



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CBS CORPORATION	:	Consolidated
LITIGATION	:	C.A. No. 2018-0342-AGB

**THE NAI PARTIES' MOTION TO STRIKE OR
TO CONFIRM *IN CAMERA* TREATMENT OF KOPELSON VIDEO**

National Amusements, Inc., NAI Entertainment Holdings LLC, the Sumner M. Redstone National Amusements Trust, Shari Redstone, and Sumner Redstone (collectively, the “NAI Parties”), through their undersigned counsel, hereby file this motion pursuant to Court of Chancery Rules 26 and 45 to strike from the record a video of Mr. Redstone recorded in his California home without his consent (the “Kopelson video”). In the alternative, assuming that the challenge to the *in camera* treatment of the Kopelson video is properly before this Court, the NAI Parties move pursuant to Court of Chancery Rule 5.1 to confirm the *in camera* designation and confidential treatment of the Kopelson video.

BACKGROUND

1. The Kopelson video contains footage of Sumner Redstone, shot in Mr. Redstone’s California home, without his consent. On July 23, 2018, the CBS Parties referenced the video in a motion to compel (the “CBS Motion”) and submitted it as an exhibit to a transmittal affidavit in connection with that motion. The CBS Motion sought to compel the NAI Parties to revise interrogatory responses, preclude

testimony (from any source) about NAI's or Mr. Redstone's intentions, or compel a videotaped deposition of Mr. Redstone.¹

2. Submission of the Kopelson video was unnecessary to the CBS Motion, and the motion itself failed to explain why the video was relevant to the relief sought. Before filing the CBS Motion and submitting the Kopelson video to the Court, the CBS Parties sought an order authorizing the submission of the video to the Court *in camera*. The CBS Parties professed that *in camera* treatment was necessary “out of concern for Mr. Redstone's personal privacy” and “respect for Mr. Redstone's personal dignity.”² On July 27, 2018, the Court entered an order authorizing submission of the Kopelson video for *in camera* review. Dkt. No. 180.

3. The Kopelson video is not necessary for the Court to decide the CBS Motion, was mentioned in the motion only in passing (CBS Motion ¶ 8 n.2), and should never have been submitted to the Court. The NAI Parties' Opposition to the Motion³ invited the CBS Parties to “explain why they included that video with the CBS Motion to Compel, other than for harassment.” Opposition at ¶ 31. The CBS Parties' Reply⁴ offered *no response* to this inquiry and *no justification* for their

¹ Dkt. No. 159.

² Dkt. No. 179.

³ Dkt. No. 209.

⁴ Dkt. No. 231.

decision to submit the Kopelson video. Nor did the Reply contest that the video was taken without Mr. Redstone's consent. To the extent the CBS Parties wanted to document Mr. Redstone's physical condition, they separately submitted an affidavit from Mr. Redstone's treating physician that discussed Mr. Redstone's medical condition in detail. *See* Ex. 3 to CBS Motion. The submission of the Kopelson video was thus revealed as a gratuitous effort to harass or embarrass an elderly gentleman and his family.

4. On August 6, 2018, Keach Hagey, a reporter with the *Wall Street Journal*, submitted a letter requesting that the Kopelson video be made public and purporting to challenge the Confidential Treatment of the video pursuant to Rule 5.1(f) (the "Hagey Letter").

5. For the reasons explained below, the Court should strike the Kopelson video by returning it to the submitting CBS Parties and not consider it in deciding the CBS Motion, or, in the alternative, assuming that the Hagey Letter properly challenges the *in camera* or confidentiality designation of the Kopelson video, the Court should afford the Kopelson video continued *in camera* and confidential treatment. The CBS Parties have refused to agree to have the video stricken and returned, but the NAI Parties understand that the CBS Parties oppose the request to make the video public.

ARGUMENT

I. The Court Should Strike the Kopelson Video

6. The Court should strike the Kopelson video as irrelevant to the legal issues presented in the CBS Motion to Compel. *See Cantor Fitzgerald, L.P. v. Cantor, et al.*, 1999 WL 413394, at *13 (Del. Ch. June 15, 1999) (holding that testimony about Mr. Cantor’s capacity was irrelevant and should be stricken).

7. The CBS Parties’ Motion papers provided no explanation for the video’s submission, despite the NAI Parties’ Opposition calling for them to do so.

8. To the extent the CBS Parties sought to provide evidence of Mr. Redstone’s physical condition or ability to communicate, they separately submitted a detailed affidavit from Mr. Redstone’s treating physician (which the NAI Parties had provided to them), discussing and detailing both.

9. The Kopelson video is a sensitive and personal video recording of an elderly person. It was undisputedly taken in his home and without his consent, and without warning that it would be used for any purpose, much less made public in connection with high-profile litigation.

10. While the CBS Parties professed their “concern for Mr. Redstone’s personal privacy” and “respect for Mr. Redstone’s personal dignity,” their needless submission of the video has created a situation that does violence to both. Counsel for the NAI Parties requested that the CBS Parties withdraw the video exhibit, in

light of the request to make the video public. The CBS Parties' refusal to do so only calls into question their statements and purpose in submitting the video in the first place.

11. The NAI Parties therefore respectfully request that the Court strike the video and return it to the submitting CBS Parties.

II. The Court Should Continue to Afford the Kopelson Video Confidential Treatment.

12. If the Court should decline to strike the Kopelson video, the Court should nevertheless confirm that it is subject to *in camera* review and cannot be made public. This Court has already ordered that the Kopelson video is subject to an *in camera* designation, preserving the confidentiality of the Kopelson video to a very limited distribution. Because the Court has already ruled on the *in camera* designation of the Kopelson video, the Hagey Letter's purported challenge under Court of Chancery Rule 5.1 is procedurally improper. However, even if the Court accepts the Hagey Letter as a proper Court of Chancery Rule 5.1 challenge, the relief requested in the Hagey Letter should be denied.

13. Under Court of Chancery Rule 5.1(b), if a party establishes "good cause," then the Court may "order the Register in Chancery to permit Documents to be filed confidentially and not available for public access ('Confidential Treatment')." Ct. Ch. R. 5.1(b), 5.1(b)(3). "For purposes of this Rule, 'good cause' for Confidential Treatment shall exist only if the public interest in access to Court

proceedings is outweighed by the harm that public disclosure of sensitive, non-public information would cause.” Ct. Ch. R. 5.1(b)(2). “Examples of categories of information that may qualify as Confidential Information include trade secrets; sensitive proprietary information; sensitive financial, business, or personnel information; sensitive personal information such as medical records; and personally identifying information such as social security numbers, financial account numbers, and the names of minor children.” *Id.* The Court may determine the appropriate “manner and extent of Confidential Treatment” Ct. Ch. R. 5.1(b)(4).

14. The Kopelson video provides an exemplar of the type of submission that merits Confidential Treatment. According to Mr. Kopelson, the video was taken, at least in part, to document Mr. Redstone’s medical condition. Delaware law protects medical records as confidential.⁵ Indeed, Rule 5.1 itself acknowledges that a mere medical *record* justifies providing Confidential Treatment. Ct. Ch. R. 5.1(b)(2). It follows that a *video*, recorded in Mr. Redstone’s private residence, without his consent and designed to show his medical condition, is properly the subject of continued Confidential Treatment. The harm that public disclosure of the Kopelson video would cause to Mr. Redstone’s personal privacy and dignity far

⁵ See *Rodriguez v. State*, 77 A.3d 272, 2013 WL 5494720, at *2 (Del. 2013) (TABLE) (“Diagnostic tests reveal personal information about a patient’s medical history which can reasonably be expected to remain confidential.”). See also *Estate of Reed by and through Reed v. Grandelli*, 2015 WL 1778073, at *5 (Del. Ch. Apr. 17, 2015) (“Equity stands ready to protect the vulnerable from exploitation”).

outweighs any public interest in disseminating a video of a vulnerable nonagenarian taken in his home without his consent.⁶

15. The Hagey Letter's arguments for disclosure of the Kopelson video fall far short. None of the cases cited in the Hagey Letter involve the publication of a video of an elderly gentleman, taken in his own home and without his consent, and which was submitted in the litigation for no good reason.⁷ The Court has already entered an order permitting the submission of the Kopelson video *in camera*, and the

⁶ See *Cantor Fitzgerald*, 1999 WL 413394, at *12 (refusing to lift a confidentiality order from a prior action, thereby precluding counsel from *even reviewing* materials concerning Mr. Cantor's medical condition that had been produced in a prior action, because the issue of his capacity was irrelevant).

⁷ The Hagey Letter argues that "generalized statements" about Mr. Redstone's privacy interest cannot justify Confidential Treatment, but the cited cases do not suggest this video must be made public, *see In re Matter of Liquidation of Freestone Ins. Co.*, C.A. No. 9574-VCL (Del. Ch. Feb. 18, 2015) (Order) (discussing documents used in open court), and instead show that a corporation's CEO cannot keep allegations about his "improper conduct" confidential merely because the allegations embarrass him. *See Espinoza v. Hewlett-Packard Co.*, 2011 WL 941464, at *6 (Del. Ch. Mar. 17, 2011); *Hurd v. Espinoza*, 34 A.3d 1084, 1086 (Del. 2011). Nor is this a situation where Confidential Treatment is sought to avoid embarrassment about bad business decisions. *Khanna v. McMinn et al.*, 2006 WL 1388744, at *40 (Del. Ch. May 9, 2006). The publication of press articles about this matter does not justify publicizing this particular video. *See Sequoia Presidential Yacht Grp., LLC v. FE Partners LLC*, 2013 WL 3724946, at *3 (Del. Ch. July 15, 2013). Finally, this case does not involve a complaint redacted so heavily as to render the very nature of the dispute incomprehensible. *Al Jazeera America, LLC v. AT&T Servs., Inc.*, 2013 WL 5614284 (Del. Ch. Oct. 14, 2013).

video should be afforded continued *in camera* and Confidential Treatment under Rule 5.1.⁸

CONCLUSION

The NAI Parties respectfully request that the Court enter the attached Proposed Order Granting the NAI Parties' Motion to Strike or, in the alternative, to Confirm *In Camera* Treatment of the Kopelson video.

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⁸ Mr. Redstone continues to reserve all rights against Mr. Kopelson and the other CBS Parties for taking the video in the first instance without his consent and in violation of law and for the further dissemination of the unauthorized and illegal video recording.

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2018, the foregoing document was served electronically via *File & ServeXpress* on the following counsel of record:

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