



Credit: The Associated Press

In this April 22, 2013 file photo, Sumner Redstone arrives at the LA Premiere of "Pain and Gain" in New York. (Photo by Matt Sayles/Invision/AP, File)

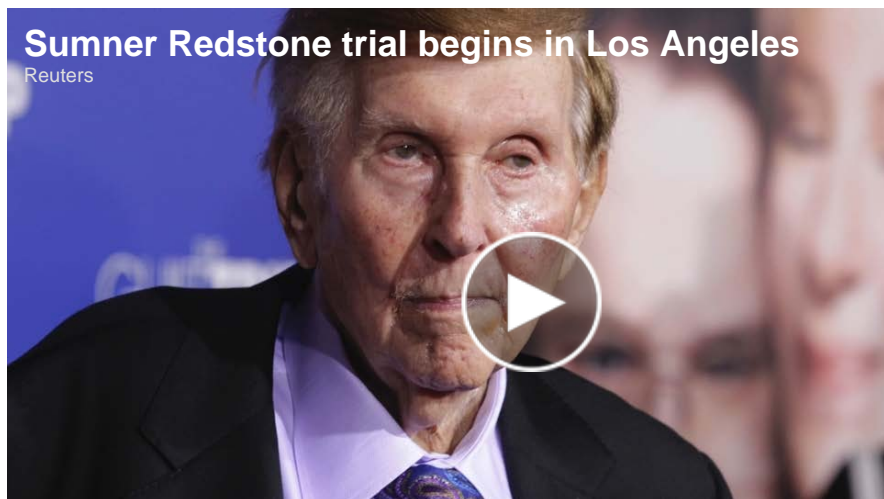


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Just as the much anticipated trial over Sumner Redstone's mental capacity got underway, Judge David Cowan suggested Friday afternoon that he is close to dismissing the case because of Redstone's own

words.

Cowan said he relied heavily on Redstone's videotaped testimony, in which the media mogul strongly said he wanted his longtime companion, Manuela Herzer, out of his life. Herzer is suing to block Redstone's decision to remove her as his healthcare agent, saying that the chairman emeritus of CBS and Viacom was mentally incapacitated when he threw her out.

"How can I sit here and say after listening to that video, 'No you can't have what you want?'" Cowan said. The judge had earlier told Herzer's attorneys they had a steep burden to keep the case alive, given the "strong evidence" of Redstone's own words. He asked the attorneys for both sides to submit briefs to him by Sunday morning on whether the case should continue or not. He said he would decide Monday whether to keep the case alive.

Faced with the potential demise of an action filed more than five months ago, Herzer's attorney's scrambled to put on evidence supporting their contention that the 52-year-old socialite was the victim of a "vast conspiracy" to separate her from Redstone -- a plot allegedly led by Redstone's daughter, Shari, and perpetuated by his household staff, nurses and lawyers.

Herzer attorney Ronald Richards launched an aggressive examination of vocational nurse Joseph Octaviano, the last witness of the day. Richards suggested that the Redstone caretaker spied on his boss and both Herzer and the other woman who oversaw his care, then-girlfriend, Sydney Holland.

Octaviano acknowledged that he disliked the women, even hated Herzer, and did not think Herzer was good for Redstone's well being. The nurse acknowledged that he set up a special email account and routinely sent reports on what was going on inside Redstone's mansion to Shari.

Richards got the nurse to acknowledge that these reports to Shari violated a confidentiality agreement he had signed, along with privacy rules governing healthcare workers. Octaviano conceded that Redstone would

have been unhappy, and likely would have fired him, had he known he was making the secret reports.

Attempting to explain why he routinely reported to Shari, Octaviano said:

"She is the daughter. She is family." At another point, the nurse expressed his frustration that two women he did not trust were in such control of Redstone's life. "My loyalty was to Sumner Redstone," said Octaviano. "At that time Mr. Redstone only believed in Sydney, Sydney, Sydney." Octaviano's concern was that Redstone was being abused, which he felt justified being in touch with Shari.

In one email, the nurse declared that "99% of the staff is willing to testify about the brutality of Manuela and Sydney." Attorney Richards asked incredulously if Octaviano could make such a claim because he had interviewed the rest of the staff. "No need to interview," Octaviano responded. "They said that."

The nurse will return to the stand Monday morning, presuming Cowan does not throw the case out. He is expected to have a chance to give a much fuller explanation of his concerns about Herzer and Holland under friendly questioning from Sumner Redstone's attorneys.

(Though the elder Redstone was estranged from his daughter for a time, the two reportedly have reunited. Redstone said in his videotaped deposition that he had been glad to reunite with his family.)

Lawyers of the magnate have portrayed the two women as after some of his vast wealth, pegged by Forbes at more than \$5 billion. The two women received a total of \$150 million in cash and other assets from Redstone from 2010 until 2015, when both were thrown out of the Redstone mansion in Beverly Park, according to Redstone's trial brief.

Holland was first to be shown the door, after Redstone discovered she had cheated on him. Then the staff ejected Herzer, in October, allegedly after Redstone learned that she had been blocking his access to another girlfriend and also prevented him from communicating with the ousted Holland.

All of the grand contretemps may not matter, though, if Cowan decides that Redstone's own testimony will carry the day. Herzer's case was not

aided when her own expert, geriatric psychiatrist Stephen Read, acknowledged that it would not be a good idea for her to return to the role of Redstone's health care agent.

On cross examination, Redstone's attorney, Robert Klieger, noted that Redstone has clearly stated that he does not want Herzer is his life. The attorney asked Dr. Read whether that made it difficult to return her to a key role making decisions about the billionaire's care.

"The principal should have some trust in the agent," Read acknowledged.

Herzer's lead attorney, Pierce O'Donnell, said he hoped that the suggestions of conspiracy in Octaviano's testimony would help keep the case alive. "There is still evidence in dispute about why Sumner Redstone ejected Manuela Herzer from his home," O'Donnell said, after court adjourned for the day. O'Donnell said he hoped the judge would hear all of that evidence.

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