Appendix A

Appeals Court's Unpublished Decision

Dated July 16, 2024

Pages A1–A6

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

23-P-588

JAMES TODINO

vs.

TWITTER, INC., & others[1] (and eight companion cases[2]).

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

On April 30, 2021, the plaintiff, James Todino, filed defamation actions against ten sets of defendants. The ten cases were consolidated by order dated May 6, 2021, although one

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[1] Jack Dorsey and John Doe. Since the complaint was filed, Twitter has changed its name and is now known as "X."

[2] James Todino vs. Tim O'Reilly, O'Reilly Media, Inc., and Brian S. McWilliams, Middlesex Super. Ct., No. 2181CV00967; James Todino vs. Pinterest, Ben Silbermann, and John Doe, Middlesex Super. Ct., No. 2181CV00968; James Todino vs. Disqus, Middlesex Super. Ct., No. 2181CV00970; James Todino vs. Google LLC, Sundar Pichai, and John Doe, Middlesex Super. Ct., No. 2181CV00971; James Todino vs. Facebook, Inc., Mark Zuckerberg, and John Doe, Middlesex Super. Ct., No. 2181CV00972; James Todino vs. Wattpad, Middlesex Super. Ct., No. 2181CV00973; James Todino vs. Horseneck Media, LLC, Middlesex Super. Ct., No. 2181CV00974; and James Todino vs. Conde Nast and Advance Magazine Publishers, Inc., Middlesex Super. Ct., No. 2181CV00975.

of the cases (James Todino vs. PayPal, Middlesex Super. Ct., No. 2181CV00965) subsequently was removed to Federal court, and is not a part of this appeal. The appeal before us focuses on judgments entered in four of the remaining cases: those brought by Todino against defendants Twitter, Inc.; Pinterest; Google, Inc.; and Facebook, Inc. In each of those cases, a Superior Court judge allowed motions to dismiss Todino's amended complaints filed by those defendants who had been identified (identified defendants) on the ground that the defendants were immune from suit pursuant to § 230 of the Federal Communications Decency Act, 47 U.S.C. § 230 (§ 230). See Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974). The motion judge then denied Todino's motions for reconsideration. On Todino's appeal, we affirm.[3]

Background. All of the identified defendants were sued as operators of social media sites. According to Todino's amended complaints, anonymous users posted content to the social media

[3] The other five cases were also dismissed, three on statute of limitations grounds and two for lack of service. Although Todino's notice of appeal nominally applies to the judgments in these other five cases, he makes no argument in his brief as to how the dismissal of those cases constituted error. Any claim of error therefore has been waived. See Commonwealth v. Winfield, 464 Mass. 672, 684 (2013) (arguments not raised on appeal are waived). We accordingly affirm the judgments in those cases. For the same reason, Todino's appeal from the orders denying his motions for reconsideration is waived.

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sites that included false statements about him, or offensive material (such as pornography) that falsely was presented as having been posted by him. Todino alleges that the posting of the content amounted to defamation, entitling him to injunctive relief and damages. He claims that the identified defendants are liable in their own right for refusing to take down the posts even after he demonstrated their defamatory nature.[4]

As the motion judge accurately pointed out, appellate courts have interpreted § 230 as providing extremely broad immunity to those in the defendants' position. Such immunity applies where "the defendant (1) is a provider or user of an interactive computer service; (2) the claim is based on information provided by another information content provider; and (3) the claim would treat the defendant as the publisher or speaker of that information." Massachusetts Port Auth. v. Turo Inc., 487 Mass. 235, 240 (2021), quoting Doe v. Backpage.com, LLC, 817 F.3d 12, 19 (1st Cir. 2016), cert. denied, 580 U.S. 1083 (2017). As to the first criterion, it is uncontested that the identified defendants qualify as providers of an "interactive computer service" as that term is used in § 230. Todino also does not appear to contest the second criterion,

[4] The judge indicated in his memorandum of decision and order that he allowed Todino to expound on his allegations at the hearing on the motion to dismiss.

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namely that the defendants were not the creators of the content at issue.[5]

The third criterion also applies, because the essence of Todino's claims is that the identified defendants are liable for publishing the content that a third party had posted. Todino seeks to avoid the application of this criterion by maintaining that he is suing the identified defendants not for posting the content, but for refusing to remove it. However, none of the cases draws such a distinction. To the contrary, the cases establish that whether to withdraw a posting is an editorial decision covered by § 230 immunity, and that such immunity "applies even after notice of the potentially unlawful nature of

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[5] The motion judge observed that at the motion hearing, Todino "concede[d] that the defendants were not the creators of the content at issue." In his motions for reconsideration, Todino argued that he did not concede the point and pointed to the possibility that the identified defendants themselves theoretically could have posted the relevant content. This does not assist Todino for three reasons. First, because he did not supply a transcript of the motion hearing, we have no basis for assessing whether the judge was correct that he affirmatively conceded that third parties had made the posts. Second, Todino does not allege in his amended complaints that the identified defendants themselves made the posts. Third, the mere fact that the posts theoretically could have been made by the defendants would not be enough for Todino to plausibly suggest an entitlement to relief. See Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008) (setting forth standard applicable to motion to dismiss for failure to state claim). See also Estate of Moulton v. Puopolo, 467 Mass. 478, 492 n.19 (2014) ("mere speculation . . . does not satisfy the requisite standard" for motion to dismiss).

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the third-party content." Universal Communication Sys., Inc. v. Lycos, Inc., 478 F.3d 413, 420 (1st Cir. 2007). Recasting the defamation claim as one for negligence does nothing to save it from falling within § 230's ambit.

We are unpersuaded by Todino's additional arguments. For example, while it is true that § 230 does not shield any party from criminal liability, see 47 U.S.C. § 230(e)(1), Todino has not alleged that the identified defendants have violated any criminal statutes and, in any event, whether to enforce such laws would fall to the relevant prosecutors, not to Todino.

For completeness, we note a procedural issue not addressed by any party. In each of the four actions that are the focus of this appeal, Todino joined as a defendant the unidentified user(s) who had posted the content (referenced as "John Doe"). Of course, John Doe "himself" is not entitled to § 230 immunity. In his memorandum of decision and order allowing the identified parties' motions to dismiss, the judge did not address Todino's claims against John Doe. Nevertheless, the various judgments of dismissal that entered are not limited to the claims that Todino brought against the identified parties. Rather, those judgments ordered simply that Todino's "Complaint be and hereby is dismissed." In his brief, Todino raises no argument that his

John Doe claims were improperly dismissed. Accordingly, such arguments are not before us.[6] See note 3, supra.

The judgments of dismissal entered in this case and in the eight companion cases are affirmed. We additionally affirm the orders denying Todino's motions for reconsideration.

So ordered.

By the Court (Milkey, Shin & Englander, JJ.[7]),

Paul Lattle

Clerk

Entered: July 16, 2024.

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[6] Lest our ruling be misunderstood, one final clarification is warranted. If someone in Todino's position had secured injunctive relief requiring third parties to remove defamatory content that they had posted to a social media site, but those parties refused to comply, the question would arise whether such a plaintiff could secure an order requiring the social media sites themselves to remove the material (on the theory that the plaintiff was not invoking their own liability but simply enforcing the judgment against the third party). See Murcia, Section 230 of the Communications Decency Act: Why California Courts Interpreted It Correctly and What That Says About How We Should Change It, 54 Loy. L.A. L. Rev. 235 (2020) (discussing issue). Compare Hassell v. Bird, 5 Cal. 5th 522, 527-533, 548 (2018) (plurality opinion concluding that § 230 immunity applies even in that context), with id. at 565-566 (Liu, J. dissenting). We do not reach this issue because it is not presented in the current appeal.

[7] The panelists are listed in order of seniority.

Appendix B

Superior Court's Memorandum of Order and Decision

Allowing Defendants' Motion to Dismiss (April 13, 2022)

and Denying Motion for Reconsideration (October 7, 2022)

Pages B1–B6

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
Nos. 21-00966
21-00968
21-00971
21-00972

JAMES TODINO

vs.

TWITTER INC.
(and companion cases)[1]

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTIONS TO DISMISS

The plaintiff, James Todino, filed these actions *pro se* against the defendants, Twitter, Inc., Pinterest, Inc., Google, and Facebook, Inc. (collectively, "defendants"), claiming, as best the court can tell from his complaints, that he was defamed by the defendants either through their direct actions in publishing defamatory content or by allowing such content to be posted on their respective online platforms by an unknown party, John Doe. He also asserts negligence claims and alleges that the defendants carelessly allowed false statements to be published on their platforms and failed to remove such statements after the plaintiff notified them of their falsity. The defendants have separately moved to dismiss the plaintiff's complaints arguing that he has failed to state a claim upon which relief can be granted and that they are immune from suit under the Communications Decency Act ("CDA"), 47 U.S.C. § 230.

[1] James Todino vs. Pinterest Inc., Middlesex Superior Court, Civil No. 21-00968.
James Todino vs. Google, Middlesex Superior Court, Civil No. 21-00971.
James Todino vs. Faceboook, Inc., Middlesex Superior Court, Civil No. 21-00972.

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The court heard extensive argument from all parties, especially the plaintiff, who provided specific details of his claims against the defendants and a critique of their responses thereto. The plaintiff is representing himself in this matter and has presented complicated factual scenarios that are obviously quite troublesome to him. The court does not doubt the emotional toll that can be caused by harmful words written by another. Indeed, modern society is suffering from a "digital pandemic," where notions of common decency often take a backseat to mean-spirited hyperbole. That being said, the defendants' arguments under the CDA compel the court's decision with respect to the present motions, and for the reasons stated below, the defendants' motions are **ALLOWED**.

I. Standard of Review

To withstand a motion to dismiss pursuant to Rule 12(b)(6), a claim must allege facts plausibly suggesting entitlement to relief. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). Rule 12(b)(6) imposes a relatively low standard for surviving a motion to dismiss. *Marram v. Kobrick Offshore Fund, Ltd.*, 442 Mass. 43, 45 (2004). Nevertheless, a plaintiff is obligated to provide more than mere labels and conclusions. *Iannacchino*, 451 Mass. at 636. When considering a claim, the court accepts as true the allegations set forth in the complaint and draws any reasonable inferences in the plaintiff's favor. *Sisson v. Lhowe*, 460 Mass. 705, 707 (2011).

II. Analysis

Congress enacted the CDA "to promote the continued development of the Internet" and "to preserve the vibrant and competitive free market that presently exists . . . ." 47 U.S.C. § 230(b)(1)-(2). To that end, the CDA provides that "[n]o provider or user of an interactive

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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).

Courts have construed the CDA "to establish broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service" (quotation and citation omitted). *Massachusetts Port Auth. v. Turo, Inc.*, 487 Mass. 235, 240 (2021). Immunity under the CDA applies when "the defendant (1) is a provider or user of an interactive computer service; (2) the claim is based on information provided by another information content provider; and (3) the claim would treat the defendant as the publisher or speaker of that information." *Id.*, quoting *Doe v. Backpage.com, LLC*, 817 F.3d 12, 18 (1st Cir. 2016), cert. denied, 137 S. Ct. 622 (2017). Here, the defendants argue, and the court agrees, that all three factors are met, and as such, the defendants are immune from suit.

At the motion hearing, the plaintiff conceded that the first two factors have been satisfied. Under the first factor, an interactive computer service is as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server . . . ." 47 U.S.C. § 230(f)(2). The plaintiff does not dispute that the defendants are interactive computer services. As for the second factor, an information content provider is "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). The plaintiff, likewise, concedes that the defendants were not the creators of the content at issue; rather, he alleges that the defendants knowingly allowed the publication of the offending material on their platforms and failed to remove the same after being notified about the publication. Therefore, the only question before the court is whether the plaintiff's claims treat the defendants as the publisher or speaker of the alleged defamatory and harassing content.

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The CDA "precludes courts from entertaining claims that would place a computer service provider in a publisher's role. Thus lawsuits, seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred." *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997), cert. denied, 524 U.S. 937 (1998). Publishing functions also include decisions about "the structure and operation of the website," see *Backpage.com, LLC*, 817 F.3d at 21, and courts have rejected claims that attempt to hold website operators liable for failing to provide sufficient protections to users from harmful content created by others. See *Doe v. MySpace Inc.*, 528 F.3d 413, 419-420 (5th Cir. 2008) (failing to implement basic safety measures was another way of claiming website operator was liable for publishing third-party content).

Here, all of the plaintiff's claims relate to the design and structure of the defendants' online platforms as well as the monitoring and screening of content posted thereto, which are precluded under the CDA. "Features such as these, which reflect choices about what content can appear on the website and in what form, are editorial choices . . . ." *Backpage.com, LLC*, 817 F.3d at 21. See *Green v. America Online (AOL)*, 318 F.3d 465, 471 (3rd Cir.), cert. denied, 540 U.S. 877 (2003) ("decisions relating to the monitoring, screening, and deletion of content from its network [are] actions quintessentially related to a publisher's role" and protected by CDA). See also *Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 422 (1st Cir. 2007) (website operator's decision not to reduce misinformation by changing its website policies was "as much an editorial decision with respect to that misinformation as a decision not to delete a particular posting"). Although the plaintiff alleges that the defendants knowingly allowed the publication of the offending material on their platforms and failed to remove the same after being notified of it, "notice of the unlawful nature of the information provided is not enough to make it the service

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provider's own speech," see *Universal Commc'n Sys., Inc.*, 478 F.3d at 420, and immunity applies "even after notice of the potentially unlawful nature of the third-party content." *Id.* See *Green*, 318 F.3d at 470 (failure to properly police its network for content transmitted by its users would treat website as "publisher or speaker" of that content). Because the plaintiff's claims would require this Court to treat the defendants as the publishers or speakers of the alleged defamatory and harassing content, the defendants have shown that they are entitled to immunity under the CDA.

Accordingly, the defendants' motions to dismiss are **ALLOWED**.

April 13, 2022

C. William Barrett
Justice of the Superior Court

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. **SUPERIOR COURT**

CIVIL ACTION
NOS. 21 – 0966
21 – 0968
21 – 0971
21 – 0972
21 – 0967
21 – 0974
21 – 0975

JAMES TODINO

VS.

TWITTER INC.
(and companion cases)

DECISION AND ORDER ON THE PLAINTIFFS MOTION FOR APPEAL AND RECONSIDERATION

After review of the plaintiff's Motions for Appeal and Reconsideration as well as the defendants' responses thereto, the court DENIES the plaintiff's motions. While the court can appreciate the plaintiff's claims, it cannot deviate from the established law and reverse its decisions to allow the defendants Motions to Dismiss. The plaintiff has not provided the court with any New evidence, statute or case precedent that would allow it to reconsider and change its decisions. Nor has the plaintiff shown that the court committed an error of law in allowing the defendants Motions to Dismiss.

While the court recognizes that the plaintiff's motions were not filed in accordance with Superior Court rule 9A, the court, pursuant to its discretion, ***Denies*** the motions on substantive grounds and not procedural.

(Barrett, J.)
C William Barrett
Justice of the Superior Court

DATE: October 7, 2022

Attest: Robert F. McAvoy
Dep. Asst. Clerk

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Appendix C

Supreme Judicial Court Denial of Further Appellate Review

Dated November 14, 2024

Page C1

From: **SJC Full Court Clerk** <SJCCommClerk@sjc.state.ma.us>
Date: Fri, Nov 15, 2024 at 10:01 AM
Subject: FAR-29937 - Notice: FAR denied
To: <jimtodino@gmail.com>

Supreme Judicial Court for the Commonwealth of Massachusetts

Telephone

RE: Docket No. FAR-29937

JAMES TODINO
vs.
TWITTER, INC., & others (and eight companion cases)

Middlesex Superior Court No. 2181CV00966; 967; 968; 970; 971; 972; 973; 974; 975
A.C. No. 2023-P-0588

NOTICE OF DENIAL OF APPLICATION FOR FURTHER APPELLATE REVIEW

Please take note that on November 14, 2024, the application for further appellate review was denied.

Very truly yours,
The Clerk's Office

Dated: November 14, 2024

To: James Todino
Kenneth Thayer, Esquire
Emily Slaman, Esquire
Sarah P. Kelly, Esquire
Ritika Bhakhri, Esquire
Ariel B. Glickman, Esquire
J. Mark Dickison, Esquire
Brendan Slean, Esquire
Atty. Ariel B. Glickman
Joseph H. Aronson, Esquire
Caroline Koo Simons, Esquire
James Flynn, Esquire
Robert R. Pierce, Esquire
Thomas E. Kenney, Esquire
Elizabeth Susan Zuckerman, Esquire
Watt Pad
Luke T. Cadigan, Esquire
Dane Voris, Esquire

Appendix D

Supreme Judicial Court Denial of Motion for Reconsideration

Dated January 17, 2024

Page D1

From: **SJC Full Court Clerk** <SJCCommClerk@sjc.state.ma.us>
Date: Fri, Jan 17, 2025 at 4:55 PM
Subject: FAR-29937 - Notice of Docket Entry
To: <jimtodino@gmail.com>

Supreme Judicial Court for the Commonwealth of Massachusetts

RE: No. FAR-29937

JAMES TODINO
vs.
TWITTER, INC., & others (and eight companion cases)

NOTICE OF DOCKET ENTRY

Please take note that on January 17, 2025, the following entry was made on the docket of the above-referenced case:

DENIAL of motions to reconsider denial of FAR application.

Very truly yours,

The Clerk's Office

Dated: January 17, 2025

To:
James Todino
Kenneth Thayer, Esquire
Emily Slaman, Esquire
Sarah P. Kelly, Esquire
Ritika Bhakhri, Esquire
Ariel B. Glickman, Esquire
J. Mark Dickison, Esquire
Brendan Slean, Esquire
Atty. Ariel B. Glickman
Joseph H. Aronson, Esquire
Caroline Koo Simons, Esquire
James Flynn, Esquire
Robert R. Pierce, Esquire
Thomas E. Kenney, Esquire
Elizabeth Susan Zuckerman, Esquire
Watt Pad
Luke T. Cadigan, Esquire
Dane Voris, Esquire

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Additional material from this filing is available in the Clerk's Office.