

Court puts online reviewers in Oregon on notice

Supreme Court declines to offer ordinary people higher media protection from libel suits

By ZANE SPARLING
The Oregonian

SALEM — Merchants irked by online reviews will still have an open lane to file libel lawsuits against their critics, the Oregon Supreme Court signaled, while media organizations will remain relatively secure against such defamation claims.

In a closely watched ruling, the state's highest court declined to extend certain free speech protections available to the media to ordinary people, batting down arguments that anyone with an internet connection and an opinion now acts as a journalist.

While the Thursday, June 23, decision has broader implications, the case at hand stems from a Jackson County Circuit Court lawsuit between dueling piano stores in Medford.

In 2013, Piano Studio and Showcase owner Tom Lowell sued competitor Artistic Piano after its general manager, Matthew Wright, allegedly posted a phony review on Google claiming the Piano Studio store "smelled like grandma's attic" and that the business "can't be trusted," according to court records.

Circuit Judge Dan Bunch found in favor of Artistic Piano without a trial in 2016, noting the online review had been deleted before it could be documented and saying he couldn't issue a ruling without an exact copy.

Lowell appealed and won, sending the case to the Oregon Supreme Court.

Free speech advocates hoped the state's high court would seize the opportunity to change Oregon law, which currently offers separate, tougher standards to prove defamation suits against the media. Successful cases against the media must show "actual malice" — that a falsehood was published on purpose or with reckless disregard for the truth.

Libel suits filed against a regular person can succeed merely if the statements are proven untruthful.

Oregon's double standard is out of step with the law in most other states, said Lewis & Clark law professor emeritus William Funk, as well as the interpretation in federal court in Oregon, which makes no distinction between media and non-media writers.

"If you file a libel suit in a federal court in Oregon, then you will get a different constitutional decision than if you file in Oregon state court, which just doesn't make any sense," Funk said.

The U.S. Supreme Court, however, hasn't ruled definitively on the matter.

Funk joined two other Oregon law professors, the Electronic Frontier Foundation, UCLA law professor Eugene Volokh and appellate lawyer Howard Bashman in a friend of the court brief seeking to extend the "actual malice" standard to all defamation cases on topics of public concern.

Justice Pro Tempore Lynn Nakamoto declined to do so.

"Plaintiff will not be subject to a heightened proof-of-fault requirement ... that applies to media defendants in defamation cases," Nakamoto wrote.

The justice acknowledged the criticism, but said the case "did not offer an opportunity for careful examination" of the fine line between web users and institutional journalists.

"(We cannot) destabilize over 40 years of precedent on the strength of a few hypotheticals and some abstract concerns about modernity," she wrote.

Nakamoto returned the case to the lower court, saying the exact text of the review wasn't necessary to proceed. In a separate opinion, Justices Thomas Balmer and Christopher Garrett said they would overturn the double standard.

Lowell, 68, said he was pleased the court had seen the distinction between journalistic commentary and what he called a "cyber-smear" campaign by a rival.

"How could letting people get away with publicizing false facts be in the public interest?" he said.

A lawyer for Artistic Piano didn't respond to a request for comment.

The Oregon Supreme Court in 2016 previously sided with a consumer who wrote a scathing online review of a wedding venue, but only after determining the man had posted his negative opinions, not assertions of fact.

A reason for OPTIMISM

Wallowa County businesses see promise of rebound during tourism season



Bill Bradshaw/Wallowa County Chieftain

Customers enjoy the outdoor seating Thursday, July 7, 2022, at the Outlaw Restaurant in Joseph. The Outlaw is one business that has had a hard time finding enough employees to serve all the customers who show up.

By BILL BRADSHAW • Wallowa County Chieftain

WALLOWA COUNTY — As the tourism season ramps up in the wake of two years of difficulties caused by the COVID-19 pandemic, business owners and others are feeling optimistic — for the most part.

"The sentiment does seem to be optimistic," said Jennifer Piper, executive director of the Wallowa County Chamber of Commerce, Enterprise.

Jude Graham, of the Joseph Chamber of Commerce, agreed. "I think everybody's optimistic," she said. "The tourists that are coming through are having a great time. They're excited about traveling again and the businesses are excited about the summer."

Mike Lockhart, who is both a business owner — of the Wallowa Lake Tramway — and a representative of the Wallowa Lake Tourism Association, was cautiously optimistic.

"It's really hard to say because we're dealing with so many negative variables," he said.

He said for the tram, the big thing is the weather. If it's cloudy or smoky, visibility is down and people can't get a good view from the top of Mount Howard. But he's optimistic it will improve.

He said tourist accommodations are doing well and visitors are staying longer.

"That may be because of the price of gas, but I really don't know,"

he said. "There's so many things screwed-up but it's really hard to tell."

One of the challenges business owners face is a lack of employees. During the pandemic, state and federal unemployment insurance allowed people to take time off from work.

"A lot of people quit the labor force for the couch," Lockhart said. "Other people had good reason to quit, such as approaching retirement age. This just accelerated it somewhat."

He noted that from personal observation, many local youths don't seem to be working.

"But I really don't know what's causing trouble with the labor force," he said.

Scott Rushton, co-owner of the Outlaw Restaurant, Joseph, said the lack of employees is hurting his business.

"The business is there but there's just no employees because of all the government money they've been given. Nobody wants to work," he said, adding that he's open only half days as a result and hasn't opened his ice cream stand. "People are showing up even though the gas prices are high."

He said he is aware of other

businesses experiencing the same problem.

Graham agreed that the government's answer to the pandemic of infusing communities with more money didn't really help.

"I think it hurt," she said. "There's a lot of businesses looking for employees and they're on government assistance. Some of that money was spent out of the county."

Piper noted that in addition to the labor problems, the weather has been a challenge this year. Although last year saw much heat and smoke from wildfires, the rainy spring and cloudy weather experienced this year have been a challenge.

While the dire fears many business owners expressed when the government shut down businesses at the start of the pandemic in 2020 for the most part didn't materialize, other challenges such as the labor shortage has.

"The challenges were not so much lack of business or a lack of customers," Piper said. "The challenges (now are a) lack of staffing that businesses are still facing. It is still a big challenge."

Just the same, most interviewed were hopeful the tourist season now underway will be at the very least a "leveling out this summer," as Piper said.

Lockhart said from what he's heard, restaurants and lodging establishments are doing well.

"I look forward to the summer and I'm very optimistic that it'll be a great one," Graham said.

COVID-19 business fines going uncollected

Oregon struggles to collect amid appeals, paperwork

By JAMIE GOLDBERG
The Oregonian

SALEM — State workplace safety officials have issued at least 48 fines totaling more than \$900,000 since the start of the pandemic to Oregon businesses they say intentionally violated COVID-19 safety restrictions.

But those employers have ponied up only about \$15,000 so far — totaling less than 1.7% of the amount



Samantha Swindler/The Oregonian, File

Courthouse Club Fitness in Keizer, a Salem-based gym chain, reportedly was issued five citations by the Oregon Occupational Safety and Health Division for violating COVID-19 safety restrictions.

they were collectively fined.

The situation illustrates the challenges that Ore-

gon's workplace safety agency has navigated as it has tried to hold employers

accountable and the limitations it has faced in trying to ensure compliance during an unprecedented pandemic.

The Oregon Occupational Safety and Health Division received an onslaught of complaints — more than 31,000 in total — related to COVID-19 in a little more than two years. In comparison, the agency, which has 85 enforcement officers and a \$13.4 million enforcement budget, usually responds to about 2,000 complaints a year. Known as Oregon OSHA, the agency responded to those complaints by doing roughly 750

See, **Fines**/Page B6