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

Couple Settles Wiretap Act Suit Over Email Snooping

By **Diana Novak Jones**

Law360, Chicago (August 3, 2017, 4:27 PM EDT) -- An Illinois federal jury won't get to debate whether a wife's alleged use of an auto-forwarding rule to snoop in her husband's email constitutes a violation of the Wiretap Act, as the now-divorced couple settled their suit Wednesday.

Barry Epstein and his ex-wife Paula Epstein won't be giving a jury a chance to consider his claim she violated the Wiretap Act, the Stored Communications Act and other statutes when she allegedly set his email accounts to forward all their incoming and outgoing mail to her, Barry Epstein's attorney, Nejala Lane of Lane Keyfli Law Ltd. told Law360. The couple settled their case on the second day of trial, after their jury heard opening arguments, Lane said.

In a ruling reviving the case in December, the Seventh Circuit said the case's reliance on the Wiretap Act probably went beyond Congress' intentions for the law but the allegations of auto-forwarding could fit under current interpretations.

Although Lane says she was anxious to get the jury's take on the issue, she said the emotions involved in litigating the couple's dispute made it better to resolve it this way.

"Because these are family members this was dealt with in a little sensitive way," Lane said. "If this was a big corporation [it] would have been handled much differently."

An attorney for Paula Epstein did not respond to a request for comment Thursday.

The settlement came on the second day of trial, before Paula was set to take the stand. The terms are confidential, but they cover both the lawsuit and the divorce's unresolved division of assets between the couple, Lane said.

Barry Epstein sued Paula in 2014. The couple was in the process of divorcing after more than 40 years of marriage.

Barry claimed Paula used his computers to log in to his work and personal email accounts so she could set them to forward her his emails. She used the information she gleaned — which included emails to and from women she claimed Barry was having affairs with — as leverage in their divorce, Barry claimed.

Paula didn't dispute that she had read some of Barry's emails, but said he gave his consent when he left his accounts open on their communal computer in the couple's home.

U.S. District Judge Thomas Durkin granted Paula's motion to dismiss the suit in 2015, pointing to timestamps on the emails that showed a lag time between when Barry received them and when Paula did, which refuted Barry's claims they were intercepted.

The Seventh Circuit **rebooted the case** in December, saying discovery was necessary to determine if Paula received the emails via an in-transit interception. Under that standard, which other circuits have said is necessary to back up Wiretap Act claims, an auto-forwarding rule could be a violation, the court said.

But the settlement will prevent a jury from hearing from the parties' telecommunications experts or weighing in on what happened.

The Wiretap Act needs clarification, Lane said, particularly as methods of communication change. The circuit courts' reliance on a contemporaneous interception — when no language on that exists in the statute — has made it hard to prove violations of the act, she said.

"We need to have answers," Lane said. "We really right now are still in a limbo."

Barry Epstein is represented by Nejla Lane of Lane Keyfli Law Ltd.

Paula Epstein is represented by Scott Schaefer of Brotschul Potts.

The case is Barry Epstein v. Paula Epstein, case number 1:14-cv-08431, in the U.S. District Court for the Northern District of Illinois.

--Editing by Alyssa Miller.

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