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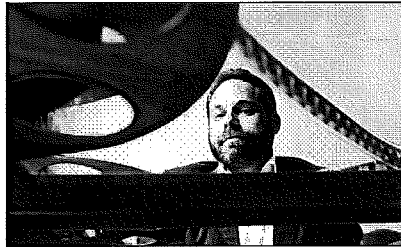
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Film financier claims firms pushed his companies into bankruptcy

By Jean Yung

In the microcosm of lawsuits orbiting Hollywood financiers and recent nemeses David Bergstein and David Molner, two law firms say they're getting sued for speaking out.

In a well-watched case that follows closely on the heels of Bergstein's \$50 million verdict against his former in-house counsel, Stroock & Stroock & Lavan LLP, Levene, Neale, Bender, Yoo & Brill LLP and the lawyers who represent companies controlled by Molner are facing accusations that they misappropriated confidential information about Bergstein's companies and used it to force them into bankruptcy on behalf of companies controlled by Molner and other creditors.



Stroock and Levene Neale have hit back with a motion to strike Bergstein's complaint under California's anti-SLAPP statute, saying that filing lawsuits - a form of petitioning the government - is protected under the First Amendment. In other words, the defendants argue, Bergstein claims he suffered \$100 million in damages as a result of Molner's attorneys filing lawsuits in bankruptcy court, which launched involuntary bankruptcy proceedings against Bergstein's companies and froze access to profit-generating assets. However, they say, filing a suit is protected speech, and the case should be dismissed.

It's an unusual line of argument against the legal maneuver known as strategic lawsuit against public participation, and it sets the stage for Los Angeles County Superior Court Judge Michael P. Linfield to parse the complex issue of litigation privilege, as well as a statute of limitation argument at a hearing scheduled for Sept. 25. *Bergstein v. Stroock*, BC483164 (L.A. Super. Ct., filed Apr. 20, 2012).

But the bigger story looming over the proceedings is one firmly rooted in the complex and at times secretive world of film finance. Devoid of headline-grabbing celebrity names, the multitude of courtroom battles fought by Bergstein and Molner, as well as by Ronald N. Tutor, Southern California-based construction magnate and business partner to Bergstein, nevertheless touches on many whose checkbooks have shaped Hollywood.

New York native Bergstein entered the film business a decade ago, teaming up with Tutor, chief executive of Sylmar-based Tutor-Saliba Corp., to back dozens of projects and broker other deals. A tough businessman, he also got into a number of disputes over money, which earned him a controversial reputation in the business.

The recent troubles began in part after a falling out with his trusted longtime in-house counsel, Susan H. Tregub, over unpaid legal bills. Tregub left Bergstein in early 2010 and began working for Molner, an unhappy creditor who claimed Bergstein owed him millions in unpaid loans. Working with Molner's attorneys, she corralled creditors and drafted a master bankruptcy complaint against Bergstein's companies.

Upon discovering Tregub's actions, Bergstein sued her for legal malpractice and breach of fiduciary duty. A jury last month found Tregub liable, handing him a decisive victory in the form of \$50 million in damages. Now Bergstein's setting his sights on her collaborators - Molner's legal counsel. Whereas Tregub has little financial resources to pay Bergstein, he said Stroock and Levene Neale have vastly deeper pockets.

Prominent Los Angeles litigators Daniel A. Rozansky of Stroock and David Neale, Irving M. Gross and Beth Ann R. Young of Levene Neale are named in the complaint. Sanjay Sharma, Molner's in-house counsel, is also a defendant.

Questions and Comments

NEWS RULINGS VERDICTS

SPECIAL REPORT
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Thursday, September 13, 2012

California Courts of Appeal Sex offender residential requirements unconstitutional, court rules

A blanket restriction prohibiting sex offenders from living near places where children congregate is unconstitutional, an appellate court ruled Wednesday, throwing a surprising wrench into a popular law.

Environmental Newhall Ranch developers face new opposition

Developers of the Newhall Ranch, on the outskirts of Los Angeles, have a growing fight on their hands as environmentalists are mounting multiple legal challenges to the project.

U.S. Court of Appeals for the 9th Circuit Law firm's right to shield financial documents up for debate

A law firm's disputed right to shield a client's financial documents from the Internal Revenue Service is set for oral argument today before a 9th U.S. Circuit Court of Appeals panel.

Litigation San Francisco plaintiff's attorney wins wrongful death verdict

A San Francisco-based plaintiff's attorney on Wednesday obtained a jury verdict for more than \$1 million in damages in a wrongful death case. But the damages might be capped at \$250,000 under state law.

Federal chicken lawsuit lays egg, earning dismissal

How much room does a chicken need to do a pirouette? In a sense, that was the crux of a Riverside County egg farmer's lawsuit that a federal judge in Los Angeles dismissed with prejudice on Wednesday.

Real Estate Real Estate Deals

Gaston & Gaston APLC inked a 66-month, 9,880 square foot lease on the 24th floor of 1010 2nd Ave. in downtown San Diego.

Personal Injury & Torts Punitive damages permitted in SLO medical malpractice case

A plaintiff alleging medical malpractice will be allowed to seek punitive damages against a San Luis Obispo physician and hospital after a favorable ruling from a superior court judge was affirmed by an appellate court.

Alternative Dispute Resolution

Stroock is represented by Brad D. Brian of Munger, Tolles & Olson LLP, and Levene Neale is represented by David B. Parker of Parker Shumaker Mills LLP. Sharma is represented by Patricia L. Glaser of Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP.

SLAPP experts say the trial judge faces a difficult decision and that the dispute will likely end up on appeal however he rules.

"Given the broad and general nature of the anti-SLAPP statute, one might conclude that such allegations do arise out of the protected activity of litigation conduct," said Edward Susolik, a civil litigator and partner at Callahan & Blaine APC who has filed and opposed some 50 anti-SLAPP motions but isn't involved in the case. "However, one can also argue that the gravamen of the plaintiffs' complaint is the improper use of confidential and privileged information. Thus, such conduct would not in and of itself be protected activity under the statute."

Susolik added that Linfield might also deliver a split decision, ruling that only some of the allegations in the complaint constitute protected activity. For example, the judge may find that allegations relating to the misappropriation of confidential information don't trigger anti-SLAPP protection, whereas the allegations related to filing of lawsuits do.

"SLAPP is often misused and abused, but this argument hits on exactly what SLAPP was designed for," said Mitchell J. Langberg, an entertainment litigator at Brownstein Hyatt Farber Shreck LLP. He's not involved in the case but has represented Molner's companies in an unrelated matter and also previously worked at Stroock.

If the court finds that Bergstein's complaint hinges on protected activity, then the burden shifts to the plaintiff to demonstrate a reasonable probability of prevailing on its claims.

"For the defendants, it's kind of a brilliant move, because it will force the plaintiff to show all his cards and put on all the evidence" in a sort of mini-trial at the pleadings stage, Langberg said. "And if the defendants win, Bergstein will have to pay all attorneys fees."

Forcing a plaintiff to present all of the evidence before discovery might typically put the plaintiff at a disadvantage. However in this case, Bergstein's lawyers did extensive work to find evidence during the Tregub trial that they can use in this case.

That leaves the defendant's second argument that Bergstein's suit is time-barred, an argument that prevailed last week in a separate suit Bergstein waged against another former counsel of his working under Tregub.

Meanwhile, Bergstein's attorneys hope to spotlight an alleged aspect of Molner's business that has gotten little media attention relative to Bergstein's troubles of late.

Calling Stroock, Levene Neale and Sanjay Sharma "the foot soldiers in David Molner's campaign to scapegoat Plaintiff David Bergstein," Bergstein's attorneys Alex M. Weingarten of Weingarten Brown LLP and Lucia E. Coyoca of Mitchell Silberberg & Knupp LLP say Molner's assaults against Bergstein are "part of a desperate effort to recoup funds Molner stole from investment vehicles he controlled and otherwise distract from his own malfeasance."

Molner controls a set of companies that include the Cayman Islands-incorporated Aramid Entertainment Fund Ltd., an investment vehicle that accepted money from large institutional investors and put it into film projects, including some of Bergstein's. Indeed, Molner has himself been embroiled in an ongoing legal war with his own investors, who are demanding clarity over the fund's activities amid accusations that he diverted large portions of the money for his personal use.

RELATED ARTICLES

Lawyer ordered to pay \$50 million in Hollywood financier spat August 23, 2012

A Los Angeles jury awarded Hollywood financier David Bergstein \$50 million in damages late Tuesday in his legal malpractice case against his counsel of many years, Susan H. Tregub.

Closing arguments made in Bergstein ex-counsel trial August 21, 2012

The legal malpractice suit Hollywood dealmaker David Bergstein is waging against his longtime counsel, Susan H. Tregub, was handed over to a jury in Los Angeles on Monday after both sides delivered closing arguments.

Neutral uses fellowship to foster mediation overseas

The Weinstein International Fellowship Program provides grants of up to \$25,000 to help people from other countries study ADR practices in the U.S.

California Supreme Court The final word: Civil law developments in the state Supreme Court

A convenient way to track the state Supreme Court's most important civil law cases. By **Joseph M. Lipner** and **BJ Ard** of Irell & Manella LLP

Family Decision impacts move-away requests in custody proceedings

Following the ruling in *Mark T. v. Jamie Z.* family law attorneys can finally make a promise to their clients: custody orders will change if a move-away request is made. By **Veronika Melamed** of Melamed Law Group PC

Government Article 3 inapplicable to California real property mortgages

As a matter of law, a California mortgage note cannot be a "negotiable instrument" under Article 3 of the California Commercial Code. By **Mark Didak**

Judicial Profile David Abbott

Superior Court Judge Sacramento County (Sacramento)

Entertainment & Sports Film financier claims firms pushed his companies into bankruptcy

In the microcosm of lawsuits orbiting Hollywood financiers and recent nemeses David Bergstein and David Molner, two law firms say they're getting sued for speaking out.

Trial begins for former lawyer of Hollywood financier

August 9, 2012

Opening statements are set to begin in a jury trial that will pit film financier David Bergstein against his longtime counsel, Susan Tregub, over claims of legal malpractice.

Law firms sued again over bankruptcy case

April 30, 2012

Law firms Stroock & Stroock & Lavan LLP and Levene, Neale, Bender, Yoo & Brill LLP were sued for the second time in a week over their role in the involuntary bankruptcy proceedings of film financier David Bergstein.

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