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COVER STORY

Handshakes make for slippery deal terms

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Adam Carolla, left, interviews guest Jimmy Kimmel in 2009 for "The Carolla Podcast." A settlement last week in a suit against Carolla has raised questions about the bounds of informal business deals involving entertainers.

By Matthew Blake / Daily Journal Staff Writer

LOS ANGELES — A confidential settlement last week in a suit against comedian Adam Carolla claiming he reneged on an implied partnership deal for his lucrative podcast shows the likelihood of litigation stemming from informal handshake or "cocktail napkin" deal s in the entertainment industry, legal observers said.

"When people don't get greedy, handshake agreements work," said Carolla attorney Mark Geragos of Geragos & Geragos in Los Angeles.

But some California entertainment lawyers say the Carolla case included fairly novel legal terrain, namely assessing each member's monetary value in a nebulously formed entertainment business partnership, particularly one in a relatively new medium like podcasting.

"On one side was the entertainer, on one side was the producer," said attorney Gregory Doll of Doll Amir & Eley LLP in Los Angeles, who represented the plaintiffs in the matter. "That situation has no established case law."

Owen Seitel, a San Francisco-based entertainment lawyer, said he's handled similar cases involving entertainers and their estranged business associates that never went to trial. But Seitel acknowledged that it is tough to say what value plaintiff Donny Misraje brought to Carolla's network, now called Carolla Digital, and, more generally, how lawyers and economists can assess the worth of a podcast, "a business model that is still evolving in many ways."

"That's not science; that's art," Seitel said. "You could talk to 10 different attorneys and come up with 10 different numbers."

In the Carolla case, Misraje, who was joined by his wife Kathee Misraje and cousin Sandy Ganz as co-complainants, claimed that he and Carolla entered into a partnership in 2009 to produce the Adam Carolla Show.

Misraje was an experienced Hollywood producer who claimed he introduced Carolla to the podcast medium. Once Carolla's show got big — the Guinness Book of World Records lists it as the most downloaded podcast in history — Carolla became "increasingly dictatorial," according to the complaint, and pushed Misraje, and his wife and cousin, out, sometime between 2011 and 2012.

Carolla countered in testimony Sept. 8 in Los Angeles County Superior Court that he and Misraje were never business partners and that the entertainer uses the term partner "quite liberally."

Hollywood has seen several recent disputes between celebrities and their managers or agents, including *Howard Entertainment Inc. v. Kudrow* this February. In that case, an L.A. County jury found that actress Lisa Kudrow owed her ex-manager Scott Howard $1.6 million.

Edward Klein, a partner with Liner LLP in Los Angeles, noted that in such cases the relationship between the eventual plaintiffs and defendants blurred between friends and business partners.

"A lot of people in Hollywood see themselves as artists, not business people," Klein said, adding some people feel they are lucky to associate with a possible star on the rise and "don't want to make waves by doing something too formal."

In the Kudrow case, Howard was a talent manager who took on the "Friends" co-star before she became famous, and sought five percent of Kudrow's earnings. He argued that they had formed an indefinite partnership, entitling him to a portion of her earnings after she terminated the agreement.

Misraje, meanwhile, claimed that he was not just integral to Carolla's business success but the creative genesis of his podcast.

Doll contended Misraje was entitled to 30 percent of Carolla Digital's revenues through five years after their partnership's dissolution, with Kathee Misraje and Sandy Ganz to receive another 10 percent combined.

Because of confidentiality provisions, it is unclear how much Doll got for his clients, and if he was able to extract more than plaintiffs simply claiming to be manager s or agents of the stars.

But Superior Court Judge Michael Johnson ruled right before the settlement that future earnings should not be taken into account because the public might stop finding Carolla funny, or Carolla might want to start a new project or leave entertainment entirely.

Entertainment, particularly new media, is "clearly a mercurial business," Johnson said from the bench, making it almost impossible to predict future earnings.

Lawyers are split on whether this is true.

Klein agrees that it is hard for any plaintiff to extract future profits, especially in new media. "Lawyers are trained to be very skeptical about alleged future profits," Klein said.

But John F. Stephens of Sedgwick LLP in Los Angeles argues that there can be a methodology applied to finding future earnings. Stephens represented a co-defendant in *Julia Child Foundation v. BSH Home Appliances Corp. et al.*, a settled 2012 dispute in which lawyers calculated the future value of advertising featuring the likeness of Child by comparing it to ads featuring contemporary celebrity chef Rachael Ray.

Stephens said that one could begin to determine the future earnings of a podcaster or YouTube channel host by assessing trends in their advertising money, as well as name recognition through polling.

The attorney admits that determining future earnings in new media has some "guess work." But, "If you have a formula or methodology that's believable you can persuade a judge or jury."