

## Winston and Co-Counsel Secure Major Dismissal, with Prejudice, of Antitrust Claims Against Actors' Equity on Labor-Exemption Grounds

APRIL 14, 2022

We and co-counsel defended Actors' Equity Association ("Equity")—a union representing actors and stage managers in the theater—in a lawsuit filed in the Southern District of New York by a Broadway producer who was placed on the union's "Do Not Work List."

Plaintiff was the lead creative producer for *Paradise Square*, a theatrical show. The show's terms and conditions of employment for actors and stage managers were set forth in a collective bargaining agreement (CBA) between Equity and the Broadway League, a multi-employer association. Plaintiffs asserted state-law claims for defamation, intentional tort, and negligence, and alleged that his placement on Equity's "Do Not Work List" violated Sections 1 and 2 of the Sherman Act.

Drabinsky filed his original complaint (asserting only the state-law claims) on October 20, 2022, and filed his amended complaint (adding the antitrust claims) on December 13, 2022. We appeared in the case following the filing of the amended complaint to defend the case alongside co-counsel at Cohen, Weiss & Simon (collectively, "the Equity team").

The Equity team filed a [motion to dismiss](#) the first amended complaint on January 10, 2023, arguing *inter alia* that 1) the state law claims were precluded under *Martin v. Curran*, 303 N.Y. 276 (1951) and 2) the antitrust claims were barred by the labor exemptions to the antitrust laws. On April 14, 2022, Judge Schofield agreed with our arguments, granted Equity's motion, dismissing the first amended complaint, with prejudice. Plaintiff has appealed the dismissal; his appeal is pending.

### IMPACT

This decision has important impacts not only for Equity but also for all unions and labor groups facing antitrust claims—it confirms the broad protections unions enjoy when they act in their self-interest and not in combination with non-labor groups. The decision also reinforces the important point that, when a union acts in its self-interest, it is not for a court to evaluate the wisdom or unwisdom, or the rightness or wrongness of the union's actions. Further, the fact that the court dismissed the antitrust claims, with prejudice, at the motion to dismiss stage emphasizes that a plaintiff must allege sufficient facts in a complaint to overcome the exemption, and it is not the defendant's burden to prove its application.

***(Drabinsky v. Actors' Equity Association*** (Case No. 1:22-cv-08933-LGS, U.S. District Court for the Southern District of New York))

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