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To: Carmen Cardinal

From: Applicant

Re : Neisi v. Gosling and Hardy

Date : 26 July 2022

I. Introduction

Thank for the opportunity to prepare this draft for your meeting with Gosling about Niesi's complaint. Please find below an objective memorandum regarding the defamation case filed against our Grace Gosling. I hope you find the discussion below is helpful to prepare for your meeting with Gosling.

II. Discussion

A. Hardy's statement, as quoted in the complaint could be defamatory, if they are statement of fact and not based solely on opinion, determined by the Totality of the Circumstances (TOTC) by the trier of the fact.

To be false, a statement must be one of fact, and cannot be one solely of opinion. *Anderson*. In *Insky* as referred in *Anderson*, the court therein held for an such determination follows the Totality of TOTC. If a statements were reasonably susceptible to an interpretation as either fact or opinion, its proper characterization is determined by asking, a reasonable trier of fact could conclude that the statement communicates actual fact rather than expresses mere opinion. *Anderson*

The statements in *Anderso* were detailing perjury and fraud and arises from awarding of city contracts to friends and family in exchange for bribes which are more serious and stem from credible events, where as in the present case the statements of Hardy regarding Niesi, seems to be reasonably susceptible to an interpretation as either a fact or opinion.

The statement a. from the complaint, uses the word "I'll bet he isn't even a cable subscriber"

comes closer to more of speculative, applying the test in *Anderson* the it is more likely to be held as an opinion, however according to Hardy they are based on his personal information. It is not certain how Hardy obtained the information regarding the unauthorized use as they very well could be authorized unless he had access to telephone company records. Therefore this statement is more likely than not stems from opinion.

The second statement b. from the complaint is more provocative, however is based on limited knowledge of facts. It is unclear if Hardy is keeping regular close eye on his neighbor or exaggerating an incident that he witnessed. It cannot be said for sure but the attractive women could be related. The act of informing his wife seems to be anomalously done. However, Hardy seems to emphasize on information that wife of Neisi works and he stays at home. There could be other motivations, which can led Hardy to make such statements, could be out of jealousy. There are multiple circumstances which could bear on the final determination by the trier of fact of whether the statements are that of fact or one based on opinion.

Hence, it could go either way and statement a. is based on personal information is more likely to be held as statement of fact than of opinion, where the statement b. is more likely to be held as an opinion. The characterization will depend on credibility of witness and other circumstantial evidence which could be discovered in course of litigation.

B. Gosling could be Immune from liability for Hardy's alleged defamatory statements, as "interactive computer service providers" immunized from liability as long as they are not "information content providers"

Section 230 immunizes "interactive computer service providers" from liability arising from content created by third party but it does not immunize them from liability. They are also not immunized if they act "information content providers". An "information content provider" is a person or entity that "is responsible, in whole or in part, for the creation or development of content." An "interactive computer service providers" passively displays content that may be actively created or developed by "information content provider", whereas "information content provider" actively creates or develops content that may be passively displayed by an "interactive computer service providers"

While explaining the scope of the Section 230 the Court in *Columbia Valley Fair Housing Council (CVFC)*, held that the intent of the legislature in enacting Section 230 is to preserve free-flowing nature of internet speech and commerce without unduly prejudicing the enforcement of other important law. The purpose of the enacted is to protect website fro liability for including or failing to remove actionable content. It further held that close cases must be resolved in favor of immunity lest websites be forced to face death by ten thousand cuts, fighting off barrage of claims that they created or developed actionable court.

Here, our client created the website to provide a platform, thus it is an "interactive computer service providers", the analysis of Court in *CVFC* relied on three specific function of the Roommate website to determine if they have immunity under section 230,

first the design of questionnaire and choice of answers containing discriminatory categories, and secondly requiring subscribers to provide preference using limited set of pre-populated answers as a condition for accessing services as those rendering the website as information content provider and not eligible for immunity under section 230. however for the third function which deals with "additional comments" section was found to be a precisely kind of situation Section 230 designed to provide immunity.

In the present case the website of our client as provided in the Note, has pre-populated pull-down menu, but it does not provide for setting a preference as condition to use the service, and the second function of blank box to provide additional information or comments is identical to the function that court in *CVFC* found to be eligible for immunity.

Thus, there is a strong case to argue that our clients website could be eligible for immunity from liability for Hardy's allegedly defamatory statements. As Hardy was the information content provider and was responsible in whole or part for creation or development of the alleged defamatory content. Further court in *CVFC* has held that close cases must be resolved in favor of immunity.

Thank you for the opportunity and I hope you find the above analysis complete and relevant for your meeting with Gosling. If you have any further queries and clarification, I would be more than happy to answer those.

Question #3 Final Word Count = 1035

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