

## **Pryor Cashman Wins Motion Dismissing Claims in Case Involving Reality Television Program**

Pryor Cashman is representing defendants Fox Reality Channel, Lions Gate Entertainment and Termite Art Productions in a case involving a reality television program pending in the U.S. District Court for the Eastern District of New York.

The case involves *Busted On The Job*, a reality television program produced by Termite and broadcast in 1998. The show included undercover video surveillance tapes that had been filmed in the course of the Nassau County District Attorney's Office's undercover sting operation aimed at medical professionals engaged in insurance fraud. The tapes, which depicted the plaintiff (a former physician), were introduced at the Grand Jury hearing at which the plaintiff was indicted. The tapes were subsequently provided to Termite by the DA's office and included in the television program.

In his complaint, the plaintiff alleged that the inclusion of the tapes in the program violated N.Y. Criminal Procedure Law § 140.25(4), which prohibits disclosure of Grand Jury proceedings or evidence by a list of entities (including the District Attorney, court clerks, attorneys, stenographers, interpreters and others typically involved in or privy to Grand Jury proceedings).

Pryor Cashman, on behalf of its clients, moved to dismiss plaintiff's claims under the statute on the grounds that, whether or not the District Attorney's office had acted improperly in providing the tapes to the program's producer, the media does not fall within any of the categories of persons upon whom the statute imposes a duty of confidentiality.

In his August 25, 2009 decision, Judge Joseph F. Bianco agreed with Pryor Cashman's arguments and granted the motion to dismiss all of the claims made under the statute against Fox Reality Channel, Lions Gate and Termite.

Pryor Cashman also moved for summary judgment dismissing defamation claims made by plaintiff against Termite on statute of limitations grounds. Following the initial broadcasts of the program, Termite had sold all of its interest in the program to Lions Gate, which, in 2004, licensed the broadcast rights to Fox Reality Channel. The program was then aired by Fox Reality periodically between 2004 and 2006. Plaintiff brought his defamation claim within one year of these latter broadcasts.

Accepting that the first publication rule does not apply to the Lions Gate/Fox broadcasts commencing in 2004 because those broadcasts were separate in time from the original broadcast and directed at a new audience, the Court agreed with Pryor Cashman's arguments and nonetheless dismissed the defamation claim as time barred as to the original producers (Termite and its President) because Termite had sold all its interest in the program to Lions Gate and had no role in the subsequent decision by Lions Gate and Fox to re-broadcast. The situation was similar to where an author, who may be liable for defamation based on an initial book publication, is not liable regarding a subsequent paperback re-issue where the author has signed away his rights to the publishing company which has the sole say regarding whether and how often the book is re-printed.

To read the decision in its entirety, please [click here](#).