

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS, et al.,

Plaintiffs,

v.

FELD ENTERTAINMENT, INC.,

Defendant.

Case No: 03-2006 (EGS)

REPLY IN SUPPORT OF DEFENDANT FELD ENTERTAINMENT, INC.'S
MOTION FOR ENTITLEMENT TO ATTORNEYS' FEES

EXHIBIT 24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X

AMERICAN SOCIETY for the
PREVENTION of CRUELTY to
ANIMALS, et al.,

Civil Action 03-2006

Plaintiffs

v.

FELD ENTERTAINMENT, INC., et al.,

Defendants,

-----X

Washington, D.C.

Tuesday, July 14, 2009

11:00 A.M.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Katherine A. Meyer, Esq.
Howard M. Crystal, Esq.
Eric Robert Glitzenstein, Esq.
MEYER GLITZENSTEIN & CRYSTAL
1601 Connecticut Avenue, NW
Suite 700
Washington, DC 20009
(202) 364-4092

For the Defendant: John M. Simpson, Esq.
Lance L. Shea, Esq.
Michelle C. Pardo, Esq.
Kara L. Petteway, Esq.
FULBRIGHT & JAWORSKI, LLP
801 Pennsylvania Avenue, NW
Washington, DC 20004-2623
(202) 662-0200

1 Pardo for the defendant.

2 THE COURT: Ms. Pardo.

3 MS. PETTEWAY: Good morning, Your Honor. Kara
4 Petteway for the defendant.

5 THE COURT: Ms. Petteway.

6 MS. STRAUSS: Good morning, Your Honor. Julie
7 Strauss for the defendant.

8 THE COURT: Ms. Strauss.

9 MR. PALISOUL: Derrick Palisoul for the defendant.
10 Good morning.

11 THE COURT: Mr. Palisoul, good morning.

12 All right. Let me hear from plaintiffs first with
13 respect to standing.

14 For the record, as indicated in previous orders,
15 today's hearing will just focus on the standing arguments and
16 plaintiff's request for relief. I have a number of questions
17 I need to get answers to, but I will give you the time that
18 the Court allotted in the prior order.

19 What's the legal significant, if any, of the fact
20 that the plaintiffs never sought a motion for reconsideration
21 of this Court's ruling that the organizational plaintiffs
22 lack standing? In other words, this Court held the
23 organizational plaintiffs lacked standing. That issue was
24 appealed; the Circuit Court never reached a finding that --
25 finding standing for Mr. Rider. And the Circuit was of the

1 opinion correctly that there was no need to address the issue
2 of the organizational standing.

3 Nevertheless, my order still in existence, the Court
4 denied organizational standing. The matter was remanded and
5 no one asked the Court to reconsider. Why is that not the
6 law of the case?

7 MS. MEYER: For a number of reasons, Your Honor.
8 First of all, the organization, American Animal Protection
9 Institute, who actually is the organization that we use to
10 prove both resource injury and informational injury, was not
11 a plaintiff at the time that you issued your ruling.

12 THE COURT: I understand that. Are you telling me
13 now that the other organizations who were party's plaintiff
14 are no longer party's plaintiff in this case?

15 MS. MEYER: They are plaintiffs, Your Honor, but we
16 only --

17 THE COURT: Answer my question, then. I want an
18 answer to my question before we start talking about the new
19 plaintiff. With respect to the former plaintiffs or the
20 ongoing plaintiffs, no one asked me to reconsider my ruling.
21 And unless there has been some change in the law, my ruling I
22 issued in 2001 is the law of the case.

23 MS. MEYER: Well, Your Honor, I guess I'll have two
24 answers to that. First of all, it was an interlocutory
25 ruling, and under Rule 54, you are allowed to revisit

1 interlocutory rulings at any time.

2 THE COURT: No one ever asked me to. You never
3 asked me to.

4 MS. MEYER: We're asking you to now.

5 THE COURT: Right this second?

6 MS. MEYER: Well, as part of our case, Your Honor.
7 And we believe --

8 THE COURT: Did you ever file a pleading asking me
9 to reconsidering my rulings?

10 MS. MEYER: Your Honor, we did it in our pretrial
11 briefs and our post trial briefs.

12 THE COURT: Did you ever file a motion for
13 reconsideration?

14 MS. MEYER: No, Your Honor, we did not. No, we did
15 not.

16 THE COURT: Okay. Is there some reason why you
17 didn't?

18 MS. MEYER: Because we believed that you could
19 revisit the issue without having a motion for
20 reconsideration.

21 THE COURT: What would be the incentive for this
22 Court to on its own to revisit an issue, absent a party
23 asking me to revisit it? Certainly, the defendants had no
24 incentive to ask me to revisit it. And it seems to me the
25 plaintiffs had all the incentive in the world, and you didn't

1 ask me to do it. You didn't file a motion for
2 reconsideration. I'm not on my own going to just revisit
3 rulings I've made on an interlocutory basis.

4 MS. MEYER: Well, Your Honor, the other reason we
5 didn't ask you to revisit is because we added an additional
6 organizational plaintiff to the case and; therefore, there
7 wasn't really a need for you to revisit it because we were
8 asserting standing on behalf of API.

9 The case law had changed with respect to
10 informational injury and with respect to the resource injury.
11 There had been several new cases that had been issued, and we
12 thought it made more sense with the new plaintiff to put her
13 on the stand, prove that we met all the requirements for
14 standing with respect to both of those bases, both the
15 resource drain argument and also the informational injury.
16 And not bother dealing with the other plaintiffs because the
17 case law is clear, as long as one plaintiff has standing, the
18 Court need not decide whether or not other plaintiffs have
19 standing.

20 THE COURT: Well, putting Mr. Rider aside for the
21 second and assuming hypothetically that he doesn't have
22 standing, who does have standing?

23 MS. MEYER: Animal Protection Institute has
24 standing, Your Honor.

25 THE COURT: So that's the only plaintiff then, the

1 country and educating the public. He testified that when he
2 first --

3 THE COURT: How do I balance that with his professed
4 care for elephants?

5 MS. MEYER: I think it heightens, I think it
6 supports the notion that he cares about these elephants, Your
7 Honor.

8 THE COURT: Would he have been doing the same thing
9 had he not received the money from the plaintiff
10 organizations over those years?

11 MS. MEYER: If he had gone off and pumped gas
12 somewhere and not spent his life devoted to doing something
13 about the elephants? I would say you probably could take
14 that into consideration and say how much does he really care
15 about them. He has devoted his life to advocating for their
16 protection, to do something to make their lives better. He's
17 not living in a nice apartment with a nice car somewhere.
18 He's traveling around the country.

19 THE COURT: I understand that, but that's all
20 relative too because that was his lifeline, that was his
21 stream of income. That was his only stream of income for
22 years. I mean, it's one thing, I think, to distinguish this
23 scenario from a scenario where, you know, someone has helped
24 out along the line because people always need help.

25 But he was, I won't say he was an employee, but he

1 was -- his sole source of income was derived from plaintiff
2 organizations during the relevant time period. And that's
3 something the Court has to deal with. That's something the
4 Court has to balance also.

5 MS. MEYER: I understand that, Your Honor.

6 THE COURT: It wasn't as if he was given a meal
7 every now and then or -- I mean, his sole source of income.

8 MS. MEYER: I understand that, Your Honor. There's
9 nothing nefarious about it. He happens to be an incredibly
10 effective spokesperson for these animals.

11 THE COURT: Well, you hit the nail on the head, it's
12 all about credibility. I'm not suggesting nefarious, but
13 it's about credibility though, believability. Is he
14 believable? Is he believable, or is he the chief
15 spokesperson for the plaintiffs because he was hired to say
16 what they wanted him to say? I'm just raising the argument
17 for you to address.

18 MS. MEYER: I understand, Your Honor. But what I'm
19 saying is the reason --

20 THE COURT: Just forget about all that. Forget
21 about the fact that he received all of his income, that this
22 was his lifeline, this was -- forget about that, that's fine.
23 He, nevertheless, left his girls.

24 All right. What do I hang my head on? How do I
25 void all that? How do I void the fact that he didn't pay

1 came to the United States and found his way to some animal
2 welfare organizations, correct, and has been going around the
3 country for not very much money, Your Honor, and living in a
4 Volkswagen van, doing incredible public education ever since
5 for the elephants.

6 This is his cause. This is his cause. He promised
7 the elephants he would do something to make their lives
8 better, this is what he has devoted himself to. I don't
9 think the fact that he has devoted himself to it should take
10 away --

11 THE COURT: I understand. Look, I'm not giving you
12 a hard way to go. I'm just sharing with you the same
13 questions that I'm wrestling with because at the end of the
14 day, I have to make a credibility assessment as to whether I
15 believe him or not. I mean, he's your plaintiff. And all
16 I'm saying is, you know, I need help from you.

17 And I want to hear the defendant's arguments as
18 well, as to why I should at the end of the day, believe him.
19 Why I should find him credible as opposed to -- and not
20 minimize him, as opposed to being a very outspoken
21 spokesperson for the rights of elephants.

22 MS. MEYER: But the reason he is a very effective
23 spokesperson --

24 THE COURT: I said outspoken.

25 MS. MEYER: Outspoken? Okay, I say effective, is

1 because he cares so much about them. He cares so much about
2 them, Your Honor. He is a changed man because of what he
3 witnessed. This is what he has devoted his life to.

4 THE COURT: Right. But you understand that after I
5 lay out all the impeachment and everything he testified to
6 support his claims, I should be able to conclude,
7 nevertheless, I find him credible for these following
8 reasons.

9 MS. MEYER: Yes. I'll tell you one very recent --

10 THE COURT: Because Ms. Meyer believes him, that's
11 the reason. No, but seriously, I have to find reason.

12 MS. MEYER: I'm hoping that you do too, Your Honor.
13 And I'll tell you --

14 THE COURT: You know what, but I've got to be able
15 to -- I can't just use say, nevertheless, the Court believes
16 him. I can't do that. I have to articulate.

17 So help me, what are the reasons?

18 MS. MEYER: Everything that Mr. Rider said about the
19 treatment of those elephant, Your Honor, has been
20 corroborated by voluminous evidence, not only from other
21 former Ringling Brothers employees who testified, and said
22 yep, that's how they used the bull hook, that's how they do
23 the chaining, but by Feld Entertainment's own documents, its
24 own witnesses, the medical records of the Asian elephants
25 that Dr. Ainsley did a painstaking review of, videotape