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ISSUES IN BOOK DISPUTE

Kennedy Suit Raises Legal Problems

Beyond Question of a Broken Promise

The legal dispute over "The Death of a President" reads so far like the first half of a law school examination question in Contracts I.

It is therefore deceptively simple. However, as any first-year law student knows, the real problems begin when you hear what the other fellow has to say. The crux of the Mrs. John F. Kennedy's lawsuit against William Manchester and his publishers is whether he broke his promise to give her and Senator Robert F. Kennedy final approval over the contents of his book on the assassination of President Kennedy.

Since the memorandum of understanding signed by Mr. Manchester gave approval rights to the Senator and Mrs. Kennedy, the question would seem to involve factual issues rather than legal principles.

Did Mr. Manchester renege on his promise? Or did the Kennedys approva the book, in fact or by implication ?

The First Questions

Obviously these are the first questions to be answered. If it turns out that approval was given, then of course the presses may roll.

On the other hand, it is not clear that an injunction against publication will automatically follow a finding by a judge that approval was not given.

Since the defendants have not yet answered the charges in Mrs. Kennedy's complaint, the approaches they take will take (sic) are speculative.

But lawyers said yesterday that the most natural defenses in a breach of contract action were waiver and estoppel.

In the context of the case, this would involve the contention that the Kennedys, by words or conduct, waived their right of approval -- or at least are estopped from asserting it -- by leading the defendants to believe they had approved the book and thus causing the publishers to "change their position" by going ahead with their plans.

Kennedy Anticipates Defense

Apparently anticipating such defenses, Senator Kennedy filed an affidavit asserting that a telegram he sent to Mr. Manchester last summer was not a waiver of his right to approve the final manuscript. And he added that he could not bind Mrs. Kennedy to such a waiver in any event.

The legal effect given to the telegram could depend more on conversations among the parties before and after it was sent than on the exact words of the message, according to legal authorities.

They explain that the eelgram is ambiguous -- it talks of placing "no obstacle" in the way of publication but begins with a statement that Mr. Kennedy has not read the manuscript -- and therefore needs to be seen in context before its legal consequences may be assessed.

Agency Law Theory

In like manner, the question of whether Senator Kennedy could speak for Mrs. Kennedy, even assuming he did waive approval rights, also depends on the circumstances. The legal theory involved here is one of agency law, a first cousin to the law of contracts.

In general, one person may not bind another without express approval. But if Mrs. Kennedy, by a course of conduct "clothed" the Senator with apparent authority to speak for her, then she could be held to the consequences of his actions.

Another possible agency problem involves the fact that the Senator and Mrs. Kennedy assigned the reading of the manuscript to other persons.

Ordinarily this would probably be all right, but this is hardly an ordinary case. Some lawyers believe that the reading of the book was not subject to assignment to others unless Mrs. Kennedy and the Senator were physically unable to review the manuscript.

Professor Doubtful

Prof. Arthur R. Miller, who teaches copyright and equitable remedies law at the University of Michigan Law School, said in a telephone interview that he was "not at all sure" that the agreement between Mr. Manchester and Senator Kennedy "contemplated that a committee could have approval rights over the book."

Professor Miller also said that even if it were determined that Mrs. Kennedy had never approved the book, this would not necessarily mean that the courts could enjoin publication.

"First of all," he said, "if the contract is interpreted literally, a court might throw the whole thing out on the grounds that it is an 'illusory contract.'"

Professor Miller explained that if the contract gave the Kennedys an absolute, arbitrary right to disapprove the book without explanation, it could be ruled "Illusory."

He added that this would probably force the Kennedy legal forces to take the position that they do not have an arbirtary right to reject the manscript.

"But by doing this, by reading in a provision that they must be reasonable, the Kennedys end up with a tougher factual question," he said.

Agreement Criticized

A number oa lawyers have commented that the agreement was inortistically (sic) drawn and that it involved people who never thought they would be in court.

Some legal experts could be more troublesome to Mrs. Kennedy than to the defendants, since she is seeking the injunction.

Lawyers are divided on whether a court would grant an injunction even if the judge agreed with all Mrs. Kennedy's contentions.

Those who do not believe an injunction would be granted point to the fact that injunctions are seldom used in breach of contract suits, where damages are the usual remedies. They also question whether the First Amendment permits a prior restraint on publications.

Others argue that if Mrs. Kennedy is correct she has no other useful remedy than the injunction and that Mr. Manchester has in effect waived his right of free speech under the First Amendment by agreeing to subject his book to a virtual veto power.

In any event, most Lawyers agree that at this stage in the proceedings, the case does not look like a typical literary law case or free speech proposition.

"It is a unique situation as far as I know," said Shirley Fingerhood, a New York lawyer who specializes in literary law.

"I think it has less to do with pirvacy law and literary law than it does with old-fashioned breach of contract questions."
