

## Weinstein Co. Buyer Owes Pre-Ch. 11 Profits, 3rd Circ. Told

By **Jeannie O'Sullivan**

Law360 (January 13, 2021, 4:39 PM EST) -- The producer of "Silver Linings Playbook" told the Third Circuit that the buyer of Harvey Weinstein's film and television assets owes him profits made before the disgraced movie distributor's Chapter 11 petition, arguing that a lower court wrongly found the buyer was free and clear of the obligation.

During an oral argument before a three-judge panel, an attorney for producer Bruce Cohen and his production company said that a reading of Cohen's film profit participation rights agreement shows that the obligations of the parties in the agreement are material. Cohen claims Spyglass Media Group LLC owes him \$400,000 for profits spanning from the Bradley Cooper movie's 2012 release up until The Weinstein Company Holdings LLC filed for bankruptcy in March 2018.

Andrea M. Butcher of Elkins Kalt Weintraub Reuben Gartside LLP, attorney to Cohen, pointed to a provision in the agreement stating that a breach by him of any of its terms would excuse the debtor's obligations.

She invoked the Third Circuit's 2005 decision in [In re: General DataComm Industries Inc. v. Arcara](#), in which the court held that a contract involving a bankrupt party is executory if the "failure of either party to complete performance would constitute a material breach excusing the performance of the other."

"Therefore the parties have agreed on the face that the obligations are material," Butcher told the court.

Cohen is seeking to overturn a Delaware bankruptcy judge's finding — and a district court's **backing** of that ruling — that agreements governing film profit rights didn't oblige Spyglass' predecessor Lantern Entertainment LLC to "cure" prepetition contract claims before acquiring the film and agreement.

But an attorney for Spyglass, Thomas R. Califano of DLA Piper, said the language in the agreement was a "far cry" from rendering the obligations material.

"I think the appellant is trying to put inordinate weight on the language," he told the court.

The appeals panel also heard an argument by companies wanting to undo a bankruptcy court's **ruling** that Spyglass' asset purchase agreement didn't include investment agreements for 12 film projects.

Pushing back on Spyglass' contention that the investment contracts were debts with no value to the buyer, an attorney for Y Movie LLC and several affiliates said the agreement didn't set forth a value threshold for the contracts.

"We are just reading what they wrote and what the bankruptcy court approved," Y Movie attorney Robert A. Klyman of Gibson Dunn & Crutcher LLP told the court.

Califano countered that the investment contracts were inadvertently included in the agreement and

that Y Movie's argument amounted to a "gotcha."

"Yet if you look at everything else in the [agreement] and the sale order, the great weight of the evidence and all the parties' obligations is that this type of obligation was excluded," he said.

The companies claimed they spent millions investing in a dozen Weinstein-produced film projects that included "The Iron Lady," "The Upside" and "Crouching Tiger, Hidden Dragon: Sword of Destiny" under the investment agreements.

The disputes stem from Spyglass' \$281 million purchase of the bulk of TWC's assets following Weinstein's notorious fall from grace because of sexual assault allegations dating back decades, culminating in a rape conviction that landed him a 23-year sentence in New York state prison. He's since been hit with more rape charges in Los Angeles.

Judges Thomas L. Ambro, Cheryl Ann Krause and Peter Phipps sat on the panel for the Third Circuit.

Cohen and his company are represented by Angela M. Butcher, Michael I. Gottfried and Roye Zur of Elkins Kalt Weintraub Reuben Gartside LLP, and Kevin S. Mann and Christopher P. Simon of Cross & Simon LLC.

Y Movie LLC, Y Theatrical LLC, YFE Holdings Inc., OA3 LLC and RMF LLC are represented by Robert A. Klyman, Blaine H. Evanson, Matthew G. Bouslog and Max E. Schulman of Gibson Dunn & Crutcher LLP, and Michael R. Nestor and Andrew L. Magaziner of Young Conaway Stargatt & Taylor LLP.

Spyglass is represented by Rachel E. Albanese, Thomas R. Califano, Maris J. Kandestin and R. Craig Martin of DLA Piper.

The cases are In re: Weinstein Co. Holdings, case numbers 20-1878, 20-1750 and 20-1751, in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by Jeff Montgomery and Vince Sullivan. Editing by Adam LoBelia.