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Taylor Swift Loses Bid To Nix Ex-Manager's Restitution Claim

By **Allison Grande**

Law360, New York (March 03, 2010) -- A federal judge overseeing a suit brought by country music star Taylor Swift's former manager has nixed six contract claims related to the singer's alleged inability to properly compensate him for his representation, leaving only a sole unjust enrichment claim intact.

Judge Richard J. Sullivan of the U.S. District Court for the Southern District of New York signed an order on Tuesday dismissing music industry manager Daniel Dymtrow's breach of contract, promissory estoppel, tortious interference and breach of implied covenant of good faith claims against Swift's parents and her current label, Big Machine Records LLC.

Tuesday's order — which was decided after Judge Sullivan heard oral arguments on the parties' motions to dismiss on Monday — strikes the three claims asserted against Big Machine Records and its CEO Scott Borchetta, but Swift and her parents still face an allegation that they unfairly benefited from Dymtrow's services during the first two-and-a-half years of Swift's career.

Dymtrow originally sued Swift and her parents Scott and Andrea Swift in December 2007, claiming that they had violated the terms of their personal management contract by only paying him \$10,000 “for the entirety of what he did to build and launch Taylor's career” between early 2003 and July 2005.

The manager, who has represented industry stars such as Britney Spears, agreed to take on the then 13-year-old Taylor Swift in 2003 after concluding “that Taylor had potential to become a young star in the music world with the proper guidance and management,” according to Dymtrow's complaint.

In April 2004, Swift signed an exclusive personal management agreement stipulating that Dymtrow would receive between 5 percent and 10 percent commission in Taylor's gross income received during the contract period, while Taylor's parents signed a separate contract guaranteeing her obligations under the agreement.

Dymtrow claimed that he was not fairly compensated for his “significant amount of time... helping to sharpen (Taylor's) talent and skills, exposing her to career-building prospects through live performances with established singers and assisting in the development and selection of opportunities that promoted and advanced Taylor's image and career.”

Dymtrow also introduced Swift to Borchetta, who in early 2005 told Dymtrow that he was leaving Universal Music Group to start his own independent record label and that he “wanted Taylor and Mr. Dymtrow to be part of his plans,” according to the complaint.

However, a few weeks before Swift finalized her contract with Borchetta's new label, the Swifts sent an Aug. 1, 2005, letter disaffirming their management agreement, the complaint said.

Dymtrow amended his original 2007 complaint in December 2008, adding tortious interference and unjust enrichment claims against Borchetta and Big Machine Records for their alleged role in convincing Swift to terminate Dymtrow's contractual relationship.

In their March 20 motion to dismiss the amended complaint, the Swifts alleged that they executed their "undisputed legal right" to walk away from the contract at any time because Dymtrow "displayed an astounding lack of understanding of the country music industry, alienated the very people essential to the advancement of Taylor's career, had no business plan... and displayed a surprising lack of professionalism by gossiping behind the backs of other artists."

The claims should be tossed, the Swifts added, because the agreement never gained judicial approval, which is required under New York law for all minors' contracts.

The Swifts' attorney Paul LiCalsi said on Wednesday that his clients were pleased with Judge Sullivan's decision to toss the claims against Swift's parents, adding with respect to the remaining issue of the value of Dymtrow's efforts in his representation of Swift that his clients remain confident that Swift's former manager was not entitled to the requested relief due to his failure to gain state approval of the contract.

However, Fernando M. Pinguelo, who represents Dymtrow, expressed confidence in the remaining claim on Wednesday.

"The judge's ruling recognizes Mr. Dymtrow's right to receive restitution for the significant efforts he expended over the course of two and one-half years on creating and selling this brand that the rest of the world now knows as 'Taylor Swift,'" Pinguelo said. "Mr. Dymtrow simply wants to be compensated for his work, and the facts of this case will support that result."

Jonathan D. Davis, an attorney representing Borchetta and Big Machine Records, said on Wednesday that his clients were pleased with the court's decision to grant their March 18 motion to dismiss the three claims asserted against the label, adding that Dymtrow had "simply failed to state a claim" against his clients.

Dymtrow is represented by Norris McLaughlin & Marcus PA and Gupta Legal PLLC.

Swift and her parents are represented by Mitchell Silberberg & Knupp LLP.

Big Machine Records and Borchetta are represented by Jonathan D. Davis PC.

The case is Dymtrow v. Swift et al., case number 07-cv-11277, in the U.S. District Court for the Southern District of New York.

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