

Michael Jackson estate call HBO's appeal in 'Leaving Neverland' dispute "bogus"

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HBO has formally begun the process of appealing a ruling in the Californian courts that would force its dispute with the Michael Jackson estate over the 'Leaving Neverland' documentary into arbitration. It is, of course, a "bogus appeal" as the broadcaster tries yet again to cover up the truth about its "shoddy journalism". Or at least that's what legal reps for the Jackson estate would like you to believe.

The estate sued HBO back in February over the media firm's airing of the headline-grabbing documentary that put the spotlight back on allegations of child abuse made against the late king of pop by Wade Robson and James Safechuck.

The lawsuit centres on a 1992 contract between Jackson and HBO signed when the latter broadcast footage of the former's live shows. The contract included a clause in which HBO promised to never "disparage" the musician, a commitment the estate claims the broadcaster breached by airing 'Leaving Neverland'.

As the dispute progressed, the estate filed a motion seeking to force the matter to arbitration, rather than a proper court hearing. HBO then filed a counter motion seeking to stop that from happening on free speech grounds, via what is known in American legal circles as an anti-SLAPP motion.

Last month the judge hearing the case, George H Wu, **said he couldn't find any previous relevant precedent** to support the idea that HBO could avoid arbitration on free speech grounds. Which meant he was prone to support the estate's motion to force the whole matter to an arbitration hearing.

Although, **according to Law360**, the judge also conceded that the question over whether or not a party could avoid arbitration on free speech grounds may need to be considered in a higher court. He said "the question over whether an anti-SLAPP can be applied to a motion to compel arbitration is up in the air", before adding: "Who gets to choose if it applies? Not the trial judge. Maybe the circuit court, maybe the Supreme Court".

That makes HBO's decision this week to try to take the matter to the Ninth Circuit appeals court unsurprising. The broadcaster's core legal filing yesterday was short and sweet, setting out the grounds for taking the case to a higher court.

But the Jackson estate was immediately disparaging of the media firm's latest manoeuvre. An attorney working for the estate, Bryan Freedman, told reporters: "This bogus appeal is nothing more than HBO's latest desperate attempt to cover up the truth about its shoddy journalism. For seven months HBO has tried and failed to avoid a public arbitration. This appeal, which is its latest Hail Mary attempt, is even more pathetic than all of its other attempts to avoid public scrutiny".

"If HBO truly wanted to avoid a judgment", he went on, "it should have thought about that before it aided and abetted a one-sided documentary without any journalistic integrity and in which the subjects have a huge motivation to lie – namely the millions of dollars for which they are suing the estate. Our client will never stop until justice is served".

Of course, if this case does ever get to a full court hearing or arbitration – public or otherwise – it's debatable whether or not much time would actually be dedicated to assessing the shoddy-ness or not of HBO's journalism. Or, indeed, the allegations contained in 'Leaving Neverland' and the credibility, or not, of the two men making the allegations.

After all, it's a contractual dispute at heart. Although perhaps the estate feels that, if HBO is going to argue that its first amendment rights supersede 27 year old contractual commitments, that justifies some analysis of what the broadcaster did with its free speech.

HBO is yet to comment on its decision to appeal.