

## New York Court of Appeals Adopts Broad View of Section 230 Immunity

### Court dismisses defamation claim based on user's post and host's added content

By James Rosenfeld

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In its first decision addressing Section 230 of the Communications Decency Act, the New York Court of Appeals (New York's highest court) has ruled that Section 230 bars tort claims against a website operator based on user-generated content. *Shiamili v. The Real Estate Group of New York, Inc.* No surprise there—but the court's split (4-3) decision sets out an expansive view of the protection offered by Section 230, immunizing the website operator from liability even though the content in question combined a user's post and the host's own added embellishments.

Plaintiff Christakis Shiamili, CEO of Ardor Realty Corp. (Ardor), had brought a defamation suit against a competing company, The Real Estate Group of New York, its principal and his assistant (collectively TREGNY), who administered a blog about the New York real estate industry. A user of the TREGNY blog (who signed on as "Ardor Realty Sucks") posted a comment to a discussion thread on the blog, making several allegedly defamatory statements suggesting that Shiamili mistreated his employees and was racist and anti-semitic.

TREGNY allegedly: (i) moved the comment from the discussion thread to a stand-alone post, "prefacing it with the statement that 'the following story came to us as a ... comment, and we promoted it to a post'"; (ii) added a headline, "Ardor Realty and Those People," and a sub-heading, "and now it's time for your weekly dose of hate, brought to you unedited, once again, by 'Ardor Realty Sucks.' and for the record, we are so. not. afraid."; (iii) added an illustration of Jesus Christ with Shiamili's face and the caption "Chris Shiamili: King of the Token Jews"; and (iv) pseudonymously egged on another commenter to provide additional dirt on Shiamili.

Despite these contributions by TREGNY, the Court of Appeals affirmed the dismissal of Shiamili's defamation suit based on the immunity provided by Section 230.

Section 230 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). There is no serious question that the operator of a web site like this is the provider of an interactive computer service under the statute, or that a libel claim against a web site based on a third-party user's comment is just the sort of claim which is typically barred by Section 230. The question here, however, was whether TREGNY materially contributed to the content—by highlighting it, adding prefatory text, headlines and an illustration—such that the content was no longer merely "information provided by another information content provider" but rather information co-created by "Ardor Realty Sucks" and TREGNY—thereby depriving TREGNY of Section 230 immunity.

The Court of Appeals:

- Adopted a "national consensus" on the broad scope of Section 230's protections, reading the statute "as generally immunizing Internet service providers from liability for third-party content wherever such liability depends on characterizing the provider as a 'publisher or speaker' of objectionable material."
- Affirmed that Section 230 bars lawsuits seeking to impose liability on a service provider's "exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content" (quoting *Zeran v. AOL*, 129 F.3d 327, 330 (4th Cir. 1997)), including moving or re-posting a comment as the publisher's own post.

- Held that TREGNY’s additions to the third-party post did not convert TREGNY from a service provider into an “information content provider” (defined as one “responsible, in whole or in part” for the “creation or development of information”, § 230(f)(3)), even taking the 9th Circuit’s broad approach, which interprets “development” in this context as “materially contributing to [the] alleged unlawfulness” of the content. The court reasoned that Section 230 clearly protected TREGNY from liability for the anonymous user’s underlying comments; that there was no allegation that the comments were invited by TREGNY or that TREGNY contributed to their illegality as in *Fair Housing Council v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008) (please see our [previous advisory](#) regarding the case); and that the text and illustration added by TREGNY were not themselves defamatory as a matter of law. It did not assess whether the user-generated and host-generated content taken together were defamatory.

The court was deeply divided. A dissent by Chief Judge Lippman, joined by two other members, opined that Shiamili had stated a claim which lay outside the scope of Section 230 immunity. In the dissent’s view, the sum total of TREGNY’s headlines, comments, and illustration were “not so benign” as to be within “a publisher’s traditional editorial function” and suggested an endorsement of and material contribution to the user’s comments.

While the dissent agreed that a broad approach to Section 230 immunity was appropriate, it disagreed that this approach should immunize what it saw as “a business’s complicity in defaming a direct competitor.” Nonetheless, the majority’s decision establishes a broad approach to Section 230 immunity and should deter future claims against website hosts over user-generated content, even where the host’s after-the-fact embellishments to such content are not insubstantial.

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