

# Colorado Appeals Court Hears Landmark Cancel Culture Case

*In Rare Occurrence, Court Holds Oral Arguments at Denver University's Sturm College of Law, Panel Discussion to Follow*

COLORADO SPRINGS, CO, UNITED STATES, March 28, 2023

/EINPresswire.com/ -- Smith Plumbing & Heating ("Smith"), one of Colorado Springs' most popular "Five-Star" plumbing, heating, cooling and HVAC companies (founded in 1974), in January 2022 filed a lawsuit in El Paso County District Court (Case No. 2022CV30081) against Colorado Springs resident Elizabeth Tibbets (now "Watson") for her participation in an online smear campaign against Smith following her refusal to remove or correct a false and defamatory Facebook review claiming the company and its employees engaged in

deceptive and predatory business practices in an attempt to take advantage of single mothers. Tibbets received five invoices from Smith for a variety of different services and different quote points. She never paid any money to the company or used their services.

Smith representatives made multiple attempts to speak and work with her regarding the review to no avail.

The company ultimately was forced to take down various social media accounts temporarily due to the inundation of one-star and false reviews from persons who never used their services and learned of Tibbets' smear campaign.

Technicians, employees, and Smith's owners were harassed online, offline, in person and over the telephone after Tibbets furthered her vilification of Smith through KOAA media. One



Eva the Polish Plumber

technician in particular was cornered at a gas station and screamed at by a woman that they should be ashamed of taking advantage of a single mother like Tibbetts.

This unlawful behavior has caused Smith employees, its owners, and their loved ones to fear for their safety and that of their small children who accompany them as verified by court affidavits.

Smith employees were verbally assaulted over the phone in the weeks following Tibbetts' initial Facebook posts, and then subsequent republications on live broadcast television, by angry people laboring under the false and defamatory allegations lodged by Tibbetts against the company and its owners. Some of these individuals were friends and family members of Tibbetts based on their social media accounts and other details in their posts.

Smith filed the lawsuit on the basis that the review contained false statements about deceptive and predatory business practices which led to economic damages, as well as subsequent in-person harassment following the inception of the online smear campaign.

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Every small business should keep a close eye on this landmark case. It will hopefully answer the question as to whether disgruntled consumers can defame a company & its employees with near impunity.”

*J. Matt Barber*

Attorney James “Matt” Barber, General Counsel for Smith, noted, “Suffice it to say that a negative or ‘one-star’ review itself is irrelevant to our decision as to whether or not to pursue legal remedies. If a customer has a legitimate and truthful concern and writes an unfavorable review (even a 1-star review), we address it directly and remedy the situation to the customer’s satisfaction. This is why, out of the hundreds of reviews we’ve received; the vast majority are 5-Star reviews. One can discern from this alone that this horribly offensive and defamatory allegation that Smith Plumbing takes advantage of single mothers, is particularly and facially absurd. A one-star review does not

equate to a demand letter. A review with false and defamatory claims which significantly hurt the families of our nearly eighty (80) employees, equates to a demand letter. If that doesn’t work, then litigation.”

Experts range in their final numbers, but a single negative online review can translate to losses



anywhere from \$4,000.00 to \$30,000.00 of lost revenue per year to a business, or approximately 30 customers a year.

Tibbets received a free consultation from Smith Plumbing in May 2021. Smith discovered numerous code violations and informed Tibbets. After her free consultation, Tibbets posted an online review, falsely accusing Smith of engaging in numerous unethical and deceptive business practices, including:

- o Charging more than double the rate of similar services and products;
- o Requiring purchase of services and products that were not needed, including an electrical panel; and
- o Engaging in predatory practices toward single mothers.



Furthermore, Tibbets, who was never an actual Smith customer, falsely claimed that Smith, “tried to charge \$23,000 for \$10,000 in work” and then inexplicably claimed, “[T]hey really tried to take advantage of this single parent.” In fact, none of this was true.

Tibbets further omitted key information from her review about the five (5) total separate estimates she received from Smith for different work, products, warranties and guarantees. Moreover, it was discovered in a public records search that, despite her claims to the contrary, Tibbets did have an electrical panel installed months after Smith’s consultation, which it had recommended, and she had claimed was unnecessary and predatory.

In their complaint and subsequent affidavits, Smith represented that they believed Tibbets intended for the online smear campaign to coerce them out of fear not to assert their legal rights using the threat of “cancel culture.”

Claims include trade libel, tortious interference with business relations, and intentional infliction of emotional distress for an unwarranted smear campaign that she took from the internet [all the way to broadcast television in December 2021](#).

Neither the lower court nor defense counsel have addressed whether the claims for intentional infliction of emotional distress by the owners of Smith are subject to Colorado’s anti-SLAPP

provisions. Smith and its attorneys stand by the proposition that the real-world spillover of actual harassment in-person and threats from smear campaigns and targeted online cancel culture fall outside the protections of any anti-SLAPP motion.

“With the current status quo of Internet culture, online harassment, including smear campaigns, in the years ahead will remain a key issue for the courts to consider in the context of current First Amendment jurisprudence and call upon lawmakers to determine whether Free Speech captures the spillover of cancel culture campaigns into the real world and the resulting harm,” says lead litigator for Smith, Attorney Cassandra Kirsch, “It should come as no surprise that the newly established [White House Task Force to Address Online Harassment and Abuse](#) in its initial blueprint issued on March 3, 2023, emphasized that victims experience real, devastating consequences to their health, including post-traumatic stress disorder (PTSD), depression, anxiety, eating disorders, self-harm, and suicide, as well as increased risk of physical and sexual violence. Survivors described how they self-censored and withdrew from online spaces and from broader engagement in academic, workplace, or social settings, often encouraged to do so by those who were unable—or unwilling—to help.”

Attorney Cassandra Kirsch, outside of the courtroom, has published and dedicated a substantial portion of her career to studying various actors on the Internet and how their motivations and roles intersect with effective cyber security, privacy, and legal solutions.

“When people hear the words “cancel culture,” it’s incredibly divisive to say the least. Many remember the term first appearing within a largely positive framework in association with causes that many Americans can and did get behind,” explains Kirsch, “However, the mobilization of the internet masses through alarmist phrases and the threat of not falling in line with attacking an online pariah has been abused by many to the point that even The New York Times in 2020 said that “cancel culture” is now “shambolically applied to incidents both online and off that range from vigilante justice to hostile debate to stalking, intimidation and harassment.”

Represented by Ian Speir of Covenant Law, LLC, Tibbets filed an anti-SLAPP motion to dismiss the lawsuit. However, the [El Paso County District Court disagreed with Tibbets and her counsel](#). Following oral arguments on March 4, 2022, the El Paso County District Court found that Smith had a reasonable likelihood of success on the claims and allowed the lawsuit to move forward.

After losing her anti-SLAPP motion in the lower court, Tibbetts appealed the decision of the lower court.

Upon review of the opening brief and responsive documents, the Colorado Court of Appeals has selected the case for the Courts in the Community program. “Courts in the Community is the Colorado Supreme Court and Court of Appeals' educational outreach program.” Although held before law schools and high schools with student participation, “These are not mock proceedings; they are oral arguments in actual cases from which rulings are determined. Each

Court issues its opinions anywhere from a few weeks to months after hearing the arguments.”

Oral arguments are set to take place at the University of Denver Sturm College of Law on April 4, 2023, at 4:00 p.m. MDT.

The public is welcome and encouraged to attend as the attorneys for both sides argue the future of First Amendment jurisprudence in Colorado.

For Smith and its owners, this matter is no David versus Goliath as might be misrepresented by some pundits– Smith is a small, but successful, business based out of Colorado Springs. Smith recognizes that many small businesses do not have the means to fight back against negative online reviews, smear campaigns, and ensuing harassment of its employees and owners in-person.

Owner Eva Robinson, and general manager Mike Robinson, a local husband and wife team of self-made entrepreneurs, believe that successful business owners who have the means should use their privilege to set legal precedent and establish legal opinions for those who may not otherwise be able to seek justice and save their businesses due to the high financial and legal bars to justice thanks to the Colorado anti-SLAPP statute.

“Every small business in Colorado and beyond,” continues Barber, “should keep a close eye on this landmark case. It will hopefully answer the question as to whether disgruntled consumers in Colorado can defame a company and its employees with near impunity from behind a computer screen, or whether there might remain legal recourse for small businesses in Colorado against often financially devastating and patently false smear campaigns.”

More importantly though, Smith and its owners do not believe the First Amendment rights of consumers and protections for businesses have to be mutually exclusive— online reviews based on false information or material omissions hurt consumers as well as businesses at the end of the day by depriving the public of the facts they need to make informed decisions.

Although Colorado’s anti-SLAPP statute is intended to bolster free-speech rights, it is the position of Smith and its counsel that the Colorado legislature never intended this new law to give consumers a green light to orchestrate smear campaigns and post online reviews about private business disputes based on falsities and omissions of material information against other individuals and companies.

Both parties indicate a willingness to go all the way to the Colorado Supreme Court.

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