

2nd Circ. Reopens Ex-NY Knick's Assault Case Against MSG

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By **Zachary Zagger**

Law360 (November 16, 2020, 6:47 PM EST) -- The Second Circuit on Monday revived former New York Knicks player Charles Oakley's assault and battery claims against the Madison Square Garden Co. over his controversial ejection from the arena during a 2017 game, allegedly ordered by Knicks owner James Dolan.

The Second Circuit dismissed most of **Oakley's lawsuit**, including defamation claims against Dolan himself over his and the team's subsequent claims the former Knicks forward is an alcoholic, but the court said questions remain as to whether MSG security guards used unreasonable force.

"I am appreciative of the appeals court as I now have a chance to show the world what I said from day one was true," Oakley said in a statement released through his attorneys. "The truth is going to come out at trial and Dolan will be held responsible for what he did."

The suit stems from a widely publicized incident in February 2017 at a Knicks game in which Oakley, who played 10 seasons with the Knicks and helped lead them to the 1994 NBA Finals, was approached by MSG security after taking his seat in the stands. Oakley exchanged words and physical contact with the guards before he was **thrown to the ground** and escorted from the venue, according to his suit. He was later arrested.

Oakley claimed that he did nothing to deserve being kicked out of the Garden and that Dolan wanted to publicly humiliate him. The suit said one of the guards asked Oakley why he was sitting so close to Dolan, who happened to be seated a few rows in front, a fact his suit says shows that the team's owner was behind the ejection.

After the incident, the Knicks' public relations staff tweeted that Oakley had been acting "inappropriate" and "abusive," and stated they "hope he gets some help soon." Dolan then gave an interview during which he said Oakley "may have a problem with alcohol" and that "anybody drinking too much alcohol" or "looking for a fight" will be "ejected."

In a summary order, the Second Circuit panel agreed with then-U.S. District Judge Richard Sullivan that Oakley did not have enough to sustain his defamation, Americans with Disabilities Act or false imprisonment claims.

Particularly, the court said Oakley needed to show that Dolan's and the team's statements about his drinking suggesting he was an alcoholic were made with "actual malice" since Oakley is a public figure.

But in a separate opinion written by U.S. Circuit Judge Jon O. Newman, the court found Oakley's claim for assault and battery should not turn on whether there was reason to eject him from the arena but whether the amount of force used by the security guards to remove him was excessive for removing a patron from an arena.

Judge Newman noted that Oakley's claims that the security guards threw him to the ground and roughed him up were enough to be considered "excessive" for removing a patron from an arena, suggesting that less force is reasonable than for a situation where police are making an arrest.

"The force reasonably needed to initiate the criminal process by handcuffing a person being arrested, in circumstances that are tense, uncertain, and rapidly evolving, is not necessarily reasonable in the civil context to remove a person whose license to remain on private property has been revoked," Judge Newman wrote.

"Even in the arrest context, the reasonableness of the force used is often a jury question," he added.

Even though Oakley was arrested after his removal from the arena, the opinion pointed out that the MSG's guards were not trying to handcuff Oakley at the time, Judge Newman wrote. The court thus revived Oakley's claims for assault and battery against the arena's owners, the Madison Square Garden Co. and MSG Sports & Entertainment LLC, sending them back to the district court for further consideration.

"As we have always stated, Mr. Dolan and MSG acted improperly, and unlawfully, when they violently threw Mr. Oakley out of MSG without provocation," Oakley's attorney Douglas H. Wigdor of Wigdor LLP said in a statement Monday.

Dolan, who is the executive chairman and CEO of Madison Square Garden Entertainment Group, and the arena have argued that Oakley repeatedly refused requests to leave, and that even Oakley concedes in his suit that "any physical contact occurred in the course of effectuating his removal." Oakley was not injured nor was there any intent to injure, they have argued.

"We are pleased that the court dismissed the majority of the case and are confident that after a review of the facts, the remaining claims will also be dismissed," an MSG spokesman said Monday.

Judges Jon O. Newman, Guido Calabresi and Susan L. Carney sat on the panel for the Second Circuit.

Oakley is represented by Douglas H. Wigdor and Renan F. Varghese of Wigdor LLP, and Nelson A. Boxer of Petrillo Klein & Boxer LLP.

Dolan and MSG are represented by Akiva Shapiro, Declan T. Conroy, Grace E. Hart and Randy M. Mastro of Gibson Dunn & Crutcher LLP.

The case is Oakley v. Dolan et al., case number 20-642, in the U.S. District Court of Appeals for the Second Circuit.

--Additional reporting by Dave Simpson and Mike Curley. Editing by Adam LoBelia.