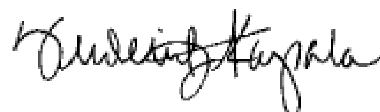
United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Frederick J. Kapala	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	12 C 1548	**DATE**	7/10/2012
CASE TITLE	Hadley v. GateHouse Media Freeport Holdings, Inc.		

DOCKET ENTRY TEXT:

Defendant's motion to dismiss [15] is granted. This case is closed. All pending motions [24] are denied as moot.



■[For further details see text below.] Docketing to mail notices.

Plaintiff, Bill Hadley, has filed a two-count amended complaint against defendant, GateHouse Media Freeport Holdings, Inc., alleging that defendant published defamatory statements implying that plaintiff committed a crime and that defendant had actual knowledge of the statements' falsity (Count I), or, in the alternative, defendant was negligent in publishing the statements (Count II). Defendant has filed a motion to dismiss pursuant to Federal Rules Civil Procedure 12(b)(6). For the following reasons, defendant's motion is granted.

I. BACKGROUND[1]

Plaintiff is a resident of Stephenson County, Illinois. Defendant publishes The Journal-Standard, a newspaper distributed in Stephenson County, Illinois, and online at JournalStandard.com. On December 28, 2011, defendant published a news article in The Journal-Standard and on its website entitled "Hadley returns to county politics/Candidate stresses fiscal responsibility." Subsequent to the online publication, a person using the name "Fuboy" posted the following allegedly defamatory comment on defendant's website: "Hadley is a Sandusky waiting to be exposed. Check out the view he has of Empire from his front door."

Plaintiff brings a state law defamation per se claim, alleging defendant published statements it knew were false or, in the alternative, were negligent in publishing, and these statements have lowered plaintiff's reputation and caused damage.

II. DISCUSSION

A motion to dismiss may be granted if the complaint fails to "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A complaint must allege "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

Section 230(c)(1) of the Communications Decency Act of 1996 ("CDA"), 47 U.S.C. § 230(c)(1), provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." This subsection, while not granting blanket immunity to interactive computer services, defines who can be called a "publisher" for purposes of civil liability.

City of Chi., Ill. v. StubHub! Inc., 624 F.3d 363, 366 (7th Cir. 2010); Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666, 671 (7th Cir. 2008) ("What § 230(c)(1) says is that an online information system must not be treated as the publisher or speaker of any information provided by someone else." (quotation marks omitted)). Because plaintiff's complaint rests on defendant being the publisher of the comment posted by "Fuboy," the complaint fails to allege enough facts to state a plausible claim.

Defendant, as a website host that allows readers to post comments, is an interactive computer service. Section 230(f) of the CDA defines an interactive computer service as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." 47 U.S.C. § 230(f). This has been interpreted to include websites that allow users to write comments, because such websites enable multiple users access to the server that hosts the website. Universal Commc'n Sys, Inc. v. Lycos, Inc., 478 F.3d 413, 419 (1st Cir. 2007); DiMeo v. Max, 248 F. App'x. 280, 282 (3rd Cir. 2007); see also Craigslist, 519 F.3d at 671 (holding that Craigslist, a classified advertising website, is an interactive computer service), Collins v. Purdue Univ., 703 F. Supp. 2d 862, 878-79 (N.D. Ind. 2010) (holding that a university newspaper's website is an interactive computer service). Defendant's website falls within this category because it allows users to post comments in response to news articles.[2]

The user that posted the comment is "another information content provider." Section 230(f) defines an information content provider as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230(f)(3). The anonymous user was responsible for the "creation or development of information" posted in the comment.

Plaintiff argues it is possible that defendant created or developed the information in the comment by inventing a fictitious person named "Fuboy" in order to post the comment anonymously. However, there are no such allegations made in the amended complaint. Even if such allegations were made, it would amount to nothing more than "sheer speculation." Lycos, 478 F.3d at 425 ("Any suggestion that [defendant] may have done more specifically to encourage the postings at issue is sheer speculation.").[3]

Because defendant is an interactive computer service by providing a website that allows users to post comments and the user "Fuboy" is another information content provider, defendant cannot be considered the "publisher or speaker" of the comments posted by "Fuboy." Claiming that defendant was the publisher of the alleged defamatory comments would therefore be inconsistent with § 230(c)(1). Section 230(e)(3) prevents bringing such a claim, stating that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3). Thus, plaintiff's defamation claim against defendant is barred by § 230 of the CDA, and plaintiff has failed to allege enough facts to state a plausible defamation claim against defendant.

III. CONCLUSION

For the foregoing reasons, defendant's motion to dismiss is granted, and GateHouse Media Freeport Holdings, Inc. is dismissed with prejudice.

1. For purposes of a motion to dismiss, the factual allegations contained in the amended complaint are accepted as true.

2. The fact that defendant also posts its own newspaper articles does not change the analysis. It is possible for an entity to be both an interactive computer service and an information content provider. Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1162 (9th Cir. 2008). A newspaper is an information content provider for the articles it writes, but is only an interactive computer service for the comments made by third-party users. Collins, 703 F. Supp. 2d at 879; see also Craigslist, 519 F.3d at 670 (noting that even if § 230(c)(1) is read as a definitional clause, "an entity would remain a provider or user . . . as long as the information came from someone else; but it would become a publisher or speaker . . . if it created the objectionable information" (quotation marks omitted)).

3. Allowing plaintiff to amend the complaint to include allegations that defendant invented the user "Fuboy" would not change the outcome of the motion. Such allegations are purely speculative and would fail to meet the plausibility standard outlined in Twombly. Because "plaintiffs should not be permitted to conduct fishing expeditions in hopes of discovering claims that they do not know they have," McCloskey v. Mueller, 446 F.3d 262, 271 (1st Cir. 2006), plaintiff cannot be granted leave to amend the complaint.