BY DAVID M. McLAIN

Navigating Defamatory Online Reviews

Colorado case sets new precedent for builders

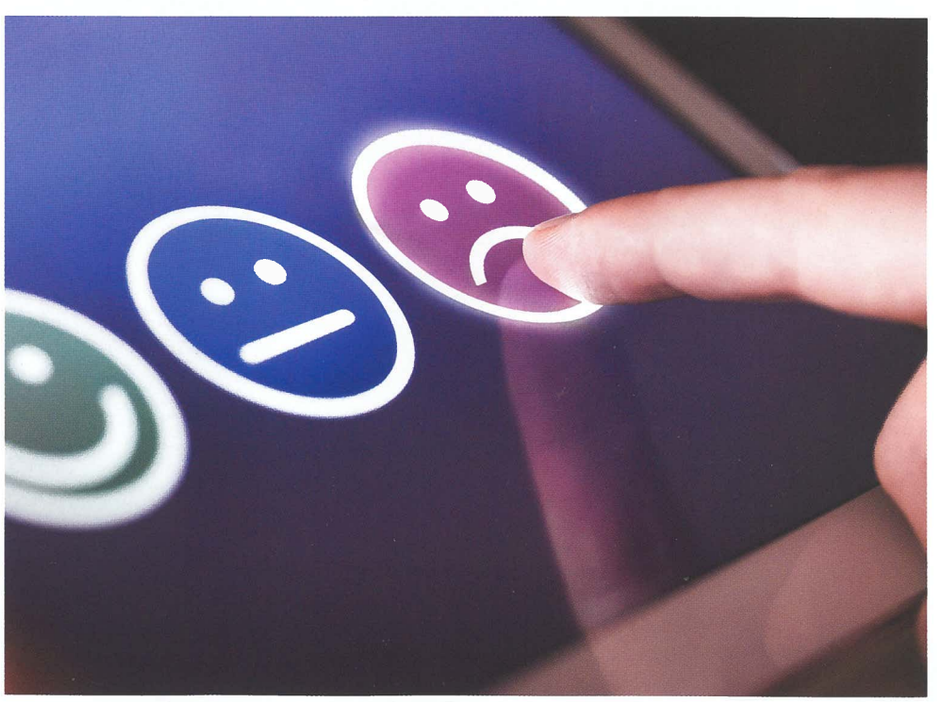
THROUGH OUR PRACTICE and conversations with our clients, we often see the problems associated with builders responding to negative online reviews, particularly when homeowners use the threat of such reviews as leverage to force the builders into settlements or warranty responses beyond what might be considered reasonable or necessary. In the Colorado Court of Appeals' recent decision in *Tender Care v. Barnett*, the court provided noteworthy context for builders facing such online attacks.

The *Tender Care* case involved a claim of defamation, through online reviews, of a veterinary clinic by a disgruntled client. The court's decision hinged on the application of Colorado's anti-SLAPP (strategic lawsuits against public participation) statute, which was designed to prevent the misuse of legal action to silence or intimidate critics engaging in protected speech, particularly on matters of public interest.

In a detailed analysis, the court determined that the online reviews in question were not a matter of public interest, a critical element for the application of the anti-SLAPP statute, as they were primarily focused on expressing personal grievances rather than contributing to a public discourse on veterinary standards or public health issues.

This decision is a beacon for home builders who have long grappled with the double-edged sword of online reviews. On one hand, constructive feedback and positive reviews can significantly boost a builder's reputation and market presence. On the other hand, malicious or extortionate reviews can unfairly tarnish a builder's image and potentially lead to unwarranted settlements or concessions.

Builders can draw several key insights from this ruling. First, it establishes that the law does not shield all negative reviews under the guise of free speech, especially if they do not pertain to matters of legitimate public interest. Second, the decision delineates a clearer boundary between genuine grievances and reviews that may have ulterior motives, such as coercion or defamation.



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While this case does not offer a panacea for builders to stop or litigate against every negative review, it provides a firmer legal footing to contest instances where online criticism crosses the line into defamation. It emphasizes the importance of distinguishing between protected speech and malicious attacks disguised as reviews.

In conclusion, the *Tender Care v. Barnett* decision could be a turning point for builders facing online attacks. It underscores the need for a balanced approach in responding to online reviews, where genuine concerns are addressed constructively and defamatory or extortionate comments are met with appropriate legal action.

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