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Twitter, Yelp Back Glassdoor In Negative Review Spat

By Jess Krochtengel

Law360 (April 2, 2018, 8:01 PM EDT) -- Twitter Inc., Yelp Inc., TripAdvisor Inc. and other technology companies on Friday asked the Texas Supreme Court to overturn a ruling that allows an online retailer to depose Glassdoor Inc. to learn who wrote a negative online review, saying the decision creates an important free speech issue.

In an amicus brief, the companies — joined by Reddit Inc., A Medium Corporation and Automattic Inc., which is behind the online publishing platform WordPress — said that **the March 2017 opinion** from the Fifth Court of Appeals in Dallas chills anonymous speech. Backing Glassdoor's attempt to bring a quick end to lingerie retailer Andra Group LP's bid to learn the identity of two anonymous reviewers, the amici said Andra's suit should be dismissed under the Texas Citizens Participation Act, a state law intended to curb meritless lawsuits that target a party's protected free speech.

Andra, which runs the website HerRoom.com, had filed what is known as a Rule 202 petition for presuit discovery against Glassdoor, seeking to uncover the identities of former employees who posted reviews saying the company has illegal hiring practices, a supervisor is racist and sexist, and illegal immigrants work there. A trial court allowed the depositions, and the Dallas appellate court upheld the ruling.

The amici said Friday that Andra is seeking the identity of the anonymous reviewers as part of a "pretextual investigation into time-barred, meritless claims." The companies argued that preventing abuse of Rule 202 is "critical in cases like this one, where the ramifications for protected speech rights loom large."

"The current lack of reliable First Amendment protection of anonymous speech harms amici, similarly situated online platforms, and the millions of users who rely every day on the platforms amici provide to enable online expression," Friday's brief said. "Amici and their users are regularly subject to invasive, harassing, and inappropriate attempts to burden those seeking to speak out about matters of public concern."

Glassdoor **has argued** that the Rule 202 petition should have been thrown out under the TCPA, saying Andra could not meet the law's burden of setting forth clear and specific evidence of each element of its claim.

Andra has argued it had to show only that the likely benefit of allowing Andra to take a deposition about the anonymous reviews in question outweighed the burden or expense of the procedure. Andra told the Texas Supreme Court in a brief that the company met that burden and should be allowed to move forward with the deposition.

"By taking this case, the Texas Supreme Court has the opportunity to clearly rule that the

Texas Citizens Participation Act applies to Rule 202 proceedings,” Laura Prather of Haynes and Boone LLP, who represents the amici, said Monday. “Without this ruling and in this instance, those who don’t like what a speaker says will be able to make an end-run around the TCPA and subject speakers to legal proceedings without having to meet the requirements of establishing a prima facie case before unmasking anonymous speakers.”

In a statement Monday, Glassdoor said it believes the trial and intermediate appellate courts erred by not dismissing Andra’s case under the TCPA and is “fighting to protect the identities of two Glassdoor users and provide clarity on application of Texas’ anti-SLAPP law.”

“We are encouraged the Texas Supreme Court is considering our petition to protect the First Amendment rights of our users and are thankful for the strong support of our industry peers,” Glassdoor said.

Counsel for Andra did not immediately respond to a request for comment Monday.

Glassdoor is represented by Pete Kennedy and Jim Hemphill of Graves Dougherty Hearon & Moody PC.

Andra is represented by Cole B. Ramey, W. Alan Wright and Tamara D. Baggett of Kilpatrick Townsend & Stockton LLP.

The tech companies are represented by Laura Prather and Wesley Lewis of Haynes and Boone LLP.

The case is Glassdoor Inc. et al. v. Andra Group LP, case number 17-0463, in the Supreme Court of the State of Texas.

--Editing by Edrienne Su.

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