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## 'Gone In 60 Seconds' Producer Warned Of Contempt At Trial

By **Craig Clough**

Law360 (March 23, 2023, 11:47 PM EDT) -- A producer of the 2000 film "Gone in 60 Seconds" was threatened with contempt on Thursday as she testified in a bench trial between her and late racing icon Carroll Shelby's licensing company over a dispute about the film's "Eleanor" automobile, as a California federal judge grew frustrated with her interruptions.

U.S. District Judge Mark Scarsi issued a stern warning to Denice Shakarian Halicki, widow of independent filmmaker H.B. Halicki, as she testified on the **second day** of the trial, telling Halicki she needed to stop talking over him.

The bitter dispute between Halicki, two Shelby-related companies and other parties in the case dates back to at least 2004, when disagreements over who owns the rights to the customized 1967 Mustang featured in the 2000 film resulted in lawsuits and a 2009 settlement before the parties ended up back in court for the bench trial while accusing each other of violating the settlement's terms.

Halicki retook the stand Thursday to continue her testimony that began the day prior, but things got heated quickly as she was questioned by Anton N. Handal of Murchison & Cumming LLP, attorney for Classic Recreations LLC and its owners, who are counter-defendants in the suit. Judge Scarsi struck a number of Halicki's answers as nonresponsive and admonished her several times when she gave long, elaborate answers to Handal's questions or tried to keep explaining further when Handal attempted to move to another question.

"Please, Ms. Halicki, it's not your opportunity to speak at this point," Judge Scarsi said after she interrupted Handal while he was responding to a question from the judge. "And if you do it again, the court will hold you in contempt, do you understand?"

After Halicki said she did understand, the judge swung his attention to her attorney, Jason J. Keener of Irwin IP LLC, who had also interrupted Handal.

"And counsel, let [Handal] speak. This is not an opportunity for people just to argue," Judge Scarsi said. "You're talking to the court. Do you understand that?"

Keener said he did understand, and the judge continued, saying, "OK, I'm not going to put up with the sorts of things that have happened in this case over and over and over again. Please, let's have courtroom decorum."

Halicki was an executive producer of the 2000 remake of "Gone in 60 Seconds," starring Nicolas Cage and Angelina Jolie and featuring a modified 1967 Ford Mustang nicknamed "Eleanor" that led to previous litigation between the Shelby parties and Halicki.

The litigation **has its origins** in 1974, when H.B. Halicki produced, directed and starred in the original "Gone in 60 Seconds," which features a 40-minute car chase as well as a modified Ford Mustang named Eleanor.

Despite its low budget, Halicki's movie was a huge hit, as was its 2000 remake. Yet despite also being named Eleanor, the car in the remake was switched for one of Shelby's Mustangs, according to some court briefs. H.B. Halicki died in 1989 during an accident on the set of a planned "60 Seconds"

sequel.

His widow Denise Halicki received rights to the "60 Seconds" film after her husband's death and was an executive producer of the remake.

Shelby, a famous race car driver and designer who was portrayed by Matt Damon in the 2019 movie "Ford v Ferrari," died in 2012. He designed the 1967 GT500 and other models, sometimes referred to by shorthand as Shelby Mustangs.

The car featured in the "60 Seconds" remake is a 1967 Mustang bearing some of the markings of a Shelby GT500, but with alternations that include a distinctive hood and headlights, according to court documents, although the Halicki parties contend the car in the film is not based on a Shelby but is its own unique creation.

Halicki in 2004 sued the Carroll Hall Shelby Trust and Carroll Shelby Licensing and Carroll Hall Shelby Trust over their licensing of trademarks related to Eleanor on vehicles labeled GT500E. The case reached the **Ninth Circuit** and the parties settled in 2009, with Shelby giving up rights to the Eleanor and Halicki agreeing to make Eleanor models but without any Shelby marks, such as the "GT500" lettering.

Halicki and one of her companies also sued Classic Recreations and its owners over a dispute about ownership of a specific Eleanor model built by Classic Recreations. Halicki won the 2015 trial and the appeal, according to court documents.

Halicki's representatives in 2019 sent cease-and-desist letters to several parties, including an owner of a GT500E, claiming the car needed to remove its Shelby marks and replace them with Eleanor marks. A letter was also sent to Classic Recreations alleging a model it was building through a licensing deal with the Shelby parties, the GT500CR, was based on the Eleanor.

The letters led the Shelby parties to sue Halicki, Eleanor Licensing and Gone in 60 Seconds Motorsports LLC, claiming breach of contract, breach of the covenant of good faith and fair dealing, false designation of origin, trade libel and others.

The Halicki parties filed counterclaims against the Shelby parties, Classic Recreations, co-owner Jason Engel and his father, co-owner Tony Engel, that included breach of contract, copyright infringement, false designation of origin and others.

It is unclear through evidence received at that trial how much money is at stake in the case, the Halicki parties argued in a pretrial brief that Classic Recreations netted more than \$19 million through the sale of GT500CRs.

A damages expert for the Halicki parties, certified public accountant David Connelly, testified Thursday and submitted a written declaration about potential damages, but Judge Scarsi struck his testimony after finding it is based on a disgorgement theory that does not require an expert. Judge Scarsi said the parties can submit briefs about potential damages.

The parties moved for summary judgment ahead of the trial, and Judge Scarsi trimmed claims on both sides in November, notably a copyright claim brought by the Halicki parties arguing the Eleanor is a copyright-protected character like the Batmobile, which received copyright protection through a **2015** Ninth Circuit opinion.

Judge Scarsi did not buy the argument and dismissed Halicki's copyright claim.

The remaining claims before Judge Scarsi in the bench trial include the Shelby parties' breach of written contract, breach of the covenant of good faith and fair dealing, false designation of origin, common law unfair competition, violation of California Business & Professions Code Section 17200, trade libel and declaratory relief, according to a pretrial brief filed by the Shelby parties.

The Halicki parties' counterclaims include breach of contract, false designation of origin and declaratory relief, according to the Shelby pretrial brief.

Under the bench trial rules set by Judge Scarsi, the majority of witnesses' direct testimony is given through a written declaration ahead of the trial before undergoing cross-examination and redirect testimony live during the trial.

One witness Thursday was Gilly Rojany, who said in his declaration that he owns a GT500E purchased in 2005, but that he was unable to sell the car at an auction in 2020 because the auction house told him he needs a license from co-defendant Gone In 60 Seconds Motorsports LLC.

"This was disturbing to me and made me angry at Shelby because I had spent a great deal of money purchasing and maintaining my GT500E, believing it to be worth a lot of money, specifically because it was built under authorization from Shelby; has Shelby logos and trademarks on it; and is listed in the Shelby registry," Rojany said in the declaration. "I should not need to secure a license from anyone else to sell this car. I was also confused about how any lawsuit with Shelby could affect my personal ownership of and right to sell my car."

During questioning from Shelby attorney Caroline H. Mankey of Akerman LLP, Rojany said he believed the only reason he was unable to sell the car was due to the threats of litigation from the Halicki parties.

The trial ended Thursday with no verdict, as Judge Scarsi ordered the parties to submit closing arguments through written briefs.

Carroll Shelby Licensing and Carroll Hall Shelby Trust are represented by Larry C. Russ, Irene Y. Lee, Nathan D. Meyer and Jean Y. Rhee of Russ August & Kabat and Caroline H. Mankey of Akerman LLP.

Jason Engel, Tony Engel and Classic Recreations LLC are represented by Anton N. Handal of Murchison & Cumming LLP.

Denice Halicki is represented by David L. Brandon of Clark Hill LLP and Jason J. Keener of Irwin IP LLC.

The case is Carroll Shelby Licensing Inc. et al. v. Halicki et al., case number 8:20-cv-01344, in the U.S. District Court for the Central District of California.

--Additional reporting by Andrew Karpan. Editing by Jay Jackson Jr.