

## Baiul's \$10M Royalty Suit Over NBC's 'Nutcracker' Falls Flat

By **Cristina Violante**

Law360, New York (February 3, 2016, 6:05 PM ET) -- A California federal court Tuesday threw out figure skater Oksana Baiul's suit seeking \$10 million in royalty payments from NBCUniversal Media LLC for her performance in the 1994 television special "Nutcracker on Ice," saying that the skater's claims were filed too late and are preempted by federal copyright law.

Judge Dean D. Pregerson granted NBC's motion to dismiss allegations of unjust enrichment and conversion against the TV network, On Ice Inc. and television producer Barry Mendelson, ruling that unjust enrichment is not a standalone claim and state claims of conversion of intangible property are both time-barred and preempted by federal law because "the work at issue [the filming of live performances] comes within the subject matter of copyright."

The court disagreed with Baiul's bid to extend the three-year statute of limitations on the grounds that she did not know about the money owed to her until 2014, saying Baiul did not show due diligence for the 20 years in between the performance and the filing of the complaint.

Judge Pregerson gave Baiul 14 days to appeal the decision.

He also refused **her attempt to remand the case** in a separate order Tuesday.

The dismissal ends a **suit filed in California state court** in June over royalties from the TV special, which NBC supposedly distributed globally. The suit claimed that "by reason of fraud or mistake," NBC denied Baiul royalties from the show despite an alleged January 1995 agreement written by the network and now-defunct On Ice Inc.

Baiul said that at the time of the performance she was a minor unable to read or write in English, and she alleged that she was not aware of the January 1995 agreement until NBC admitted in separate litigation in 2014 that she never entered into a performance agreement for that show.

NBC Sports, a division of NBCUniversal, moved the California case to federal court and **asked to dismiss the suit** in August, arguing that unjust enrichment is not a standalone claim and that the suit was time-barred. **Mendelson replied to the suit**, arguing that Baiul improperly split her claims against him, NBC and One Ice Inc., where he used to work.

The California suit is one of a few Baiul has launched over earnings from her skating career. She **first sued NBC in 2013** in New York federal court for allegedly using her likeness, seeking \$5 million. After the court dismissed the suit, **NBC slapped Baiul with legal fees**, a dispute that went up to the Second Circuit, **which sided with NBC**.

She also launched an **unsuccessful racketeering suit** against promoters and talent agents in 2013, alleging that they conspired to steal over \$62 million of her earnings through a criminal enterprise.

"In the past Baiul has pursued contractual-based theories that she's been advised by the courts are non-starters," Edward Pilot, counsel for Barry Mendelson, told Law360 on Wednesday. "Now she's attempting non-contractual based theories of conversion, unjust enrichment and accounting, and they too fail."

"Hopefully Ms. Baiul and her counsel will understand it's time to waive the white flag," Pilot said.

Baiul is represented by Kenneth I. Sidle of Gipson Hoffman & Pancione.

NBCUniversal Media is represented by Enoch H. Liang, Damian J. Martinez and Danielle R. Claxton of Lee Tran & Liang LLP and by in-house counsel Avi Braz of NBCUniversal Television Group.

The Mendelson defendants are represented by Edward W. Pilot.

The case is Oksana Baiul v. NBC Sports et al., case number 2:15-cv-05163 in the U.S. District Court for the Central District of California.

--Editing by Jeremy Barker.

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