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DM&H Litigation Newsletter

Vol. 1. Summer 2008

A Cure for Online Defamation



It is important in this day and age of Google to protect your online reputation. DM&H was recently engaged by a senior corporate executive to assist in repairing his online reputation, which had been tarnished by defamatory statements posted anonymously by a former girlfriend in a public forum.

Using a combination of the steps set forth below, DM&H was able to successfully remove defamatory statements from the web and replace them with a website that appropriately presented the executive to the public.

remove content from the web, not get even.

First, attempt to persuade the forum's host to remove the comments. As these hosts typically are not liable under the Communications Decency Act for comments authored by third parties, you should demonstrate, in detail, why the comments are defamatory. Keep the letter well-reasoned, since the host may well post it on the forum.

You can also threaten the poster with a defamation suit, if you know his identity. Posters typically remove their comments, rather than incur the expense and exposure of litigation. If the poster

has spoken anonymously, identity can be ascertained through judicial discovery procedures.

To obtain identity you will typically need to convince the Court that you have sufficient evidence to support a valid defamation claim. Once the poster's identity is revealed, the threat of litigation should cause him to remove the post.

In addition, be proactive. Create a positive website, accentuating the image you want to present. Optimize this website so that it tops the list of search results.

To learn more, call Martin Samson in the NY Office.

Steps to Take

Your goal should be to

A Victory for "Work Product Privilege" [continued on slide 2]

DM&H's litigation group recently obtained a huge victory for a Manhattan law firm upon whom document and deposition subpoenas were served in connection with a Florida action.

The client law firm is prosecuting a federal securities fraud class action against Bombardier Capital. Bombardier

sued two of its former employees in Florida state court for allegedly violating confidentiality agreements by assisting the client law firm with its investigation of Bombardier.

Bombardier, represented by McGuireWoods, sought documents and testimony from the client law firm concerning its interviews

with former employees. DM&H moved to quash the subpoenas on the basis of the attorney work-product privilege, arguing that the purpose of the subpoenas was to provide Bombardier with a window into the client law firm's analyses and strategies in the federal securities class action.

Justice Lehner of the

*To our clients
and friends*

This is the first in a series of practice focused newsletters from our firm. Please let us know if you find them informative.

You will see from the list of department members that we have a substantial litigation practice, with extensive experience in many areas.

*Larry Hutcher,
Co-Managing
Partner*

Firm News

Congratulations to Larry Hutcher and Jeff Citron our new co-Managing Partners.

We also welcome our new partner, Derek Wolman, who focuses on corporate and real estate law, with an emphasis on health care and financing.

Litigation Department Members

Michael Adler
Audrey Bedolis
Charles
Capetanakis
David Denenberg
Maria Deraco
Mark Geraghty
Larry Hutcher
Patrick Kilduff
Charles Klein
Gary Lerner
David Lieser
Ricardo Oquendo
Frank Perrone
Stuart Perlmutter
Ralph Preite
Peter Ripin
Martin Samson
Brett Smiley
Lewis Smoley
Mark Spund
Dimitra
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Michael Zapson

The Importance of Subordinate Clauses

In a hotly contested motion for a preliminary injunction, DM&H prevailed on behalf of a commercial subtenant, and was granted an injunction preventing its landlord from terminating its sublease.

The sublease was invalid, argued the landlord, because of the failure to obtain necessary approvals from the master lessor – the NYC Industrial Development Agency (IDA) – to sublease the space to our client.

The court agreed with our assertion that the 'subject

and subordinate to" clause in the sublease incorporated therein the terms of the IDA Master lease.

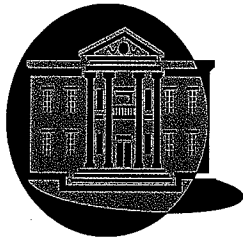
As a result, our client's sublease was considered approved because of its submission to the IDA without objection, in accordance with the Master Lease. This, in turn, caused the landlord to withdraw its Notice of Termination, and stipulate that the sublease was in full force and effect.

The decision likely saved our client millions of dollars in

increased rent which it would have had to pay if the injunction was not granted, and it had been forced to relocate to new space at current market rents.

Something to Think About

When faced with the potential termination of a valuable lease, have a legal professional analyze your lease before taking action. In this case, it was DM&H that brought to its client's attention both the need to review the Master Lease and its applicability to the case at hand. To learn more, call Larry Hatcher or Peter Ripin in the NY Office.



A Victory for "Work Product Privilege" [cont. from side 1]

Supreme Court, New York County, denied these motions holding that a New York court's authority to review subpoenas issued in connection with an out-of-state litigation is narrowly circumscribed.

In two separate published decisions, the Appellate Division reversed Justice Lehner, quashed the law firm's deposition on the ground that New York courts disfavor attempts by litigants to depose their

adversary counsel, and held that the firm need not produce privileged documents, which it directed the New York Supreme Court to review *in camera*.

After *in camera* review, the client law firm avoided the depositions and produced only a few harmless emails, with its assertion of privilege sustained as to nearly all of the documents at issue.

Something to Think About

Losing in lower court doesn't need to mean defeat.

Appeals can work.

In this case, the higher court agreed that the assertion of privilege should be sustained.

Bombardier Capital Inc. v. Schoengold Sporn Laitman & Lometti, P.C.

To learn more, call Larry Hatcher or Gary Lerner in the NY office.

Bank's Entitlement to Service Charges Upheld

The plaintiffs claimed that DM&H's client, a major regional bank, breached its agreement not to charge service charges for bounced checks resulting in damages of \$250,000. In a complete victory for our client, the court granted DM&H's motion to dismiss the complaint in its entirety.

The Court agreed with DM&H that the purported agreement was barred both by the Statute

of Frauds and the parole evidence rule. In addition, the Court held that plaintiffs' "bald" assertion that the agreement was memorialized by faxes and e-mails allegedly in the bank's exclusive possession was insufficient either to withstand dismissal or permit discovery in the face of the bank's unequivocal denials of the existence of such an agreement or any written evidence of it.

Something to Think About

Properly supported motions to dismiss can be effective tools to limit a client's overall litigation expense. While such motions can require a larger outlay at the outset of the litigation, if successful, they may avoid the significantly greater costs of a protracted litigation with ensuing discovery and trial.

To learn more, call Larry Hatcher or Peter Ripin in the NY office.

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