

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DAVID RODRIGUEZ,

Plaintiff,

v.

CASE NO: 8:19-CV-1290-T-30SPF

OFFERUP, INC. and JOHN DOE,

Defendants.

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ORDER

THIS CAUSE comes before the Court upon Defendant OfferUp Inc.’s Motion to Dismiss (Dkt. 22) and Plaintiff’s Renewed Motion to Amend Complaint to Add Non-Diverse Defendants and Concurrent Motion for Remand to State Court (Dkt. 37). Upon review of these motions and the respective responses/replies, the Court concludes that Plaintiff’s motion to amend to add non-diverse defendants should be denied.¹ The Court also concludes that Defendant’s motion to dismiss should be granted and this action should be dismissed with prejudice because Plaintiff’s claims against OfferUp are statutorily barred pursuant to Section 230 of the Communications Decency Act.

¹ The Court rules on Plaintiff’s motion first because it impacts the Court’s subject matter jurisdiction over this action.

BACKGROUND

Plaintiff David Rodriguez filed the instant action against Defendants OfferUp, Inc. and John Doe in Florida state court on or about April 4, 2019. The complaint alleges claims of negligence and fraud against OfferUp and claims of assault and battery against John Doe. The crux of the claims against OfferUp is that OfferUp permitted a third party (i.e., John Doe) to post an advertisement on OfferUp's website that lured Rodriguez to a location where he was robbed and shot.

On May 29, 2019, OfferUp removed the case to this Court based on diversity jurisdiction. On July 8, 2019, OfferUp filed a motion to dismiss. OfferUp argues that it is immune from the negligence and fraud claims pursuant to the Communications Decency Act because the claims seek to hold OfferUp liable for its publishing, editorial, and/or screening capacities.

On July 29, 2019, Rodriguez filed a motion to amend the complaint to add a claim against "Sheila and Ramarius Woodie." The joinder of these parties would destroy diversity jurisdiction and require remand of the action to state court. Based on the Court's review of the proposed amended complaint, the actual claim against these parties is unclear. Rodriguez states that these Defendants owned the premises and "knew or should have known" of John Doe's "true intentions" of using their premises for the "specific purpose of robbing and ultimately injuring Plaintiff." (Dkt. 37-1).

As discussed below, Rodriguez's motion to amend is without merit. As such, the Court denies the motion and retains jurisdiction over this case. The Court will discuss the motion to amend first and then the Court will turn to OfferUp's motion to dismiss.

DISCUSSION

I. Rodriguez's Motion to Amend and Remand

When a plaintiff seeks to join a non-diverse defendant *after* a case has been removed, the analysis begins with 28 U.S.C. § 1447(e), rather than the liberal amendment standard of Rule 15 of the Federal Rules of Civil Procedure. *See Henry v. K-Mart Corp.*, No. 8:10-cv-2105-T-33MAP, 2010 WL 5113558, at *1-*2 (M.D. Fla. Dec. 9, 2010) (citing *Ingram v. CSX Transp., Inc.*, 146 F.3d 858, 862 (11th Cir. 1998)). Under Section 1447(e), a district court has the following discretion: “If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to State court.” 28 U.S.C. § 1447(e).

Section 1447(e) requires an evaluation of the following factors when considering a request to add a non-diverse defendant: “(1) the extent to which the purpose of the amendment is to defeat federal jurisdiction; (2) whether the plaintiff has been dilatory in asking for the amendment; (3) whether the plaintiff will be significantly injured if the amendment is not allowed; and (4) any other factors bearing on the equities.” *Henry*, 2010 WL 5113558, at *1-*2 (citing *Hensgens v. Deere & Co.*, 833 F.2d 1179, 1182 (5th Cir. 1987)). The Court’s review of these factors makes clear that Rodriguez’s request to amend to add Sheila and Ramarius Woodie (the “Woodies”) must be denied.

The timing of Rodriguez’s motion suggests that the purpose of the requested amendment is to defeat federal diversity jurisdiction. Rodriguez did not seek to amend the complaint to add the Woodies until *after* this case was removed and *after* OfferUp filed a

dispositive motion to dismiss on the merits of the claims.

Related to the timing of Rodriguez's motion, the Court also determines that Rodriguez has been dilatory in his request to amend the complaint. The Court sees no valid reason for Rodriguez's failure to add the Woodies as defendants at or shortly after the commencement of this suit. Indeed, Rodriguez has been aware of the property's address since before his injury more than one year ago, and his original complaint did not allege any claim against the property owners or reference the Woodies at all (even as John and Jane Doe defendants). Notably, Rodriguez had sufficient time to learn the identity of the property owners.

Finally, the proposed amended complaint is legally deficient as it pertains to the Woodies because it is entirely unclear what legal claim Rodriguez is asserting against them. The body of the proposed amended complaint merely establishes the Woodies as property owners, which, standing alone, is insufficient to hold them liable for Rodriguez's injuries.

In sum, the Court concludes that the purpose of Rodriguez's proposed amendment is to defeat federal jurisdiction. The Court also concludes that the proposed amended complaint is futile because it does not state a valid claim against the Woodies.² Accordingly, the Court denies Rodriguez's motion to amend.

II. OfferUp's Motion to Dismiss

OfferUp argues that Section 230 of the Communications Decency Act ("CDA") bars Rodriguez's negligence and fraud claims. The Court agrees based on a reading of the

² Of course, Rodriguez may still file a separate action against the Woodies in state court if he believes he has a valid claim against them. As OfferUp points out, the claims against OfferUp and John Doe are unrelated to the purported claim against the Woodies. So Rodriguez suffers no injury if he chooses to pursue claims against the Woodies in a separate suit.

complaint. Notably, the Court assumes the truth of the allegations at this stage. According to the complaint, OfferUp “owns, operates and distributes a website and similarly owns, operates and distributes a mobile application.” (Dkt. 1-1 at ¶5). John Doe created a “Seller Account” with the email/username BMW3GSXR750@gmail.com and a phone number. OfferUp “represents on its website and application that it is building a ‘local marketplace’ where the well-being of buyers and sellers comes first.” *Id.* at ¶7. “Through the use of its website and application, OfferUp makes this ‘local marketplace’ available to enable users of its website and application to locally buy and sell goods.” *Id.* at ¶8.

On June 13, 2018, Rodriguez used the OfferUp application to purchase goods. This same day John Doe purported to sell goods listed through OfferUp that Rodriguez was interested in purchasing. “Through the use of the OfferUp application, John Doe persuaded [Rodriguez] to meet in Palmetto, Manatee County, Florida, to consummate the contemplated sale of goods.” *Id.* at ¶19. When Rodriguez arrived at the location, John Doe shot Rodriguez multiple times and robbed him.

The negligence claim against OfferUp alleges that OfferUp failed to warn Rodriguez that users of the OfferUp website may attract criminals, “who could remain anonymous, to prey upon innocent users such as [Rodriguez], as OfferUp failed to require proper identification and registration of users so that criminal activities could be deterred and/or detected.” The fraud claim asserts that OfferUp materially represented that its website was “safe for the consummation of sales transactions.” *Id.* at 32.

At its core, the CDA “bars lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish,

withdraw, postpone or alter content.” *Mezey v. Twitter, Inc.*, No. 1:18-CV-21069-KMM, 2018 WL 5306769, at *1 (S.D. Fla. July 19, 2018) (quoting *Fed. Trade Comm’n v. LeadClick Media, LLC*, 838 F.3d 158, 174–75 (2d Cir. 2016) (internal citation omitted)). The CDA states that “[n]o provider or user of interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). “The majority of ‘federal circuits have interpreted the CDA to establish broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.’” *Roca Labs, Inc. V. Consumer Opinion Corp.*, 140 F. Supp. 3d 1311, 1319 (M.D. Fla. 2015) (quoting *Almeida v. Amazon.com, Inc.* 456 F.3d 1316, 1321 (11th Cir. 2006)).

“The CDA bars a plaintiff’s claims when (1) defendant is a provider or user of an interactive computer service; (2) the relevant content contains information provided by another information content provider; and (3) the complaint seeks to hold defendant liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content.” *Mezey*, 2018 WL 5306769, at *1 (citing *Bennett v. Google, LLC*, 882 F.3d 1163, 1166 (D.C. Cir. 2018) (citing 47 U.S.C. § 230(f)(3))).

Applying this three-part test, the Court concludes that the CDA bars Rodriguez’s claims. First, OfferUp provides “interactive computer services” under Section 230. Per the complaint, OfferUp is an online “local marketplace” available to enable users of its website and application to locally buy and sell goods. *See* 47 U.S.C. § 230(f)(2) (defining interactive computer service as “any information service, system, or access software provider that

provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet”); *Roca Labs*, 140 F. Supp. 3d at 1318 (“Websites that allow third parties to make posts regarding a product or service, regardless of whether the post is made anonymously or under a pseudonym, have been held to be interactive computer services.”).

Second, both of Rodriguez’s claims stem from John Doe’s listing of goods on OfferUp’s mobile application. The complaint alleges that John Doe persuaded Rodriguez to meet him through the use of the OfferUp application.

Third, the allegations reflect that Rodriguez seeks to hold OfferUp liable for the content that John Doe listed, as if OfferUp were the publisher or speaker of John Doe’s listing. Rodriguez attempts to plead around the fact that he is trying to hold OfferUp responsible for content published by its users by asserting failure to warn and fraud claims. Courts in other jurisdictions have addressed this artful pleading tactic and explained why it also fails under the CDA if the warning is about user-generated content because it still goes to the heart of “publishing functions.” See *Herrick v. Grindr LLC*, 765 F. App’x 586, 591 (2d Cir. 2019) (“Herrick’s failure to warn claim is inextricably linked to Grindr’s alleged failure to edit, monitor, or remove the offensive content provided by his ex-boyfriend; accordingly, it is barred by § 230.”); *Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843, 849 (W.D.Tex. 2007), aff’d 528 F.3d 413, 419–20 (5th Cir. 2008) (“The Court, however, finds this artful pleading to be disingenuous. It is quite obvious the underlying basis of Plaintiffs’ claims is that, through postings on MySpace, Pete Solis and Julie Doe met and exchanged personal information which eventually led to an in-person meeting and the sexual assault of

Julie Doe. If MySpace had not published communications between Julie Doe and Solis, including personal contact information, Plaintiffs assert they never would have met and the sexual assault never would have occurred. No matter how artfully Plaintiffs seek to plead their claims, the Court views Plaintiffs' claims as directed toward MySpace in its publishing, editorial, and/or screening capacities."); *Lee v. OfferUp, Inc.*, No. CV 17-1609, 2018 WL 4283371, at *4 (E.D. La. Sept. 7, 2018) ("Lee alleges that OfferUp is liable for negligence because it allowed third-parties to post an advertisement on OfferUp's app, which is a website, that lured Lee to a location where he was allegedly robbed and shot. Essentially, Lee alleges that if OfferUp had not published the advertisement, he would not have gone to the meeting with the third-parties and would not have been harmed. Lee's complaint seeks to hold OfferUp liable for its publishing, editorial, and/or screening capacities, which is barred by the CDA."); *see also Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 20-21 (1st Cir. 2016) (noting that decisions regarding the "structure and operation of [a] website"—such as "permitt[ing] users to register under multiple screen names" and other decisions regarding "features that are part and parcel of the overall design and operation of the website"—"reflect choices about what content can appear on the website and in what form" and thus "fall within the purview of traditional publisher functions.").

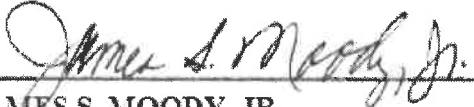
In sum, Rodriguez's claims are barred because "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with" the CDA. 47 U.S.C. § 230(e)(3). Courts construe the CDA broadly and apply it to all cases arising from a website's publication of content generated by the website's users. *MySpace*, 528 F.3d at 418 (citations omitted). A person who is harmed by a website's publication of

user-generated content may sue the third-party user who provided the content, “but not the interactive computer service that enabled them to publish the content online.” *Id.* at 419. Accordingly, the Court must grant OfferUp’s motion to dismiss and dismiss the complaint with prejudice.

It is therefore **ORDERED and ADJUDGED** that:

1. Plaintiff’s Renewed Motion to Amend Complaint to Add Non-Diverse Defendants and Concurrent Motion for Remand to State Court (Dkt. 37) is denied.
2. Defendant OfferUp Inc.’s Motion to Dismiss (Dkt. 22) is granted.
3. The Complaint is dismissed with prejudice because the claims are barred by Section 230 of the Communications Decency Act.
4. The Clerk of Court is directed to close this case and terminate any pending motions as moot.

DONE and ORDERED in Tampa, Florida on August 29, 2019.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record