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Lawsuit against balloonists dropped by JCM, damage lingering

By Keith Matheny
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Hot-air balloonists celebrated when an east valley olive farm dropped its lawsuit against them Aug. 15 after nearly 2 1/2 years. But the damage had already been done.

A dozen balloonists or balloon companies went out of business, left the area or simply stopped flying locally. People lost their jobs and ran up big debts defending themselves. One balloonist said he ran up \$177,000 in attorney's fees.

All of this occurred with JCM Farming Inc., the plaintiff in the lawsuit, never once having to show proof to a judge that its initial, central complaint was true: That the balloonists had flown too low over its property and caused a nuisance.

"It made no sense all the way through," said Cindy Wilkinson, who with her husband, Steve, and their Palm Desert company, Fantasy Balloon Flights, were defendants in JCM's lawsuit.

"We'd think, why is this continuing?"

The lawsuit illustrated what many see as a pervasive problem in the U.S. justice system, especially in California: well-financed litigants can run small businesses and individuals into the ground, often grinding out cases for years.

"For \$300 I can upend your life, whether's there's merit or no merit to my case," said Tom Scott, executive director of California Citizens Against Lawsuit Abuse, referring to the cost of filing a civil suit.

Wilkinson and other balloonists were especially troubled that the case dragged on even after the Federal Aviation Administration twice investigated complaints by JCM that they were flying too low. And twice the FAA ruled that there were no violations.

So JCM simply added the FAA to its list of businesses and agencies it was suing.

"This is the system. This is our court system," Wilkinson said. "In other parts of the world, they do it different. If you bring an action like this and you lose or quit like this you have to pay the other side's costs."

The balloonists may be able to take action to recover court-related expenses as a result of JCM dropping its lawsuit. But to recover compensation for lost business and other fees will require more paperwork and court appearances, all of which cost time and money.

Attorney Robert Gilliland Jr. told The Desert Sun that the balloonists are still considering their options.

"You shouldn't have to go hire another lawyer and have to make it right," Cindy Wilkinson said.

California Citizens Against Lawsuit Abuse, based in Sacramento, was formed in 1993 and works to educate citizens about the costs and consequences of what it perceives as lawsuit abuse.

The average superior court judge sees 400 newly filed lawsuits every year, almost two every business day, Scott said.

"Our courts are clogged with frivolous lawsuits, which slows down the progress of all lawsuits," he said.

That's a staggering load on top of a California court system that has absorbed more than \$370 million in budget cuts in recent years.

Fourteen balloonists or balloon companies were named as defendants in JCM Farming Inc.'s lawsuit.

By the time the suit was dropped, only two ballooning companies remained, the others having folded, moved away or agreed to JCM's request that they stop flying near their 80-acre walled estate off Avenue 54 between Monroe and Jackson streets in an unincorporated area south of Indio.

Balloonist Dennis Barrett said that by the time the Guralnick and Gilliland law firm of Palm Desert agreed to defend the balloonists at no charge to them in early February, he had racked up \$177,000 in legal expenses.

The Wilkinsons avoided huge legal bills by attempting to defend themselves. But it wasn't easy, they said.

"It was a staggering amount of paperwork; they're trying to bury you in paperwork," Steve Wilkinson said.

"We would take some of the paperwork (JCM) would submit, go to the law library, try to figure out what they were talking about, and basically clip and paste a response to it."

JCM at one point had Steve Wilkinson in depositions -- essentially interrogations under oath -- for three days. Cindy Wilkinson was questioned over nearly five days, he said.

"One of the most outrageous questions they asked Cindy was what kind of jobs did she have at 14 years old, and what were her duties in those jobs?" Steve Wilkinson said.

"They went everywhere. I don't know what they were looking for. But I guess in discovery you can ask anything."

Said Cindy Wilkinson, "Every day it was relentless. It affected everything -- our health, our other businesses." The couple owns two local restaurants in addition to its ballooning company.

It wasn't until well into the second year of litigation that Steve Wilkinson said he realized the lawsuit was supposed to be on a fast track, "a one-year- maximum deal."

"They just kept dragging it on," he said. "And with the court system so busy, they didn't even know our names and who we were after 12 times before the judge.

"I don't know how you fix it."

'Vexatious litigants'

California has "one of the worst legal climates in the country," said Katherine Pettibone, legislative director for the Sacramento-based Civil Justice Association of California, a group that advocates so-called tort reform.

A bill promoted by the association earlier this year would have allowed judges to consider people represented by attorneys as "vexatious litigants" if they show a pattern of using lawsuits to harass others. Under current state law, only a person representing themselves in court can receive such a designation.

Even those previously designated vexatious litigants can get an attorney and "the tag no longer matters," Pettibone said, "because theoretically our rules of professional conduct, our Bar rules and so forth, would prohibit us from filing cases intended only to harass or delay."

The bill didn't make it out of the Senate Judiciary Committee.

"You can't get common-sense things like this passed" in California, Pettibone said.

JCM Farming is owned by a Solana Beach family, John C. and Carol Marrelli and their daughter, Marilena Marrelli.

State and federal court records show 22 lawsuits statewide since 2000 in which John and Carol Marrelli; JCM Farming or another family affiliate, Equity Ag Financial; or some combination were plaintiffs.

In addition to the lawsuit against balloonists, another nine lawsuits have been filed in Riverside County -- including one involving a neighbor's barking dog when the Marrellis lived in La Quinta -- three lawsuits against contractors who helped build their compound and a suit related to the purchase of a former restaurant's equipment.

In one instance, a contractor was sued for his work on the Marrellis' estate, then sued again for defamation for allegedly publicly complaining about the Marrellis' lawsuit.

JCM has also sued multiple U.S. government agencies and officials in federal court related to the alleged low flights over their ranch.

Pettibone called JCM Farming's lawsuit against balloonists "a perfect example" of a vexatious litigant represented by an attorney.

"When you start throwing around lawsuits to balloonists who don't even fly over that area, that right there is a problem," she said.

States including California have undertaken tort reform to varying degrees in recent years in an effort to discourage frivolous lawsuits that can tie up courts for years.

Texas Gov. Rick Perry, a Republican candidate for president, earlier this year signed a high-profile "loser pays" law that speeds up trials in cases with claims under \$100,000; empowers judges to deem lawsuits frivolous, dismiss them and impose sanctions earlier in the litigation process; and forces the losers of lawsuits determined to be without merit to pay the other side's attorney fees. The law takes effect in Texas on Sept. 1.

But some, including many attorneys, are wary of tort reform. They say short-cutting the legal process can make it difficult for people to get compensated for damages in a variety of cases, from medical malpractice to product defects.

"These are laws that take away the constitutional rights people have to go to court when they've been wronged and are seeking accountability," said Joanne Doroshov, executive director for the New York-based Center for Justice and Democracy, a nonprofit organization that seeks "to protect the civil justice system."

Added Los Angeles attorney Bradley Boyer, "When there are certain cases that cause everybody concern, there can be a tendency to overreact and over- legislate."

Possible sanctions

Clients and attorneys can be fined -- and attorneys further sanctioned -- for filing frivolous lawsuits or taking frivolous positions in a valid lawsuit, said Thomas J. Simeone, a trial lawyer who teaches at George Washington University Law School in Washington, D.C.

"There are mechanisms to weed out truly frivolous cases -- motions to dismiss; motions for summary judgment," he said. "The rich can definitely afford lawyers more easily than others, but there are controls that stop abuse."

But Pettibone said judges are reluctant to sanction litigants or attorneys, or to throw most cases out of court early.

"To all of us looking at a lawsuit where common sense would say that's ridiculous, judges give attorneys and their clients the benefit of the doubt," she said.

And the remedies offered in California state law for victims of frivolous lawsuits involve further litigation -- exactly what they're trying to avoid, Pettibone said.

"Businesses want to spend their time working on their businesses -- growing it, adding jobs, ensuring their employees have paychecks," she said.

The legal climate in California is holding the state back economically, Pettibone said.

"When you talk about job creation, this is one of the reasons businesses leave the state," she said. "They cannot afford this nonsense."

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