

Judge Pauses Arbitration in ‘Neverland’ Spat Pending 9th Circuit Review

MARTIN MACIAS JR November 7, 2019

LOS ANGELES (CN) – A federal judge Thursday [granted](#) entertainment network HBO’s bid to pause arbitration proceedings with the estate of Michael Jackson over the “Leaving Neverland” documentary pending HBO’s appeal to the Ninth Circuit.

The documentary focuses on the accounts of two men, Wade Robson and James Safechuck, who claim they were sexually abused by Jackson over several years when they were children.

Jackson’s estate sued for \$100 million in damages and to force arbitration, saying HBO’s “one-sided” documentary violated a non-disparagement clause from a 1992 agreement between the parties.

The network called the 27-year-old agreement invalid in court papers and moved to dismiss the case under California’s anti-SLAPP statute, which protects against meritless complaints that impede free speech rights.

In a September ruling, U.S.

District Judge George Wu

denied HBO’s bid to toss the complaint and sent the matter to arbitration.

HBO filed court papers a month later seeking to stay Wu’s order until the Ninth Circuit rules on whether the entertainment network would be “irreparably harmed” by arbitration proceedings.

At issue is whether arbitration in this matter has the effect of chilling HBO’s speech by providing Jackson’s estate with a “perpetual forum” to criticize the documentary, court papers said.

“The public interest favors a stay given the strong interests in protecting the exercise of First Amendment rights and promoting expressive, newsworthy works exploring issues of public concern such as Leaving Neverland,” attorneys for HBO said in court papers.

At a hearing Thursday in federal court in Los Angeles, Wu granted HBO’s motion for a stay and said he’d like the Ninth Circuit to weigh in on the First Amendment questions.

“This is not a typical arbitration case,” Wu said, adding later the case is unique because of the First Amendment concerns and that he “isn’t here just to enforce a contract.”

Jonathan Steinsapir of Kinsella Weitzman Iser Kump & Aldisert, an attorney for the Jackson estate, told Wu the stay is simply an HBO delay tactic and that multiple courts have rejected the notion that arbitration equals irreparable harm.

“We’re not seeing evidence that anyone has been silenced,” Steinsapir said regarding HBO’s free speech concerns. “Michael Jackson is still the most talked about celebrity in the world.”

“Trump may have superseded him, I think,” Wu said, prompting a chorus of chuckles from the gallery.

Bryan Freedman of Freedman & Taitelman, an attorney for the plaintiffs, told Wu he is making a simple breach of contract case more complicated than it needs to be.

“We think it’s a typical contract case. HBO are big boys and they bargained for a contract,” Freedman told Wu. “The harm to us is not being able to put this case before an arbitrator.”

Daniel Petrocelli of O’Melveny & Myers represents HBO in the matter.

A spokesperson for HBO declined to comment.

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