

Use of Woman's Image in HBO Reality Show Prompts Lawsuit

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A Manhattan woman's violation-of-privacy suit, which alleges that participants in the Home Box Office show "Family Bonds" made crude comments about "the effects looking at [her had] on their respective libidos," highlights the challenges that reality TV shows face under New York state law.

Supreme Court Justice Debra A. James has denied the defendants' motion to dismiss, holding that the defense failed to satisfy the "real relationship" standard for a violation-of-privacy defense, which requires a connection between the use of a person's likeness and the editorial message of a program.

"On this motion the defendants' only proffered relationship between the use of plaintiff's image and the television show is that the plaintiff was standing on a New York street corner while the defendants were filming," James held in *Nieves v. Home Box Office*, 100966/05. "Clearly the court will have to make a factual determination based upon the use of the plaintiff's image and the content of the program in order to determine whether the defendants meet the 'real relationship' standard."

According to her complaint, Chanti Nieves, an aspiring actress and singer, was "lawfully standing in the vicinity of 106th Street and Broadway" when "her image was captured on video by cameras shooting 'Family Bonds.'"

The show is "HBO's first-ever prime-time documentary series," according to the cable channel's Web site. It "gives viewers a window into the dangerous and unexplored world of bounty hunting -- through the eyes of the most outrageous, fun-loving and wild (yet somehow functional) real-life family on TV."

Eleven minutes into episode three, Nieves' image appears as she paused on the corner.

"The defendants' video cameras, and later the defendant producers (through their irresponsible editing process) intentionally singled out Ms. Nieves, zooming in on her figure until the clear image filled the entire frame," according to the complaint.

Two members of the show's featured family -- the Evangelistas, from Queens -- made "crude remarks" about the how looking at Nieves affected them.

The broadcast of the episode resulted in "intense mental suffering," Nieves alleged.

"She has particular concerns about her image being out there in the world," her attorney Daniel N. Arshack of Arshack & Hajek said. "You can imagine if she were to get a part or recording contract and somebody took what had previously been put out about her on HBO and put that out in public. It would be forever humiliating."

Nieves filed the present action, alleging that the show's use of her image violated New York Civil Rights Law §61, which allows for an injunction and damages for "any person whose [image] is used ... for advertising purposes or for the purposes of trade without" written consent. She seeks \$500,000 in damages.

PUBLIC INTEREST

The defendants -- HBO, Time Warner, Stick Figure Productions and a number of individual employees -- claimed among other things that the use did not fall into either of the prohibited categories, advertising or trade purposes.

James, however, held that a dispute remains as to the purpose for which Nieves' likeness was used.

It is settled that a picture "illustrating an article on a matter of public interest" is not prohibited under the law unless there is "no real relationship" between the picture and the article, James noted.

However, even "accepting the defendant's assertion that the television show here was a 'documentary,' there are still issues of fact regarding whether the use of plaintiff's image and accompanying commentary bears a real relationship to a 'documentary' about a 'bounty-hunting' family," she concluded.

The court therefore denied the defendants' motion to dismiss.

Laura R. Handman and Wendy W. Tannenbaum of the Washington, D.C., office of Davis Wright Tremaine represent the defendants. Handman declined to comment.

The defendants have until Feb. 23 to file a notice of appeal or motion to reargue.