

Judge Doubts Pooh Evidence

By Meg James
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Walt Disney Co. on Tuesday tried to shoot holes in the "lone dumpster defense" in the long-running Winnie the Pooh royalties lawsuit, but the judge overseeing the case said the Burbank entertainment giant lacked solid evidence that "garbage documents" came from more than one location.

Los Angeles County Superior Court Judge Charles W. McCoy told Disney that the firm lacked "physical proof" that the documents - internal memos, revenue reports and contract summaries - came from locations other than the dumpsters identified by a man who was hired to dig through Disney's trash.

Much is at stake in the 13-year-old breach-of-contract lawsuit; Disney has said losing it could cost the company "several hundred million dollars."

Disney's lead attorney, Daniel Petrocelli, argued that the judge should dismiss the lawsuit. Petrocelli said it was preposterous that important papers would have found their way into the garbage behind a satellite office building a few blocks from Disney's headquarters.

"Their whole story does not hold together," Petrocelli said.

The judge did not indicate when he might rule on Disney's request to terminate the lawsuit. If the judge rules that the case can proceed, a trial could begin in January 2005.

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McCoy said he will rule at a later time, after attorneys submit briefs detailing their positions.

Slesinger attorney R. Michael Collum said it was highly unlikely McCoy would throw out the lawsuit over Disney's allegations. He said McCoy also could make a narrower ruling, and order that certain documents not be used in the trial, which is scheduled to start early next year.

The Slesinger family, which acquired Pooh merchandising rights from British author A.A. Milne in 1930, filed its lawsuit against Disney 13 years ago, claiming they had been shortchanged of royalties on Pooh merchandise and videos.

In closing arguments Tuesday, Disney attorney Daniel Petrocelli told L.A. Superior Court Judge Charles McCoy that Disney had met its burden of proof and urged the judge to terminate the 13-year-old royalty case brought by the Slesinger family as a sanction for having taken Disney documents from a trash bin. "You can't steal evidence, you can't alter evidence, and you can't cover up evidence," said Petrocelli.

McCoy did not indicate how he would rule, but he seemed to express skepticism about one of Petrocelli's key points. "What real evidence do you have that documents were taken from more than one location?" asked McCoy. "You have no physical proof that there was more than one" trash bin.

Slesinger attorney Eric Ferrer said it was difficult to prove his client didn't do something.

Trash controversy

The Slesingers have claimed that over a period of years in the mid-1990s, a private investigator they hired obtained discarded Disney documents from one trash bin accessible from public property, a procedure they claim is legal. Disney claims the documents came from several Disney trash facilities that were on private property. It also suggests Disney offices may have been broken into to get documents. The documents found in the trash include material helpful to the Slesingers and protected by the attorney-client privilege.

In explaining the nearly 10-year delay in bringing the trash motion, Petrocelli outlined what he considered a cover-up by the Slesingers and their numerous attorneys. Petrocelli did seem to score points by chipping away at the credibility of the Slesingers and detailing a course of conduct that did seem to trouble McCoy.

Petrocelli pointed out that plaintiff Shirley Slesinger Lasswell seemed to have been intentionally kept in the dark by her daughter and co-plaintiff Pati Slesinger about the trash bin searches. Although Pati has been intimately involved in the litigation, at crucial moments she claimed she had no involvement.

Conflicting testimony

Most seriously, at her first deposition, she claimed she knew nothing about the hiring of a private investigator to get documents from the trash. At a later deposition, she admitted she knew about it, but claimed she thought she wasn't supposed to answer because she believed the information was protected by the attorney-client privilege.

In an attempt to rehabilitate her, Ferrer played parts of Pati's deposition to show she was more forthcoming than Petrocelli had described. McCoy opined it was possible that, as a non-lawyer, Pati could be confused about the privilege.

Petrocelli also claimed Pati altered documents found in the trash by taking off the confidentiality

However, the judge spent much of the afternoon questioning lawyers representing the plaintiffs, Patricia Slesinger and her 82-year-old mother, Shirley Slesinger Lasswell. The judge appeared particularly concerned about alleged alterations to some of the documents.

Disney's legal team maintains that someone from the Slesinger camp altered or concealed pages that were marked "confidential" and "privileged" as a coverup because they were not supposed to have such private papers.

Slesinger and her attorneys denied the allegation.

Slesinger and her mother sued Disney in 1991, alleging the company had cheated them out of millions of dollars in royalties from Winnie the Pooh computer software, videocassettes, DVDs and other products. They also accuse Disney of not paying royalties on merchandise with several characters, including Pooh.

They inherited the Pooh merchandising rights from Stephen Slesinger, a New York literary agent who acquired them in 1930 from A.A. Milne, the British author who created the pudgy bear. Slesinger died in 1953, and his widow, Lasswell, transferred the rights to Disney in 1961.

The Slesingers and their attorneys contend the documents prove that Disney failed to pay family members all of the royalties they were due.

Disney's strategy during the hearing was to raise questions about the credibility of key participants, including Slesinger and her husband, David Bentson.

The hearing's most dramatic moment came last week during Bentson's testimony. Petrocelli played a tape of a message on the answering machine of a former high-ranking Disney executive about 18 months ago. The caller, which Petrocelli suggested was Bentson, tried to enlist the former executive to help the Slesingers' efforts, saying the person could "make a lot of money."

Bentson denied that he made the call, and the judge refused to admit the tape into evidence.

After the hearing concluded Tuesday, Patricia Slesinger said she had had enough of Disney's legal tactics. Standing outside McCoy's courtroom, a visibly angry Slesinger said she and her mother would channel their legal efforts to terminating the open-ended rights they gave to Disney. If successful, she said, the family could then turn to another entertainment company, such as **Pixar Animation Studios**.

"We're going to just terminate our contract and get our rights back," Slesinger said. "Pooh doesn't need Disney as much as Disney needs Pooh."

Disney Pooh-poohs case

Judge expected to take several weeks to issue written opinion

By JANET SHPRINTZ <<http://www.variety.com/index.asp?layout=bio&peopleID=1144>>

Disney wrapped up a weeklong hearing on the so-called "trash motion" in the Winnie the Pooh case by telling the judge the proceeding was about the honor and integrity of the court and that the rules of litigation had been broken.