

Baiul's Latest \$10M NBC Suit Called A Repeat Performance

By **Melissa Daniels**

Law360, Los Angeles (October 5, 2016, 7:17 PM EDT) -- A California federal judge on Wednesday shut down allegations from famed figure skater Oksana Baiul that NBC Sports owes her \$10 million in royalty payments from the 1994 television special "Nutcracker on Ice," saying her claims are too similar to an action previously tossed in New York.

Baiul sued the network for the royalty payments in the summer of 2015 in California federal court, though she had previously brought a case against NBC in New York state court in 2013. She amended her complaint eight times, and the case was removed to federal court with U.S. District Judge Katherine B. Forrest presiding.

Judge Forrest has dismissed the complaint as time-barred and called it "frivolous and, frankly, bizarre." A Second Circuit panel later affirmed the dismissal.

In Wednesday's order, U.S. District Judge Dean D. Pregerson examined NBC's argument that the case should be dismissed as res judicata, given what was raised in the previous case.

"There is an identity of claims between this action and the New York case, a final judgment on the merits in that prior case, and identity of parties," Judge Pregerson said. "Accordingly, this actions is barred as res judicata."

The judge also denied NBC's motion for sanctions.

Baiul filed the California action in July 2015 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. 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 moved the California case to federal court and asked to dismiss the suit in **August 2015**, arguing that unjust enrichment is not a standalone claim and that the suit was time-barred. Television producer Barry Mendelson, who was also a defendant, replied to the suit, **arguing** that Baiul improperly split her claims against him, NBC and One Ice Inc., where he used to work.

In **February of this year**, Judge Pregerson said the claims were filed too late and preempted by federal copyright law. Baiul followed up with a second amended complaint, which the defendants again moved to dismiss, with NBC citing first-to-file standards as well as failure to state a claim.

Wednesday's order from Judge Pregerson said that because the New York case was based on questions of federal law, the court will apply federal law preclusion principles to determine whether the instant case can be brought. In examining the identity of the claims, the judge said "there is no doubt" that the California case and New York case come from the same nucleus of facts, even after Baiul filed a second amended complaint.

"As the New York order explains, the New York case was premised upon the allegation that NBC and others 'used and exploited the television motion picture recording of the "Nutcracker on Ice Starring Oksana Baiul" without entering into a written contract with Baiul or compensating her,' " the judge wrote. "The operative complaint in the New York case also included other factual allegations made here as well, including NBC's failure to cover production expenses or pay royalties to plaintiff."

Attorney Edward Pilot who represents Barry Mendelson said his client is pleased that the court "saw through the morass" to find the action was properly barred by res judicata.

Although the defendants had hoped for sanctions, "for the moment, we're pleased that it's over at the district court level," Pilot said.

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

NBC declined to comment. Attorneys for the other parties didn't immediately return requests for comment on Wednesday.

Oksana Baiul is represented by Usman Shaikh of U.S. Law Group.

NBC Sports is represented by Enoch H. Liang, Damian J. Martinez and Danielle R. Claxton of Lee Tran & Liang LLP.

Defendant Barry Mendelson is represented by 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.

--Additional reporting by Kurt Orzeck and Cristina Violante. Editing by Patricia K. Cole.