

Weinstein, But Not His Film Cos., To Face Sex Trafficking Case

By **Dean Seal**

Law360 (April 18, 2019, 7:35 PM EDT) -- Hollywood producer Harvey Weinstein will face a trafficking charge brought by women who say he coerced them into having sex with him, a Manhattan federal judge said Thursday in a ruling that dismissed his former film companies from the suit.

U.S. District Judge Alvin K. Hellerstein indicated at a hearing in March that he, like two other judges in his district, would not dismiss claims brought under the Trafficking Victims Protection Act over the disgraced movie mogul's alleged history of sexually preying on women in the film industry.

His ruling Thursday dismisses every other claim in the proposed class action — which also charged his former companies, Miramax and The Weinstein Co., and a number of their directors and executives with playing some part in the "Weinstein sexual enterprise" — but left the sex trafficking charge intact.

"I join Judges [Paul A.] Engelmayer and [Robert] Sweet in holding that the TVPA extends to enticement of victims by means of fraudulent promises of career advancement, for the purpose of engaging them in consensual or, as alleged here, non-consensual sexual activity," Judge Hellerstein said.

The three judges are handling civil litigation brought by women who say Weinstein assaulted them, coerced them into sexual relationships, or otherwise preyed on them over roughly two decades beginning in the mid-1990s by leveraging his powerful position atop his now-bankrupt Hollywood movie company. Weinstein is also set for trial on criminal sex assault charges starting June 3.

Judge Sweet said in August that while he was delving into legally "uncharted waters," the plaintiff in the case before him, actress Kadian Noble, had alleged a sexual encounter with Weinstein that could be construed as a value transaction and therefore falls under the TVPA. In January, Judge Engelmayer made the same call in a case brought by producer Alexandra Canosa.

While he kept Weinstein on the line, Judge Hellerstein did not do the same for claims that the mogul's former namesake company and its officers helped facilitate, clean up or conceal the assaults to ensure that The Weinstein Co. would continue churning out profitable movies.

Although the company and officers "undoubtedly benefited" from Weinstein's employment at TWC, the judge said, the sex trafficking claim against them fails without allegations that Weinstein provided them those benefits because they were facilitating his sexual misconduct.

"To the contrary, plaintiffs' allegations suggest that H. Weinstein benefited TWC in spite of his alleged predations, which caused many women not to work with TWC, diverted company resources toward supervision of H. Weinstein and away from business activities, and exposed TWC to potential liability," Judge Hellerstein wrote.

The suit had asserted Racketeer Influenced and Corrupt Organizations Act and racketeering conspiracy charges against nearly all of the defendants for allegedly blacklisting actresses who refused Weinstein's advances, but the judge ruled Thursday that blacklisting is not a valid RICO violation.

Seven state law claims — for negligent supervision, civil battery, assault, false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, and ratification — were all dismissed as untimely.

The accusers had argued that the applicable statutes of limitations should be extended because the defendants took steps to prevent them from "learning of the defendants' knowledge" of Weinstein's misconduct and filing claims, but Judge Hellerstein was not convinced.

"At the time of H. Weinstein's alleged assaults, plaintiffs were aware of their injuries — from assault, battery, false imprisonment, and/or infliction of emotional distress — and of the identities of the company or companies that might be vicariously liable to them for those injuries," he said.

The judge further concluded that the suit alleged "little or no threatening behavior" by the defendants between the immediate aftermaths of the alleged assaults and the suit's filing in 2017.

Judge Hellerstein also dismissed a claim under the recently enacted Child Victims Act from an unidentified woman who accused Weinstein of sexually assaulting her in 2002, when she was 16 years old, but the judge noted that she was "situated differently" from the other plaintiffs and permitted her to file again later, while dismissing the other claims with prejudice.

Elizabeth A. Fegan of Hagens Berman Sobol Shapiro LLP, an attorney for the plaintiffs, told Law360 on Thursday that the court "correctly ruled that Harvey Weinstein should have to face the federal sex trafficking charge that he used his power to deceive and manipulate women, knowing he intended to sexually abuse them."

"We are disappointed that certain claims were dismissed and plan to file an appeal," Fegan said. "But this decision — since it dismissed class claims — opens the floodgates for victims to file individual lawsuits in state courts across the country."

Counsel for Weinstein did not respond to a request for comment. Counsel for The Weinstein Co. declined to comment.

The plaintiffs are represented by Elizabeth A. Fegan, Steve W. Berman, Craig Spiegel, Shelby Smith and Jason Zweig of Hagens Berman Sobol Shapiro LLP.

Weinstein is represented by Elior D. Shiloh and Brian Pete of Lewis Brisbois Bisgaard & Smith LLP and Phyllis Kupferstein of Kupferstein Manuel LLP.

The Weinstein Co. is represented by Gerald L. Maatman Jr., Karen Y. Bitar and Lisa L. Savadjian of Seyfarth Shaw LLP.

The individual executives and other corporate defendants are represented by Paul Weiss Rifkind Wharton & Garrison LLP, Patterson Belknap Webb & Tyler LLP, Skadden Arps Slate Meagher & Flom LLP, Reed Smith LLP, Latham & Watkins LLP, Fried Frank Harris Shriver & Jacobson LLP, Schulte Roth & Zabel LLP, Rosoff Schiffres & Barta, Pillsbury Winthrop Shaw Pittman, Rosenberg & Giger PC, Cravath Swaine & Moore LLP, Serpe Ryan LLP and Hoguet Newman Regal & Kenney LLP.

The case is Geiss et al. v. The Weinstein Co. Holdings LLC et al., case number 1:17-cv-09554, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Pete Brush. Editing by Brian Baresch.

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