IN THE CIRCUIT COURT OF POLK COUNTY, ARKANSAS
CIVIL DIVISION

STATE OF ARKANSAS, ex rel.
TIM GRIFFIN, ATTORNEY GENERAL PLAINTIFF

VS. NO. 57CV-23-47

META PLATFORMS, INC.; FACEBOOK HOLDINGS, LLC;
FACEBOOK OPERATIONS, LLC; META PAYMENTS, INC.;
FACEBOOK TECHNOLOGIES, LLC; INSTAGRAM, LLC;
and SICULUS, INC. DEFENDANTS

RULING ON DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

The state filed its first amended complaint on October 30, 2023. Defendants filed a motion to dismiss the first amended complaint or "FAC" on November 29, 2023. The court held a hearing on the motion to dismiss on April 17, 2024. The parties then each submitted proposed findings for the court to consider before making its determination. The parties submitted six issues for the court to consider (1) whether Arkansas has specific personal jurisdiction over the defendants, (2) whether the state's claims are barred under Section 203 of the Communications Decency Act, (3) whether the state's claims are barred by the first amendment, (4) whether the state has plead facts sufficient to set out claims for relief under theories of public nuisance, (5) the Arkansas Deceptive Trade Practices Act, and (6) the doctrine of unjust enrichment.

I. Arkansas has specific personal jurisdiction over Meta

The court need not address the landmark cases on the issue of personal jurisdiction, nor should it make an unnecessary attempt to discuss the distinctions between general and specific jurisdiction. The parties agree that if the court has jurisdiction at all that the plaintiff must establish that the court has specific personal jurisdiction over the defendants. The parties also agree on which test that this court must apply. In their respective briefs and arguments the parties have argued that the court must determine whether or not (1) the defendants purposefully availed

themselves of the privilege of acting in the forum state or causing a consequence in the forum state; (2) whether or not the cause of action arises from or relates to the defendants' contacts with the forum state; and (3) whether or not the acts of the defendants or the consequences caused by the defendants have a substantial enough connection with the forum state to make the exercise of personal jurisdiction over the defendant reasonable. *Lawson v. Simmons Sporting Goods, Inc.* 2019 Ark. 84.

Defendant argues that Meta has not purposefully availed itself of the privilege of acting in Arkansas. The argument Meta makes is a nuanced one. It argues that it did not target its activities at the State of Arkansas. If the court understands Meta's arguments correctly, Meta seems to suggest that its business model is as passive as a community bulletin board located in another state. Anyone from anywhere can post any message on the face of such a board. In making its argument, Meta understands that it must draw a distinction between its own activities and the activities of third party advertisers who use its services to offer products to Arkansas consumers. Meta obviously couches its argument in such a way as to make it appear to be factually similar to the sporting goods store in *Lawson* whose only contact with Arkansas was to solicit business from Arkansans using the medium of an Arkansas-based publication.

The plaintiffs argue that Meta's activities and tools involve much more interaction with and manipulation of Arkansans than a passive newspaper circular. Plaintiff argues that Meta "specifically and purposefully directed activity toward Arkansas's youth." They allege that Meta purposefully targets Arkansans by "collecting data"--including location data--on all young Meta users who utilize Meta's service within the borders of this state. They allege that Meta makes advertising revenue by selling the data they collect to companies who are eager to use targeted information to tailor their ads to consumers. It is the court's belief that the interactive nature of Meta's platform standing alone might not give rise to personal jurisdiction; however, its collection of

data and use of that data to create sharpened opportunities to enable advertisers to hawk goods to specific users within the state of Arkansas satisfies the "purposeful availment" requirement.

Likewise, Meta argues that the plaintiff's claims "do not arise from or relate to Meta's alleged contacts with Arkansas." It argues that there is no connection between Arkansas and the specific claims at issue as required by *Lawson*. However, the allegations in this case are nothing like the allegations made in *Lawson*. In *Lawson*, Justice Wood, writing for the court, was careful to home in on the facts—after all in a lawsuit the facts do indeed matter. Lawson involved a claim of negligence against a Louisiana merchant for a slip and fall that occurred in a store located in the State of Louisiana.[1] Dismissal was warranted because the advertising in Arkansas had no connection with the negligence claim.

The allegations in this case demonstrate that it is a horse of a different color when compared with *Lawson*. The plaintiff has argued that Meta's features and targeted activities toward young Arkansans have significantly injured them by causing various harms and psychological injuries as well as addiction to the platform. While it remains to be seen if these allegations can be satisfactorily proven, the allegations contained in the first amended complaint are sufficient to qualify as suit-related conduct.

Finally, the court must decide whether the exercise of jurisdiction over Meta would be reasonable. The court concludes that it would. Meta has made a substantial amount of gross sales and income receipts in Arkansas. These receipts come in part from its targeted ad sales in the state, a portion of which are complained of in this action, Meta has employees who work in, reside in, and have income taxes withheld in and paid to the state because of the employees' connection

[1] If Lawson were a deceptive trade practice case, I speculate that it is unlikely that the result would have been the same.

to the state. Based upon the advertising revenue and the way it is allegedly obtained, Meta could reasonably anticipate being summoned to court in Arkansas in an action over these particular allegations.

Based upon the foregoing, the defendant's motion to dismiss for want of personal jurisdiction is denied.

II. Section 230 of the Communications Decency Act does not bar the state's claims

Defendants argue that the State's claims are barred under 47 U.S.C. § 230. Section 230's "Good Samaritan" provision states that, "no 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." To determine whether or not Section 230's Good Samaritan provision applies a court must decide(i) if the party is a provider or user of an interactive computer service; (ii) if the state is seeking to treat the defendants, under a state law cause of action, as publisher or speaker of information; (iii) and that the information is provided by another information content provider.

There is not—probably only because it could not be seriously argued—a dispute on the first element. Meta is a provider of an interactive computer service. This being the case, the parties have trained their arguments on the second element of § 230.

According to the defendants, the state is seeking to treat Meta as a publisher or speaker of information posted to its platforms by third-party users. As evidence to back their contention, they direct the court's attention to the portions of the first amended complaint where dissemination of information provided by third party users is discussed. (See, p.6 of proposed order of dismissal) Relying on several cases,[2] the defendants also believe that § 230 immunity applies to this case

[2] The court understood the defendants to rely primarily on *Dyroff v. Ultimate Software Group, Inc.,* 934 F.3d. 1093 (2019), and *Force v. Facebook, Inc.,* 934 F.3d 53 (2019). Both of those cases were dismissed because

because they argue that at its essence the state's complaint is about how information is curated and published before it is delivered to users.

The state contends that it is not complaining about the content itself rather it claims to concern itself with the design features of the platforms.[3] The state alleges that Meta's platforms are designed in such a way as to exploit areas of vulnerability to adolescent users of Meta's services. The allegations in the complaint are not aimed at the content itself rather the allegations are aimed at alleged harm caused by the design features themselves. The State alleges that it is merely attempting to hold Meta liable for its own conduct.

It is the court's opinion that § 230's immunity does not apply in this case. The State is not seeking to treat Meta as a publisher or speaker of information, rather it is alleging that the design features of Meta's platforms themselves are hazardous to adolescents because the features are designed to addict and exploit the frailties of developing brains. If that is ultimately proven to be true, the nature of the content shared on the platforms is irrelevant. This case is properly understood as a dispute over whether the design features of Meta's platforms harm adolescents.

III. The first amendment does not bar the state's complaint

The first amendment arguments advanced by the parties are similar in nature to the arguments advanced in support of their respective arguments regarding § 230. Defendants argue that the state's claims run afoul of the first amendment to the constitution because they claim that the state is attempting to impose a restraint on their editorial judgment and their method of

---

the claims for liability were based upon actions that speakers took using the format that the interactive computer service as a megaphone, i.e. selling heroin and causing the death of a user of the interactive computer, and Hamas' coordinating of terrorist acts using an interactive computer service when the attacks themselves caused American citizens to die.

[3] The state principally relies on *Lemon v. Snap, Inc*. 995 F.3d 1085 (2021) and several trial court decisions deciding issues like those before this court. In Lemon, an interactive computer service was not dismissed from a lawsuit because it created a Speed Filter for users to utilize while operating or riding in a motor vehicle.

disseminating speech. The state claims that it is not aiming its fire at speech, content moderation, or organization of content rather it claims that the allegations in the complaint are aimed at alleged harms caused by the design features of Meta's platforms.

The court believes that this case is about conduct rather than speech. Here, the language from a decision of the Eleventh Circuit is instructive "[p] ut simply, with minor exceptions, the government cannot tell a private person or entity what to say or how to say it." *NetChoice v. Att'y Gen*., 34 F. 4th 1196, 1203 (11th Cir. 2022). The complaint does not seek to restrain speech, interfere with editorial function, or compel a publisher to publish content against its will; therefore, the first amendment does not require dismissal.

IV. Meta's platform cannot constitute a public nuisance

The defendants allege that the State's public nuisance claim against them must fail because the acts complained of in this case are conducted through the medium of an internet website or application. They ask the court to hold that public nuisance claims are limited to cases involving land or property use. To support their argument, they cite a decision from the Eastern District of Arkansas that quickly and efficiently dispatched a claim for public nuisance against pharmaceutical companies because the companies "[were] not landowners." *Independence County v. Pfizer, Inc.* 534 F. Supp. 2d. 882, 890 (E.D. Ark. 2008) *Independence County* adopted the definition of "nuisance" from *Milligan v. Gen. Oil Co.* 293 Ark. 401 (1987) to reach its decision. The definition recited in Milligan is "[n]uisance is defined as conduct by one landowner which unreasonably interferes with the use and enjoyment of the lands of another and includes conduct on property which disturbs the peaceful, quiet, and undisturbed use and enjoyment of nearby property." (Id. at 404) A few common examples are enterprises that emit unreasonable noise or noxious odors, bookmaking operations, bootlegging operations, and theatres. Thus, it is the

defendants' contention that an act may not be abated as a nuisance unless the act itself is carried out on land.

The state claims that the court's authority to enjoin a nuisance is not tethered to real property provided that the nuisance is a public nuisance. It asks the court to focus its attention on Meta's activities that it alleges threaten public health, safety, and morals.

The real property tethered definition of "nuisance" advanced by the defendants appears to show up without citation to precedent for the first time in *Ark. Rel. Guidance Fdn v. Needler*, 252 Ark. 194, 196 (1972). The rule announced and applied in *Needler* is recited again in *Milligan* as settled law and is cited in other cases thereafter. (See also, *Aviation Cadet Museum, Inc. v. Hammer*, 373 Ark. 202, 207 (2008).) Thus, it would appear that the Arkansas Supreme Court has declared that nuisance is a land based caused of action as urged by the defendants.

To get around the "land-based rule" of *Needler*, the state asks the court to distinguish between public and private nuisance.[4] The problem child for the state is, again, *Needler*. The distinction Needler drew between a public and private nuisance "is simply the extent of the injury." *Ark. Rel. Guidance Fdn. v. Needler*, 252 Ark. 194, 196 (1972). Thus, it would appear to the court that the land-based rule applies in both public and private nuisance cases. The nuisance claim is, therefore, dismissed.

[4] *Webber v. Gray*, 307 S.W. 2d 80 (1957) is a factually interesting case that did not bind nuisance law to land. *Webber* focused upon the court's power to abate harassing acts when there exists no adequate remedy at law. It should be noted that *Webber* was decided before harassment was criminalized. Since *Webber* was decided prior to *Needler*, the court believes that the language contained in *Needler* relegated nuisance to a land based cause of action.

V. Deceptive trade practices

The state alleges that Meta's activities violate three portions of the Arkansas Deceptive Trade Practices Act. First, the state claims that Meta utilized deceptive and unconscionable trade practices that included "knowingly making false representations as to the characteristics – specifically the safety and addictiveness – of Meta's services and platforms in violation of Ark. Code Ann. § 4-88-107(a)(1)." Meta counters that subsection (a)(1) is not applicable because it only applies to "goods or services." Clearly Meta's interpretation of (a)(1) is correct because Meta's platform neither meets the definition of a "good" nor does it meet the definition of a "service" as set out in the ADTPA.

Is the platform offered by Meta a "good" for the purpose of ADTPA?

The ADPTA defines "goods" as "tangible property, coupons or certificates whether bought or leased." (Ark. Code Ann. § 4-88-102(4)) The words "bought or leased" present a barrier that the state must attempt to circumnavigate. So, to avoid the plain language that Meta offers as a defense, the state resorts to a novel argument—that Meta's platform is "bought or leased" by consumers who pay no money, but instead render consideration in the form of data which Meta exploits to turn its profits. The state's argument fails because Meta's platforms are not anything approaching "tangible property, coupons, or certificates." Therefore, the court rejects the state's contention that Meta's platforms are a "good" for the purposes of ADTPA.[5]

Is the platform offered by Meta "services" as contemplated in ADTPA?

The ADTPA defines "services" as "work, labor, or other things purchased that do not have physical characteristics." Though Meta's platforms are a "service" in the common usage of the

[5] The state cites no authority to support its contention that Meta provides a "good or goods."

word, this court finds that they are not "services" under the ADTPA because they are not "purchased." The Arkansas Supreme Court has adopted the following definition of the word "purchase:" [a] purchase is a transmission of property from one person to another by voluntary act and agreement on valuable consideration." Erxlebren v. Horton Printing Co. 283 Ark. 272, 275 (1984). Justice Hubbell, writing for the Erxlebren majority, derived this definition by consulting Black's law dictionary. Id. There has been considerable debate in the public square regarding whether personal data generated on the internet is personal property,[6] but there is no consensus on the issue. This court finds that users purchase nothing directly from Meta, therefore, the court must decline to extend the ADTPA to this portion of the state's argument.

Do the pleadings set out sufficient allegations that Meta's activities violate § 4-88-107(8)?

For its second ADTPA claim, the state argues that Meta's actions violate § 4-88-107(8) which states that it is unlawful and prohibited to knowingly take "advantage of a consumer who is reasonably unable to protect his or her interest because of physical infirmity, ignorance, illiteracy, inability to understand the language of the agreement, or a similar factor." Here, the state alleges that "the Defendants knowingly took advantage of vulnerable adolescent users who were reasonably unable to protect their own interests because of their young age, ignorance of the facts which Defendants had in their possession and control, and inability to understand the addictive and harmful consequences of using Meta's platforms." (FAC ¶ 251) Because the ADTPA is broadly construed, the state's allegations survive the motion to dismiss.

[6] The United States Senate considered the "Own Your Own Data" Act during the 116th Congress, but the bill did not become law.

Do the pleadings set out sufficient allegations that Meta's conduct violates § 4-88-107(a)(10)?

Finally, the state asks the court to deny Meta's motion to dismiss because the totality of Meta's "conduct described [in the complaint] also constitutes unconscionable[7] and deceptive acts or practices which Defendants undertook in furtherance of their business, commerce, or trade and attempts to profit at the cost of the decimated mental health of teen users in violation of Ark. Code Ann. § 4-88-107(a)(10). The false representations, fraud, concealments, omissions and suppressions of damaging information were deceptive and constituted a repeated course of unconscionable conduct contrary to public policy and the public's interest which continues to this day." (FAC ¶ 256-257) Ark. Code Ann. § 4-88-107(a)(10) is often referred to as ADTPA's "catch-all provision." (see, *State v. R&A Investment Co.,* 336 Ark. 289, 295 (1999)) Generally, "[a]n act is unconscionable if it affronts the sense of justice, decency, and reasonableness." Howard W. Brill, Arkansas Law of Damages §17:18 (6th Ed. 2014) Because the "catch-all" provision" has been broadly construed to encompass acts not specifically named in the act or even envisioned by the General Assembly, the claims set out in the state's complaint, which must be accepted as true in the current analysis, are sufficient to survive a motion to dismiss.

VI. Unjust enrichment

Arkansas law on unjust enrichment is based upon the notion that "one person should not be free to unjustly enrich himself at the expense of another." Howard W. Brill, Arkansas Law of Damages §31:2 (6th Ed. 2014) In this action, the legal theory advanced by the state is that Meta's platforms are dangerous because they are designed to be addictive--especially so to younger users. The argument continues that Meta, through deception and omission and suppression of

[7] The Arkansas Supreme Court has stated that 'unconscionability' is not precisely defined in the law." *LegalZoom.com, Inc. v. McIllwain*, 2013 Ark. 370, 6. In the context of contract law, it seems that the cases focus upon the inequality of bargaining positions between parties to a contract as a part of an unconscionability analysis.

facts, fraudulently concealed those alleged addictive features from the unsuspecting public. Once Meta got its unwary victims addicted to its platforms, its coffers were swelled with advertising revenue because the addictive nature of the platforms caused these vulnerable Arkansans to stay on the platforms longer. Thus, the state claims that the user's addiction to Meta drove its advertising revenue even higher.

In the court's judgment, a claim for unjust enrichment is not available under the specific facts alleged in the complaint. It is the court's opinion that the State cannot assert an unjust enrichment claim because it does not allege that Defendants were enriched by Arkansas or its citizens. The basis of the state's complaint is that Meta profits from its malevolent practices, but the alleged malevolent practices do not generate monies or property from the state or its citizens.

Taking the allegations of the complaint as true, Meta's practices stimulate users to engage with Meta longer thereby increasing the value of advertising, but it cannot seriously be argued that Meta is not entitled to receive the advertising revenue from the ***advertisers***. The Arkansas Court of Appeals has held that "[o]ne is not unjustly enriched by receipt of that to which he is legally entitled." *Smith v. Whitener*, 42 Ark. App. 225, 228 (1993) When one is found to have been unjustly enriched at the expense of another, he or she must restore the item or sum of money (or said another way--pay restitution) wrongly received back to the person or entity from whom it was wrongly received. Considering the allegations set out in the state's complaint against these standards, the state does not allege that Meta is not entitled to payment for the advertising revenues that it has received from the advertisers, rather it complains about the way the revenues were earned. Under the state's theory, Meta received neither money nor property from the users of its platforms that could be restored to the State or to Arkansas residents on whose behalf it sues, and there is no basis for a claim of unjust enrichment.

IT IS SO ORDERED this the _____ day of June 2024.

ELECTRONIC SIGNATURE

Case Title: STATE OF ARKANSAS VS. META PLATFORMS, INC ETAL

Case Number: 57CV-23-47

Type: ORDER OTHER

So Ordered

James A. Riner, 18th West Judicial Circuit Judge