

3)

Re: Niesi v. Gosling and Hardy

## INTRODUCTION

Please see the objective memorandum that you requested on :

1. Whether Niesi would prove that Hardy's statements as quoted in teh complaint, were defamatory if he were to prove the facts alleged .
2. Whether Gosling is immune form liability for Hardy's alleged defamatory statements.

## ANALYSIS

### 1. Defamatory Statement

#### **Difference between facts and opinion.**

In Columbia, defamation consists of the publication of false statement to a third party, which proximately results in injury to another. To be false, a statement must be one of fact, and cannot be solely opinion. If a statement is reasonably susceptible to an interpretation as fact or opinion, its proper determination is asking whether under the totality of teh circumstances, a reasonable trire of fact would conclud ethat he statement communicates actual facts rather than an expression of mere opinion. Anderson.

Even if they were reasonably susceptible to an interpretation as either fact or opinion, a reasonable trier of fact would conclude that hey expresses a mere opinion rather than communicated an actual fact under the totaliy of teh circumstances including that they appear on consumer websites, where most readres expec to see opinions than facst. Insky; Anderson.

In Anderson teh court held that statements were not reasonably susceptible to an interpretaion as mere opinion because under the totalit of teh circumstances, a reasonable trire of facts wo ude they communicated actual facts.

---

Here, the court will likely find that the statement on June 11 and July 1, 2022 where Hank stated:

a. "I'll tell you a big way ....report cable theft! I live in the green Hills ....one of my neighbors, Jack Niesi, is guilty of cable theft, is a fact because it is not susceptible to interpretation and a reasonable trier of fact would conclude that the expression are actual facts since the name of a person, published to a third party are ascertainable facts. It tells the name and address of the person in reference to the subscriber so all would know that the person to whom the statement is being referred as factual.

b. Since then..I've been watching him closely...he appears to be a cheating spouse. This statement would be opinion because the trier of fact would have to look at the totality of the circumstances to determine if the statement reasonably susceptible to interpretation as fact or opinion. Furthermore the statement being posted on the website as addressing Niesi as a cheater would be susceptible to be an opinion as there are no clear facts to prove the statement. Hardy only stated that it appears that Niesi was a cheater.

This would be an opinion by trier of facts being susceptible to interpretation as mere opinion.

### **Defamation?**

Since Columbia looks for publication of a false statement to a third party, this would be satisfied by the posts made by Hardy about Niesi. Niesi states that the facts are false because he has been a Col Cable co customer for over 20 years, and has paid every type of cable service received.

Hardy's post that the attractive young lady seems to make Niesi a cheating spouse was shown by Niesi to be of purely professional. Niesi stated the name of the person as Mabry, not Hardy, hence Hardy's post was merely opinion. Despite this Niesi states that he has as a result of Hardy's post on the blog, about what a loser he is, which is also an opinion because the trier of fact would have to look at the totality of the circumstances to determine the 'loser' term, has suffered injury in the loss of his personal and professional reputation and business, shame and mortification, all to his damage in a total amount to be established by proof at trial.

Due to the foregoing Niesi has only shown the only applicable fact as his name and address the as they were mere expression of opinions rather than actual facts. Since a jury will have to look at the totality of the circumstances and determine the meaning of 'I'll bet he isn't even

a cable subscriber. Its crooks like Jack Niesi wh cause cable costs to go up for the rest of us, Staement 5a of Niesi's Complaint; He appears to be a cheating spouse!. What a loser he is! in Statement 5b of teh complaint are all mere opinions and not actual facts .

The parts taht would have caused Niesi's injury would have been the opinions as stated above and not the alleged facts as to his name and address, teh only stated facts.

Nieis will not be able to prove that Hardy's statements as quoted in teh complaint were defamatory if he were to prove the fcats alleged.

### **Gosling's Entitlement to Immunity**

Interactive Computer service provider

Section 230 of teh General Stautues of Columbia is enacted to protect websites from liability for including or failing to remove actionable content in oder to preserve th efree flowing nature of internet speech and commerce without unduly prejudicing the enforcement of other important laws. To that end S 230 immunizes ("INTERACTIVE COMPUTER SERVOCE PROVIDERS"- a person or entity that enables computer access by multiple users to a computer server.) from liability arising from content created by third parties. The section 230 does not immunize interactive compuer service providers from liability to the extent they act as information content providers. The interactive computer services provider passively displays contentcreated or developed by the infromation content provider. S. 230; Roommate.

An information content provider is person or entity that is responsible in whole or part for creation and evelopment of content, and actively reates or develops content.S230; Roommate.

Here, Gosling our client is a web host for www.CravenCableConsumersUnited.com, a consumer website that contains a blog established to provid a platform for dissatisfied cable customers in Craven, Columbia. Gosling's website will be protected from liability for failing to remove the actionable content by Grace nad Hank against Niesi. This to preserve the free flowing of internet speech and commerce. Gosling's website was a blog to develop comments on the opinions in regards to cable service companies underperformance and exorbitant fees. Becasue subscribers have used the blog to express other opinions about Niesi will not subjet Gosling to liability , a sprotecetd by S 230.

O hand Niesi may claim that gsling was not passive because in each of teh comments by subscribers he wrote. In Solidarity, Gosling meaning that he was actively

---

functioning as an information content provider hence responsible in whole or part for the blog that he created on cable providers, and that he actively and created and developed the content.

Niesi's argument would fail because In Solidarity, Gosling is a passive stamp which is not developing the statements on Niesi.

Gosling is an Interactive Computer Service provider who will be protected from liability under S 230.

The court will determine entitlement to immunity by three specific functions:

1. S 230 does not grant immunity for inducing third parties to express illegal preferences.

Here, Gosling did not induce third parties Grace and HANK TO SPEAK ABOUT NIESI AS NIESI IS NOT A CABLE PROVIDER. Gosling inaugurated the blog to highlight the incompetence and overprice of cable disservice and mistreatment.

Niesi will argue that he worked as an independent television producer and so Gosling created a story of which he would have been included because Grace his neighbor would probably have associated him with a cable service provider. This argument will fail because Grace referred to Niesi as to be reported for cable theft, hence inapplicable. Hardy's statements were not illegal.

Gosling did not induce the illegal expressions about Niesi.

2. Webhost's development and Display of subscribers' discriminatory preferences.

Discriminatory questions solicit and thereby develop discriminatory answers. is not eligible for immunity under S 230.

Unlike Roommate that solicited and developed illegal content, Gosling only posted IN Solidarity and did not explicitly encourage the communications between Grace and Hank. G will be immune un

Gosling did not solicit the illegal expression as discussed above the blog was to discuss cable

---

---

providers not Niesi. Hardy's statements were not defamatory and even if they were Gosling did not develop the illegal statements

Gosling did not develop illegal comments in reference to Niesi.

3. Gosling's display of discriminatory/illegal statements in the Additional Comments Section of subscriber profile pages.

It is not the responsibility in whole or part for the development of the content such a situation S 230 was designed to provide immunity. The legislature enacted S 230 to protect websites from liability for including or failing to remove actionable content. Close cases must be resolved in immunity lest websites be forced to face death by thousand cuts, fighting off a barrage of claims that they created or developed actionable content. Such an interpretation is consistent with the intent of the Legislature to preserve free flowing nature of internet speech and commerce without unduly prejudicing the enforcement of other important laws.

The only statement that is in the additional section was in solidarity . this does not display any illegal statements from Gosling to Niesi.

This will not be satisfied if proven by Niesi, and Gosling is immune from liability for Hardy's alleged defamatory statements will be protected against liability.

CONCLUSION:

Thank you for giving me the opportunity to write this objective memorandum. If there are any questions please let me know.

Question #3 Final Word Count = 1568

**END OF EXAM**