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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

## Boies Appeals Trial Loss In Spat Over \$20M Film Investment

By **Carolina Bolado**

Law360 (April 18, 2023, 10:47 PM EDT) -- David Boies' film development company is appealing a private judge's decision siding with an investment firm that Boies, chairman of Boies Schiller & Flexner LLP, said made misrepresentations to get his film company to invest \$20 million in a movie starring Natalie Portman that later flopped at the box office.

Boies Schiller Film Group LLC filed a notice April 10 in Florida's Fourth District Court of Appeal indicating an intent to seek review of a bench trial verdict regarding investment banking firm Impala Partners LLC and partner Peter Nathaniel after finding that there was insufficient evidence to prove BSFG's negligent misrepresentation and fraud claims regarding the funding of the 2016 movie "Jane Got A Gun."

BSFG claimed that Nathaniel had falsely assured them that Impala had the resources to fund not only "Jane Got a Gun" but also other movies as well and that Impala would provide equity financing for the movie from its own resources after issuing a completion bond.

But in the final verdict, issued March 13, retired Judge Peter Blanc found that there was no written documentation to back up the assurances that BSFG says it was given.

The judge said there was no email or other written document memorializing the assurances allegedly made by Nathaniel at a March 14, 2013, meeting with Boies.

"It is extremely notable in light of the transactional expertise of the parties involved and the common practice of BSFG that there is no confirmatory documentation supporting their recollection in evidence," Judge Blanc said. "Because there is no contemporaneous documentation such as a confirmatory e-mail, letter, text, demand or any other document supportive of the accuracy of BSFG's recollection in this record, it is the finding of this court that plaintiffs have not met their burden of proof on the alleged March 14, 2013 funding promise by Nathaniel in regard to equity funding by Impala."

The parties jointly opted to resolve the dispute using a private judge in a voluntary trial resolution authorized by Florida state law. Impala and Nathaniel have since asked the trial court in Palm Beach County to issue a final judgment based on Judge Blanc's ruling and to award their attorneys' fees and costs under Florida's offer-of-judgment statute, which allows a defendant who made a settlement offer that isn't accepted to recover fees if the final judgment is at least 25% less than the offer. The defendants offered to settle the case for \$5,000 several times.

Tal Lifshitz of Kozyak Tropin & Throckmorton LLP, who represents Nathaniel, said getting his client, a respected expert on risk management and restructuring, "the total vindication he deserved here will forever be one of the greatest highlights of my career."

"When you deal with David Boies on the other side, when you have to cross-examine him, there's for sure a moment where you're a bit in awe, and wondering how to go about that task," Lifshitz said. "Then that passes, you get to work, and you remember that if the facts are on your side, you can go against anybody, at any time, in any courtroom, and win."

BSFG filed suit in Palm Beach Circuit Court in March 2017 claiming Scott Pictures, which was partly owned by Impala and Nathaniel, approached BSFG in January 2013 to ask about providing gap financing to bridge the gap between senior bank financing and equity financing for "Jane Got a Gun."

BSFG first provided \$2 million in loans and then invested more after being told that Impala had tens of millions of dollars in assets, Impala was fully committed to the movie, that Impala would provide additional financing to complete production of the movie and that Scott Pictures had assets worth more than \$10 million, according to the complaint.

But BSFG said in the suit that the representations were false, that Impala had no intent to provide the promised funding for the movie and that Scott Pictures was a shell corporation without significant assets of its own.

But Judge Blanc determined there was just not enough evidence to back up the claims.

An attorney for BSFG did not respond to a request for comment.

Impala Partners is represented by Alan B. Rose and L. Louis Mrachek of Mrachek Fitzgerald Rose Konopka Thomas & Weiss PA.

Nathaniel is represented by Tal J. Lifshitz, Detra Shaw-Wilder and Javier Lopez of Kozyak Tropin & Throckmorton LLP.

BSFG is represented by Gregory Coleman and Santo DiGangi of Critton Luttier & Coleman LLP and Steven N. Zack and Tyler Ulrich of Boies Schiller & Flexner LLP.

The case is Boies Schiller Film Group LLC et al. v. Impala Partners LLC et al., case number 2017-CA-002867, in the Fifteenth Judicial Circuit Court of Florida.

--Editing by Andrew Cohen.