

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

SHARON FEHRS, individually and on	)	
behalf of all other persons similarly	)	
situated,	)	
	)	Case No. 0801-00515
Plaintiff,	)	
	)	ORDER REGARDING
v.	)	MOTIONS TO DISMISS
	)	
STUBHUB, INC., a Delaware corporation,	)	
and eBAY INC., a Delaware corporation,	)	
	)	
Defendants.	)	

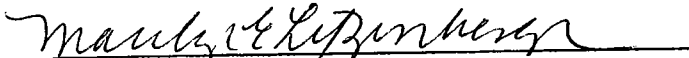
Defendant's motion to dismiss brought pursuant to ORCP 21A(8) came before the Honorable Marilyn E. Litzenberger for hearing on April 3, 2008. Plaintiff appeared by and through her attorneys, John F. Neupert and Elisa Dozono of Miller Nash. Defendants appeared by and through their attorneys, Derrick Green of Davis Wright Tremaine and Michael Rhodes of Cooley Godward Kronish, who holds a limited admission to appear before this court *pro hac vice*. The court heard arguments presented on behalf of both parties after considering the parties' written submissions. The court then requested further briefing from the parties, which they submitted on or before April 14, 2008.

After giving consideration to these materials, the Court is prepared to grant the defendant's first motion. As such, the defendant's second motion is moot. Therefore,

IT IS HEREBY ORDERED that, the defendants' first motion to dismiss for lack of standing and failure to state a claim is granted. Plaintiff's claim is brought under Portland City Ordinance §14A.50.060 (Resale of Tickets to Events at Municipal Facilities at Premium Price Prohibited). The language of this ordinance does not explicitly provide a private cause of action to citizens who claimed to have been damaged as a result of conduct violating the ordinance. *Compare* PCC §14A.50.060 with §23.01.080. Likewise, when the ordinance is analyzed in context with other provisions of Chapter 14 and the City Code in general, there is no indication that the city council intended, by implication, to provide for private enforcement activity. In fact, the inference is to the contrary. The penalty provided for violating §14A.50.060 is criminal in nature, not civil. Moreover, unlike other ordinances within Chapter 14, there is no provision for civil penalties. *See* §14B.85 and §14B.90. Finally, where civil penalties are provided under Chapter 14, an action to enforce those penalties must be brought by a city official. *See* §14B.85 and §14B.90. *Id.*

IT IS HEREBY FURTHER ORDERED that the defendants' second motion to dismiss is granted. Plaintiff's claims are barred by the federal Communications Decency Act, 47 USC §230, which immunizes the defendants from liability claims brought against providers of an interactive computer service as publishers or speakers of information provided by another information content provider. *See e.g., Barnes v. Yahoo!, Inc.*, 2005 WL 3005602 (D OR November 8, 2005) and *Gentry v. eBay Inc.*, 99 Cal App 4th 816, 831-35 (Cal Ct App 2002).

DATED this 9th day of September, 2008.


Hon. Marilyn E. Litzenberger
Circuit Court Judge

Original: Court Copies: John Neupert, Derrick Green