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Appeals court rules privilege in topless-photos case

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NEW YORK, May 24 (Reuters) - A New York state appeals court on Tuesday ruled that an attorney accused of using topless photographs as leverage in a sexual harassment charge was shielded by the attorney-client privilege.

The ruling upheld a lower court judgment that a lawsuit by Ronald Green, of Epstein Becker & Green, could "only have been brought to harass" Thompson Wigdor & Gilly, the firm of the accused attorney, Thomas Wigdor.

The feud between the attorneys stems from a sexual harassment claim against Russell Abrams, the president of the Titan Capital hedge fund, by Abrams' former assistant, Danielle Pecile.

In December 2008, Abrams asked Pecile to get two compact discs of personal photographs printed, according to Pecile's complaint. The photos included images of Abrams' wife, Sandra, posing topless on the couple's honeymoon, the complaint said. When Pecile returned the photos, Abrams "smirked callously" and asked her if she liked them, it said.

Pecile resigned the following April, and in May Abrams received a letter from Wigdor, Pecile's lawyer, saying that she and another woman at the fund had been sexually harassed and that he had the photos of Sandra Abrams.

After Abrams asked that the photos be returned, Wigdor emailed him to say his clients would waive their sexual-harassment claims and return the photos in exchange for \$2.5 million. Abrams refused, and the two women then filed a discrimination complaint with the U.S. Equal Employment Opportunity Commission, attaching the photos.

Shortly afterward, Sandra Abrams filed a lawsuit against Pecile, later naming Wigdor as a co-defendant, accusing them of improperly possessing the photos and using them as leverage in the sexual harassment case.

In 2009, Manhattan Supreme Court Justice Walter Tolub tossed Sandra Abrams' suit against Wigdor, saying it could "only have been brought to harass" him. It left the action against Pecile intact.

SANCTIONS UNWARRANTED

In its ruling on Tuesday, the appeals court said it did not need to decide whether Wigdor should have told Pecile to return the photographs to Abrams. The panel said Wigdor was immune from liability "under the shield afforded attorneys in advising their clients, even when such advice is erroneous, in the absence of fraud, collusion, malice or bad faith."

However, the panel reversed a ruling by the lower court that said Wigdor was entitled to \$1,000 in sanctions and costs, saying it was unwarranted.

Sandra Abrams' action against Pecile is still pending. The sexual harassment claim against Russell Abrams is also pending.

Wigdor said in an interview that he was pleased with the appeals court's ruling.

Green said that the ongoing action by Sandra Abrams against Pecile was vindication of his firm's decision to bring an action against an adversary firm it believes acted improperly.

The appellate case is Abrams v. Pecile, Appellate Division, First Department, No. 2704.

For Sandra Piedrabuena Abrams: Barry Cozier of Epstein Becker & Green

For Epstein Becker & Green: Hal Lieberman of Hinshaw & Culbertson.

For Thompson Wigdor & Gilly: Douglas Wigdor

(Reporting by Noeleen Walder)

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