

**IN THE STATE COURT OF SPALDING COUNTY
STATE OF GEORGIA**

WENTWORTH MAYNARD and KAREN
MAYNARD,

Plaintiffs,

v.

CHRISTAL MCGEE and SNAPCHAT,
INC.,

Defendants.

Civil Action File No.
16-SV-89

BY 
MARCIA L. NORRIS, CLERK

2017 JAN 20 PM 4 12

FILED & RECORDED
CLERK, SUPERIOR COURT
SPALDING COUNTY, GA.

**ORDER GRANTING DEFENDANT SNAPCHAT, INC.'S MOTION TO
DISMISS**

This matter comes before the Court upon Defendant Snapchat, Inc.'s¹ ("Snapchat") Motion to Dismiss or, in the Alternative, for Judgment on the Pleadings (the "Motion to Dismiss"). The Court, having considered the pleadings, papers, and proposed orders submitted each party, the arguments of counsel made at the hearing before the Court on November 23, 2016, as well as reviewed the transcript from that hearing, and this Court finds that good cause exists to GRANT the Motion to Dismiss. It is HEREBY ORDERED as follows:

I. GENERAL BACKGROUND

1. This legal action arises from a motor vehicle collision that occurred on September 10, 2015 in Clayton County, Georgia when a vehicle driven by Defendant Christal McGee ("Ms. McGee") collided with a vehicle driven by Plaintiff Wentworth Maynard ("Mr. Maynard.") (Pl. Amend. Compl. ¶ 34).

¹ Snapchat, Inc. recently changed its name to Snap Inc., but the company's smartphone application continues to be referred to as "Snapchat."

2. Plaintiffs allege Ms. McGee was traveling at an “excessive speed” above 100 miles per hour and was “distracted and on her phone” at the time of the collision. *Id.* at ¶¶ 30, 32, 33.

3. Plaintiffs also allege that, at the time of the collision, Ms. McGee “intended to post information about how fast she was driving on Snapchat and she was driving at excessive speeds in furtherance of her use of Snapchat’s speed filter.” *Id.* at ¶ 31.

4. Plaintiffs further allege Mr. Maynard suffered permanent injuries as a result of the collision.

5. Plaintiffs have asserted a single cause of action against Snapchat for negligence. *Id.*, Count I, ¶ 64. Plaintiffs allege Snapchat had knowledge of the alleged dangers of using the “speed filter” while driving at excessive speeds but nevertheless failed to “remove or restrict access to the speed filter.” *Id.* ¶ 41. In addition, Plaintiff Karen Maynard (“Mrs. Maynard”), Mr. Maynard’s spouse, advances a claim for loss of consortium. *Id.* ¶¶ 36-38.

6. Snapchat denies Plaintiffs’ allegations against it and denies all liability and causation as to Snapchat. *See generally* Ver. Answer to Pl. Am. Compl.; Motion to Dismiss.

7. Plaintiffs filed their original Complaint on April 20, 2016. The Court entered a series of consent orders staying this proceeding until August 27, 2016. Thereafter, on August 29, 2016, Snapchat timely filed its: (1) Verified Answer; (2) Motion to Dismiss or, in the Alternative, For Judgment on the Pleadings; and (3) Motion for Sanctions.

8. On August 30, 2016, Plaintiffs filed their First Amended Complaint (“Amended Complaint”), which is the operative Complaint. On September 16, 2016,

Snapchat timely filed its: (1) Verified Answer to the Amended Complaint; and (2) Motion to Dismiss Plaintiffs' First Amended Complaint or, in the Alternative, For Judgment on the Pleadings.

9. On November 23, 2016, a hearing was held on Snapchat's Motion to Dismiss.

II. **APPLICABLE LEGAL STANDARD**

"Generally, when a motion to dismiss involves a factual issue as to a question of abatement, that is, lack of jurisdiction, improper venue, insufficiency of process, insufficiency of service of process or failure to join a party, the trial court is authorized under O.C.G.A. § 9-11-12(d) to hear and determine these defenses before trial without a jury on application of any party." *Equity Trust Co. v. Jones*, No. A16A0813, 2016 WL 6102255, at *2 (Ga. Ct. App. Oct. 19, 2016).

A motion to dismiss for failure to state a claim is properly granted when "the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and...the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought." *Common Cause/Georgia v. City of Atlanta*, 279 Ga. 480, 481, 614 S.E.2d 761 (2005).

III. **The Communications Decency Act provides immunity to Snapchat**

The Court further finds that Plaintiffs' claims must be dismissed against Snapchat on the grounds that they are barred by the Communications Decency Act, 47 U.S.C. § 230 (c) ("the CDA").

The CDA was enacted by Congress in 1996 to protect Internet platforms from the threat of tort-based lawsuits and maintain the robust nature of Internet communication. To achieve that protection, Congress provided “broad immunity under the CDA to Web-based service providers[.]” *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008) (“*Doe I*”). The immunity provision states: “No 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.” 47 U.S.C. § 230(c)(1). And the question of whether the immunity applies in a given case should be decided at “the earliest possible stage” because immunity “protects websites not only from ultimate liability, but also from having to fight costly and protracted litigation battles.” *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009). Thus, where a suit seeks to hold an online platform liable and the CDA bars the action, dismissal is appropriate. *See id.* at 254-55.

Courts have arrived at a “general consensus to interpret Section 230 immunity broadly.” *Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561, 572 (2009). Courts interpreting the CDA immunity provision have dismissed lawsuits where a plaintiff attempts to treat an Internet platform as a publisher and to blame it for a user’s actions. *See id.*; *see also*, e.g., *Saponaro v. Grindr, LLC*, 93 F. Supp. 3d 319 (D.N.J. 2015); *Noah v. AOL Time Warner, Inc.*, 261 F. Supp. 2d 532, 538 (E.D. Va. 2003); *Green v. America Online*, 318 F.3d 465, 470 (3d Cir. 2003); *Ben Ezra, Weinstein, & Co. v. America Online Inc.*, 206 F.3d 980, 986 (10th Cir. 2000).

The key Georgia case addressing the CDA is *Internet Brands v. Jape*, 328 Ga.App.272 at 276 (2014) where the Georgia Court of Appeals stated that “courts have “consistently ... held that § 230 provides a ‘robust’ immunity, and that all doubts must

be resolved in favor of immunity.” (Citations [***7] and punctuation omitted.) citing *Holomaxx Technologies Corp. v. Microsoft Corp.*, 2011 U. S. Dist. LEXIS 94316 (III) (A) (N.D. Ca. 2011).

“Courts must ask whether the duty that the plaintiff alleges the defendant violated derives from the defendant’s status or conduct as a publisher or speaker. If it does, section 230(c)(1) precludes liability.” *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101-02 (9th Cir. 2009). Courts have concluded that “decisions relating to the monitoring, screening, and deletion of content [are] actions quintessentially related to a publisher’s role.” *Doe I*, 528 F.3d at 420. Decisions about the “structure and operation of [a] website” – such as decisions about “features that are part and parcel of the [site’s] overall design” – “reflect choices about what content can appear on the website and in what form” and thus “fall within the purview of traditional publisher functions.” *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 20-21 (1st Cir. 2016).

The Court finds that the CDA applies here and precludes Snapchat’s liability. Plaintiffs resist this conclusion, arguing that their negligence claim against Snapchat is for content that Snapchat created. The appropriate test is whether the “content was ‘independently created or developed by third-party users.’ ” *Jape*, 328 Ga. App. at 277.

One of the key questions in this case is whether (1) Snapchat had a legal duty because Mr. Maynard’s injury was foreseeable to Snapchat because of other users’ alleged auto accidents while using the “speed filter;” and (2) Snapchat should have “remove[d] or restrict[ed] access to” the “speed filter” after it found out about these third-party posts and the accidents they allegedly caused. (Amend. Compl. ¶ 41). This question is premised on knowledge that Snapchat allegedly would have obtained because it created the “speed filter” and was aware of what was published on its

application. As Snapchat correctly points out, the argument accordingly seeks to impose a duty on Snapchat that “derives from [Snapchat’s] status or conduct as a publisher” – and the CDA “precludes liability” based on such grounds. *Barnes*, 570 F.3d at 1102. Further, the structure and content of the Snapchat application, and decisions regarding the “structure and operation of [a] website” and “choices about what content can appear on the website and in what form” also are protected by CDA immunity. *Jane Doe No. 1*, 817 F.3d at 20-21.

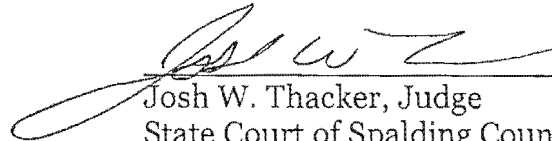
These “choices” that the users can make are derived from Snapchat’s status as a publisher, and are therefore immunized under the CDA. *Barnes*, 570 F.3d at 1101-02. Therefore, the Court finds that because the user in creating a post may choose the information included or excluded, that the speech is not Snapchat’s speech, but is ultimately the user’s speech using the voluntary options Snapchat’s platform. Therefore Plaintiffs’ claims are preempted by CDA and Snapchat has immunity under the CDA. Snapchat’s Motion to Dismiss is accordingly GRANTED upon that basis.

Accordingly, IT IS HEREBY ORDERED as follows:

Plaintiffs’ claims against Snapchat are barred by the provisions of the Communications Decency Act. Therefore, Snapchat’s Motion to Dismiss is GRANTED upon that basis.

As this Court has granted Defendant Snapchat’s Motion to Dismiss on the grounds regarding the “CDA,” the Court need not address Defendant Snapchat’s remaining arguments for dismissal.

SO ORDERED, this 20th day of January, 2017.


Josh W. Thacker, Judge
State Court of Spalding County

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