolina pageant organizations.¹⁰⁴

In the federal district court's analysis with respect to the balancing of the harms between the parties, the court recognized the great value of a state pageant title and the right to compete in the national pageant:

Each contestant garners not only personal exposure and fame, but also the opportunity to place her "platform" squarely within the national conscience. Moreover, each contestant receives something whose value cannot readily be calculated: a *chance* to be Miss America, a national icon. . . . [N]o monetary value could reflect the intangible component of the Miss America crown.¹⁰⁵

Even though the court recognized this value and that Revels would be harmed if the preliminary injunction were not to be issued, the court found that the Miss America Organization would face even greater harm if the motion for injunction was granted.¹⁰⁶ The court defined this harm as a significant undermining of the Miss America Organization's "ability to control the 'membership' in its time-honored institution;"¹⁰⁷ a "threat of crushing negative publicity;"¹⁰⁸ "a no-win situation with respect to Misty Clymer;"¹⁰⁹ and "considerable administrative expenses."¹¹⁰ As such, the balance of harm prong of the injunctive relief analysis tipped in favor of the Miss America Organization.¹¹¹

In the likelihood of who would prevail at trial prong of the injunctive relief inquiry, the court found that, "[b]ased on a preponderance of the evidence" presented in support of her motion for preliminary injunction, Revels failed to show "a substantial likelihood of success

order was entered in the case on October 2, 2002. See Docket Report, *supra* note 98, at 10, 12-13.

102. See Memorandum/Order, *supra* note 74, at 10.

103. *Id.*

104. *Id.*

105. *Id.* at 12-13.

106. *Id.* at 13.

107. *Id.* at 14.

108. *Id.*

109. *Id.* at 15.

110. *Id.*

111. See *id.* at 16.

on either [of her] breach of contract theor[ies].”¹¹² With respect to Revels’s contract claim based on her application to compete in the national pageant, the court found that the Miss America Organization never signed such agreement and that the evidence demonstrated that Revels’s Miss America Organization application was never accepted by the national pageant.¹¹³ The court concluded that the existence of a contract here was “at best, a highly debatable proposition.”¹¹⁴ With regard to the third-party beneficiary argument, the court also found that Revels proved no substantial likelihood of success on the merits as the Franchise Agreement made “no provision for conferring upon state pageant winners a legally enforceable right to compete in the National Finals.”¹¹⁵

Based on these determinations, the federal court denied Revels’s Motion for Preliminary Injunction.¹¹⁶ However, Judge Fox noted that the question of whether Revels would be allowed to continue in the Miss America Pageant would be left to the discretion of the national pageant organization itself.¹¹⁷ The Miss America Organization swiftly made the determination to not allow Revels to compete.¹¹⁸ Clymer competed in the Miss America Pageant on September 21, 2002, while Revels watched from the audience.¹¹⁹ After the pageant concluded, both women returned to North Carolina to share the duties of the crown, which was the result of Judge Cashwell’s September 4, 2002 state court order.¹²⁰

C. Post-Miss America Pageant: Continuation of State and Federal Court Litigation

The *Revels* litigation continued in both the North Carolina state court and the United States District Court for the Eastern District of

112. *Id.* at 17.

113. *Id.* at 17-18.

114. *Id.* at 18; see also Jaime Levy & Mark Washburn, *Double Reign at Pageant Ends Ruling: Miss America Entitled to Reject Revels*, CHARLOTTE OBSERVER (N.C.), Sept. 13, 2002, at 1A (stating that Revels’s contract was not formally accepted by the Miss America Organization).

115. See Memorandum/Order, *supra* note 74, at 18.

116. See *id.* at 22.

117. Levy & Washburn, *supra* note 114, at 1A.

118. Sheila Hotchkin, *Miss N.C. Can Focus Now on Miss America; Clymer Calls Judicial Outcome That Gave Her the Crown Bittersweet*, HERALD-SUN (Durham, N.C.), Sept. 14, 2002, at A11.

119. Jaime Levy, *Clymer Takes Stage — Revels, A Seat*, CHARLOTTE OBSERVER (N.C.), Sept. 21, 2002, at 1A.

120. Jaime Levy, *Queens Fly Home With No Regrets — Clymer, Revels Return to Share Duties in State*, CHARLOTTE OBSERVER (N.C.), Sept. 23, 2002, at 2B.

North Carolina after the September 21, 2002 Miss America Pageant.¹²¹ In state court, the Miss North Carolina Pageant Organization, relying on the arbitration clause in its contract with Revels, filed a motion to compel arbitration.¹²² A ruling in favor of this motion was a key component of an interesting decision on October 8, 2002.¹²³ In this October 8 decision, Wake County Superior Court Judge Cashwell dismissed all of Revels's claims against the Miss America Organization without prejudice to seek leave to amend her pleadings in the removed federal case;¹²⁴ ordered Revels and the Miss North Carolina Pageant Organization to arbitration; and ordered "the Miss North Carolina Pageant Organization to take back both tiaras [that of Revels and Clymer] until arbitration [was] settled" ¹²⁵

On October 21, 2002, Revels filed a Motion For Leave to File First Amended Complaint in federal court, seeking to add the Miss North Carolina Pageant Organization as a party.¹²⁶ On December 5, 2002, "Judge Fox entered an order which allowed plaintiff's motion to amend, and, because addition of the new part[ies] . . . destroyed diversity of citizenship, remanded the case to Robeson County Superior Court." ¹²⁷

Once back again in North Carolina state court, following the procedural precedent of the Miss North Carolina Pageant Organization, the Miss America Organization also filed a motion to compel arbitration of Revels's claims against it.¹²⁸ This motion was claimed on the basis of the arbitration clause that was contained in the "Application and Contract" that Revels signed in order to participate in the Miss America Pageant.¹²⁹ On March 31, 2003, the trial court denied the Miss America Organization's motion to compel arbitration because the Miss America Organization failed "to prove the existence of a

121. See *Revels v. Miss N.C. Pageant Org.*, 635 S.E.2d 288 (N.C. 2006); Judgment, *Revels v. Miss Am. Org.*, No. 7:02-CV-00140 (E.D.N.C. Dec. 5, 2002) [hereinafter Judgment] (on file with author) (showing that litigation continued in state and federal court, respectively, well beyond the Miss America competition date of September 21, 2002).

122. *Revels v. Miss N.C. Pageant Org.*, 627 S.E.2d 280, 282 (N.C. Ct. App. 2006).

123. *Id.*

124. Revels's Memorandum in Support of Motion for Leave to File First Amended Complaint at 2, *Revels v. Miss Am. Org.*, No. 7:02-CV-00140 (E.D.N.C. Oct. 21, 2002) (on file with author).

125. Jaime Levy, *Nobody's Miss N.C., Judge Says State is Without a Reigning Scholarship Pageant Winner*, CHARLOTTE OBSERVER (N.C.), Oct. 9, 2002, at 1B; see also Paul Woolverton, *Judge Stands by Arbitration Ruling in Miss N.C. Case*, FAYETTEVILLE OBSERVER (N.C.), Oct. 15, 2002, at 3B (discussing arbitration ruling).

126. See *Revels v. Miss Am. Org.*, 599 S.E.2d 54, 56 (N.C. Ct. App. 2004); *Revels Wants N.C. Pageant in Federal Suit*, HERALD-SUN (Durham, N.C.), Oct. 23, 2002, at C5.

127. *Miss Am. Org.*, 599 S.E.2d at 56; see also Judgment, *supra* note 121.

128. See *Miss Am. Org.*, 599 S.E.2d at 57.

129. See *id.*

written agreement between plaintiff and [the Miss America Organization] to arbitrate.”¹³⁰ The trial court based its decision on the fact that it was undisputed that the “Application and Contract” signed by Revels as a condition of participation in the Miss America Pageant was not signed by the Miss America Organization.¹³¹ Because of this premise, Judge Cashwell determined that the “Application and Contract” did “not show on its face that the document was accepted by [the Miss America Organization] as a contract.”¹³² Further, the trial court emphasized that the Miss America Organization had denied acceptance of the same document as a contract.¹³³ These findings led to the trial court’s denial of the Miss America Organization’s motion to compel,¹³⁴ which was affirmed by the North Carolina Court of Appeals on July 6, 2004.¹³⁵ The North Carolina Court of Appeals gave a very straightforward rationale for its decision:

Because the arbitration clause contained within the Application and Contract was the sole basis for [the Miss America Organization]’s amended motion to compel arbitration, we hold that the trial court’s findings support its conclusion that [the organization] failed to carry its burden of proving the existence of a written agreement between plaintiff and [the Miss America Organization] to arbitrate¹³⁶

Meanwhile, with respect to the arbitration between Revels and the Miss North Carolina Pageant Organization, Judge Cashwell again ordered arbitration between these parties on April 7, 2003.¹³⁷ Further turmoil followed this court order when, in May 2003, “the arbitrator determined that the photos taken of Revels were discoverable and must be made available to the opposing parties for use in deposing

130. *Id.*; see Paul Woolverton, *Former Miss North Carolina Wins Round in Pageant Battle*, FAYETTEVILLE OBSERVER (N.C.), Apr. 4, 2003, at 4B.

131. *Miss Am. Org.*, 599 S.E.2d at 59.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. This arbitration order was issued for a second case filed in North Carolina state court by Revels against the Miss North Carolina Pageant Organization in February 2003. See Estes Thompson, *Miss North Carolina Trial Moves Back to the Realm of a Courtroom; Rebekah Revels Seeking Ruling to Pursue a Lawsuit*, HERALD-SUN (Durham, N.C.), Feb. 4, 2003, at C6. However, it appears that this arbitration was ordered by the trial court to resolve all issues in both pending cases. See Paul Woolverton, *Judge OKs Revels Lawsuit*, FAYETTEVILLE OBSERVER (N.C.), Apr. 8, 2003, at 3B; see also *Revels v. Miss N.C. Pageant Org.*, 627 S.E.2d 280, 281 (N.C. Ct. App. 2006) (discussing procedural history of trial court orders).

Revels.”¹³⁸ Given the sensitive nature of the photographs, the arbitrator provided for certain protections in this production:

It was further stated that the photos were not to be furnished for public view and counsel was not permitted to comment on the photos outside of the arbitration. The arbitrator additionally noted that “[e]very effort shall be made to protect the privacy of the Claimant consistent with the use of the pictures in this arbitration”¹³⁹

In response, Revels’s attorney refused to produce the photographs as he was already under another state Superior Court Judge’s order not to show the photos to anyone after Revels’s ex-fiancé was compelled to turn over the photographs to Revels’s attorney.¹⁴⁰ In response, “[t]he arbitrator informed Revels that if she failed to comply with this direction . . . then that decision would be construed as a deliberate decision by her and her counsel to dismiss arbitration.”¹⁴¹ Revels and her attorney continued to resist the arbitrator’s decision for months — the crescendo of which was the filing of a motion to disqualify the arbitrator on the basis that he had become obsessed with the photographs.¹⁴² On October 16, 2003, the arbitrator dismissed Revels’s claims against the Miss North Carolina Pageant Organization due to her failure to provide copies of the photographs at issue, as ordered by the arbitrator — specifically, due to “the contumacious conduct of [Revels’s] counsel by repeatedly and consistently disobeying multiple directions from the arbitrator”¹⁴³ The dismissal and arbitration decision in favor of the Miss North Carolina Pageant Organization was confirmed by the trial court.¹⁴⁴

Revels appealed and sought a vacation of the trial court’s decision regarding the arbitrator’s award for the Miss North Carolina Pageant Organization.¹⁴⁵ Revels’s argument was two-fold, consisting of claims (1) “that the trial court erred in granting the motions to compel

138. *Miss N.C. Pageant Org.*, 627 S.E.2d at 282; see also *Nude Photos Pivotal Again in Miss N.C. Battle; Arbitrator Wants Pictures Shown; Attorney Refuses*, HERALD-SUN (Durham, N.C.), May 31, 2003, at B2.

139. *Miss N.C. Pageant Org.*, 627 S.E.2d at 282.

140. *Id.*; Estes Thompson, *Former Fiancé Gives Up Nude Photos of Revels; Judge Says Don’t Show or Destroy the Pictures*, CHARLOTTE OBSERVER (N.C.), Oct. 16, 2002, at 1B.

141. *Miss N.C. Pageant Org.*, 627 S.E.2d at 282.

142. See *Revels Lawyers Allege Judge Obsessed with Topless Photos*, HERALD-SUN (Durham, NC), Oct. 8, 2003, at C3.

143. *Miss N.C. Pageant Org.*, 627 S.E.2d at 282; see Jaime Levy, *Revels’ Refusal Gets Pageant Suit Tossed — Arbitrator Dismisses Case Because Plaintiff Won’t Submit Photos*, CHARLOTTE OBSERVER (N.C.), Oct. 17, 2003, at 2B.

144. *Miss N.C. Pageant Org.*, 627 S.E.2d at 282.

145. *Id.*

arbitration where the agreement to arbitrate was unconscionable”¹⁴⁶ and (2) “that the trial court erred by granting the motion to confirm the arbitrator’s award where the arbitration was conducted in a manner prejudicial to her, the award was procured by undue means, and there was evident partiality and misconduct by the arbitrator.”¹⁴⁷ In March 2006, the North Carolina Court of Appeals rejected Revels’s contentions and affirmed the decision of the trial court.¹⁴⁸ With regard to Revels’s first claim, the court squarely rejected the argument of unconscionability in the arbitration clause.¹⁴⁹ The court found that Revels had assented to all of the terms of the agreement and that “Revels freely and willingly decided to enter the Miss North Carolina Pageant in which each contestant was required to sign this agreement.”¹⁵⁰ With regard to the second claim, the court referenced the presumptive validity of an arbitration award; found that the arbitrator’s decision regarding the discovery of the photographs was within his discretion; noted that “[i]t would be contrary to the process of conducting a meaningful arbitration were the parties to decide what was discoverable,” and affirmed the trial court’s decision.¹⁵¹

Finally, on July 15, 2005, with respect to the lawsuit asserted against the Miss America Organization, the North Carolina state trial court granted the defendant’s motion for summary judgment on all claims.¹⁵² This decision was based on a finding of no contractual relationship between Revels and the Miss America Organization, which entitled the defendant to summary judgment on the breach of contract claims that had been alleged against it.¹⁵³ On January 8, 2007, the North Carolina Court of Appeals affirmed the trial court’s decision on all accounts, explaining that Revels was not an intended third-party beneficiary under a franchise agreement between the Miss America Organization and the Miss North Carolina Pageant Organization and determining that neither an implied contract nor an express contract existed between Revels and the Miss America Organization.¹⁵⁴ On June 27, 2007, the North Carolina Supreme Court denied Revels’s petition for discretionary review of the appellate court decision, thus ending the five-year litigation.¹⁵⁵

146. *Id.* at 282-83.

147. *Id.* at 284.

148. *Id.*

149. *Id.* at 283.

150. *Id.*

151. *Id.* at 284.

152. *See Revels v. Miss Am. Org.*, 641 S.E.2d 721, 723 (N.C. Ct. App. 2007).

153. *Id.* at 722.

154. *Id.* at 723-25.

155. *Revels v. Miss Am. Org.*, 648 S.E.2d 844 (N.C. 2007).

III. LEGAL, ECONOMIC, AND SOCIOCULTURAL EFFECTS OF THE *REVELS* LITIGATION: WHAT DOES THIS CASE MEAN FOR THE FUTURE SUSTAINABILITY OF THE PAGEANT INDUSTRY?

Despite the similarities between the Rebekah Revels saga and fictional tales of betrayal and backstabbing in beauty pageants,¹⁵⁶ the *Revels* litigation has significant lessons for the continued sustainability of the modern pageant industry. Specifically, the industry may be shaped in the future by the legal, economic, and sociocultural issues reflected in this particular case.

Legally, this case demonstrated several key examples of how courts might treat similar litigation in the future. First, the *Revels* litigation shows that courts view a pageant title and the right to compete in pageants as something of valued importance that is worthy of serious review.¹⁵⁷ The case presented many examples in which both state and federal courts either granted extraordinary injunctive relief or expedited review after extensive hearings and briefings.¹⁵⁸ The judicial dedication exhibited throughout the *Revels* litigation indicates that most court systems will not treat cases borne from scandal in the pageant industry lightly; instead, they will merit the review of any other injunctive relief or contract case.¹⁵⁹

Another strong legal precedent that flows from the *Revels* case is the explicit demonstration of judicial willingness to uphold the validity of arbitration clauses pursuant to a contractual agreement for participation in a pageant.¹⁶⁰ Given the contestants' freedom of choice in voluntarily entering a specific pageant, it seems that this trend will hold up in the future and that claims of unconscionability or unequal bargaining power will be rejected in a similar fashion.¹⁶¹

Additionally, as a parallel to the explicit finding of the validity of the arbitration clause at issue in the Miss North Carolina Pageant Organization case, the state court implicitly upheld the validity of the morals clause in the North Carolina Pageant contract as well.¹⁶²

156. See, e.g., *MISS CONGENIALITY* (Warner Brothers Pictures 2000).

157. See *supra* note 105 and accompanying text.

158. See *supra* notes 87-89 and accompanying text.

159. See, e.g., Memorandum/Order, *supra* note 74, at 18 (demonstrating United States District Judge Fox's careful treatment of the case and exemplifying the weighty issues under review in this case and in potential cases like this one in the future).

160. See *supra* note 137 and accompanying text.

161. See *Revels v. Miss N.C. Pageant Org.*, 627 S.E.2d 280, 283 (N.C. Ct. App. 2006) (discussing analysis of arbitration agreement).

162. See Thompson, *supra* note 137, at C6 (discussing enforcement of arbitration agreement); *supra* notes 65-68 and accompanying text (discussing morality clauses as invoking arbitration).

Likewise, the federal district court implicitly signified the presumptive validity of the morals clause contained within the Miss America Organization's Application.¹⁶³ It appears that if a court were to directly examine the validity of a morals clause as included in a pageant contract, then the court would likely uphold such a contractual clause. As such, the *Revels* case emphasizes the importance of contracts within the pageant industry itself.¹⁶⁴ If either a contestant or a pageant wishes to impose binding obligations on the other, this case shows that it is imperative to have a valid agreement that meets all of the essential elements of a contract.¹⁶⁵

Economically, this case is also quite instructive. Within the last decade, the overall popularity of American pageants has been on the decline.¹⁶⁶ The result of this decline has led to several dramatic changes to the structure and presentation of the industry.¹⁶⁷ With the introduction of the *Revels* litigation into the milieu of the September 2002 Miss America Pageant, many insiders predicted increased ratings and, it followed, a financial boost to this already-struggling organization.¹⁶⁸ However, after the dust settled, it appeared that this scandal, for all of its media attention, did little to stimulate the economic structure of the pageant.¹⁶⁹

This negative correlation between scandal and the economic success of pageantry has continued the same trend; the broadcast of the 2007 Miss Universe Pageant, even after a year of salacious scandal, "delivered the event's lowest ratings in 12 years . . ." ¹⁷⁰ In addition to the overall financial health of the pageant industry in relationship to scandal, the corresponding potential litigation within the industry also could have a significant economic effect.¹⁷¹ Given the

163. See Memorandum/Order, *supra* note 74, at 14 ("Put another way, does [the Miss America Organization] have the right to control — within limits — who may compete for the title of Miss America? The court concludes that it does.").

164. *Revels v. Miss N.C. Pageant Org., Inc.*, 627 S.E.2d 280, 287 (N.C. Ct. App. 2006).

165. See *Revels v. Miss Am. Org.*, 599 S.E.2d 54, 59 (N.C. Ct. App. 2004).

166. See Meghan Cox Gurdon, *Taste: Triumph of the Fembots*, WALL ST. J., Mar. 23, 2007, at W13.

167. See Sam Schechner, *Weekend Advisor: Miss America Goes Country — Pageant Ends Up on CMT With 'Desperate' Twist*, WALL ST. J., Jan. 20, 2006, at W2 (describing the changes the pageant is incurring).

168. See John Curran, *Pageant Turns to New Gimmicks to Help Boost Television Ratings; Officials Hope the Topless-Photos Flap Involving Miss N.C. Will Attract Viewers*, HERALD-SUN (Durham, N.C.), Sept. 21, 2002, at B2.

169. Jeffrey Gettleman, *There She Isn't: Miss America Pageant Leaves Atlantic City*, N.Y. TIMES, Aug. 26, 2005, at B2.

170. Benjamin Toff, *Few Care to Look At "Miss Universe,"* N.Y. TIMES, May 30, 2007, at E2 (discussing ratings in the adults age 18-49 demographics).

171. See, e.g., Jaime Levy & Mark Washburn, *Still Holding A Crown, Revels Returns to N.J.*, CHARLOTTE OBSERVER (N.C.), Sept. 11, 2002, at 1B (describing the potential economic benefit Revels could receive from the lawsuit).

multi-million dollars in damages that Revels sought in addition to injunctive relief, another important economic lesson to be learned from this litigation is the potential of substantial monetary liability that pageant organizations might face if a pageant plaintiff were ever to succeed in this type of case.¹⁷²

This final point coincides with the overriding sociocultural lesson that the modern pageant industry should consider in light of the *Revels* litigation, which is whether today's pageant organizations should impose morals requirements on the women who compete in these contests. The courts in these cases implicitly upheld the validity of these types of contractual clauses.¹⁷³ However, many outside observers claim that these rules reflect the antiquated nature of the pageants themselves;¹⁷⁴ others argue that these rules have a more insidious effect, that of the continued oppression and degradation of women.¹⁷⁵ It appears that the pageant industry may be reaching a critical mass with respect to the continued use of morals requirements as conditions for competition.

Regardless of the pageant organizations' decisions on the continued inclusion of morals clauses in contest applications, the industry, as a whole, will still have to contend with other issues of "morality," specifically with respect to varying, cultural standards across the globe.¹⁷⁶ Amid the *Revels* litigation, one can find a key example of these issues. In October 2002, Revels was selected to represent the United States in the Miss World Pageant that was to be held on December 7, 2002 in Nigeria by a new pageant organization franchise, Miss World Holdings, Inc.¹⁷⁷ Prior to the pageant, riots "erupted after a newspaper suggested Islam's founding prophet would have approved of the Miss World beauty pageant,"¹⁷⁸ killing at least 100 people and injuring another 500 people.¹⁷⁹ As a result, the pageant

172. Thompson, *supra* note 137, at C6 (describing how Revels sought ten million dollars in damages).

173. See *supra* notes 162-63 and accompanying text.

174. See Gurdon, *supra* note 166, at W13; see also Gerald Early, *Life with Daughters: Watching the Miss America Pageant*, reprinted in *THE BEST AMERICAN ESSAYS OF THE CENTURY* 532, 532-33 (Joyce Carol Oates & Robert Atwen eds., 2000) (arguing that the pageant is an antique bent on repeating history).

175. See Perlmutter, *supra* note 40, at 155 (describing pageants' discriminatory effect).

176. See, e.g., Watson, *supra* note 19, at 3D (citing the degradation of women at the Miss Universe Pageant).

177. *Who needs N.C.? Revels Has Chance to be Miss World — Embattled State Beauty Selected to Compete in International Contest*, CHARLOTTE OBSERVER (N.C.), Oct. 28, 2002, at 4B.

178. Glenn McKenzie, *Story Links Muhammad, Pageant; Nigerians Riot*, HERALD-SUN (Durham, N.C.), Nov. 22, 2002, at A12.

179. D'Arcy Doran, *Miss World Pageant Leaving Nigeria; 3 Days of Battles Between Muslims and Christians Leave About 100 People Dead*, HERALD-SUN (Durham, N.C.),

was moved from Nigeria to London, where Revels and other international contestants competed.¹⁸⁰ Similar to the ultimate results of her lawsuits, Revels did not earn the crown in the Miss World Pageant either.¹⁸¹ More importantly, from a sociocultural (and an economic) perspective, not one television channel in Great Britain agreed to televise the event — an event in which the Nigerian rioting was “barely mentioned.”¹⁸² This one chapter in the *Revels* litigation demonstrates the tremendous sociocultural impact that the pageant industry can have on the global stage. How these business organizations will negotiate future incidences of similar magnitude may determine the continued viability of these types of contests.

CONCLUSION

Throughout the *Revels* litigation, the tenuousness of certain aspects of the pageant industry can be seen. A focus on this litigation is important because it exposes the possible liability that a variety of pageant organizations might face in the future. Given their tremendous economic growth, these businesses should take heed of the *Revels* litigation and should recognize the risks that accompany these types of contests. Essentially, a prominent question that appears from a total analysis of the *Revels* litigation and that may have a substantial impact on the pageant industry’s business model is this: is there a place within today’s global society for this type of industry? The *Revels* litigation provides a mere starting point for a debate of this question that might well play out in other national and international courtrooms in the near future.

Nov. 23, 2002, at A1; Paul Woolverton, *Revels Ready to Conquer World*, FAYETTEVILLE OBSERVER (N.C.), Dec. 7, 2002, at 4A.

180. Woolverton, *supra* note 179 at 4A.

181. *Miss World: Miss Turkey Takes Crown*, FAYETTEVILLE OBSERVER (N.C.), Dec. 8, 2002, at 1A.

182. *Id.* at 6A.