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Oakley's Injury Suit Against MSG Revived Again By 2nd Circ.

By **Pete Brush**

Law360 (May 5, 2023, 12:37 PM EDT) -- Former New York Knicks star Charles Oakley's claim that Madison Square Garden security used excessive force to remove him from a 2017 basketball game is likely heading for a jury, after the Second Circuit on Friday revived his suit for a second time.

In an unsigned order the appellate court held that U.S. Circuit Judge Richard J. Sullivan's 2021 decision to **grant the win to MSG** was too hasty, given the "intensely factual nature" of the dispute and "the limitations of the video exhibits" the judge examined.

"Once a jury sorts out what exactly happened, it must make a determination as to whether the force used to eject Oakley was reasonable," the Second Circuit held Friday. The decision came after a three-judge panel **hinted in April** that they didn't consider the 5½-year-old dispute to be dead.

Judge Sullivan, who has handled the case since it was filed in 2017 and kept jurisdiction over it after his 2018 elevation to the Second Circuit, found in 2020 that MSG and owner James Dolan were within their rights to tell Oakley to leave. After a partial remand, the judge said in 2021 that video of the widely seen Feb. 8, 2017, incident "unambiguously demonstrates" that security did not use excessive force.

But those efforts did not sway U.S. Circuit Judges Guido Calabresi and Beth Robinson during April's arguments, when they credited an assertion by Oakley's lawyer Doug Wigdor of Wigdor LLP that a "first assault" not part of the existing record was directed at Oakley and was not properly accounted for by Judge Sullivan.

Friday's decision tracked that reasoning, holding that there are "material disputes" about whether and when security pushed Oakley, who played over 10 seasons for the Knicks, and questions about whether he was given "a reasonable opportunity to depart" once ordered to leave the game against the Los Angeles Clippers.

Oakley asserts that the incident began when he was approached by MSG security for no good reason and asked to leave after taking his seat. Oakley exchanged words and physical contact with the guards before he was thrown to the ground and escorted out, according to his suit.

Counsel for MSG, Randy Mastro of King & Spalding LLP, argued in April that the facts before Judge Sullivan demonstrate clearly that security acted properly. Mastro said Oakley's allegation that he was subjected to unreasonable force in a sequence that was not properly examined by the court is not plausible.

But the court held Friday that "additional discovery could have yielded additional videos showing other camera angles, as well as helpful eyewitness testimony to overcome the limitations in the video record and give context."

Unless it settles, it will now be up to a jury to decide if MSG and potentially Dolan are liable for how they ejected Oakley.

Oakley's lawyer praised the decision.

"We are obviously thrilled with the Second Circuit's decision and look forward to holding MSG and

Dolan accountable for their actions," Wigdor said.

MSG and its counsel had no immediate comment.

Oakley is represented by Douglas Wigdor of Wigdor LLP.

Dolan and MSG are represented by Randy Mastro of King & Spalding LLP.

The appeal is Oakley v. Dolan, case number 21-2939, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Brian Baresch.

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