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

## Ex-EBay CEO's Text Can't Support Stalking Claims, Court Told

By **Brian Dowling**

Law360 (October 29, 2021, 4:37 PM EDT) -- A text message from eBay Inc.'s former CEO encouraging his communications chief to "take down" a blogger who was critical of the e-commerce giant doesn't support civil racketeering claims over the harassment campaign that followed, the former executives argued in court filings.

Ina and David Steiner, the Massachusetts-based publishers of an industry blog called EcommerceBytes, claim in their federal suit that former eBay Inc. CEO Devin Wenig's apparent directive to Steve Wymer about Ina Steiner set off a torrent of harassment, intimidation and threats meant to soften their hard-nosed reporting on the company and ultimately left them fearing for their lives.

The events resulted in **criminal charges** against seven eBay workers who were allegedly involved in the scheme. Five have **pled guilty** — including one who has been sentenced to 18 months in prison — while eBay security officials Jim Baugh and David Harville **are awaiting trial**. Wenig and Wymer were not charged, but are named as defendants in the civil suit alongside the others.

Wenig, who departed eBay in the wake of an internal investigation into the alleged scheme and its coverup, responded to the claims Thursday by arguing that the "take her down" text message is not enough to keep him in the suit.

"Their claims against Wenig rest on three words in a lone text, taken out of context, that cannot bear the weight that plaintiffs place on them," Wenig said in his motion to dismiss. "In 366 paragraphs spread over 92 pages, the complaint does not identify even one communication between Wenig and Baugh, Harville, or any of the others who conducted the August 2019 harassment campaign. Not one."

According to Wenig, the August 2019 text to Wymer was in response to an article Ina Steiner wrote about litigation between eBay and Amazon. Wenig and Wymer discussed the merits of publicizing the idea that EcommerceBytes's reporting "may be colored" by the fact that it received ad revenue from Amazon, the ex-CEO argues.

Wenig also said the text — to which Wymer responded "on it" — was not an order.

Wenig's attorneys, Abbe Lowell of Winston & Strawn LLP and Martin Weinberg of Martin G. Weinberg LLP, said in a statement sent to Law360 on Friday that the campaign of harassment and threats to the Steiners "was unequivocally wrong." In his latest court filing, Wenig touts his time as the CEO of the Markets division of Thomson Reuters Corp., one of the world's largest media organizations, as proof he "understood, respected, and protected journalistic integrity."

"Mr. Wenig has championed ethics at every step of his career," the statement from his lawyers said. "He did not know of, approve, or authorize what occurred, and the results of an independent investigation confirm that fact."

Wymer, filing his response to the suit Friday, took a similar tack as Wenig.

"The question for this motion is not whether the Steiners were grossly mistreated (they were), but instead whether the complaint states a claim against Wymer. It does not," Wymer said.

Addressing the text exchange with Wenig, Wymer's defense team wrote, "Neither the messages themselves nor any other pleaded facts plausibly suggest that the messages were intended to encourage or assist with criminal conduct of any sort."

EBay's internal investigation into the stalking allegations, conducted by Morgan Lewis & Bockius LLP, cleared Wenig of wrongdoing. The probe examined Wenig's role and concluded that his communications were "inappropriate," but there wasn't evidence that he knew in advance or authorized the actions taken against the couple, according to eBay.

The couple filed their civil suit in July against eBay, the seven eBay workers who were criminally charged, Wenig, Wymer, and the security firm Progressive F.O.R.C.E. Concepts LLC. The suit includes claims of racketeering, stalking, defamation, intentional infliction of emotional distress, civil rights violations, trespassing, false imprisonment, interference with business relations, deceptive trade practices and vandalism.

The Steiners built the lawsuit, in part, on prosecutors' work and grand jury indictments that alleged the eBay team worked to silence the couple's reporting through a barrage of threatening online messages and a string of "disturbing deliveries" to the Steiners' home — and ultimately an effort to cover up the scheme through a fake offer to help the couple and local police squelch the threats.

Fearing for their lives, the couple had devised plans to stay in separate bedrooms so that if an intruder got into the home or attacked one of them, the other could escape and seek help, the civil suit said. They put in battery-powered alarms and placed baking trays on a laundry cart against the back door to make a racket if someone broke in, according to the suit.

Harville, eBay's former director of global resiliency, in his response to the civil claims Friday, admitted to having surveilled the couple "at the direction of his supervisors at eBay." He added, though, that he "never intended to inflict panic and fear on the Steiners."

Philip Cooke — a retired Santa Clara, California, police captain who worked security for eBay — also filed papers to dismiss the suit's claims against him. Cooke was **sentenced to 18 months** in prison after he pled guilty to cyberstalking and witness tampering conspiracies.

In the criminal case, Baugh filed a motion to dismiss charges related to witness tampering, as well as obstructing a federal investigation by falsifying documents and destroying records.

Baugh, the company's former senior director of safety and security, said his alleged lies to a Natick police officer and corporate security officials can't be federal witness tampering because the federal investigation at that point was "non-existent." Also, any alleged false statements are "not the same as preventing the communication of information related to a federal investigation," which is prohibited by the law.

The Steiners are represented by Rosemary C. Scapicchio, Jillise McDonough and Laura Panos.

Wenig is represented by Abbe David Lowell of Winston & Strawn LLP and Martin G. Weinberg of Martin G. Weinberg Law PC.

Wymer is represented by Caz Hashemi of Wilson Sonsini Goodrich & Rosati PC and Michael J. Pineault of Anderson & Kreiger LLP.

Harville is represented by Daniel K. Gelb and Richard M. Gelb of Gelb & Gelb LLP.

Cooke is represented by Christina N. Lindberg of Miner Siddal LLP and Susan G. Winkler of Winkler Law LLC.

Baugh is represented by William W. Fick, Daniel N. Marx and Amy Barsky of Fick & Marx LLP.

The cases are Steiner et al. v. eBay et al., case number 1:21-cv-11181, and U.S. v. Baugh et al., case number 1:20-cr-10263, in the U.S. District Court for the District of Massachusetts.

--Editing by Kelly Duncan.

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