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Wham-O Can't Slip Goodwin Procter's \$2.7M Unpaid Bill Suit

By Daniel Siegal

Law360, Los Angeles (March 18, 2015, 4:52 PM ET) -- A California judge on Wednesday rejected Wham-O Inc.'s bid to escape Goodwin Procter LLP's \$2.7 million suit that alleges the toymaker's owners looted the company to avoid paying the firm for Slip N Slide-related intellectual property work, saying concerns with the pleadings can be resolved in discovery.

The firm alleged that Wham-O owners Kyle Aguilar and Jeff Hsieh transferred assets out of Wham-O into new entities they created as a way to stiff Goodwin Procter on \$2.7 million it was owed.

Before the start of Wednesday's hearing, Los Angeles Superior Court Judge Elizabeth Feffer issued a one-sentence written tentative ruling stating she would overrule the demurrer filed by Aguilar, Hsieh and Wham-O.

Stephen E. Hyam of Clark & Trevithick, representing Wham-O and the owners, urged the judge to reverse her tentative ruling and sustain the demurrer, arguing that the complaint's allegations run together in a way that improperly prevents the defendants from ascertaining which allegations support each cause of action.

"The principal problems the moving parties have ... is sort of the bulk recitation of facts, and it's difficult for us to determine which facts the Goodwin Procter plaintiff is saying apply to which causes of action," he said. "It's unclear to me what contract Goodwin Procter is alleging my clients breached."

Judge Feffer, however, noted that the plaintiffs had attached a copy of the purported contract to the complaint and said that the alleged lack of clarity in the pleadings could be easily resolved during discovery.

Goodwin Procter filed suit in state court in November 2013, alleging that the seller of iconic toys such as the Hula Hoop, Silly String, Hacky Sack, Slip N' Slide and Frisbee had retained the firm in 2009 to handle intellectual property litigation "against a major worldwide competitor" focused on protecting valuable assets, including the yellow color used in the Slip N' Slide.

The company failed to pay Goodwin Procter roughly \$5.1 million in billings and requested arbitration, under which an arbitration panel in April 2011 awarded the firm roughly \$4.7 million, according to the complaint. The toymaker then filed suit against the firm in Los Angeles Superior Court contesting the billings, and that litigation was resolved by a settlement agreement later in 2011, under which Wham-O was required to make periodic payments through November 2014, totaling \$4 million.

The toymaker paid off some of the debt, but in August 2012, it stopped payments with \$2.73 million still owed, according to the complaint. The firm alleged that the company at that time continued to incur other debts, while owners Aguilar and Hsieh devised a scheme to avoid paying what they owed under which they fraudulently transferred millions of dollars to a new company

owned by Hsieh and based in Hong Kong, called Wham-O Holdings, leaving Wham-O Inc. "stripped of all assets."

On Wednesday, Rupa Nath Cook of O'Connor and Associates, representing Goodwin Procter, told Judge Feffer that the complaint is written the way it is because each of the defendants are liable for the alleged misbehavior.

"I think Mr. Hyam hit the nail on the head by saying the allegations are intertwined and there are alter ego issues here, and thus, all the allegations do relate to each cause of action," she said.

Judge Feffer made her tentative ruling her final ruling and overruled the demurrer.

Goodwin Procter is represented by John D. O'Connor and Rupa Nath Cook of O'Connor and Associates.

Wham-O is represented by John A. Lapinski, Leslie R. Horowitz and Stephen E. Hyam of Clark & Trevithick.

The case is Goodwin Procter LLP v. Wham-O Inc. et al., case number BC524190 in the Superior Court of the State of California for the County of Los Angeles.

--Editing by Christine Chun.

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