



Message to Internet Critics: Blog At Your Own Risk! Ohio Supreme Court Rules Nonresident Internet Critic Can be Sued for Defamation in Ohio Courts

by Rudy A. Peckinpaugh, Jr.

How many times have you been dissatisfied with a product or a company's service and wanted to write a scathing online review describing your experience? A recent ruling by the Ohio Supreme Court has a message for you: Blog at your Own Risk.

In *Kauffman Racing Equipment, L.L.C. v. Roberts*, the Ohio Supreme Court decided that an out of state resident can be sued in Ohio for defamatory statements made on the internet. This decision makes it easier for non-Ohio residents to be sued in Ohio courts for libelous internet-related communications.

FACTS

In *Kauffman*, Scott Roberts, a Virginia resident, bought an engine block from Kauffman Racing Equipment, L.L.C. (KRE), a business located in Glenmont, Ohio, after seeing the block on KRE's web site. Eight months after the purchase, Mr. Roberts called KRE and claimed the engine block was defective. Although the product

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About the photo: Associate Patrick A. Sadowski at our new Findlay office.

was sold “as is,” KRE offered to have the engine block returned to Ohio for inspection purposes. If the product was defective, the parties agreed that KRE would buy back the engine block for the purchase price.

After retrieving the engine block, KRE’s inspection revealed substantial post-purchase modifications. Although Mr. Roberts admitted altering the block, he insisted that his modifications were not the problem. Because KRE believed Mr. Roberts’ modifications were the cause of the defects, KRE declined to repurchase the engine block and returned it to Mr. Roberts in Virginia.

Dissatisfied with this outcome, Mr. Roberts posted numerous criticisms of KRE and its products on various web sites devoted to automobile racing equipment. A sampling of Mr. Roberts’ comments include:

“Bought a MR-1 Block from Kauffman in march [sic] of this year * * *

“Now, I have and have had since the day the block was delivered, a USELESS BLOCK. I didn’t say worthless! I plan to get a lot of mileage out of it[.] And when I’m [sic] done Steve Kauffman will be able to attest to its worth.”

“I did send it back. They still have it. Steve Kauffman admitted on the phone that he got similar numbers on the sonic test as i [sic] did but he won’t take it back because I did some work to it and have had it to [sic] long. I guess it doesn’t matter that the day I got it all of the **defects** existed [sic] and nothing I have done caused them. But don’t worry about that. What I loose [sic] in dollars I will make up in entertainment at their expence [sic].”

“You don’t seem to understand. As far as Steve kauffinan [sic] is concerned the issue is resolved. * * * Again, this is not to get a resolution. I have a much bigger and dastardly plan than that and this is the perfect place to start. * * * (LOL) * * * Here is another good board to visit! * * * Just trying to help other potential victims.”

LAWSUIT

After receiving several inquiries about Mr. Roberts’ internet comments from at least five Ohio residents, KRE sued Mr. Roberts in the Knox County (Ohio) Common Pleas Court for defamation and intentional interference with business relationships. Mr. Roberts argued that, as a Virginia resident, he could not be sued in an Ohio court because he did not publish his comments in Ohio and did not specifically direct them to Ohio citizens. Accepting this argument, the trial court dismissed KRE’s complaint against Mr. Roberts. KRE appealed the dismissal and the court of appeals reversed, finding that Mr. Roberts could be sued in Ohio for his allegedly defamatory internet remarks. Acknowledging there are few cases involving claims against nonresidents related to internet activity, the Ohio Supreme Court accepted the appeal. After a comprehensive jurisdictional analysis, the Supreme Court held that an Ohio court COULD exercise jurisdiction over a non-resident sued for his allegedly libelous comments made on the internet.

Rejecting Mr. Roberts’ arguments, the Supreme Court found that he did in fact publish his remarks in Ohio. Because the comments were posted on the internet “for the entire world to see,” and because at least five Ohioans saw the statements, the Court determined that the comments were published in Ohio. The Court further ruled, even if the allegedly tortious conduct did not take place within the territorial boundaries of Ohio, Mr. Roberts could still be sued in Ohio because he had both the reasonable expectation and the actual intent that these statements would inflict injury within Ohio.

Finally, the Ohio Supreme Court decided that permitting Mr. Roberts to be sued in an Ohio court satisfied due process of law under the Fourteenth Amendment because Mr. Roberts had sufficient minimum contacts with Ohio and that he “purposefully availed” himself of Ohio laws by conducting business in the state and making comments intended to injure an Ohio business. Writing for the majority, and quoting the U.S. Supreme Court, Justice Paul Pfeifer stated, “a high degree of unfairness is required to erect a constitutional barrier against jurisdiction. *** This is especially true in a case (such as the one herein) in which the defendant has intentionally directed his activity at forum residents ***”, and the ‘effects’ of the activity occur in the forum state.”

Although this ruling only applies to the parties in the suit, the Court's conclusion is telling with regard to future cases: "We decline to allow a nonresident defendant to take advantage of the conveniences that modern technology affords and simultaneously be shielded from the consequences of his intentionally tortious conduct" (emphasis added). This decision unquestionably makes it easier for Ohio citizens to sue nonresidents for tortious internet activity.

In a passionate dissent, Justices O'Donnell and Lanzinger asserted that the majority's decision "dramatically" extended the rights of Ohio citizens to sue nonresidents and significantly increased the reach of Ohio courts. The dissent argued that Mr. Roberts' limited contacts with Ohio were neither significant enough to satisfy due process concerns nor were his comments posted on general websites "purposefully directed" to Ohio residents. The dissent broadly interpreted the majority's decision and argued that "the majority has extended the personal jurisdiction of Ohio courts to cover any individual in any state who purchases a product from an Ohio company and posts a criticism of it on the internet with the intent to damage the seller."

The dissent also raised First Amendment concerns, predicting that "the practical impact of the majority's holding in this case is to unnecessarily chill the exercise of free speech."

The Supreme Court's decision in the *Kauffman* case is now the standard by which trial courts will determine whether a nonresident can be sued in Ohio. Even though this appears to be a broad ruling, with a significant reach outside Ohio, future courts will likely require a nonresident defendant to have "minimum contacts" with Ohio before exercising jurisdiction. If that criteria is followed, this ruling, while important, will not be a dramatic departure from Ohio jurisprudence, as was argued by the dissent, but instead will be a logical progression of the law in a new internet era.

CONCLUSION

There is little doubt the *Kauffman* decision will be used to gain jurisdiction over nonresident defendants. Obviously, responding to a lawsuit in Ohio is time-consuming and expensive for nonresidents. Therefore, the message to internet critics is clear -- beware what you post regarding Ohio companies or you may be forced to defend yourself and your comments here in Ohio.



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