

2018 WL 3046243

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United States District Court, D.  
Maryland, Southern Division.

ERIE INSURANCE COMPANY, Plaintiff,

v.

AMAZON.COM INC., Defendant.

Civil No.: 16-02679-RWT

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#### Attorneys and Law Firms

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#### HEARING

THE HONORABLE [ROGER W. TITUS](#), Judge

\*1 THE COURT: All right, I have before me today a case filed by Erie Insurance Company—and it was originally filed in the Circuit Court for Montgomery County, Maryland against eBay and Amazon.com Inc. The case ultimately was removed of this Court. And the complaint was dismissed voluntarily as to eBay. Erie is an insurance company that insured a policy holder named Minh Nguyen and Anh Nguyen that own property in Burtonsville here in Montgomery County.

And the circumstances of this are that there was a headlight—at first I thought it was a car headlight but it was something you wear on your head I guess, that was purchased by a friend of the policy holder and apparently it is alleged that this headlight caused a fire at the Nguyen

home. As a result of which a fire loss was paid by Erie in the total amount of \$313,166.57. Pursuant to its rights of subrogation, Erie brings an action to recover the losses that it paid on behalf of its policy holder against the defendants that I previously identified.

The cases proceeded through discovery and the defendant, Amazon has moved for summary judgement and has filed a detail papers in connection with its motion. And I have heard the argument of counsel and let me now address those arguments. The complaint asserts liability against Amazon as a seller under the theories of negligence, breach of warranty and strict liability. The circumstances under which this headlight got into the hands of a friend of the policy holder of Erie are that somebody went onto the website of Amazon and made a purchase of a product.

As I indicated in colloquy with counsel, virtually all of us have some experience with Amazon. It has become virtually ubiquitous in this country. Much to the chagrin of Macys and JCPenney and Sears and so forth and so one. They have developed a very effective system of marketing that does not require you to exercise at all by going to a mall or other stores.

In this case, it is not disputed that the—if one were to go on the web page to look up this product and purchase it, where it lists the description of the product and the pricing information and so forth about it. It typically says and it said in this case, sold by Dream Light and fulfilled by Amazon or it would say sold by Amazon. In this case it said sold by Dream Light and fulfilled by Amazon.

That is not a mere irrelevancy to the legal analysis in this case because as the uncontested record indicates, under the relationship between Dream Light and Amazon, it allowed Dream Light to ship its product to one of Amazon's warehouses or what they call Fulfillment Centers. And to have that property available for sale to Dream Light customers through Amazon's amazing computer system that allows people to log on and purchase various merchandise with pre-established credit arrangements and so forth.

It is not contested in this case that Dream Light is the seller that who's name appeared on the Amazon web page as being the seller. The question is whether the circumstances of this case in which Amazon quote "Fulfilled" the order converts Amazon into the status of the seller. The—as

I said before, the fulfillment role as far as Amazon is concerned, is that it stored the product at the expense and risk of the seller Dream Light. That it allowed the merchandise to be advertised on Amazon's web page. That if a purchase was made, Amazon would take the product from its fulfillment center, put it in a box and send it to the purchaser who made arrangements to buy the Dream Light.

\*2 Amazon would collect the money and ultimately remit to Dream Light whatever is left over after Amazon has covered its various charges that it no doubt—in connection with making arrangements to utilize Amazon's services for the sale. The issue—strike that. The plaintiff makes an emotional argument which probably could be made as I said, by JCPenney, Macys and Sears that it is outrageous that this kind of a set up can be established and that the same product purchased from Home Depot would make Home Depot liable as a seller but not Amazon.

It ain't the same to make it very straightforward and simple. The relationship with Home Depot, if I go in there and I take this Dream Light off the shelf and I take it to the check out counter and buy—I am buying it from Home Depot. They are the seller and they have the responsibilities and the liabilities associated with the seller. The relationship on the other hand between Amazon and Dream Light is quite different.

And Amazon is allowing a seller to utilize its services to store it and then to send it to whoever this purchaser asks it to be sent to. The Amazon has raised two principle arguments in support of its motion for summary judgement. First, that it is not the seller and secondly that Erie's claims are precluded by the communications decency act. The plaintiff with great enthusiasm cites how outrageous this would be to have Amazon not be a seller.

The problem is, there is—no case authority that would support the proposition that they make where Amazon clearly states on its web page that it is being sold by Dream Light and fulfilled by Amazon and I think most intelligent people can understand the difference between it when it says it has been sold by Dream Light and performed by Amazon on the one hand or it is being sold by Amazon.

The—I am not going to go into great detail on the authorities on this because I think the authorities are

pretty much in unison on concluding that the under the circumstances of this case, the vast majority of cases both inside this circuit and outside of it, have concluded that under the circumstances of this case, Amazon cannot and must not be viewed as a seller of the head light. Among the cases is the 2016 case of McDonald versus LG Electronics, and the only significant difference between that case and this is that it was decided on a motion to dismiss and not summary judgement. But that was sufficient based on the complaint for the Court to be satisfied that Amazon was not a seller of batteries in—at issue in that case.

The—there are other cases to the same effect, Milo and Gabby LLC versus Amazon of the Federal Circuit. And additional authorities that have come in while this case has been being briefed from an Ohio court, Steiner versus Amazon.com Inc. In which the Ohio Court found that Amazon was not the seller of a caffeine powder produced on Amazon's web page because the seller's agreement between Amazon and the seller indicated that the seller was responsible for the product placed on the market place.

Amazon did not manufacture, sell, deliver or offer this for sale product and the information about the product including price was created and uploaded by the seller. And therefore Amazon was not the seller under the circumstances. I would agree with that reasoning. Erie tries to argue that Amazon in effect acts as a middle man. For purposes of the provisions of Section 2-414 of the UCC, docket by Maryland in the commercial law article. I do not agree—this is not a case in which the product moves from a manufacturer to a distributor to a middle man or seller. This is a case in which Amazon did not act in any such role and was not the middle man along the chain of—title to this product.

\*3 Erie also argues that Amazon is a seller because it is the distributor of the product but that is simply not the case as far as this Court can see and I see no case law that will support that position. So based upon the authorities as cited by Amazon and the more recent decisions that have been trickling in, I am going to associate myself with a vast, vast bulk of decisions that have found under the circumstances of this case that Amazon is not the seller and cannot be held liable for the loss in this case.

That does not mean that there is not some populous concern that this is outrageous and shouldn't be this way

and so forth but the facts from the law in this case clearly indicate that Amazon is not a seller and therefore can not be held liable. I don't think I need to reach but I will mention the communication decency act because I conclude that the case can be disposed of favorably to Amazon on summary judgement because it is not a seller.

But we do have the community provided under the —under Section 230 of the communications decency act which provides 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. This is a statute that Courts construing it have given the immunity a broad scope.

And then the Fourth Circuit courts will extend its immunity on a three part test as met. One is when the defendant is an interactive computer service provider and two the information at issue was provided by another information content provider and three the plaintiff's claims to seek and treat the defendant as a publisher or speaker of that information. That is in the Nemet, N-e-m-e-t, Chevrolet case, Nemet Chevrolet versus ConsumerAffairs.com, 2009 Fourth Circuit case in 591 Federal 3rd at 250.

There is no dispute that Amazon is an interactive computer service provider and that Dream Light created the product information that was uploaded to the product detail page and it was provided by another information content provider. The—Amazon presents a number of cases that supports its position that the CDA community does apply including Gentry versus eBay, a California case and Hinton versus Amazon.com, in the Southern District

of Mississippi. And Oberdorf versus Amazon.com, a Middle District of Pennsylvania case.

I conclude as a result of those cases cited by fellow judges that it does bar the claim even though Amazon provided a venue for third party sellers and made money from those sales, provided payment services and facilitated transactions. Had standards governing the third party content. And controlled the user experience and what the content—what content was displayed. Provided a user guide post including category headings and seller ratings. Advertised and promoted its services to users and provided insurance and other buyer protection for items sold on its website.

Under the circumstances of this case, I conclude that even if I am incorrect with respect to my conclusion that Amazon is not a seller and therefore cannot be liable for the losses sustained by Erie's policy holder, I conclude that the CDA would preclude the claims in any event. Accordingly I will enter an order that for those reasons grants the defendant, Amazon's motion for summary judgement which is docket entry number 45.

I am going to deny the request to strike supplemental authority. I think that just goes to the question of what relevance I consider that authority to be. And I have already granted on the record the motion for the appearance of Mr. Murphy to appear in this court today. I will enter an order to that affect. Thank you very much.

#### All Citations

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