

GRACE V. EBAY, INC.

16 Cal. Rptr. 3d 192 (Ct. App.), cert. granted, 19 Cal. Rptr. 3d 824, and dismissing review, 21 Cal. Rptr. 3d 611 (2004)

A California court of appeal held that the Communications Decency Act (CDA), 47 U.S.C. § 230, does not provide immunity against liability for a distributor of information who knew or had reason to know that the information was defamatory. In this case, however, a written release in the user agreement between the defendant and plaintiff relieved the defendant of liability.

Roger Grace purchased several items from another individual through eBay's online auction service. A dispute arose between Grace and the seller, which resulted in the seller posting negative feedback about Grace on eBay's site. Other users of the site could view the posted comments. Grace notified eBay that the comments were defamatory, but eBay did not remove them. Grace brought suit for libel and unfair competition, contending that eBay was not immunized against liability for libel under § 230 of the CDA because eBay was not a "provider or user of an interactive computer service" within the meaning of that section.

Section 230 states that 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. The court found that eBay was not an interactive computer service provider for the purpose of the statute but was, as a website operator, a user. Nonetheless, this definition did not itself relieve eBay of liability. The court turned to the common law distinction between a primary publisher and a distributor, and found eBay to be the latter. Under common law, a distributor is liable where he knows or has reason to know that the content he distributes is defamatory—and, the court concluded, Congress did not intend to preclude traditional distributor's liability in the CDA's safe harbor. In its reasoning, the court rejected a line of cases in the Fourth Circuit, including *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997).

Despite the above findings, the court did not hold eBay liable for defamation because the written release in the user agreement between eBay and Grace relieved eBay of liability for claims arising from disputes with other users.

(This case may not be cited.)