

Yelp! Negative Online Consumer Review Protected as Opinion, Not Actionable Libel

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We have discussed [here](#) before new federal legislative protections that are in place to give consumers wide latitude to post online reviews of businesses, whether they be good or bad. A recent decision of the Appellate Division of the Supreme Court of New York in Crescendo Designs, Ltd. v. Reses, provides additional protection for online consumer

reviews, confirming that a negative online consumer review can be a protected opinion, rather than unlawful libel.

Crescendo Designs, a custom home theater system installation business, installed an expensive system in Reses' beach home. Dissatisfied with the results when she claimed the system failed and Crescendo didn't come back quickly enough to resolve the problem, Reses posted a negative review of the system and the services she received on Yelp.com. In her review, she described what went wrong and commented "Terrible service if something goes wrong!". Crescendo Designs filed a lawsuit claiming, among other things, that the online review constituted libel, i.e., a published statement of fact that was false and damaging to its reputation. The Supreme Court, Suffolk County granted Reses' motion to dismiss and Crescendo Designs appealed.

On appeal, the Appellate Division confirmed the lower court's finding that the Yelp website review was not actionable as libel, because the review was an expression of opinion by a dissatisfied customer, rather than a published assertion of fact, which is required to maintain a libel claim. It held that "[r]ather than sifting through a communication for the purpose of isolating and identifying assertions of fact," the courts should "consider the content of the communication as a whole," and "look to the over-all context in which the assertions were made" to determine "whether the reasonable reader would have believed that the challenged statements were conveying facts about the libel plaintiff." Taking into account the context in which the review was made and viewing the content of the review as a whole, the court found that "a reasonable reader would have believed that the writer of the review was a dissatisfied customer who utilized the Yelp website to express an opinion."

Yelp reviews have not always been held to be protected expressions of opinion. For example, a Staten Island court in Technovate v Fanelli awarded \$1,000 in damages to a floor refinishing business against a consumer based on her Yelp review, which contained words such as "scam," "con artist" and "robs," finding that the review crossed the line from opinion to libel. As with libel claims asserted against traditional publications, an online review will not be shielded from liability if it contains statements of fact or a combination of fact and opinion deemed to be false and injurious.