

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

DOCKET NO. 2020-0496

DEBBIE BANAIAN

V.

ANN ELIZABETH BASCOM, ET. AL.

MANDATORY APPEAL

FROM A FINAL DECISION OF THE HILLSBOROUGH COUNTY

SUPERIOR COURT, NORTHERN DISTRICT

MEMORANDUM OF LAW OF DEFENDANT AARON BLISS

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STATEMENT OF FACTS

Defendant is not obliged when filing a memorandum of law to submit a statement of facts (Supreme Court Rule 16(4)(b)) but does so for clarity and because the facts can be handled expeditiously. Defendant Bliss agrees with Plaintiff Banaian that Bliss's sole role in this matter is based on Plaintiff's allegation that Bliss is as a "retweeter" of information. See Plaintiff's Brief, p. 9, Statement of the Case. Any other facts are irrelevant to the determination of this appeal because, as noted in Plaintiff's "Questions Presented," the only issue in this case is whether retweeting Defendants are "users" of an interactive computer service under 47 U.S.C. §230 and therefore have statutory immunity for the claims made by Plaintiff in this action.

ARGUMENT

RETWEETERS OF INFORMATION ARE INTERACTIVE COMPUTER SERVICE "USERS" AND ARE THEREFORE IMMUNE FROM LIABILITY UNDER 47 U.S.C. 230.

The Communications Decency Act, 47 U.S.C. §230 ("CDA" or "§230") was signed into law in 1996. §230 immunizes any user who retweets, republishes or otherwise replicates information by using interactive computer services. It does so by providing that the "user" is not treated as the publisher or speaker of the allegedly defamatory information. The immunity grant is broad, and its language is plainly written: "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).

Plaintiff does not allege that the retweeters were original content providers. Plaintiff also does not contest that Twitter is an "interactive computer service." Plaintiff's only argument seems to be that the "user" under §230 does not actually refer

to individual users of Twitter. Not only does this ignore the plain language of §230, but it is also wholly unsupported by any applicable case law.

The trial court's Order dismissing Plaintiff's action (hereinafter "the Order") impeccably analyzed existing law on this issue. As the trial court noted, "Section 230 was enacted, in part, to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum." *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997). See the Order at p. 5. In other words, §230 immunity keeps information flowing over the Internet. Congress decided that the repetition of some potential inaccuracies was worth the risk of information being bottled up instead of being disseminated over a free-flowing medium. See *Universal Commc'n Sys. v. Lycos, Inc.*, 478 F.3d 413, 418 (1st Cir. 2007), citing *Zeran, supra*, 129 F.3d at 330-331.

The Order cites to decisions from across the country which reached the conclusion that § 230 provides immunity to retweeters/republishers. Defendant Bliss does not cite them all here – but see *Barrett v. Rosenthal*, 146 P.3d 510 (Cal. 2006), *Hoang v. BBC Global News Ltd.*, No. 56-2018-00507910-CU-CF-VTA, 2018 WL 7372013 (CA Super. Ct. Dec. 6, 2018), *Mitan v. A. Neumann & Assocs., LLC*, No. 08-6154, 2010 WL 4782771 (D.N.J. Nov. 17, 2010), and *Universal Commc'n Sys. supra*, to name a few. These and many others cited in the Order below (and by other "retweeter" defendants in their briefs) hold that users are immunized from repeating, via interactive computer service, allegedly defamatory information.

Plaintiff asserts that the term users was intended to refer to various computer access points, such as local libraries and coffee shops, based solely on surmise. See Plaintiff's Brief, pp. 11-12. There is no legislative history that points to this conclusion.¹

¹ While Plaintiff's Brief asserts that the Congressional history does not support a conclusion of immunity for individual users, Plaintiff fails to show a history pointing towards library and coffee shop outlets as the beneficiaries of immunity. More importantly, Plaintiff fails to negate the plain and unrestricted language of user immunity.

Plaintiff claims distinction between ISPs – the internet providers such as Verizon and Comcast (*Id.* at 12), and the public places one might sit to get internet service. The restriction of the word “users” to this sphere of libraries, colleges and coffee shops, however, ignores the plain language of the statute in its use of the lead in language “no provider or user.” 47 U.S.C. § 230(c)(1), emphasis added. That language is broad and unrestricted.

Defendant suggests that this Court should apply the maxim that it will not add words to a statute: “We accord statutory language its plain and ordinary meaning, and we will not add words the legislature did not see fit to include.” *Appeal of Town of Seabrook*, 163 N.H. 635, 653 (2012), *citation omitted*. Creating some third category of persons or entity not immunized when republishing would require just that. If the United States Congress intended not to immunize persons retweeting or otherwise republishing information via computer, it would have said so. It did not and, therefore, Defendant Bliss and the other retweeting defendants are immune from suit.

Importantly, Plaintiff is not left without a remedy. The CDA plainly does not provide immunity to a “information content provider.” *See* §230(c)(1). However, the inescapable conclusion of the CDA is that Mr. Bliss – and the other retweeter defendants – are immune from suit.

CONCLUSION

Defendant Aaron Bliss requests the Court affirm the Order granting his motion to dismiss on the grounds that as a retweeter he was a user of an interactive computer service and he is therefore immune from suit.

Respectfully submitted,
Aaron Bliss

By his attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that this Memorandum of Law was served upon all counsel or parties through the Court's electronic filing system on this 9th day of June, 2021.

/s/ Christine Friedman