

United States Court of Appeals For the First Circuit

No. 06-1826

UNIVERSAL COMMUNICATION SYSTEMS, INC.;
MICHAEL J. ZWEBNER,

Plaintiffs, Appellants,

v.

LYCOS, INC., D/B/A LYCOS NETWORK; TERRA NETWORKS, S.A.;
ROBERTO VILLASENOR, JR., A/K/A the-worm06; JOHN DOE #2,
A/K/A no-insiders; ROBERTO VILLASENOR, JR.,
A/K/A the-worm06A; JOHN DOE #4, A/K/A 65175R; JOHN DOE #5,
A/K/A Henry-Johnson123; JOHN DOE #6, A/K/A quondol;
JOHN DOE #7, A/K/A Tobias95; JOHN DOE #8, A/K/A CrawleySmith,

Defendants, Appellees.

ROBERT H. COOPER; ANDREW CUNNINGHAM; DOES 1 THROUGH 8;
OMAR GHAFAR,

Third-Party Defendants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Robert E. Keeton, Senior U.S. District Judge]

Before

Boudin, Chief Judge,
Selya and Lynch, Circuit Judges.

John H. Faro, with whom Faro & Associates was on brief, for
appellants.

Daniel J. Cloherty, with whom David A. Bunis, Rachel Zoob-
Hill, and Dwyer & Collora, LLP were on brief, for appellee Lycos,
Inc.

Thomas G. Rohback, with whom James J. Reardon, Jr. and LeBoeuf, Lamb, Greene & MacRae LLP were on brief, for appellee Terra Networks, S.A.

February 23, 2007

LYNCH, Circuit Judge. Plaintiffs Universal Communication Systems, Inc. and its chief executive officer, Michael J. Zwebner, (collectively, "UCS") brought suit, objecting to a series of allegedly false and defamatory postings made under pseudonymous screen names on an Internet message board operated by Lycos, Inc. UCS identified two of the screen names as having been registered to Roberto Villasenor, Jr. UCS sued not only Villasenor and the other posters of messages, as John Does, but also Lycos and Terra Networks, S.A., Lycos's corporate parent at the time of the postings in question.

In Section 230 of the Communications Decency Act (CDA), 47 U.S.C. § 230, Congress has granted broad immunity to entities, such as Lycos, that facilitate the speech of others on the Internet. Whatever the limits of that immunity, it is clear that Lycos's activities in this case fall squarely within those that Congress intended to immunize. UCS attempted to plead around this Section 230 statutory immunity by asserting that Lycos did not qualify for immunity and that UCS's claims fell within certain exceptions to that immunity. The district court rejected these arguments and dismissed the claims against Lycos and Terra Networks for failure to state a claim. We agree and affirm the dismissals, joining the other courts that have uniformly given effect to Section 230 in similar circumstances.

As for the claims against the individuals who posted, UCS alleged violations of federal and state securities laws, but made only conclusory allegations that the postings at issue were in connection with a scheme involving UCS stock. It thus failed to meet the particularity requirement for pleading fraud under Federal Rule of Civil Procedure 9(b). In the absence of any substantial allegations on this point, we affirm the district court's dismissal of those claims.

I.

Because we review here the district court's granting of a motion to dismiss, we recite the facts as alleged in UCS's complaint, McCloskey v. Mueller, 446 F.3d 262, 264 (1st Cir. 2006), but without crediting unsupported conclusions and assertions, Palmer v. Champion Mortgage, 465 F.3d 24, 25 (1st Cir. 2006).

Universal Communication Systems, Inc. is a Nevada corporation with its corporate offices in Florida. The company at one point provided telecommunications services and currently is developing solar-powered water extraction systems. It is a publicly-traded company that trades under the ticker symbol "UCSY," a label that the company also uses in its promotional materials. Zwebner is Chairman and CEO of the company. He is a citizen of the United Kingdom and of Israel, with his principal residence in Israel and a secondary residence in Florida.

Lycos is a Massachusetts corporation with its principal place of business in Massachusetts. Terra Networks is a Spanish corporation with its principal place of business in Spain. Terra Networks owned Lycos from 2000 to 2004.

Lycos operates a network of web sites devoted to a wide array of content. At times relevant here, these web sites included Quote.com, which provides stock quotation information and financial data for publicly-traded companies, and RagingBull.com, which hosts financially-oriented message boards, including ones designed to allow users to post comments about publicly-traded companies. The message board for each such company is generally created by a user and is generally identified using the company's stock ticker symbol -- UCSY in this case. In addition, the two web sites are linked to each other, so that a user who retrieves a stock quote from Quote.com is also given a link to the corresponding message board on Raging Bull. Both web sites contain advertisements, and Lycos derives advertising revenue that depends in some measure on the volume of usage of its sites.

Individuals must register with Lycos in order to post messages on Raging Bull message boards. As part of the registration process, users are required to agree to a "Subscriber Agreement," which, inter alia, requires users to comply with federal and state securities laws. Upon registration, a member obtains a "screen name." Postings on the message board are

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