[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-14125

D.C. Docket No. 2:17-cv-00566-MHT-SMD

CORAL RIDGE MINISTRIES MEDIA, INC.,
d.b.a.
D. James Kennedy Ministries,

Plaintiff - Appellant,

versus

AMAZON.COM, INC.,
SOUTHERN POVERTY LAW CENTER,
INC.,
AMAZONSMILE FOUNDATION,

Defendants - Appellees,

AMAZONSMILE FOUNDATION, INC.,
et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Alabama

(July 28, 2021)

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Before WILSON, GRANT, and TJOFLAT, Circuit Judges.

WILSON, Circuit Judge:

Coral Ridge Ministries Media (Coral Ridge), a Christian ministry and media corporation, appeals the district court's dismissal of its defamation claim against the Southern Poverty Law Center (SPLC) and religious discrimination claim against Amazon.com and the AmazonSmile Foundation (collectively, Amazon). Because we find that the district court did not err in dismissing this suit, we affirm.

I.

Amazon.com is the largest internet-based retailer in the world. AmazonSmile Foundation (AmazonSmile) is a tax-exempt corporation affiliated with Amazon.com. The AmazonSmile website allows customers to buy products as if they were using Amazon.com, but with every purchase Amazon will donate 0.5% of the price to an eligible charity selected by the customer. To be an eligible charity for the AmazonSmile program, an organization must be registered and in good standing with the Internal Revenue Service as a nonprofit organization under 26 U.S.C. § 501(c)(3); must agree to a Participation Agreement; and cannot "engage in, support, encourage, or promote intolerance, hate, terrorism, violence, money laundering, or other illegal activities." In relation to the last requirement, organizations that SPLC designates as hate groups are not eligible to participate in the AmazonSmile program. SPLC is an Alabama-based nonprofit organization

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that, among other things, publishes a "Hate Map"—a list of entities the organization has characterized as hate groups—on its website.[1] Coral Ridge applied to be an eligible charity for the AmazonSmile program, but Amazon denied its application because Coral Ridge is listed on the Hate Map as being anti-LGBTQ.[2]

Coral Ridge filed suit in the Middle District of Alabama, claiming, inter alia, that (1) SPLC defamed Coral Ridge by listing it on the Hate Map, and (2) Amazon violated Title II of the Civil Rights Act (Title II), 42 U.S.C. § 2000a et seq., by discriminating against it based on religion.[3] In its complaint, Coral Ridge acknowledged that it opposes homosexual conduct, but denied that it is a hate group. It rejected SPLC's definition of hate group and instead said that the commonly understood definition of the term was "groups that engage in violence and crime."[4] Coral Ridge asserted it did not fall within either this definition or SPLC's definition of the term. Additionally, Coral Ridge alleged that SPLC listed

[1] According to Coral Ridge's complaint, SPLC defines "hate groups" as organizations that have "beliefs or practices that attack or malign an entire class of people, typically for their immutable characteristics."
[2] LGBTQ is an acronym referring to lesbian, gay, bisexual, transgender, and queer people.
[3] Coral Ridge also brought claims against SPLC under the Lanham Act, 15 U.S.C. § 1125. The district court dismissed these claims and Coral Ridge does not appeal that dismissal. Additionally, Coral Ridge brought a negligence claim against Amazon. It concedes that this claim hinges on its Title II claim. Because we affirm the district court's dismissal of Coral Ridge's Title II claim, we do not address this negligence claim on appeal.
[4] On appeal, Coral Ridge puts forward a different definition that combines the definitions for "hate" and "group." Therefore, according to Coral Ridge a hate group is commonly understood as "a 'group' that 'hates.'"

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it on the Hate Map because of its religious beliefs about LGBTQ conduct. Therefore, according to Coral Ridge, a court could infer that Amazon discriminated against it by relying on the Hate Map. Both SPLC and Amazon moved to dismiss the suit under Federal Rule of Civil Procedure 12(b)(6).

In a thorough 141-page order, the district court dismissed the defamation claim on First Amendment grounds and dismissed the Title II claim primarily because it found that the AmazonSmile program was not covered by Title II in this instance. Alternatively, it held that Coral Ridge's interpretation of Title II created First Amendment problems. Finally, the district court found that Coral Ridge did not plausibly allege either intentional or disparate impact discrimination. It therefore dismissed Coral Ridge's suit in full.

II.

We review de novo a Rule 12(b)(6) dismissal for failure to state a claim upon which relief may be granted. *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 694 (11th Cir. 2016). We accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Id.* To survive a motion to dismiss, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is

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liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). We need not, however, accept as true a complaint's conclusory allegations or legal conclusions. *Id.*

III.

Under Alabama law, a plaintiff establishes a prima facie defamation claim when he or she demonstrates: "(1) that the defendant was at least negligent (2) in publishing (3) a false and defamatory statement to another (4) concerning the plaintiff, (5) which is either actionable without having to prove special harm . . . or actionable upon allegations and proof of special harm." *Ex parte Bole*, 103 So. 3d 40, 51 (Ala. 2012) (alterations accepted and emphasis omitted).

When applying state defamation law to public figures, the First Amendment imposes additional limitations.[5] First, the alleged defamatory statement must be "sufficiently factual to be susceptible of being proved true or false." *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 21 (1990). Second, the statement must be actually false. *Id.* at 16. And third, a public-figure plaintiff must prove that the defendant made the alleged defamatory statement with "actual malice"—"with knowledge that it was false or with reckless disregard of whether it was false or not." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964). This actual malice test is subjective; the public-figure plaintiff must show that the defendant "*in fact* entertained serious

[5] Coral Ridge concedes that it is a public figure for the purposes of this case.

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