

OREGON CASE UPDATE

Google Reviews, Angie's List and Yelp, Oh My! Are Consumer Reviews Protected by the First Amendment?

From the Desk of Jeffrey D. Eberhard: Is an online business review, that criticizes a business owner and her business entitled to protection under the First Amendment of the United States Constitution? Read on to see how the Oregon Supreme Court answered this question.

Claims Pointer: The Oregon Supreme Court held that statements provided on Google Reviews were an expression of opinion on matters of public concern which is protected under the First Amendment. This was the first occasion for the court to announce a framework for analyzing whether a defamatory statement is entitled to First Amendment protection. In an increasingly digital world, this case is important in the reverberating effect the court's decision will likely have on protecting subjective opinion speech provided on websites or other social media.

case in point...

Neumann v. Liles, 358 Or 706 (2016).

Christopher Liles (Liles) attended a wedding and reception held on Carol Neumann's property (Neumann), Dancing Deer Mountain. Two days later, Liles posted a negative review about Neumann and her business on Google Reviews, a publicly accessible website where individuals may post comments about services or products received. The review was entitled, "Disaster!!!! Find a different wedding venue," and stated, among other things, "The worst wedding experience of my life... Carol (female owner) is two faced, crooked, and was rude to multiple guest[s]... In my opinion [s]he will find a why [sic] to keep your \$500 deposit, and will try to make you pay even more."

A few months later, Neumann and Dancing Deer Mountain filed a defamation claim for damages against Liles. Liles then filed a special motion to strike under Oregon's Anti-Strategic Lawsuits Against Public Participation (anti-SLAPP) statute. The trial court allowed Liles's motion to strike and entered a judgment of dismissal of the defamation claim. Thereafter, the Oregon Court of Appeals reversed the judgment, concluding that Liles's statements were not protected as opinion and could reasonably be interpreted as defamatory.

The Oregon Supreme Court granted Liles's petition for review. Following a very detailed historical overview of the tort of defamation and whether certain statements are protected under the First Amendment, the court reversed the Court of Appeals ruling and concluded that Liles's statements were entitled to First Amendment protection. In deciding whether a defamatory statement is protected under the First Amendment, the first question is whether or not the statement involves a matter of public concern. If it does, the dispositive question is whether a reasonable factfinder could conclude that the statement implies an assertion of objective fact. In order to resolve that second question, the court adopted the Ninth Circuit's three-part "totality of the circumstances" framework, which analyzes (1) whether the general tenor of the entire work negates the impression that the defendant was asserting an objective fact; (2) whether the defendant used figurative or hyperbolic language that negates that impression; and (3) whether the statement in question is susceptible of being proved true or false.

In this case, there was no dispute that Liles's statements involved matters of public concern. His statements were posted on a publicly accessible website and the content of his review related to matters of general public interest. The next question was whether

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Is a City Employee Immune from Liability under Oregon's Public Use of Land's Act?

case in point...

a reasonable factfinder could interpret Liles's statements as implying assertions of objective fact. According to the court, the general tenor of Liles's review, beginning with the word "Disaster," was that, in his subjective opinion, the services were grossly inadequate and that the business was poorly operated. His review reflected his personal and subjective impressions and reactions as a guest, which negated the impression that Liles was asserting objective facts. Additionally, the court determined that several of Liles's statements could be characterized as hyperbolic and exaggerative which further negated any impression that he was asserting objective facts.

Finally, the court considered whether Liles's review was susceptible to being proved true or false. The court found that his statements generally reflected a strong personal viewpoint as a guest of a wedding venue. Furthermore, his statement regarding Neumann keeping the \$500 deposit was explicitly prefaced with the words "in my opinion," alerting the reader that what followed was a subjective viewpoint. While that alone would not insulate an otherwise factual assertion from liability, the fact that Liles was merely a guest at the wedding and presumably did not pay the deposit, his speculation that Neumann would keep the deposit is not susceptible to being proved true or false.

The court found that Liles's review was an expression of opinion on matters of public concern which is protected under the First Amendment. The court concluded that the trial court did not err in dismissing Neumann's claim. This case is important in its likely effect on determining whether certain statements provided on various websites or in the social

media realm will be afforded First Amendment protection.

The decision of the Court of Appeals was reversed and remanded. The decision of the trial court dismissing Neumann's defamation claim was affirmed.

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