

Word of God Fellowship, Inc. v Vimeo, Inc.
2021 NY Slip Op 33177(U)
February 5, 2021
Supreme Court, New York County
Docket Number: Index No. 653735/2020
Judge: Barry R. Ostrager
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**SUPREME COURT OF THE STATE OF NEW
YORK NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

-----X WORD OF GOD FELLOWSHIP, INC. d/b/a DAYSTAR TELEVISION NETWORK, Plaintiff, - v - VIMEO, INC., VHX CORPORATION, and LIVESTREAM, LLC, Defendants.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">INDEX NO.</td> <td style="width: 40%;">653735/2020</td> </tr> <tr> <td>MOTION DATE</td> <td></td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td>001</td> </tr> </table>	INDEX NO.	653735/2020	MOTION DATE		MOTION SEQ. NO.	001
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DECISION + ORDER ON MOTION

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HON. BARRY R. OSTRAGER

The Court heard oral argument via Microsoft Teams on February 5, 2021 on the motion by defendants Vimeo, Inc., VHX Corporation, and Livestream, LLC (together “Vimeo”) for an order, pursuant to CPLR 3211(a)(1) and (7), dismissing this action based on documentary evidence and failure to state a cause of action. The Court granted the motion on the record and dismissed the Complaint filed by plaintiff Word of God Fellowship, Inc. d/b/a Daystar Television Network (“Daystar”) for the reasons stated on the record. This decision and order summarizes the Court’s reasoning.

According to the Complaint (NYSCEF Doc. No. 1), Daystar is an evangelical Christian-based television network that broadcasts its programming around the world. In addition to broadcast television, Daystar utilizes other media platforms, such as internet-based and live-streaming platforms. Vimeo is a video hosting, sharing and services platform, similar to YouTube. Its Vimeo OTT platform allows users to upload video content to its website that can then be accessed and viewed by others.

The parties here entered into a written agreement entitled “Order Form” with a start date of October 4, 2019 for the Vimeo services at issue (NYSCEF Doc. No. 9). The Order Form

expressly incorporated by reference Vimeo’s “Enterprise Terms” available on its website (NYSCEF Doc. No. 10). The Enterprise Terms expressly incorporated by reference the “applicable online terms of service.” As particularly relevant here, Vimeo’s Terms of Service Agreement (NYSCEF Doc. No. 11) included at Section 5 Vimeo’s “Acceptable Use Policy.” Section 5.2, entitled “Content Restrictions”, lists thirteen categories of restrictions and states: “You may not submit any content that ... [m]akes false or misleading claims about vaccination safety.”

At some point it came to Vimeo’s attention that five of Daystar’s approximately fourteen vaccine-related videos connected vaccines to autism. Vimeo contacted Daystar and asked Daystar to remove those five videos from their library of thousands of videos on the ground that the videos contained “false or misleading claims about vaccination safety.” When Daystar did not remove the videos, Vimeo removed the videos itself. Daystar then commenced this action, asserting claims of breach of contract and unjust enrichment and seeking rescission and damages. In response, Vimeo filed the instant motion to dismiss.

In granting the motion to dismiss on the record, the Court found that Vimeo’s decision to remove the five vaccine-related videos based on its posted “Content Restrictions” was cloaked with immunity under the Communications Decency Act, 47 U.S.C. § 230(c)(2), as recently construed by the District Court in the Southern District of New York in *Domen v Vimeo, Inc.*, 433 F. Supp. 3d 592 (S.D.N.Y. 2020), *appeal filed* Feb. 18, 2020. Specifically, 47 U.S.C. § 230(c)(2) immunizes providers like Vimeo in cases such as this one, stating that: “No provider ... of an interactive computer service shall be held liable on account of ... any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise

objectionable, whether or not such material is constitutionally protected.” Vimeo here removed content that it found objectionable based on its written policies prohibiting the posting of misleading information about vaccines. Section 230(c)(2) “does not require that the material actually be objectionable; rather, it affords protection for blocking material ‘that the provider or user considers to be’ objectionable.” *Domen*, 433 F. Supp. 3d at 603-04, *citing Zango, Inc. v. Kaspersky Lab, Inc.*, No. 07-CV-00807 (JCC), 2007 WL 5189857, at *4 (W.D. Wash. Aug. 28, 2007), *aff’d*, 568 F.3d 1169 (9th Cir. 2009).

Even if Vimeo were not protected by the federal immunity statute, the Court found that Daystar had failed to state a claim for breach of contract. Vimeo acted in good faith when it determined, consistent with the generally accepted view, that it was misleading to suggest that vaccines cause autism, and Vimeo’s decision to remove the five videos was in accordance with its Terms of Service. Daystar presented no evidence to create an issue of fact challenging Vimeo’s good faith application of its policies. Daystar’s unjust enrichment claim also fails as it is duplicative of the contract claim. *Clark-Fitzpatrick Inc. v. Long Is. RR Co.*, 70 NY2d 382 (1987).

Accordingly, for the reasons stated herein and in the transcript of proceedings on the record on February 5, 2021, defendants’ motion to dismiss is granted, and the Clerk is directed to enter judgment dismissing this proceeding with prejudice.

Dated: February 5, 2021


 BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

☒ CASE DISPOSED
☒ GRANTED ☐ DENIED

☐ NON-FINAL DISPOSITION
☐ GRANTED IN PART ☐ OTHER

APPLICATION:

☐ SETTLE ORDER

☐ SUBMIT ORDER

CHECK IF APPROPRIATE:

☐ INCLUDES TRANSFER/REASSIGN

☐ FIDUCIARY APPOINTMENT

☐ REFERENCE