

NBA Union Can't Block Former Exec's \$10.5M Contract Suit

By Kurt Orzeck

Law360, Los Angeles (August 11, 2015, 8:14 PM ET) -- A California appeals court refused Monday to halt a \$10.5 million breach of contract suit against the National Basketball Players Association by the union's former executive director, ruling its claims didn't arise from activity protected by the anti-SLAPP statute.

Affirming a lower court's denial of the NBPA's motion to strike, a three-judge appellate panel determined that the main thrust of G. William "Billy" Hunter's lawsuit is that the union breached his contract in February 2013 by firing him before it expired. The judges said an internal investigation that raised concerns about Hunter's conduct didn't amount to an official proceeding that warranted anti-SLAPP protection.

A special committee of the NBPA launched that investigation in April 2012 into allegations of nepotism, conflicts of interest and the potential misuse of union funds. The union had been dealing with a public feud between Hunter and union president Derek Fisher, a former NBA player, over a request for an internal audit.

The lower court had said there was enough evidence of an enforceable contract requiring payment in the event of Hunter's termination and of his contract claims. The union argued on appeal that Hunter hadn't alleged a theory of breach of contract on which he could prevail.

The appeals court disagreed. "Notwithstanding the anti-SLAPP statute must be construed broadly ... its boundaries are not limitless," the three-judge panel ruled. "Hunter's disagreement with the NBPA is not protected activity; it is a garden-variety contract dispute."

Paul Weiss Rifkind Wharton & Garrison LLP, which conducted the investigation, said in its January 2013 report that Hunter never told the union's executive committee or player representatives that his \$3 million-a-year contract, in place since 2010, was not properly approved under union bylaws, even though the NBPA's outside counsel later told him that the approval remained necessary.

Hunter was fired shortly thereafter, and after he sued to recover \$10.5 million he said he was owed in salary and benefits, Los Angeles Superior Court Judge Huey Cotton Jr. decided that the investigation didn't get anti-SLAPP protection.

The appeals court on Monday held that Hunter had tried to resolve a contract dispute based the union's act of repudiating and terminating his employment contract before the end of its term. Thus, the judges said, they didn't need to decide on the merit of the claims.

David L. Anderson of Sidley Austin LLP, which is representing Hunter, told Law360 on Tuesday that “every judge that has looked at this case has rejected the union's position. In the superior court, Judge Cotton held that Mr. Hunter had ample evidence to support his claims. And now the court of appeal has rejected the union's reliance on the Ted Wells investigation.”

Gary Kohlman, general counsel for the NBPA, said in a statement Tuesday that the union is confident that Hunter's suit will ultimately be shown to be devoid of merit.

"While we understand that the [appeals court] did not find that the NBPA's cause for terminating Billy Hunter fit within the very narrow category of actions that allow claims like these to be dismissed early on procedural grounds at the outset, the court's decision specifically made no comment on the merit of Hunter's allegations," Kohlman said. "Given the multiple instances by Hunter of self-dealing and taking actions adverse to the best interests of the player's association, no one can reasonably dispute that the NBPA had both the justification and right to fire him as its executive director."

Judges Richard D. Aldrich, Lee Smalley Edmon and Anne Harwood Egerton sat on the panel for the appeals court.

Hunter is represented by David L. Anderson, Marie L. Fiala, Joshua Hill and Michelle B. Goodman of Sidley Austin LLP.

The NBPA is represented by Lynne C. Hermle, Joseph C. Liburt, Leah L. Spero and Christina G. Sarchio of Orrick Herrington & Sutcliffe LLP and James W. Quinn and Bruce S. Meyer of Weil Gotshal & Manges LLP.

The case is G. William Hunter v. National Basketball Players Association, case number B254155, in the Court of Appeal of the State of California, Second Appellate District.

--Additional reporting by Stewart Bishop. Editing by Brian Baresch.