

# Olympic Skater Calls For Rehearing Of NBC Royalty Suit

By Rick Archer

Law360 (June 20, 2018, 9:16 PM EDT) -- Olympic gold medal-winning ice skater Oksana Baiul Wednesday told the Ninth Circuit it made a factual error when it denied her an en banc rehearing of her her suit seeking royalties from the 1995 airing of "Nutcracker on Ice" on NBC and should revive some of her claims.

Baiul argued a footnote in the panel's decision incorrectly claims she failed to argue to the district court that her claims against the show's producer, Barry Mendelson, were not precluded and was therefore barred from raising the argument on appeal. She claimed she did in fact make the argument in opposition to NBC's motion to dismiss the case and that she should be allowed a hearing on her claims against the producer.

"The USDC had an opportunity to address this argument and declined to do so, simply entering the judgment without addressing Oksana's objection," she said.

Baiul filed suit against NBC, the now-defunct On Ice Inc. and Mendelson in California state court in July 2015, claiming NBC denied her royalties from the show despite an alleged January 1995 agreement written by the network and On Ice. After Baiul amended the pleadings eight times, NBC moved the California case to federal court.

In 2016 a California district court granted NBC's motion to **dismiss the suit**, finding Baiul's claims were repetitions of claims already attempted in New York state court in 2013..

The New York claims were removed to federal court as well, where they were **dismissed** in 2014. The dismissal was **affirmed** by the Second Circuit.

Baiul had argued before the Ninth Circuit that the case should have been sent back to state court instead of being dismissed, but the court found the dismissal of her New York suit precluded her federal claim and denied both **her appeal** and her **April motion** for an en banc rehearing.

Baiul had argued on appeal that the New York judgment was not final in regards to the non-NBC defendants, but the panel said in a footnote to the en banc denial that she had not argued this in opposition to a motion for judgment on the pleadings filed by NBC and joined by the other defendants in district court and therefore could not raise it now.

In her Wednesday pleading, Baiul argued she did not address the preclusion of non-NBC defendants in her opposition to the MJP because the issue was not raised in the motion for judgment, but that she did make the argument when she opposed NBC's motion to enter the judgment.

"The USDC had that opportunity and declined to address 'this argument,' as is abundantly clear from the record," she said. "But more fundamentally, Oksana did not waive any claim with respect to the Mendelson defendants in her opposition to NBC's MJP because no such claims were raised by NBC in their MJP and Mendelson defendants did no more than join NBC' MJP, not file their own MJP or even a pleading or memorandum asking for relief for themselves and briefing claim preclusion applicable to them."

In an email statement Wednesday Edward Pilot, counsel for Mendelson, called Baiul's motion a "last-gasp, desperate attempt to resuscitate her lawsuit against my clients."

"Unfortunately for Ms. Baiul, the 9th Circuit ruled in no uncertain terms on June 13, 2018, that the Southern District of New York court's judgment was on the merits, and correctly held that Ms. Baiul's claims are precluded against all defendants," he said.

Counsel for Baiul did not immediately respond to requests for comment late Wednesday.

Baiul is represented by Raymond Markovich and Usman Shaikh of U.S. Law Group.

NBC is represented by Enoch Liang, Prashanth Chennakesavan and Kevin Kelly of LTL Attorneys LLP.

Mendelson is represented by Edward Pilot of Edward W. Pilot APC.

The case is Oksana Baiul v. NBC Sports et al., case number 16-56658, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Daniel Siegal, Dorothy Atkins and Cara Salvatore. Editing by Joe Phalon.