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Litigator of the Week: King & Spalding's Randy Mastro Revives 'Lawyer Ban' for MSG

By Ross Todd
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Buckle up, folks.

This week's Am Law Litigation Daily Litigator of the Week is **Randy Mastro** of **King & Spalding**, who has been leading the charge in defending a policy by the Madison Square Garden Entertainment Corp. blacklisting lawyers suing the company from its venues—a topic of some controversy in the New York legal community, to be sure.

A New York Supreme Court judge last year handed down a preliminary injunction on parts of the ban. The judge cited a 1940 state civil rights law barring a venue from preventing anyone over age 21 presenting a valid ticket from entering performances at "legitimate theatres, burlesque theatres, music halls, opera houses, concert halls and circuses." Alas, for plaintiff and longtime Knicks fan **Larry Hutcher** the court below did not find that law applied to sporting events.

New York's Appellate Division, First Department this week reversed the preliminary injunction finding that the applicable state law only provides for potential statutory damages, not injunctive relief.

Litigation Daily: What's at stake in all this for Madison Square Garden Entertainment Corp.?

Randy Mastro: Its right as a private entertainment venue operator to decide who can and can't enter its premises. For more than a century, New York common law has protected the right of private property owners to control the property they own. And as Chief Justice Roberts recently wrote for the U.S. Supreme Court majority in the *Cedar Point Nursery* case: "The right to exclude is one of the most treasured rights of property ownership." Madison Square Garden is a privately-owned venue. That's why a federal court recently recognized that, "under New York state law, property owners," like MSG, "have the right to remove licensees, such as ticketholders . . . from their property for any reason or no reason at all." That's the right of constitutional dimension that is at stake here.

Randy Mastro of King & Spalding. Courtesy photo

How did you and your firm come to handle this matter?

I've had the honor of representing MSG for nearly two decades, going back to the Westside Stadium fight in 2005. At the time I had recently returned to private practice from my stint as Deputy Mayor of New York City, and MSG hired me to lead the litigation charge against this stadium project that had the full support of the mayor and the governor. And the last time I looked, there's no stadium on the West Side of Manhattan, so that turned out pretty well. And I've represented MSG in litigation ever since and been hugely impressed with the team there having the courage of their convictions. It's one of the best things about private practice—the bonds you develop over the years with your clients

and the personal commitment you feel to champion their causes.

Who is on your team and how have you been dividing up the work?

I've got an amazing team here at King & Spalding. Or as I like to call them, "the brains of the operation." They have been working 'round the clock churning out brilliant briefs. **Casey Lee** and **Lauren Myers**, with whom I worked previously, have joined King & Spalding, so we've worked seamlessly together. And I've been so fortunate to have such great new colleagues, including **Alvin Lee**, **Paige Comparato** and **Leah Aaronson**, who literally gave birth last month as we were about to file a new case related to this dispute. Now, that's dedication. And it's been such a pleasure to reunite with **Jim Walden** as co-counsel. He and his **Walden Macht & Haran** team, including **Dan Chirlin** and **Pete Devlin**, have taken the lead in the SLA investigation and been a joy to work with. And I also have to call out MSG's incredible internal legal team, which is very hands-on, savvy and strategic. They were there with us every step of the way in achieving this victory, and we couldn't have done it without their invaluable support.

Tell me about this New York law passed in 1940 that the plaintiffs invoked here. Where did it come from? And how have you argued that it doesn't apply to MSG?

It's an ancient civil rights law passed at a time when the only way to get tickets to a theater or music hall was through the box office. So the limited purpose of that law was to protect someone who got a ticket in good faith from the venue's box office, showed up at showtime with a valid ticket in hand, and was then turned away at the door, as the New York Court of Appeals put it in the 1940s, "for no reason assigned." It has almost never been applied in the 80 years since, and for good reason. Because the world has changed since then. And today, most tickets are sold through online sellers and resellers. So the venue cannot possibly track or prevent sales to persons it chooses to exclude from the venue. But it can give them notice, as here, that those persons are banned from the venue and any tickets that come into their possession revoked. That ancient statute does not protect—and was never intended to protect—individuals who know they are banned from the venue but surreptitiously obtain tickets elsewhere and show up at showtime demanding admission anyway. This is a civil rights law, not a gotcha game. And there is no civil right to game the system that way.

What was the practical effect of the injunction that the plaintiffs had gotten at the trial court below?

The first banned lawyer who sued had been a Knicks season ticketholder, and he sued to get into Knicks games. We defeated a TRO application in its entirety at the trial and appellate levels. He then argued for application of this ancient civil rights law, but that only got him partial relief at the trial court level—an injunction permitting him to attend theater performances or music concerts at MSG venues. But not Knicks games or other sporting events, because, on its face, that statute did not apply to sporting events. But the statute, on its face, also did not permit injunctive relief, only a civil fine of between $100 and $500. And under New York law, when a statute abrogates the common law, the specific remedy it provides is the exclusive remedy available for a violation. Hence, when we went on appeal, the appellate court recognized that long-standing rule of law, and reversed and vacated even that limited injunction. So the policy is now in full force and effect.

What were your primary arguments for reversing it?

That ancient civil rights law doesn't apply to these lawyers who know they are banned and their tickets revoked. And as the appellate court found, there is no injunction available as a remedy under the express terms of that law.

Chancellor Kathleen McCormick in Delaware called this policy "idiotic" and "the stupidest thing I've ever read" during a hearing last year in separate shareholder litigation against the company. I know she ultimately declined to allow the plaintiffs law-

yers there to question MSG's in-house counsel about the policy. But how do you, as someone who defends the policy in court, react to that?

Worse things have been said to me in court, but I appreciated that the chancellor nevertheless did the right thing and quashed the deposition notice the plaintiffs' lawyers had improperly issued when the venue policy had nothing whatsoever to do with their underlying litigation. I do find it surprising, though, how strong the reaction is within the legal community to this policy. To me, it is not at all surprising that someone would not want to do business with people who sue them. In fact, that makes perfect sense. And major venues like MSG who get sued so often in "slip and fall" cases also have a genuine interest in protecting the litigation process from inadvertent or intentional discovery outside that process. Moreover, this is not the first time that private property owners have exercised their right to decline to associate with lawyers. In New York, for example, our laws permit co-op boards to reject potential neighbors for any reason, including that they are litigious lawyers, other than violations of civil rights laws. And last time I looked, lawyers are not a protected class in any civil rights law I ever saw.

You're also handling MSG's litigation against the State Liquor Authority. I know you had a hearing in that matter Thursday. What's the state of play there?

We brought an emergency proceeding to try to prevent the SLA from pursuing bogus charges that MSG should lose its liquor license because its venue policy, affecting a few hundred New York lawyers, somehow supposedly renders it no longer "open to the public." Tell that to the millions of fans who continue to flock to The Garden every year and are welcomed with open arms. It is a ludicrous position on the SLA's part, at the behest of complaining plaintiffs' lawyers subject to the policy. Yesterday, the judge ruled our legal challenge was premature, and we should have to go through the SLA's administration process to final decision, even though the SLA has made abundantly clear from the charges it brought where this is headed. So we will continue to rail against these preposterous charges and expect ultimately to prevail. Because what the SLA is doing here is a gross abuse of power and government overreach.

The New York Times recently called you "a pit bull of a lawyer." When you told my predecessor at the Lit Daily you think of yourself as a teddy bear, she wrote that "makes sense, if teddy bears also have teeth and claws." What do you make of all these scrappy descriptors?

I do think of myself as a teddy bear when I'm among family and friends. But I'm also a bear in the courtroom. I admit I'm a zealous advocate and a fierce cross-examiner. I love being in the courtroom. And I also love dogs. Maybe my first choice for a house pet wouldn't be a pit bull. But a pit bull in the courtroom is OK by me. So I'll take the New York Times reference as a compliment.

One of the lawyers suing MSG here is a longtime Knicks fan seeking to get back into the Garden for games. Is there any particular venue that you'd be devastated to be banned from—perhaps to the point of becoming a plaintiff yourself?

Can't say that any comes to mind. But I have been excluded from venues in my life. I'm Italian, and I love Italian food. But when I was a federal prosecutor and New York City deputy mayor cracking down on La Cosa Nostra corruption—for which I literally got death threats, by the way—I couldn't get reservations at certain Italian restaurants. One in East Harlem even told me, "Call back in a year." But I didn't sue them over it.

What will you remember most about getting this injunction reversed?

That we vindicated our client's rights in a maelstrom of controversy. It's one thing to win when everybody agrees with you. It's quite another to win when you know you are right but facing headwinds. We are in the right here. There never should have been any injunction in the first place. And now, the appellate court has so ruled.