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DQ'd Atty Gets Another Shot In Suit Against Mexican Singer

By **Dan Prochilo**

Law360, New York (April 04, 2013, 4:40 PM ET) -- A Florida appeals court on Wednesday struck down a decision disqualifying an attorney representing CMG Entertainment Inc. in a \$1 million breach-of-contract suit against Mexican singer Paulina Rubio over a missed concert, finding the trial court's decision was improperly based on affidavits.

A Florida trial court had disqualified attorney Richard Wolfe after concluding that Rubio's former personal assistant had given him access to confidential emails between the star and her attorneys regarding CMG's complaint, which stemmed from a 2010 concert Rubio was scheduled to play but missed.

On Wednesday, the Third District Court of Appeal quashed the decision, saying trial court Judge Abby Cynamon had based her conclusion solely on clashing affidavits — which dispute whether the lawyer had gotten ahold of privileged information — and not on testimony.

The appeals court said an evidentiary hearing should be held in the Circuit Court for Miami-Dade County to determine whether the assistant, who was fired after just two months of service in September 2012, had in fact passed along the information.

The lower court also must figure out whether that information gave CMG's attorney a leg up in the breach of contract case in order for him to be disqualified, the appellate court said.

"The trial court departed from the essential requirements of law by considering solely the conflicting affidavits and by not conducting an evidentiary hearing to resolve the conflicting factual issues," the court ruled.

CMG and a group of Colombian entertainment organizations sued Rubio seeking damages of \$1 million after she didn't perform during a free, government-sponsored concert she was supposed to headline in the city of Tunja, Colombia, in August 2010, her attorney Omar Ortega told Law360 on Wednesday.

The star's flight from another Colombian city was diverted to an airport that was a three-and-a-half-hour car ride away from the stadium where the show was being held, Ortega said.

Rubio asked if the government could make emergency arrangements to fly her to Tunja, but the request was turned down, he said. Under doctor's orders not to take long car rides since she was eight months pregnant, Rubio decided to cancel, according to her lawyer.

Ortega said the contract the star had signed to perform at the event permitted entertainers to back out for health and safety reasons. He said the drive through the Andes would have been dangerous not only medically, but also given the areas the singer would've had to travel through and the lack of security she had with her. He said she was to be paid \$50,000 for the concert, part of a 12-day international festival.

But Wolfe, the lawyer disqualified from representing CMG, gave a starkly different version of events and rejected the contention that the singer refused to drive to the show out of concern for her safety and that of her unborn child.

Rubio allegedly was offered a ride in an armored "high-luxury" SUV accompanied by a military escort to make the 50-mile drive from Bogota to the concert in Tunja on Aug. 30, Wolfe said in an interview with Law360.

But for unknown reasons she balked at driving and insisted on flying through military airspace to an unlit, weed-infested airstrip in the town of Piapa, Wolfe said. The risky flight was diverted and she missed the performance, which cost \$960,000 to arrange, he said. Rubio stood up 35,000 people, including foreign dignitaries from 17 countries, he added.

"The government hired Ms. Rubio to put on the concert, and she didn't come due to her own negligence and arrogance," Wolfe said.

Following the no-show, Wolfe sued on behalf of CMG, Fondo Mixto de Cultura de Boyaca, and other organizations. Two years later, with the CMG suit still pending, Wolfe took on a case brought by the star's former personal assistant, Felipe Restrepo, against Rubio in the U.S. District Court for the Southern District of Miami. The suit claimed the star owed Restrepo \$6,000 in unpaid wages.

Rubio's attorney motioned for Wolfe to be disqualified from the CMG case in November 2012. Ortega said he has supplied the trial court with emails he sent Rubio regarding the breach-of-contract case that were obtained by the personal assistant and then forwarded to Wolfe.

Wolfe denied receiving the emails.

"Absolutely not. That's nonsense," he said. "It is a complete fabrication on the part of Mr. Ortega, and when there is an evidentiary hearing, the truth will come out."

The hearing has not yet been scheduled.

Rubio is represented by Omar Ortega, Rey Dorta and Giselle Hugues of Dorta & Ortega P.A.

CMG and the other plaintiffs are represented by Jay M. Levy.

Chief Judge Linda Ann Wells and Judges Richard J. Suarez and Ivan F. Fernandez sat on the panel for the Third District Court of Appeal.

The case is Carlos Gutierrez, et al. v. Paulina Rubio and Link Tours Inc., case number 10-60925, in the Circuit Court for Miami-Dade County.

--Editing by Jeremy Barker.

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