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TO: Carmen Cardinal
FROM: Applicant
RE: Niesi V. Gosling and Hardy
DATE: July 26, 2022

INTRODUCTION

You have requested that I prepare an objective memorandum for your upcoming meeting with Ms. Gosling about Niesi's complaint. Below please find my analysis of the issue regarding:

- 1) whether Niesi would prove that Hardy's statements, as quoted in the complaint were defamatory if the facts alleged were proved
- 2) whether Gosling is immune from liability for Hardy's allegedly defamatory statements

ANALYSIS

1. Hardy' Statements as Quoted in Complaint Were Defamatory and Considered as Actual Fact (in part) and Opinion (in Part- see discussion)

In *Columbia*, Defamation consists of the publication of a 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 one solely of opinion. If a statement is reasonably susceptible to an interpretation as either fact or opinion, its proper characterization is determining by asking whether, under the *totality of the circumstances*, a reasonable trier of fact would conclude that the statement communicates actual fact rather than expresses mere opinion. (*Anderson*)

In *Insky*, the court held that "internet forums promote a looser communication style and an outlet for the user to criticize others (*Insky*). Users are able to engage freely in informal debate and criticism, leading to substitute gossip for accurate report and adopt a provocative tone." *Insky*

The court held in *Insky*, that under the totality of the circumstances, a reasonable trier of fact would conclude that calling company executives "liar, loser, and crook's were mere opinion rather than actual fact. The court considered statements such as this as offensive and demeaning and more of an emotional catharsis than information. *Insky*

In *Anderson*, however, the court that the facts under that case was different from *Insky*, the defendant on his consumer blog called RipOffReport.com, although labeling his statements, were actual facts not opinion. The facts the defendants included in his consumer blog detailed perjury and fraud by the plaintiff. The defendant similarly posted statements on another site Yelp.com that the Plaintiff awarding city contracts to friends and family in exchange for bribes. The court concluded that these types of statements were not reasonably susceptible to interpretation as mere opinion; and that under the totality of the circumstances, a reasonable trier of fact would conclude that the defendant communicated actual fact. (*Anderson*)

Here, Hardy posted a statement in Gosling's blog that Jack Niesi, is a guilty of cable theft. Hardy states that Niesi uses various a unauthroized devices to get free phone, television and internet service to his condo, even though he is not a cable subscriber. Hardy included that "it's crooks like Jack Niesi who cause cable costs to go up for the rest of us". Hardy claimed in his post that while Niesi's wife was at work, an attractive young woman is at their house most of the day, watching TV together with Niesi at the stolen cable service. Hardy states that Niesi appears to be a cheating spouse, placing a note on Niesi's wife's windshield about her husband's infidelity. Hardy further called Niesi a "loser and low life"

Defamatory/ Actual Facts not Opinion

In accordance to the court's definition of defamation Hardy's statement was published to a third party, and

it referred to Niesi by name and address and would be understood by those who read it as Niesi, and it is harmful to Niesi's reputation both professional and personal, as well as business, shame and mortification all to his damage as he was blamed for being a thief, cheating husband. The question is whether or not Hardy's statement was merely a statement of fact or opinion.

Like in *Insky*, Hardy's statement that Niesi was "loser and a low life" is akin to what was said in *Insky* about executives that they are "liars, losers, and crooks". The court in *Insky* held this as a mere opinion rather than fact as a form or emotional catharsis.

However, like in *Anderson*, the rest of Hardy's statements were akin to perjury, alleging facts detailing Niesi's acts of using various unauthorized devices to get free phone, television and internet service to his condo as allegedly a noncable subscriber. These statements were similar to the defendant in *Anderson* who posted statements about the plaintiff that he was awarding city contracts to friends and family in exchange for bribes. The court included that these were "facts" and not mere opinion. I believe the court as a reasonable trier of fact would conclude in this situation that in the totality of the circumstances

Hardy's statements about Niesi's theft of cable access, naming him a cheating husband was more than opinion but would be considered by the court as actual fact (and not opinion).

Truth would not be a defense to Hardy's statements when in fact Niesi has been a Columbia Cable Company customer for over 20 years. He has paid for every type of cable service he has ever received. The woman Hardy mistaken to be Niesi's infidelity partner was actually his technical assistant, Liana Mabry, He works from home why Mabry is in Niesi's home. However, Niesi's and Mabry's relationship has been purely professional.

Therefore, consistent with Columbia's definition of defamation rule, Hardy's statements were defamatory. Furthermore, whether it is a question of mere fact or opinion

I believe the court as a reasonable trier of fact would conclude in this situation that in the totality of the circumstances Hardy's statements about Niesi's theft of cable access, naming him a cheating husband was more than opinion but would be considered by the court as actual fact (and not opinion).

2. Gosling Is Immune From Liability for Hardy's Defamatory Statements Because Se is acting an an interactive computer service providers ICSP, protected under Section 230

Under Section 230, the legislature enacted this to protect websites from liability for including or failing to remove actionable content in order to preserve the free-flowing nature of internet speech and commerce without unduly prejudicing the enforcement of other important laws. section 230 immunizes interactive computer service providers (ICSP) from liability arising from content created by third parties. But it does not immunize an information content provider (ICP) from liability. *Section 230, Columbia Valley Fair Housing Council (CVFHC)*

An ICSP is an entity or person, that enables computer access by multiple users to a computer service; it passively displays content actively display by an ICP. An ICP is a person or entity that is responsible in whole or in part for the creation or development of content; actively creates or develops content that may be displayed passively by an ICP.

In *(CVFHC)*, the court held that the defendant was immune from liability, under Section 230, when it created an "additional comments" section in its subscriber profile page, when they desired different individuals seeking roommates to put comments and without revision by the defendant.

The court held that this is precisely the kind of situation for which Section 230 was designed to protect. The court opined that Section 230 was enacted to protect websites from liability for including or failing to remove actionable content.

Here, Ms. Gosling is the web host of [www. CravenCable ConsumersUnited.com](http://www.CravenCableConsumersUnited.com), a consumer website. Her website is a platform for dissatisfied cable consumers. She makes access an area where consumers can place their email address, first and last names, physical address and whether they are a Columbia Cable Company (CCC) subscriber. Thus CravenCable Consumers United.com would be considered as an ICSP since it is passively allowing consumers to actively post (CVFHC).

Like in *CVFHC*,

The CCC website provides a blank box at the end where you can provide any additional information that is accessible to other subscribers.

In CVFHC, the court held that the defendant, Roomate, was not responsible to maintain or develop what consumers post in the 'Additional Comments' section of the blog which is precisely what Section 230 was designed to provide immunity from. The court also concluded that Section 230 protects websites from liability for including or failing to remove actionable content. Therefore, Ms. Gosling should not be responsible for including an area for comments which she intended to contribute to the goals of educating about cable services and consumer rights with regard to cost of cable service.

Therefore,, Ms. Gosling under Section 230 will be immune because her website will be considered as an interactive computer service provider, and protected under this statute. She will not be responsible form failing to remove actionable content such as the defamatory content posted by Hardy in the comment section.

And that, close causes must be resolved in favor of immunity lest websites be forced to face death by ten thousand cuts. The intent of the legislature is to preserve the free-flowing nature of internet speech and commerce without unduly prejudicing the enforcement of other important laws.

CONCLUSION

Thank you this opportunity to conduct this analysis for you regarding our client Grace Gosling. Please do not hesitate to contact me if you have further questions.

Question #3 Final Word Count = 1513

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