United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Amy J. St. Eve	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	06 C 657	DATE	1/10/2007
CASE TITLE	Chicago Lawyers' Committee vs. Craigslist		

DOCKET ENTRY TEXT

MOTION by Plaintiff Chicago Lawyers' Committee for Civil Rights Under Law, Inc. to amend/correct [52] is denied.

■[For further details see text below.] Notices mailed by Judicial staff.

STATEMENT

Plaintiff Chicago Lawyers' Committee for Civil Rights Under Law, Inc. ("CLC") has moved pursuant to Fed. R. Civ. P. 59(e) to alter or amend the judgment that the Court entered in favor of Defendant Craigslist.com ("Craigslist") on November 14, 2006. After reviewing and analyzing substantial briefing by the parties and *amici*, the Court held that Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. §230, barred the CLC's Fair Housing Act ("FHA") claim. Finding that CLC has not presented any valid basis for relief under Rule 59(e), the Court denies the CLC's motion.

BACKGROUND

The Court held in the underlying opinion that Section 230(c)(1) – which states that "[n]o 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," 47 U.S.C. §230(c)(1) – barred CLC's claim under Section 3604(c) of FHA because that claim, if successful, would treat Craigslist, a provider of an ICS, as a publisher of discriminatory housing notices originating from third parties. *See* 42 U.S.C. §3604(c) (making it unlawful "makes it unlawful: [t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination"). The Court further determined that Section 230(c)(1) barred CLC's claim notwithstanding the fact that Section 3604(c) of the FHA proscribes "making" and "printing," as well as "publishing," discriminatory housing notices. *See Chicago Lawyers' Comm. For Civil Rights Under The Law, Inc. v. Craigslist, Inc.*, __ F. Supp. 2d __, 2006 WL 3307439, *14 n.18 (N.D. Ill. Nov. 14, 2006) ("The Complaint cannot state a claim for relief under Section 3604(c) because, even when viewed in the most favorable light, Craigslist has not made or printed the notices at issue. Craigslist did not 'make' the notices because they originated from users of Craigslist's

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website, (R. 1-1, Pl.'s Compl. at ¶¶ 7-14), and it did not 'print' them within any reasonable interpretation of that word, as defined when Congress enacted the FHA." (citing *Sanders v. Jackson*, 209 F.3d 998, 1000 (7th Cir. 2000))).

LEGAL STANDARD

Rule 59(e) permits parties to file, within ten days of the entry of judgment, a motion to alter or amend the judgment. *See* Fed. R .Civ. P. 59(e). Motions under Rule 59(e) serve the limited function of allowing the Court to correct manifest errors of law or fact or consider newly discovered material evidence. *See County of McHenry v. Insurance Co. of the West*, 438 F.3d 813, 819 (7th Cir. 2006). Rule 59(e) "does not provide a vehicle for a party to undo its own procedural failures" or "introduce new or advance arguments that could and should have been presented to the district court prior to the judgment." *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996); *see also Estremera v. United States*, 442 F.3d 580, 587 (7th Cir. 2006). Whether to grant a Rule 59(e) motion "is entrusted to the sound judgment of the district court." *Matter of Prince*, 85 F.3d 314, 324 (7th Cir. 1996); *see also Andrews v. E.I. Du Pont De Nemours & Co.*, 447 F.3d 510, 515 (7th Cir. 2006) (appellate court reviews denial of Rule 59(e) motion for abuse of discretion).

ANALYSIS

In urging reconsideration, CLC focuses on a point that it all but left to the wayside the first time around. Revisiting an "argument" it asserted in one sentence in a footnote (R. 16-1, Pl.'s Resp. at 27 n.19; *see also* R. 22-1, NFHA Amicus Br. at 11), CLC requests that the Court "reconsider its meager reading of the words 'to print' in Section 3604(c) of the Fair Housing Act" to include Craigslist's alleged conduct because "[t]he Supreme Court has long held that the Fair Housing Act should be interpreted liberally, to effectuate its important remedial purpose." (R. 52-1, Pl.'s Motion at ¶1.) CLC further argues that, regardless of the term's meaning in 1968 (when Congress enacted the FHA), the "Court should interpret the words 'to print' to include modern day forms of printing." Such an interpretation, CLC asserts, not only designates "the printing of text of paper, but [also] the act of making text visible to a reader." (R. 56-1, Pl.'s Reply at 4-5 (also asserting that "Craigslist has made the discriminatory preferences visible to a reader by displaying them on its website").)

CLC failed to develop this argument on the initial motion to dismiss, despite extensive briefing. This failure, alone, is reason to deny the current motion. *See Moro*, 91 F.3d at 876; *see also Estremera*, 442 F.3d at 587. CLS's argument fails on the merits regardless.

In support of their motion, CLC cites *In re Erickson*, 815 F.2d 1090, 1093 (7th Cir. 1987). In that case, the Seventh Circuit tackled the problem of how to apply obsolete statutory terms in the Wisconsin bankruptcy code to present day bankruptcies. The Wisconsin statute, which had been on the books since 1935, allowed farmers to exempt from judgment creditors one "mower" and one "hay loader" – implements that modern day farmers no longer used. The Seventh Circuit held that without construing the terms "mowers" and "hay loaders" to include new devices of different names, the purpose of the statute – to allow farmers to retain certain minimal equipment sufficient to operate a small farm – would be lost. *Id.* ("The problem in this case comes from the fact that technology has done more to change farm implements than the Wisconsin legislature has done to change §815.18(6) . . . The statutory list comprises the equipment that in 1935 would have kept a small farm in operation. But small farms now use a different set of equipment"; further noting that the court could not successfully apply "plain meaning" approach).

Here, the situation is different. First, Section 3604(c)'s language is not obsolete. Indeed, Craigslist's

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alleged conduct clearly would fall within the meaning of the term "to publish" in use when Congress enacted the FHA. That is to say, "publishing" then, as now, includes any act, whatever the technological means, that results in disseminating or divulging information to the public. *See, e.g., Webster's New Int'l Dictionary of the English Language, Unabridged* (2d Ed. 1947) (defining "publish" to mean, among other things: "1. To make public announcement of; to make known to people in general, to divulge; to disseminate; . . . 2. To make known . . . as by exposing or presenting to view . . ."). Yet, as the Court noted in its Opinion, "printing" is more limited than the term "publishing" because the former pertains only to a particular mechanical process used to produce the written word:

> "Print" [means]: 1. To press (a mark or design, for example) onto or into a surface. 2. To make an impression on or in (a surface) with a stamp, seal, die, or similar device. 3. To press (a stamp or similar device) onto or into a surface to leave a marking. 4. To produce by means of pressed type on a paper surface, with or as if with a printing press. 5. To offer in printed form; publish. 6. To write (something) in characters similar to those commonly used in print. 7. To impress firmly in the mind or memory. 8. To produce (a positive photograph) by passing light through a negative onto a sensitized paper").

The Am. Heritage Dictionary of the English Language (1st Ed. 1969). In any event, what is critical here is that, unlike in *Erickson*, the Court did not have to determine whether the FHA still applies to conduct that does not literally fall within that statute's language.

Instead, the Court faced the issue of whether it should stretch the old definition (which normally controls in statutory interpretation, *see Sanders*, 209 F.3d at 1000) of the term "to print" beyond its original meaning in order to bypass Section 230(c)(1)'s prohibition on treating ICSs as "publishers." As it determined in the first instance, the Court sees no reason to so extend the meaning of the term "to print," especially when doing so would have the effect of trumping a more-recent legislative enactment. *Erickson* does not demand that result, and CLC otherwise fails to demonstrate that the Court committed a manifest error of law. CLC's motion is denied.