

Sofos' notes on Mahim Khan case (from the minutes)

Client attorney privilege

Case BC654017

To
Mr Alkiviades David

Athens the 26th of June 2023

Dear Mr David,

We hereby send you our notes which come from the minutes of the case with Nr BC654017 and you are kindly requested to send us your comments or your possible considerations in order to evaluate the case and the participation of the parties in it.

Judged before

The Superior Court of the State of California
for the County of Los Angeles Department 74
Hon. Michelle Williams Court, Judge

Mahim khan,

Plaintiff,

case no. bc654017

Hologram USA, Inc.; Alki David Productions, Inc.;
Filmon TV, Inc., Alkiviades ("Alki") David, an individual,
Defendants

The main question at this trial was whether or not the plaintiff ("Ms Khan") in this case actually suffered damages substantially caused by Mr. David's alleged conduct. There is extensive testimony about Ms. Khan's background and the 19 years of pervasive and severe abuse that she suffered, both physical and mental, at the hands of her father; and we are going to consider about how that might have played into Dr. Reading's opinion and some of the other things we've heard in this case, particularly causation and damages.

The harass poster that Mr. Goldberg showed in the court. The poster, at the bottom, had the names of the two women -- well, it had the names of two women, Alli Botto and Janel Bauer. Plaintiff did not call either Ms. Bauer, nor Ms. Botto to corroborate plaintiff's testimony that that poster was up for a year or that Mr. David had any involvement with hanging that poster.

The testimony has been mainly from Ms. Khan's point of view. Testimony about her background, what she was before, what she is now, what she told Dr. Reading. Everything said in the courtroom, with the exception of two witnesses, was told to the court from Ms. Khan's eyes. When we determine credibility, one of the things you can consider is who has something to gain by certain testimony.

The witnesses either told the court they heard it from Ms. Khan or Ms. Khan conveyed the evidence or the testimony, the facts, to the court. It is all strained through Ms. Khan's eyes with very little, if any, corroboration from neutral, unbiased witnesses with actual knowledge of the facts. One of the things Ms. Khan told the court about, was the severity and the cruelty of her upbringing, not only the beatings.

Ms. Khan described from the time she was eight months old on a regular and routine basis from her father, but emotional terror from her father and a mother who was not supportive, who did not intervene, who allowed the conduct and the abuse to continue for 19 years. Ms. Khan has indicated to you that her emotional state is unconnected. It's up for you -- it's up to you to decide whether that's credible, and we're going to get into that more when we discuss Dr. Reading's testimony.

Ms. Khan worked at Filmon between early October 2014 and September 2015 approximately a year. According to Ms. Khan, Mr. David was gone for part of that time, maybe two months at the beginning until about December 2014 and for the summer of 2015. So Ms. Khan and Mr. David worked together for approximately eight months.

Compare eight months, even assuming that what Ms. Khan said is true, eight months to 19 years of abuse in Ms. Khan's formative years, and you decide whether it is credible that her childhood had no effect on her emotional state and that it is all attributable to Mr. David. Interestingly, Ms. Khan has not shown you any evidence of a complaint of any sort until August 28, 2015, almost a year into her employment.

She stated that Mr. David's conduct began in December of 2014. She stated about incidents in February and March, an incident in January, and an incident later on in the spring and summer of 2015. No complaint of any kind was made until August 28, 2015.

It comes from the minutes that Ms. Khan stated first that in September of 2015 she was denied a promotion and she was denied that promotion because she's a woman. She stated that the gentleman that got the job was less qualified. That testimony was actually on a Friday and Ms. Khan stated that in September 2015 Ian Robertson was the gentleman who got the job that she thought she was more qualified for. However, Ms. Khan showed an e-mail earlier on which disclosed that by that time Mr. Robertson no longer worked at the company. He left allegedly because of some kind of harassment according to Ms. Khan. So on Monday, Ms. Khan changed her testimony and she said, well, she must have made a mistake. She was denied the job in May or June of 2015.

One question is, why, in this allegedly terrible workplace where Ms. Khan was being harassed on a regular basis, according to her own testimony, was she seeking not only to stay, but seeking a promotion. The answer may be in the interrogatory response. Interrogatories are questions asked of parties to a litigation. Ms. Khan was asked specifically, "*were you denied a promotion because you were a woman?*" and she responded, "*I was not denied a promotion.*" Inconsistent testimony like that may indicate that a witness is not credible. So Ms. Khan also stated to the court that in August of 2015 and Mr. Goldberg showed the e-mail, she complained to her boss, Gary Shoefield and she told Gary Shoefield about some of the things that were going on. Ms. Khan did not call Mr. Shoefield as a witness. Ms. Khan also stated that Mr. Shoefield advised her to go to Ms. Calendar even though, according to Ms. Khan, Ms. Calendar was not the HR person. And Ms. Khan stated that she did go to Ms. Calendar at Mr. Shoefield's recommendation and they discussed sexual harassment and had (this is a quote) a "*lighthearted conversation*".

Assuming that what Ms. Khan stated is true of her months at Filmon or one of the other entities, it is not credible that she and Ms. Calendar had a lighthearted conversation if Ms. Khan was as distressed as she claims and even having suicidal thoughts by August 2015. **Not only did Mr. Shoefield not testify, Ms. Calendar was not called by plaintiff to testify.** There is no evidence in this record, except Ms. Khan's testimony, that she was employed in any way by Hologram and not by the entities actually identified in the addendum to her employee contract.

Ms. Khan stated first that there were no female executives at Filmon. Ms. Khan stated she did not know Kim in her testimony. Ms. Khan then conceded she did know Kim Hurwitz, a female executive at Filmon. Ms. Khan testified that she was basically in a cubicle in an open office; not in a closed office, didn't have her own office with a door, but in a cubicle. And Ms. Khan told us that the alleged acts of harassment happened at her cubicle, in one of the production or editing bays where there were people, these were not private spaces. Ms. Khan however brought you two witnesses, and here's where we're going to talk about credibility. Ms. Khan, and all the people who could

have witnessed what was happening at Filmon, Ms. Khan brought Mr. Hyams. He's the one that, when he didn't like the questions by the defense, called Mr David's lawyer a racist. Mr. Hyams stated he had been sexually harassed by Mr. David, leading us to believe, if Mr. Hyams is to be believed, that Mr. David was not targeting his conduct at women, but was kind of an equal harasser.

Mr. Hyams, however, had a grudge -- has a grudge against Mr. David. And when questioned by defense counsel, he admitted first that he was owed a little money, then that he was owed about \$100,000, and finally that he was owed somewhere up -- somewhere between \$200 and \$225,000, and that is an issue in dispute that has not been resolved. So Mr. Hyams is angry, he believes he's owed significant sums of money, and this is the only witness of all the people who worked at the three entities that Ms. Khan claims to have been employed by to come in here and corroborate seeing any act of sexual harassment whatsoever by Mr. David directed to Ms. Khan.

Mr. Hyams also tried to avoid saying that the shows that Ms. Khan worked on included violent content, sexual language, and profanity. and those shows were called ether weekly and a show called battle rap which was a competition between rappers. Ms. Khan told us that she worked at Filmon without knowing that the company was producing the kind of shocking, outrageous material (lord of the freaks video). Lord of the freaks was something that was produced for public release. It is shocking, it may be truly distasteful to most people, but the fact is that Ms. Khan knew very well what the businesses of Filmon were and what Mr. David did for a living, which is to produce this kind of content, competitions between rappers. And Mr. Hyams finally admitted that, in fact, profanity, sexual language, and so forth were part of those shows. He also stated that Ms. Khan was at every taping battle rap, ether weekly. and Ms. Khan stated that she worked on lord of the freaks. Ms. Khan knew what the companies' businesses were and stayed. Ms. Khan did not object, Ms. Khan did not complain until August of 2015, just before her departure.

If one were suffering the kind of harassment that Ms. Khan claims, do you seek a promotion? Do you stay hoping you'll get a promotion? and do you wait to time your departure to coincide with the end of your lease? Ms. Khan, in the texts with Ms. Berkley was already planning to go to Dubai as early as July 27th. So by the end of August, when Ms. Khan is writing her first complaint to Mr. Shoefield -- by the way, there's no evidence that Mr. Shoefield received these e-mails because Mr. Shoefield wasn't here to tell you that he did. But when she is sending her first complaining e-mail, she has already decided to go to Dubai. She is waiting for her lease to end at the end of October. And she knows she's leaving. When you think about why Ms. Khan stayed without making any complaint, sought a promotion, and waited until it was convenient for her plans to leave, if the abuse she was allegedly suffering at Mr. David's hands was so intolerable that she was suicidal.

Mr Hyams stated about witnessing Mr. David pick up a woman in the office by her ankles and sling her over her shoulder. Those were -- his exact words were "*Mr. David slung her over his shoulder.*" I have kind of tried to practice this with my husband. I didn't pick him up. It is not physically possible to pick a woman up by her feet, sling her over your shoulder without banging her head. In any event, what Mr. Hyams stated is that that incident was filmed, that Mr. David filmed it and streamed

it. The other witness was Mr. Hyams' wife, Helen Davis. And Helen Davis stated that she saw one incident in which Mr. David touched Ms. Khan. **Ms. Davis was biased because, as she stated, she was fired, she was terminated by Mr. David.**

Dr. Reading stated that he was paid \$800 an hour to come here and testified he was paid \$400 an hour for his work in diagnosing and evaluating Ms. Khan. The evaluation took place in August and October of 2019, four years after Ms. Khan left Filmon. Dr. Reading was not a treating physician. Dr. Reading saw Ms. Khan on two occasions to purportedly administer certain diagnostic tests, which were not performed to the court. Those two visits occurred after Ms. Khan filed this lawsuit and prior -- very close to the time of trial. The evaluations were done for trial. Again, Dr. Reading did not treat Ms. Khan. Ms. Khan was not a patient of Dr. Reading.

Dr. Syed, the cousin stated that she met Ms. Khan -- knew of her, but met her at a medical conference in 2013, but didn't really get to know Ms. Khan until 2014. It was spring or summer of 2014 when they both found themselves living in Los Angeles. Dr. Syed stated that Ms. Khan never told her anything that happened at Filmon, never disclosed it until 2019, couple of months ago before trial, because of the shame and the Muslim religion and that Ms. Khan feels that she may have brought this on herself. Ms Khan stated that she didn't even disclose this to her mother. In March of 2017, Ms. Khan filed this lawsuit and that lawsuit was a public record. anybody can go get the lawsuit and read it. So ms. khan was so reticent to disclose what happened to Dr. Syed, but not so reticent that the allegations were not [sic] aired in a public lawsuit filed in the public record and open to anyone who wanted to see it.

Dr. Ssyed, Nick Hyams, Helen Davis stated about meeting with counsel to prepare for their testimony. Going back to Mr. Hyams and Ms. Davis, the preparation time they spent with counsel far exceeded the testimony, the time they spent testifying in court. Dr. Syed also noticed the change in Ms. Khan when Ms. Khan returned from Dubai. There's been conflicting testimony on when Ms. Khan started to exhibit the changes she now blames on Mr. David. Dr. Syed stated she is physician and that she noticed the change after -- in either late 2015 or early 2016. Not after Ms. Khan left Filmon, but after Ms. Khan returned from Dubai. Ms. Syed, like dr. reading, did not know Ms. Khan as a child, did not know Ms. Khan as an adult, but only knew Ms. Khan -- in the case of Dr. Syed, from approximately the summer of 2015; and in the case of Dr. Reading, he first met her in August of 2019.

About the witnesses

Everything Dr. Syed stated about who Ms. khan was before, all came from Ms. Khan, everything Dr. Reading stated all came from Ms. Khan. The other two witnesses, Mr. Hyams and Ms. Davis, the only two who claimed to have seen anything happen to Ms.

Khan at Filmon, both have reasons to testify against Mr. David, since both were terminated. Mr. Hyams claims to be owed a great deal of money by Mr. David. Mr. Shoefield wasn't in court, the only one who really could have stated exactly what Ms. Khan said while she was employed and before she decided to bring this lawsuit about what happened at Filmon. Ms. Calendar, the only other person to whom Ms. Khan allegedly spoke about those incidents to, was not called by plaintiff to testify as to what Ms. Khan told her.

On the procedure

Mr. Alkiviades David filed a complaint to the State Bar of California, whereas he claimed that

- ethical breaches involved the manipulation of a joint exhibit list by plaintiff's attorneys which caused a doctored list to be filed with the court
- the plaintiff's attorneys removed the signature page with defendant's attorney's (renowned litigator and trial attorney, Ellyn S. Garofalo) signature affixed to it from a previous agreed upon version (See Attachment 3 EXHIBIT A – page 31)
- they then attached it to the fraudulent version (Attachment 3 EXHIBIT B – page 31) when she was unavailable; Mr. Goldberg then signed the exhibit list and filed it with the court.
- This was done without the knowledge, permission or authorization of Ms. Garofalo or anyone else in her office. (Attachment 3 Declaration of Ellyn S. Garofalo page 2, paragraphs 6-9).
- A comparison between the doctored document and the original agreed upon version indicates that one document was added (EXHIBIT B, page 5 - Ex. 131 – “Dr. Reading Documents”) and three documents were deleted (EXHIBIT B, page 30 – Exs. #647, 648 and 649).
- Ms. Leal and Ms. Mochkatel were two other attorneys listed on the pleading as well as Gloria Allred who is a partner of the law firm.
- In addition to the above referenced misconduct, the attorneys for plaintiff sought to exclude documents that were previously produced to plaintiff's attorneys by indicating falsely to the court that they were not disclosed or produced in discovery.
- During closing argument, Mr. Goldberg indicated on several occasions that Mr. David did not call witnesses on his behalf. He also suggested that if he were not culpable, witnesses would have testified for him. (See Attachment 10 – page 83, lines 27-28, page 84, lines 1-4; page 146, lines 20-27; page 147, lines 1-4 and page 148, lines 17-25).
- This was done even though the judge had previously ruled outside the jury's presence that Mr. David would not be able to call any witnesses (including himself) on his behalf. Ms. Garofalo has also indicated her willingness to clarify any questions that might arise during the investigation of this matter.

Furthermore, it is pointed out that Ms. Khan's lawyers filed a notice that on October 23, 2019, at 8:30 a.m. in Department 74 of the above-referenced court, Plaintiff Mahim Khan would move for an order pursuant to California Code of Civil Procedure §2023.030 precluding Defendants and their attorneys from calling Defendant Alkiviades ("Alki") David from testifying in their defense case. According to their notice,

Defendant David failed to attend his deposition on three occasions; thus the Court ordered Defendant David to appear for his deposition on September 18, 2019. Defendant David did appear for his deposition, but as this Court stated in the September 27, 2019 Order regarding Plaintiffs Motion for Terminating Sanctions, "The court finds David's behavior at deposition was tantamount to not appearing at all."

According to this notice, Defendants have also failed to respond to: (1) special interrogatories; (2) form employment interrogatories, (3) form general interrogatories, and (4) requests for production of documents resulting in monetary sanctions. As such, Plaintiff Khan has been severely prejudiced by not knowing Defendant David's defenses, nor identities of witnesses or documents. The Court stated in its September 27, 2019 Order: *"had David provided substantive testimony at his deposition, they would have denied the allegations plaintiff has made against them."* However, Plaintiff Khan points out that this may not necessarily be completely accurate since in another case recently tried (Reeves v Hologram USA), ***Defendant David admitted to many of the incidents alleged by Ms. Reeves both during his deposition and at trial, but justified the acts as "comedy."***

Finally, according to Ms Khan's submission, this motion was made on the grounds that allowing Defendant David to testify in its defense would reward Defendant David's unrepentant willful defiance of the Court's Orders and consistent abuse of the discovery process.

*Kind regards,
Themistoklis Sofos, PhD
Attorney-at-law
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