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Wife Violated Wiretap Act With Email Snooping, Jury Told

By **Diana Novak Jones**

Law360, Chicago (August 1, 2017, 8:02 PM EDT) -- A wife who allegedly read her husband's email for years violated the federal Wiretap Act while trying to gain leverage over him during their divorce, counsel for the husband told an Illinois federal jury Tuesday.

In opening arguments on the first day of trial in Barry Epstein's lawsuit against his now ex-wife Paula Epstein, Barry's attorney, Nejla Lane of Lane Keyfli Law Ltd., told jurors Paula set Barry's email to auto-forward to her account in violation of the Wiretap Act and the Stored Communications Act, among other statutes.

Barry didn't know his email was being read until the divorce was underway, Lane said, because he had an expectation that Paula was not using his computers or logging in to his personal account. But Paula got details she claimed were evidence Barry was having an affair, which she used in an attempt to humiliate her husband as the divorce went on, Lane said.

"She did this to gain control over Barry, to gain access over his entire life," she said.

In 2014, several years into their divorce, Barry sued Paula after he received discovery that he said showed she was intercepting the emails he received and sent.

U.S. District Judge Thomas Durkin granted Paula's motion to dismiss in April 2015, pointing to timestamps on the disputed emails that he said showed a lag time between when Barry's account sent the email and when Paula's account received it. The gaps indicated there was no auto-forwarding rule, he said.

But the Seventh Circuit **revived the suit** in December, saying Judge Durkin hadn't given Barry Epstein time to investigate whether the emails were intercepted contemporaneously, as some circuits have said the Wiretap Act requires.

"The allegations against Paula," Circuit Judge Diane Sykes wrote in the appellate court's majority opinion, "technically fall within the language of the act, though Congress probably didn't anticipate its use as a tactical weapon in a divorce proceeding,"

On Tuesday, Lane told the jury that Barry and Paula had entirely separate computers and entirely separate email accounts. But Paula used his computers and turned on the forwarding while Barry was out of the house or away on business, collecting about 200 of his emails over a six-year period, she said.

She filed for divorce after she learned from the emails she read that Barry was planning on leaving some of his money to various charitable causes after his death, Lane said. Rather than allow that to happen, she tried to use the material she collected in a divorce to get a more favorable settlement, an act worthy of punitive damages, Lane said.

Paula's attorney, Scott Schaefer of Brotschul Potts, didn't deny that Paula had read Barry's emails but told the jury his client was the one who was being extorted.

Paula came across the emails when using the computers in the couple's home, which were shared, Schaefer said. Barry never closed his email, he added.

She forwarded herself several individual emails she believed were evidence he was having an affair, and confronted him about them in other emails, Schaefer said. She used language identical to what she saw him write to the other women, making it clear she had read his email, he said, but Barry didn't care until the divorce threatened to split up his money.

The fact that Barry heard that language and knew his emails were compromised — but did nothing to stop Paula — means he gave his consent, Schaefer said. Consent overcomes any statutory violations Barry alleges, he said.

And the fact he knew means the statutes of limitations on these claims have already expired, Schaefer added.

"It's a lot of hooley," Schaefer said.

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 Joe Phalon.

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