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JUNE 2011

LABOR & EMPLOYMENT DEPARTMENT

ALERT

NEW YORK COURT EXEMPTS INTERACTIVE WEB SITE PROVIDER FROM DEFAMATION FOR THIRD-PARTY STATEMENTS

By John D. Horowitz and Todd A. Palo

On June 14, 2011, the New York Court of Appeals – the highest state court in New York – issued its decision in *Shiamili v. The Real Estate Group of New York, Inc.*, and held that the federal Communications Decency Act, 47 U.S.C. § 230 (CDA), shields interactive computer service providers (e.g., blog administrators) from liability for publishing defamatory statements on their blogs that were originally authored by a third party. 2011 WL 2313818 (N.Y. June 14, 2011). While *Shiamili* confirms that New York courts will adopt the generally accepted judicial view that the CDA immunizes a blog service provider from these types of defamation claims, the decision presents further challenges for an employer who seeks to pressure a provider to remove defamatory comments about the company from the provider's interactive web site or blog.

By way of background, Section 230(c)(1) of the CDA provides: "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." Accordingly, in most instances, a blog administrator is immune from a state law defamation claim if: (1) it is a "provider or user of an interactive computer service;" (2) the plaintiff seeks to hold the administrator liable as the "publisher" of the derogatory remarks; (3) the defamation claim is based on statements "provided by another *information content provider*;" and (4) the interactive computer service provider did not materially contribute to the defamatory nature of the third-party's statements. The CDA 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).

In *Shiamili*, the Real Estate Group of New York, Inc. (the Group) operated a blog dedicated to the New York City real estate market, which allowed users to anonymously post messages about the real estate industry. In particular, one anonymous user, acting under the pseudonym "Ardor Realty Sucks," posted derogatory statements about the Ardor Realty Group's founder and CEO, Christakis Shiamili, on the Group's blog. Notably, Ardor Realty was a competitor of the Group and, after the statements were posted on the blog, the Group isolated and highlighted the posts by making them available for comment through an independent thread. Further, the Group proceeded to embellish the posts by attaching a large, doctored photograph of Shiamili, which further tarnished his business reputation.

Though the derogatory posts on the blog were preceded by the Group's editor's note that, "the following

story came to us as a long [...] comment, and we promoted it to a post," Shiamili believed the Group intentionally republished and isolated the comments for discussion in order to injure his business reputation. As a result, Shiamili filed a lawsuit against the Group for defamation, and named the Group's CEO and blog administrator as additional defendants in the action.

In his complaint, Shiamili alleged that by republishing unlawful statements authored by a third party, the defendants were equally liable for defamation. In response, the Group filed a motion to dismiss Shiamili's claims on the grounds that the Group had little control over the blog since it was an open discussion forum in which anyone could add material. The Group further argued that because they did not author the defamatory statements, the CDA shielded them from liability for republishing the user's alleged defamatory remarks. The trial court denied the motion to dismiss, and the defendants appealed.

On appeal, the New York Court of Appeals held the complaint should be dismissed, and reasoned that while a publisher of defamatory material authored by a third party may often be liable for defamation, the CDA carves out an exception for interactive computer service providers that exercise the traditional editorial function of reviewing, editing and deciding whether to publish third-party content (e.g., blog administrators). Specifically, the court concluded that even though the defendants added headings and photo illustrations after isolating the disparaging posts, their intent was "obviously satirical" and the additions did not "materially contribute to the defamatory nature of the third-party statements."

Significantly, however, the court reiterated that the author of a defamatory statement on a blog is certainly liable for any defamatory statement he/she publishes. The court further instructed that a blog administrator's immunity under the CDA did not extend to statements authored by that administrator.

The principles of law set forth in *Shiamili* are recognized by several other courts throughout the country, and though *Shiamili* allows interactive computer service providers to breathe easier in New York, the decision makes it more difficult for employers in the state to pressure blog administrators to remove disparaging comments about their companies from a provider's blog.

Indeed, most users who post comments on a web site, blog or message board usually do so under a pseudonym or under "Anonymous." Therefore, it is difficult for a company to proceed against an individual who publishes an anonymous defamatory remark about the employer on a blog, and *Shiamili* reduces the probability of the company bringing successful legal pressure on the blog administrator to remove the remarks from the website. In light of *Shiamili*, companies that seek to commence a civil action against an interactive computer service provider who publishes or republishes defamatory comments on its blog or message board, should carefully plan their litigation strategies with counsel to determine how to overcome the current hurdles in the law.

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