12/27/22 cc: RTD Swanglacano

DOCKET NO. HHD-CV-21-6146962-S	:	STATE OF CONNECTICUT
COURTNEY DESILET	:	J.D. OF HARTFORD
v.	:	AT HARTFORD
EAST HARTFORD POLICE OFFICERS ASSOCIATION, ET AL	:	DECEMBER 27, 2022

MEMORANDUM OF DECISION RE: DEFENDANTS' MOTIONS TO DISMISS

INTRODUCTION

Before the court are the defendants' motions to dismiss certain counts and paragraphs of the plaintiff's complaint on subject matter and personal jurisdiction grounds. The defendant East Hartford Police Officers Association's (union) motion (docket no. 106.00) seeks dismissal of the first and second counts of the complaint on the grounds that the complaint was not served on the union in the statutorily prescribed manner under General Statutes § 52-57(e) and within the statutory period required under General Statutes § 46a-101(e); the fifth count, on the grounds that the plaintiff failed to exhaust her administrative remedies under the Municipal Employee Relations Act (MERA), General Statutes §§ 7-468 and 7-470; and paragraphs 31 through 34 and 37 through 38 of the first through fifth counts on the grounds of statutory immunity under 47 U.S.C. § 230, the Communications Decency Act (CDA). The defendant Francesco Iacono's motion to dismiss (docket no. 108.00) seeks dismissal of paragraphs 29 through 32 and paragraph 35 of the seventh, eighth, ninth and tenth counts, also on CDA immunity grounds.

For the reasons discussed more fully below, the union's motion to dismiss is denied as to the first and second counts, and granted as to the fifth count, and paragraphs 31 through 34

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and 37 through 38 of the first through fourth counts, of the complaint. Iacono's motion to dismiss paragraphs 29 through 32 and paragraph 35 of the seventh through tenth counts of the complaint is granted.

FACTS AND PROCEDURAL HISTORY

On September 15, 2021, plaintiff, Courtney Desilet, filed a ten count complaint against the union and Iacono alleging the following facts.[1] The plaintiff was employed as an East Hartford police officer and was a member of the union from December 2013 until her forced retirement on October 22, 2020. The plaintiff alleges that she was subjected to discrimination and bullying throughout her tenure based on her gender. In 2019, the plaintiff sat for the sergeant's promotional exam, obtained the highest score, but was not promoted. Following the release of the exam results, other examinees, with the union's help, filed formal challenges to the plaintiff's exam results, alleging malfeasance and misconduct. At the time of her retirement, the plaintiff had not been promoted to sergeant despite her performance on the sergeant's exam. The plaintiff alleges that Iacono and the union created a blog following the

[1] The complaint, dated August 24, 2021, was filed on September 15, 2021. The first five counts are directed against the union, alleging employment discrimination under the Connecticut Fair Employment Practices Act (CFEPA), General Statutes § 46a-60 (b) (3) (first count), CFEPA retaliation under General Statutes § 46a-60 (b) (4) (second count), tortious interference with contractual expectations (third count), intentional infliction of emotional distress (fourth count), and violation of the duty of fair representation under General Statutes § 7-468 and 7-470 (b) (3) (fifth count). Counts seven through ten are directed against Iacono, alleging aiding and abetting gender discrimination in violation of CFEPA, General Statutes § 46a-60 (b) (5) (seventh count), retaliation in violation of CFEPA, General Statutes § 46a-60 (b) (5) (eighth count), intentional infliction of emotional distress (ninth count), and tortious interference with contractual expectations (tenth count). The plaintiff's prayer for relief seeks money damages "for economic and non-economic losses," attorney's fees and punitive damages as allowed by law.

release of the sergeant's exam results through which the parties falsely claimed, among other things, that the plaintiff had cheated on the exam. Additionally, the plaintiff alleges that the blog allowed for anonymous comments, many of which targeted or referred to her either directly or indirectly.

On November 18, 2021, the union filed a motion to dismiss counts one, two and five of the complaint in their entirely, as well as paragraphs 31 through 34 and 37 through 38 of counts one through five on the grounds of statutory immunity under § 230 of the CDA. On November 19, 2021, Iacono also moved to dismiss paragraphs 29 through 32 and 35 of counts seven through ten on § 230 immunity grounds. The plaintiff thereafter sought and was granted limited discovery directed to the statutory immunity issue. The court conducted an evidentiary hearing on July 28, 2022, pursuant to *Conboy* v. *State*, 292 Conn. 642, 974 A.2d 669 (2009), to determine whether the defendants are information content providers under the CDA. On September 15, 2022, the parties filed supplemental briefing addressing the issues raised at the *Conboy* hearing. The defendants filed a reply memorandum on October 17, 2022.

The following additional facts relevant to the pending motions were found at the *Conboy* hearing. The union is an unincorporated association with over one hundred members, and serves as the certified bargaining unit representing sworn police officers serving in the department. Not all officers are union members; senior department officials, such as the chief and deputy chiefs, are not eligible for union membership.

Iacono joined the department and became a union member in 2010, retiring in 2021. He served in a number of positions and was twice elected president, in 2019 and 2021. Prior to Iacono's presidency, the union had no online presence. In July 2019, Iacono created a blog

entitled "Just the Facts: Official Blog of the East Hartford Police Union" (blog). In creating the blog, Iacono hoped to publicize some of the issues that existed within the department to pressure the administration and public officials to improve conditions in the department. Iacono administered the blog as union president, but the blog remained the union's property, and he ceded control of the blog to the union when he retired.

The blog was accessible to the general public. Iacono successfully used social media to publicize the blog, which received significant traffic and thousands of "hits" (views) per month. Iacono, in his capacity as union president, was the only person who wrote blog posts, and as the union president he was the only person authorized to speak for the union on union matters.

While the union president was the only person who could write blog posts on the union's behalf, any person visiting the blog could post a comment. All comments were made anonymously, in order to facilitate free discussion of issues relating to the department, protect commenters from retaliation, shield citizens from negative attention by police, and protect officers against potential adverse action by the administration. Iacono was unable to identify who posted comments. Although Iacono posted comments himself from time to time, he did so under his own name or in the union's name. Iacono did not respond to the majority of anonymous blog comments, including those directing personal comments toward him.

During the summer of 2020, Iacono noticed an increase in spam, or irrelevant comments such as advertisements, posted as comments to the blog. Iacono imposed a filter through which spam content would be blocked, but manually allowed non-spam comments to be posted to the blog. Enabling the spam filter triggered a "content moderation" notice to be

posted to the beginning of the comments section, which was retroactively added to all prior posts. Iacono did not filter out non-spam comments based on content because the purpose of the blog was to facilitate open discussion.

In connection with her claim before the Commission on Human Rights and Opportunities (CHRO), in November 2019, the plaintiff issued a notice to the union to preserve all blog posts and comments. After the CHRO rejected the plaintiff's claims, she obtained a release of jurisdiction, and in December 2020, filed her first complaint in the Superior Court, which ultimately was withdrawn. In September 2020, the union voted to disable the blog's comment feature, but given the plaintiff's pending claims and the preservation letter, Iacono did not believe that he had the right to remove existing comments.

DISCUSSION

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *MacDermid, Inc.* v. *Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) *Hinde* v. *Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014).

"[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). "[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. . . . It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Financial Consulting, LLC* v. *Commissioner of Ins.*, 315 Conn. 196, 226, 105 A.3d 210 (2014).

"Trial courts addressing motions to dismiss . . . pursuant to § 10-31 (a) (1) may encounter different situations, depending on the status of the record in the case. . . . [L]ack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. . . . Different rules and procedures will apply, depending on the state of the record at the time the motion is filed." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Conboy* v. *State*, 292 Conn. 642, 650-51, 974 A.2d 669 (2009). "[W]here a jurisdictional determination is dependent on the resolution of a critical factual dispute, it cannot be decided on a motion to dismiss in the absence of an evidentiary hearing to establish jurisdictional facts." (Citation omitted.) Id., 652. "[A] court cannot make a critical factual [jurisdictional] finding based on memoranda and documents submitted by the parties." (Internal quotation marks and citation omitted.) Id., 653-54.

"[A] defendant may seek dismissal of certain portions of the complaint over which the court has no jurisdiction. This has the benefit to the plaintiff of salvaging the portion of the complaint over which the court has jurisdiction." *Lloyd* v. *Connection, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-11-6023491-S (December 21, 2011, *Young, J.*) (dismissing paragraphs of an employment discrimination complaint and noting that "there is nothing in the practice book precluding dismissal of certain claims within a complaint . . . particularly when the plaintiff has commingled allegations [over] which this court has jurisdiction with [those over] which [it does not]"); see *Paragon Construction Co.* v. *Dept. of Public Works,* 130 Conn. App. 211, 221 n.10, 23 A.3d 732 (2011) (upholding dismissal of portions of a count of a complaint where the moving party asserted lack of subject matter jurisdiction based on the failure to meet statutory waiver requirements for sovereign immunity); see also *Doe* v. *Norwich Roman Catholic Diocesan Corp.*, Superior Court, judicial district of New London, Docket No. CV-19-5020352-S (May 26, 2020, *Calmar, J.*) (dismissing paragraphs of a complaint alleging church doctrinal matters).

I

The Union's Motion to Dismiss the First and Second Counts

The union argues that the first and second counts of the plaintiff's complaint should be dismissed for lack of personal jurisdiction and on statute of limitations grounds because the plaintiff failed to serve process upon an officer of the union, a voluntary association, in the manner required by General Statutes § 52-57 (e) and within the ninety-day limit imposed by General Statutes § 46a-101 (e). The union contends that the ninety-day limitations period was not tolled because the union treasurer was served on September 8, 2021, and the state marshal

failed to endorse his return in accordance with General Statutes § 52-593a (b).[2] In her opposition, the plaintiff asserts that the union's motion should be denied because the endorsement requirement of § 52-593a (b) is directory, not mandatory, and may be satisfied by an affidavit showing that the marshal received the writ, summons and complaint before the limitations period expired and served process within thirty days of receipt.

General Statutes § 52-57 (e) provides in relevant part: "In actions against a voluntary association, service of process may be made upon the presiding officer, secretary or treasurer." General Statutes § 46a-101 (e) provides: "Any action brought by the complainant in accordance with section 46a-100 shall be brought not later than ninety days after the date of the receipt of the release from the commission."

"[T]he endorsement requirement of § 52-593a (b) is directory rather than mandatory. . . . [T]he placement of § 52-593a among a number of provisions that extend or toll statutes of limitations under various circumstances . . . underscores its remedial purpose and counsels that it should not be given an overly restrictive construction that would defeat its curative goal." (Citations omitted.) *Doe* v. *West Hartford*, 328 Conn. 172, 185-86, 177 A.3d 1128 (2018). "[P]laintiffs may prove delivery of process to the marshals by other methods beyond the endorsement prescribed by § 52-593a (b). If endorsement of the date of delivery is not

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[2] General Statutes § 52-593a provides in relevant part: "(a) . . . a cause of action shall not be lost because of the passage of the time limited by law within which the action may be brought, if the process to be served is personally delivered to a state marshal, constable or other proper officer within such time and the process is served, as provided by law, within thirty days of the delivery. (b) In any such case, the officer making service shall endorse under oath on such officer's return the date of delivery of the process to such officer for service in accordance with this section."

mandatory, it follows that plaintiffs should not be penalized if, in the absence of an endorsement, they can prove delivery by other evidence." *Johnson* v. *Preleski*, 335 Conn. 138, 153-54, 229 A.3d 97 (2020).

The plaintiff proved delivery by the return of service and other evidence. The return of service confirms and there is no factual dispute that state marshal Keith Niziankiewicz served the union's treasurer, Christina Johnston, in hand on September 8, 2021. In his affidavit dated September 16, 2021 (docket entry no. 101.00), the marshal confirmed that he received the plaintiff's writ on August 25, 2021, and served it "within thirty days of such delivery in accordance with Section 52-593 (a) of [the] Connecticut General Statutes." The writ was timely and properly served on the union. Accordingly, the union's motion to dismiss the first and second counts of the complaint for lack of personal jurisdiction is denied.

II

The Union's Motion to Dismiss the Fifth Count

The union next argues that the fifth count of the plaintiff's complaint, alleging violations of MERA §§ 7-468 and 7-470 (b)(3), should be dismissed for lack of subject matter jurisdiction because the plaintiff failed to exhaust her administrative remedies. The plaintiff responds that the exhaustion doctrine is inapplicable because the available administrative remedies are futile or inadequate.

Section 7-468 (d) provides: "When an employee organization has been designated in accordance with the provisions of sections 7-467 to 7-477, inclusive, as the exclusive representative of employees in an appropriate unit, it shall have a duty of fair representation to the members of that unit." Section 7-470 (b)(3) provides: "Employee organizations or their

agents are prohibited from: (3) breaching their duty of fair representation pursuant to section 7-468." General Statutes § 7-471 sets forth the powers of the State Board of Labor Relations (SBLR). Section 7-471 (5) provides in relevant part: "Whenever a question arises as to whether a practice prohibited by sections 7-467 to 7-477, inclusive, has been committed by a municipal employer or employee organization, the [SBLR] shall consider that question in accordance with the following procedure. . . . (D) For the purposes of hearings and enforcement of orders under sections 7-467 to 4-477, inclusive, the [SBLR] shall have the same power and authority as it has in sections 31-107, 31-108 and 31-109 . . . ." "Thus, the [SBLR] is charged, in the first instance, with determining whether an unfair practice, as defined by statute, has been committed and [if so] with remedying any violations." (Internal quotation marks omitted.) *Piteau* v. *Board of Education*, 300 Conn. 667, 679, 15 A.3d 1067 (2011).

"It is a settled principle of administrative law that if an adequate administrative remedy exists, it must be exhausted before the Superior Court will obtain jurisdiction to act in the matter." (Internal quotation marks omitted.) *Stepney, LLC* v. *Fairfield*, 263 Conn. 558, 563, 821 A.2d 725 (2003). "It is well established that [a]n administrative remedy is futile or inadequate if the agency is without authority to grant the requested relief. . . . It is futile to seek a remedy only when such action could not result in a favorable decision and invariably would result in further judicial proceedings. . . . Thus, [i]f the available administrative procedure . . . provide[s] the [plaintiff] with a mechanism for attaining the remedy that [she] seek[s] . . . [the plaintiff] must exhaust that remedy. . . . It is well established, moreover, that [t]he plaintiff's preference for a particular remedy does not determine the adequacy of that

remedy. [A]n administrative remedy, in order to be adequate, need not comport with the [plaintiff's] opinion of what a perfect remedy would be." (Citations omitted; internal quotation marks omitted.) *Piteau* v. *Board of Education*, supra, 300 Conn. 684-85.

In the present case, the fifth count of the plaintiff's complaint alleges that the union violated its duty to represent her in accordance with §§ 7-498 and 7-470 (b)(3) by failing "to fairly represent each of its member without regard to sex, and to act in the best interests of its members," for which the plaintiff seeks "economic and non-economic damages and attorney's fees and costs. . . ." Under § 7-471 (5), the SBLR is authorized in the first instance to determine whether an unfair labor practice has been committed by an employer or employee organization, and therefore the plaintiff must first exhaust available administrative remedies provided within the statute. See *Piteau* v. *Board of Education*, supra, 300 Conn. 679.

The plaintiff argues that exhaustion is not required in this case and that it would be futile to request non-economic damages from the SBLR, because the SBLR has no authority to order the union to cease harassing the plaintiff or to award her damages for emotional distress, reputational harm, or loss of stature. The union counters that the plaintiff's claim for non-economic damages alone does not render the available administrative remedies inadequate, citing *Piteau* v. *Board of Education*, supra, 300 Conn. 684-85; see also *Straubel* v. *Bridgeport*, Superior Court, judicial district of Fairfield, Docket No. CV-21-6108821-S (July 8, 2022, *Welch, J.*) ("Even if all of the losses claimed by the plaintiff could not be addressed under the legislatively delegated authority of the [labor board], the court cannot classify or categorize these remedies as futile." [Internal quotation marks omitted.]). Moreover, the plaintiff concedes that the SBLR has the power to award at least some of the

remedies that she seeks (e.g., attorney's fees and costs). Therefore, her claim cannot be deemed inadequate or futile. See *Council 4, AFSCME, AFL-CIO* v. *State Board of Labor Relations*, 111 Conn. App. 666, 676, 961 A.2d 451 (2008), cert. denied, 291 Conn. 901, 967 A.2d 112 (2009) ("[T]he imposition of attorney's fees and costs is consistent with General Statutes § 7-471 (5), which requires the labor board to take such further affirmative action as will effectuate the policies of [collective bargaining under the Municipal Employee Relations Act, General Statutes § 7-460 et seq.]." [Internal quotation marks omitted]); see also *Piteau* v. *Board of Education*, supra, 300 Conn. 685 ("[T]he plaintiff's preference for a particular remedy does not determine the adequacy of that remedy." [Internal quotation marks omitted.]). Having failed to exhaust her administrative remedies under MERA, the court lacks subject matter jurisdiction over the fifth count, and the union's motion to dismiss that count is therefore granted.

III

The Defendants' Motions to Dismiss Under 47 U.S.C. § 230

A

Motions to Dismiss Various Paragraphs of the Complaint

The union argues that paragraphs 31 through 34, 37 and 38 of the first through fifth counts should be dismissed because it is immune from liability under the CDA. Similarly, Iacono argues that paragraphs 29 through 32, and paragraph 35 of counts eight through ten should be dismissed because he also is immune from liability under the CDA. In opposition, the plaintiff argues that the motions should be denied because the defendants are information content providers under the statute, and therefore are not immune from liability.

Section 230 (c) of the CDA provides in relevant part: "(1) 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. (2) No provider or user of an interactive computer service shall be held liable on account of – (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be . . . harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1)." An "interactive computer service" is defined as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." Id., § 230 (f)(2). An "information content provider" is defined as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." Id., § 230 (f)(3).

"In applying the statute, courts have broken [it] down into three component parts, finding that [i]t shields conduct if the defendant (1) is a provider or user of an interactive computer service, (2) the claim is based on information provided by another information content provider and (3) the claim would treat [the defendant] as the publisher or speaker of that information." (Internal quotation marks omitted.) *Poole* v. *Tumblr, Inc.*, 404 F. Supp. 3d 637, 641 (D. Conn. 2019). "Courts typically have held that internet service providers, website exchange systems, *online message boards*, and search engines fall within this definition. . . .

At its core, § 230 bars lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions – such as deciding whether to publish, withdraw, postpone or alter content." (Citations omitted; emphasis added; internal quotation marks omitted.) *Federal Trade Commission* v. *LeadClick Media, LLC*, 838 F.3d 158, 174 (2d Cir. 2016).

In the present case, there was no evidence adduced at the *Conboy* hearing that Iacono or the union posted the anonymous comments that the plaintiff believes were directed at her. The plaintiff's complaint appears to be based upon the defendants' decision to allow anonymous comments to be posted on the blog that either directly or indirectly referenced the plaintiff. As noted above, however, § 230 provides immunity to service providers who exercise traditional editorial functions, such as decisions to publish, withdraw or alter content. See *Federal Trade Commission* v. *LeadClick Media, LLC*, supra, 838 F.3d 174. Additionally, message boards and blogs have been held to be interactive computer service providers under the statute. See id. The plaintiff's allegations concerning the union's blog fall within the editorial functions that have been afforded immunity under § 230, and therefore the defendants are immune from liability as interactive computer service providers.

B

Vicarious Liability

At the *Conboy* hearing, the plaintiff argued that the defendants may be vicariously liable for the comments made by fellow union members on the union's blog. The plaintiff contends that the defendants, as information content providers under § 230, are bound by the anonymous postings of their fellow union members on the union's blog. In her supplemental

post-hearing memorandum of law, the plaintiff cites *Short* v. *Ross*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X10-CV-12-6023797-S (September 16, 2015, *Dooley, J.*) (61 Conn. L. Rptr. 40), as ostensible support for her argument. The defendants argue that federal law preempts the imposition of vicarious liability under state law, and therefore is inapplicable in the present case.

"Vicarious liability is based on a relationship between the parties, irrespective of participation, either by act or omission, of the one vicariously liable, under which it has been determined as a matter of policy that one person should be liable for the act of the other. Its true basis is largely one of public or social policy under which it has been determined that, irrespective of fault, a party should be held to respond for the acts of another." (Internal quotation marks omitted.) *Alvarez* v. *New Haven Register, Inc.*, 249 Conn. 709, 720, 735 A.2d 306 (1999). The union is a voluntary association. General Statutes § 52-76 provides in relevant part: "Any number of persons associated together as a voluntary association, not having corporate powers, but known by a distinguishing name, may sue and be sued and plead and be impleaded by such name. . . . Civil actions may be brought, both in contract and tort, against such an association and its members . . . ."

Section 230 (c)(1) provides: "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." Section 230 (e)(3) expressly provides that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." "Although [p]reemption under the Communications Decency Act [47 U.S.C. § 230] is an affirmative defense . . . it can still support a motion to dismiss if

the statute's barrier to suit is evident from the face of the complaint." (Internal quotation marks omitted.) *Poole* v. *Tumblr, Inc.*, supra, 404 F. Supp. 3d 642.

The invocation of vicarious liability in the present case runs counter to the CDA's express mandates and Congress's intent when it was enacted.[3] The act specifically shields interactive computer service providers from liability from the potentially injurious messages posted to the service by other information content providers, and expressly preempts state law which seeks to hold service providers liable for information provided by another information content provider. Accordingly, § 230 preempts General Statutes § 52-76, which would have the effect of holding a service provider liable for the information provided by another information content provider in violation of §§ 230 (c)(1) and 230 (e)(3)

Even if the CDA did not preempt General Statutes § 52-76, there is still no basis to impose vicarious liability on the union. The plaintiff's reliance on *Short* v. *Ross*, supra, Superior Court, Docket No. X10-CV-12-6023797-S, is misplaced. In *Ross*, a local fraternity hosted a tailgate party before the Yale-Harvard football game. The fraternity's president rented a truck to transport supplies, beer and people to the tailgate party. While navigating through a parking area crowded with pedestrians the truck lurched forward and struck a

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[3] "Congress recognized the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium. . . . Section 230 was enacted, in part, to maintain the robust nature of Internet communications and, accordingly, to keep government interference in the medium to a minimum. . . . None of this means, of course, that the original culpable party who posts defamatory messages would escape accountability. . . . Congress made a policy choice, however, not to deter harmful online speech through the separate route of imposing tort liability on companies that serve as intermediaries for other parties' potentially injurious messages." *Ricci* v. *Teamsters Union Local 456*, 781 F.3d 25, 28 (2nd Cir. 2015).

number of people, one of whom died. The issue before the court on summary judgment was "under what circumstances, if any, are the individual members of a voluntary unincorporated association liable for the negligent acts of another member, when those negligent acts occur while in the course of performing acts at the behest of the association and in furtherance of the association's interests and affairs." Id. Noting that the issue had not been addressed by our appellate courts, the court held "that there are circumstances under which the individual members of an unincorporated association may be held vicariously liable for the negligent acts of another member. . . . [M]ere membership is insufficient. In order to be vicariously liable, the individual member *must have authorized, approved, actively participated in, aided and abetted or ratified the events and conduct giving rise to injury*. (Emphasis added.) Id.

In the present case, there is no evidence that individual union members authorized, approved, actively participated in, aided and abetted or ratified the comments posted on the blog.

CONCLUSION

For all of the foregoing reasons, the union's motion to dismiss is denied as to the first and second counts, and granted as to the fifth count, as well as to paragraphs 31 through 34 and 37 through 38 of the first, second, third, and fourth counts. Iacono's motion to dismiss paragraphs 29 through 32 and paragraph 35 of the seventh, eighth, ninth and tenth counts is granted.

BY THE COURT

Rosen, J.

Checklist for Clerk

Docket Number: HHD21-6146962

Case Name: Desilet v. East Hartford

Memorandum of Decision dated: 12/27/2022

File Sealed: **Yes** **No** X

Memo Sealed: **Yes** **No** X

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HHD-CV21-6146962-S **DESILET, COURTNEY v. EAST HARTFORD POLICE OFFICERS ASSOCIATION Et Al**

Prefix: HD2 **Case Type:** M90 **File Date:** 09/15/2021 **Return Date:** 10/19/2021

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Case Information

Case Type: M90 - Misc - All other
Court Location: HARTFORD JD
List Type: No List Type
Trial List Claim:
Last Action Date: 12/01/2022 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	**COURTNEY DESILET**		Plaintiff
	Attorney: BROWN ERIC R LAW OFFICE OF (436049) File Date: 09/15/2021 30 WOODRUFF AVENUE #615 WATERTOWN, CT 06795		
	Attorney: RONALD J PUGLIESE JR (439174) File Date: 08/08/2022 30 WOODRUFF AVE #615 WATERTOWN, CT 06795		
D-01	**EAST HARTFORD POLICE OFFICERS ASSOCIATION**		Defendant
	Attorney: MCELENEY & MCGRAIL LLC (101360) File Date: 10/19/2021 310 HARTFORD TPKE SUITE 3 VERNON, CT 06066		
D-02	**FRANCESCO "FRANK" IACONO**		Defendant
	Attorney: MCELENEY & MCGRAIL LLC (101360) File Date: 05/12/2022 310 HARTFORD TPKE SUITE 3 VERNON, CT 06066		

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