

## Ex-Disney Exec Says Age Bias Suit Deserves Second Chance

By Daniel Siegal

Law360, Los Angeles (April 25, 2018, 7:25 PM EDT) -- A former Disney executive on Wednesday urged a California appeals court to revive his suit alleging he was fired after 26 years at the company because of his age, arguing the trial court overlooked the inference of discrimination evident in Disney's decision to give his job duties to his much younger assistant.

During oral arguments in downtown Los Angeles, Scott R. Ames of Law Offices of Scott R. Ames PC, representing plaintiff Kevin Brady, urged a three-judge panel to overturn Los Angeles Superior Court Judge Holly Kendig's ruling granting summary judgment to Walt Disney Pictures.

Ames argued that Judge Kendig had failed to properly apply the summary judgment standard by not drawing all inferences in favor of the party not moving for summary judgment — Brady, the former head of Disney's story department.

Ames said the inference could be drawn that company president Sean Bailey's decision to scrap the story department and absorb its duties into a new Creative Affairs Department headed by then-27-year-old Jessica Virtue was motivated by age discrimination.

"You really can't get to that ultimate question on paper, you have to go to a jury," Ames said.

Ames argued that case law doesn't require that a plaintiff at summary judgment show substantial direct evidence of age discrimination, because employers are often too careful to outright say that they are taking an action because a worker is too old.

Ames added that the criticisms Disney allegedly levied against Brady before terminating him — that he "lacked vitality" or wasn't enthusiastic enough — could be read as digs at his age.

In his 2014 suit, Brady said he was 48 when he was fired in June 2013, after first getting hired in 1987 as a temporary employee in the studio's story department. He claimed he was hired the following year and was soon promoted to secretary. He was promoted to director and head of the department in 2005, making \$135,000 before he was fired, he said. He consistently received positive performance reviews, according to the suit.

Company president Sean Bailey told Brady that he was getting fired because they were eliminating his position and because the company was making fewer movies than it used to. Both of those claims were false, Brady alleges, and Bailey instead tabbed Virtue to take over Brady's job duties, according to the suit. Additionally, when Brady tried to apply for the new job using Disney's electronic job system in May 2013, the system would not accept his resume, the suit said. When he asked for help, a human resources recruiter told him that his timing was "bad" and that the position was no longer available.

In March 2016, Judge Kendig granted Disney's **bid for summary judgment**, saying that while Brady argued Virtue's new creative affairs manager position was effectively the same as his role, the evidence did not bear it out and that his performance reviews didn't support his contention that he was as equally qualified as Virtue to fill the new position.

On Wednesday, Emilio Gonzalez of Davis Wright Tremaine LLP, representing Disney, urged the appellate panel to affirm that ruling, arguing that Brady's evidence had been given all proper deference and there simply wasn't

evidence, direct or in an inference, to find that Disney had discriminated against him.

“There’s not evidence this wouldn’t have happened if he was 36 and not 46,” he said.

Disney is also asking the appellate court to reverse Judge Kendig’s **refusal to award Disney** nearly \$15,000 in costs.

The panel took the matter under submission to issue a ruling at a later date.

Justices Victoria Gerrard Chaney, Jeffrey W. Johnson and Helen I. Bendix sat on the panel that heard Wednesday’s arguments.

Brady is represented by Scott R. Ames of Law Offices of Scott R. Ames PC.

Disney is represented by Emilio G. Gonzalez, Rochelle L. Wilcox and Evelyn Wang of Davis Wright Tremaine LLP.

The case is Kevin Brady v. Walt Disney Pictures et al., case number B275515 in the Court of Appeals of the State of California, Second District.

--Additional reporting by Bonnie Eslinger. Editing by Alanna Weissman.