

Cosby, Ex-Atty To Be Deposed In Model's Defamation Suit

By **Bonnie Eslinger**

Law360, Los Angeles (November 2, 2015, 9:37 PM ET) -- A California judge on Monday ordered Bill Cosby and his former lawyer Martin Singer to face deposition in a defamation suit brought by former supermodel Janice Dickinson, who sued the comedian for calling her a liar in response to claims he raped her in 1982.

Los Angeles Superior Court Judge Debra Katz Weintraub's ruling Monday lifted an automatic stay of discovery imposed by Cosby's motion to have the suit dismissed on the basis that statements issued to the press on his behalf about Dickinson were protected free speech.

Judge Weintraub, however, said Dickinson made her case that she needed the depositions in order to demonstrate that Cosby acted with malice when he defamed her by making statements that were untrue, and in order to overcome Cosby's anti-SLAPP, or Strategic Lawsuit Against Public Participation, motion.

"Malice is a required element of defamation where the plaintiff is a public figure," Judge Weintraub said, reading from a pre-written tentative ruling that she finalized without change after hearing the parties' oral arguments. "The court finds good cause exists to lift the discovery stay."

In the context of this early stage of the case, Dickinson also put forward enough facts to show that Cosby's statements were not opinions but could be proven to be false.

"In other words, the rape did occur or did not occur, and in this regard, Ms. Dickinson is either telling the truth or not telling the truth," the judge said. "Facts pled in the complaint by the plaintiff support her claim that the rape actually occurred, and the press statement asserting the plaintiff is lying is a false statement."

The depositions need to be completed by Nov. 25, the judge said, adding that Cosby still had the right to refuse to answer some questions.

"Nothing, and I repeat nothing, in this court's ruling prevents the assertion of the attorney-client privilege or other objection during those depositions," Judge Weintraub said.

Dickinson, who filed her suit in May, submitted a declaration on Oct. 26 saying that although she told friends and work colleagues that Cosby had sexually assaulted her during a meeting at his invitation in Lake Tahoe, she was afraid to go to the authorities.

"I did not report the incident to the police in fear of retaliation against me and my family by Mr. Cosby, who was and is a wealthy, powerful man," Dickinson wrote.

After other sexual allegations began to surface against Cosby, Dickinson said she decided to go public with her story, telling Entertainment Tonight in March 2014 that the comedian drugged and raped her in 1982.

Through Singer, Cosby issued a statement to the entertainment news show for their broadcast saying Dickinson fabricated the story, and followed up days later with a similar denial for other media.

In his June 22 motion to strike the complaint, Cosby said Dickinson couldn't establish a probability of prevailing on her claims and called her "a celebrity, self-promoter and confessed persistent liar."

Dickinson waited decades to come forward, and she made public statements that the alleged attack had not occurred, Cosby said.

"But after other women accused Cosby of sexual misconduct and a media frenzy developed, Ms. Dickinson decided to cash in on that publicity and she completely changed her story," Cosby states.

In court on Monday, Cosby's current attorney in the case, Christopher Tayback of Quinn Emanuel Urquhart & Sullivan LLP, unsuccessfully argued that motion to strike should be heard before any discovery is done.

"The anti-SLAPP motion raises valid legal issues that could be dispositive of the case," Tayback said.

The attorney suggested that Judge Weintraub erred by being sympathetic to an argument in the supermodel's court filing that granting early discovery would provide a "balancing of equities."

"The California Legislature said the First Amendment is such that it doesn't matter what the case is, who the parties are or the relative affluence of the plaintiff versus the defendant," Tayback said.

A former Los Angeles County and federal prosecutor, Tayback replaced Singer of Lavelly & Singer PC as counsel for Cosby in two suits accusing him of sexual abuse.

Last month, Cosby was deposed in a suit filed by a woman named Judy Huth, who claims he assaulted her at the Los Angeles Playboy Mansion 40 years ago, when she was 15 years old.

In a related action in California federal court on Monday, AIG Property Casualty Co. argued that Cosby's insurance policies do not cover defending him against Dickinson's defamation claims since they stem from alleged sexual misconduct.

In the courtroom of U.S. District Judge Beverly Reid O'Connell, Cosby's attorney in that case, Kirk Pasich of Liner LLP, countered that coverage was due since Dickinson's claim came out of statements the comedian had made, not the alleged assault.

"There's no claim here for personal injury arising out of the alleged sexual assault," Pasich said. "The personal injury is for defamation."

AIG attorney James Wagoner of McCormick Barstow Sheppard Wayte & Carruth LLP countered that the policy exclusion dropped coverage for defending personal injury claims “arising out of any actual, alleged or threatened” sexual molestation or misconduct.

The exclusion was broad, exemplified by the inclusion of the word “alleged,” in order to cover cases that were not about an assault but a related matter, he said.

“It's intended to be a category of risk exclusion in the spirit of keeping clear of anything having to do with that type of risk,” Wagner said.

Judge O’Connell did not rule on Monday, and took the arguments under submission.

Janice Dickinson is represented by Lisa Bloom, Jivaka Candappa and Nadia Taghizadeh of The Bloom Firm.

William H. Cosby Jr. is represented by Christopher Tayback of Quinn Emanuel Urquhart & Sullivan LLP in the defamation suit. In the AIG matter, he is represented by Kirk A. Pasich and Kimberly A. Umanoff of Liner LLP and Francis D. Dibble Jr. and Jeffrey E. Poindexter of Bulkley Richardson and Gelinas LLP.

AIG is represented by James P. Wagoner, Lejf E. Knutson and Graham Van Leuven of McCormick Barstow Sheppard Wayte & Carruth LLP.

The cases are Janice Dickinson v. William H. Cosby Jr., case number BC580909, in the Superior Court of the State of California for the County of Los Angeles and AIG Property Casualty Co. v. William H. Cosby et al., case number 2:15-cv-04842, in the U.S. District Court for the Central District of California.

--Additional reporting by Daniel Siegal and Jody Godoy. Editing by Philip Shea.

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