

Internet opens door to free speech that can get expensive

209

27

1

4

4

4



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(Photo: azcentral)

Sherry Petta did not like the results of two surgeries to reshape her nose and a laser procedure to smooth her face more than six years ago.

The 51-year-old Scottsdale businesswoman and jazz-piano entertainer was so angry that she posted remarks on consumer websites to complain about her rhinoplasty and treatment at the Desert Palm Surgical Group, a Scottsdale practice of Dr. Albert Carlotti and Dr. Michelle Cabret-Carlotti.

The Carlottis' attorneys filed a defamation complaint and won a \$12 million judgment in 2011 against Petta, who has since lost her home and filed for bankruptcy as she struggles to pay her debt.

"My life and emotions have been turned upside down," Petta said in a recent interview.

She is appealing the Maricopa County Superior Court jury verdict, asserting that truth is a defense for her comments and that the Carlottis did not prove the more-than-\$1 million loss of income they claimed was the result of Petta's online complaints.

"I'm volunteering now for a dog-rescue group, working 30 to 40 hours," said Petta, who previously had a business selling promotional products. "There is no point in doing a lot of work since my pay is taken from me."

Petta's case is an extreme example of defamation cases that have surfaced in the digital age as websites give consumers a chance to share their often-anonymous complaints to a wider audience. The online posts, sometimes accurate and sometimes false and defamatory, have put businesses, doctors and other professionals in a harsh and unwelcome spotlight.

Attorneys are finding no shortage of plaintiffs and defendants in defamation cases as the courts struggle to balance free-speech rights with legal protections from false claims.

The Valley, with ties to a number of controversial websites, is at ground zero of this shifting legal landscape.

Ripoff Report is based in Tempe and the Dirty started as DirtyScottsdale.com in 2007.

The Dirty gossip site was on the losing end of a \$338,000 defamation judgment in Kentucky last year in federal court that is under appeal.

San Francisco-based Yelp, a consumer-review site at the center of a closely watched Virginia case, has a presence here with several hundred employees at its downtown Scottsdale office.

Plus, the top domain-name registrar, GoDaddy, is based in Scottsdale.

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Icons representing various roles: a person with a heart, a person with a headset, a person with a magnifying glass, a person with a gear, and a person with a speech bubble.

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For legal purposes, a website exists where it is registered. That allows attorneys to file claims here against unknown defendants if GoDaddy is the registrar for a website that included a defamatory post.

GoDaddy requires a court order to provide information about an anonymous person posting on a website that it hosts.

"If Delaware is the capital of corporate law, then Arizona is the new capital of Internet law," said Jordan Rose of the Rose Law Group in Scottsdale.

Christopher Ingle and Logan Elia, who developed a specialty in Internet-related defamation cases, cyberpiracy and cybersquatting over the past three years, joined the Rose Law Group in January to further develop that niche.

They specialize in finding the identity of people who make false allegations and typically can get search engines like Google and Microsoft to de-index or remove links to defamatory statements, Ingle said.

"You can do a lot of damage with the Internet," he said.

Ingle is working with Matthew Kelly and Kevin McCoy to represent the Carlottis and Desert Palm Surgical Group on Petta's appeal of the 2011 jury verdict.

Attorney Ryan Lorenz of Clark Hill, representing Petta, said the case is set for oral arguments before a three-judge panel of the Arizona Court of Appeals. Petta's comments about the Carlottis are either true or legally protected opinions, Lorenz said.

Cases settled out of court

Not all defamation cases are as involved as Petta's.

In many instances, a defamation defendant will admit that his or her Internet post was false in an out-of-court settlement, Ingle said. That stipulation allows the attorney to get a court order that he or she can use to request that Google and Microsoft, which runs the Bing and Yahoo search engines, no longer link to a defamatory post.

Ingle said in most cases, Google and Microsoft will de-index the post and the defamatory comments no longer will come up in searches.

However, the website that hosted the comments is not required to remove the posts.

Section 230 of the Communications Decency Act of 1996 protects website publishers from defamation claims for comments made by others on their sites, and they are not required to remove the posts.

In an October 2013 case, three former employees of Natural Health Research Inc. made false claims against the company on Ripoff Report.

Ingle sued on behalf of Natural Health, operating as the Diet Doc, and won a default judgment in March against the defendants.

Those garden-variety defamation cases do not bring financial windfalls.

"I tell my clients this is not going to be a claim where you're going to get a lot of money in a judgment," said Ingle, adding that the point is to restore the plaintiff's reputation and eliminate links to the offensive comments in search engines.

The comments still will be found on sites such as the Ripoff Report.

Ripoff Report is operated by Fountain Hills resident Ed Magedson, who said more

than 3 million consumer complaints have been posted over the past 16 years on his site.

"The biggest and best thing (about Ripoff Report) is that consumers have a way to speak out," Magedson said. "It used to be buyer beware, but in the 21st century, it's seller beware."

Magedson is a lightning rod for complaints from businesses and individuals targeted in Ripoff Report postings. He has been widely vilified and seems to relish his role as an antagonist.

"Do consumers lie sometimes? Yes. Do businesses lie?" Magedson said. "The truth is probably somewhere in between."

Ingle, who has often tangled with Magedson and his attorneys, calls Ripoff Report a "defamation engine."

Others have alleged that Magedson uses Ripoff Report to force businesses to pay him for favorable treatment on his site.

He denies those allegations, saying that businesses have offered him \$500 to \$50,000 to remove one report.

"That's nice in theory, but it's just not the way the site works," Magedson said.

Xcentric Ventures LLC, the parent company of Ripoff Report, makes its money from advertising, a corporate advocacy program and an arbitration service it offers, said Maria Speth, Magedson's attorney.

Ripoff Report investigates the business practices of companies that pay for the corporate advocacy program and works to try to resolve consumer complaints with the companies, Speth said.

Companies that opt for arbitration agree to pay \$2,000. Half of that fee goes to the independent arbitrator, who reviews the veracity of the Ripoff Report complaints that were posted, she said.

If there are false statements, only those remarks are removed from the site; the rest of the post is left intact, Speth explained.

Business practices questioned

Paul Levy, an attorney for Public Citizen, a non-profit group that does not accept corporate or government funding, questions the validity of the corporate responsibility programs offered by sites such as Ripoff Report and Pissed Consumer.

They claim to analyze a company's business practices, but it appears they just bury the online criticism with an abundance of praise, Levy said.

"Many of these (consumer sites) are within their rights. Others are sleazy," he said. "I have to admit I'm skeptical."

Levy is representing Yelp in a 2012 Virginia case involving seven anonymous reviews that were critical of Hadeed Carpet Cleaning Inc.

Owner Joe Hadeed checked his customer database and could not match them with the negative reviewers that posted on Yelp. Hadeed asked the court to force Yelp to disclose the identity of the anonymous reviewers.

Both a lower court and Virginia Court of Appeals ordered Yelp to disclose the

identities of the reviewers. That ruling has been appealed to the Virginia Supreme Court.

Levy said the First Amendment protects anonymous speech and Hadeed has not presented enough evidence to overturn those protections, which are in place to prevent retaliation.

He said he has spoken with four of the seven anonymous reviewers and they are legitimate customers with legitimate complaints against Hadeed.

"Hadeed is seizing on the controversy to amplify his extortion claim against Yelp," Levy said.

Yelp has been accused of strong-arming businesses to advertise on Yelp or expect a slew of negative reviews.

The Federal Trade Commission disclosed last month that it received 2,046 complaints about Yelp in the previous five years. The complaint information was released in response to a *Wall Street Journal* Freedom of Information Act request.

Yelp had an average of 102 million unique, monthly visitors in the first quarter of 2013, and its contributors have posted 39 million local business reviews, according to court records.

"I don't see any substantial basis that Yelp is engaged in extortion," Levy said.

It's unclear when the Virginia Supreme Court will hold a hearing on the case, he said.

Cheerleader wins judgment

In the case of the Dirty, a federal district court in Kentucky denied editor Nik Richie's immunity claim under the Communication Decency Act. The court ruled that the Dirty encouraged defamatory content.

Richie, a former Scottsdale resident now living in Orange County, Calif., added his own comment to a post about a Cincinnati Bengals cheerleader, who was also a high-school teacher.

One of the posts said the cheerleader had slept with all of the Bengals players and another said she likely had two sexually transmitted diseases.

Richie's comment was: "Why are high school teachers freaks in the sack?"

Judge William Bertelsman allowed the case to go forward. In his ruling, he wrote: "These postings and others like them were invited and encouraged by the defendants by using the name 'Dirty.com' for the website and inciting the viewers of the site to form a loose organization dubbed 'the Dirty Army,' which was urged to have 'a war mentality' against anyone who dared to object to having their character assassinated."

The Electronic Freedom Foundation and other free-speech advocates filed an amicus brief supporting the Dirty's appeal.

"In short, since 1996 the law has been very clear: Website owners are not legally responsible for content posted by their users," said David Gingras, a Phoenix attorney representing the Dirty. "In our case, the trial judge said that this protection will be lost if a website owner does anything to screen or review content from users."

The appeal is scheduled to be heard May 1 in Cincinnati with a decision likely in a few months, he said.

Meanwhile, no date has been set on Petta's appeal of her \$12 million judgment from 2011 that included \$1 million in punitive damages.

 209
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