

Hughes Misses Court Date

But That Doesn't Prove He's Dead, Lawyer Says

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NEW YORK, Sept. 17—Billionaire recluse Howard R. Hughes failed to show up in Manhattan Supreme Court today to prove that he is alive, but nobody was really surprised. †

Certainly not attorney I. Walton Bader, who represents two stockholders in Hughes Airwest Corp.

Bader said he believes Hughes is either dead or is a controlled vegetable, and he wants an administrator appointed to manage his holdings.

There was no surprise shown by Chester C. Davis, a lawyer for two companies controlled by Hughes.

Davis had returned unopened a court order directing Hughes to appear, and in a brief filed with the court he said he did so because Bader's assertion that Hughes hasn't been seen or heard from in five years "is evidence of nothing except a desire to capitalize upon the sort of life that Mr. Hughes has chosen to live."

Not even the television network artists and cameramen who stood poised in the courthouse—just in case Hughes should show up—seemed to be surprised when he didn't.

In the end, Judge Thomas J. Hughes (no relation) reserved decision on a request by Bader that either Hughes be declared dead or that a hearing be held to prove that he is alive.

Bader, representing Hughes Airwest stockholders Victor and Ellen Kurtz, filed a \$100 million lawsuit against

Hughes in July, charging him with stock manipulation and fraud in his 1969 acquisition of the California airline.

Two weeks ago, a state supreme court justice issued an order requiring Hughes to appear personally and show cause why he should not be declared dead.

Bader had asked that, if Hughes appeared, he be made to give a set of fingerprints for comparison with those in government files.

Bader said his original complaint in the lawsuit was mailed to Hughes at the Hotel Xanadu, Grand Bahama Island, but was returned unopened, with the notation, "Return to sender." Hughes is reported to be living in a penthouse suite at the hotel.

"I think he's dead. If he is, I want an administrator appointed for his stock so we can settle this lawsuit," Bader said today. "If he isn't, let him stand up in the courtroom and say so."

However, Davis, the general counsel for Hughes Airwest and the Summa Corp., argued that the request was a nuisance action and a publicity stunt.

Bader and the Kurtzes, Davis argued, are "acting in the mistaken belief that if they make enough nuisance of themselves, somebody will pay them to go away."

He said Bader's "bizarre contention" that Hughes had been dead for years is designed to "pander to that part of the populace that wallows in sensationalism."

"For all the hoopla that has surrounded this case, there is nothing before this court on which it can act," he said, adding that a court order requiring Hughes' presence would "turn the judicial process into a theater of the absurd."

The court, Davis added, should not be "an arena in which those who would take advantage of Mr. Hughes' well-known desire for privacy may engage in a cruel sport and stage a spectacle for publicity or even more unworthy purposes."

However, Davis' brief contained no documents purporting to show that Hughes is alive, except for copies of news articles describing a visit by Hughes to London in March, 1973.

Bader countered with an affidavit by a British journalist who said he researched Hughes' visit and could find nobody who had actually seen the billionaire.

Arelo Sederberg, a Hughes spokesman in Los Angeles, said there have been numerous attempts to force Hughes' appearance in court, including the long legal battle over Trans World Airlines and during the unraveling of the hoax biography by Clifford Irving.

"It's not likely that he will appear this time either, but I know he's alive," Sederberg said in a telephone interview.

Court sources said it would be a week or more before a decision is handed down in this case.