Tribune

Putting Newspapers On Trial

James Erik Abels, 09.17.08, 7:35 PM ET

Sam Zell was sued in Federal Court in California yesterday by a group of current and former Tribune Company employees. They did a lot more than go after the billionaire they say ruined their company--you could make the case that they've put the fast-changing newspaper business on trial, too.

The group says Zell, the Chicago real estate mogul-turned-newspaper-titan, has done nothing but run down Tribune since buying it last year. But the suit is so much more than an angry lashing by frustrated journalists. To the group of well-known reporters that include two Pulitzer Prize winners, the indictment of Zell is an angry answer to Wall Street's pessimism about their industry.

"The problem is not with the product, the problem is monetizing the product online," says Dan Neil, a five-year employee of the Tribune-owned *Los Angeles Times*. "It's not journalism's problem, it might be publishing's problem." Neil won the Pulitzer Prize for criticism in 2004.

Leading the charge from the *LA Times* newsroom, Neil and his cadre of plaintiffs are claiming various violations of the Employee Retirement Income Security Act (ERISA). Essentially, they allege that as members of Tribune's Employee Stock Ownership Plan (ESOP)--which became the legal owne of Tribune during a complicated buyout in April of 2007--Zell has breached his duty of loyalty to Tribune's employees. The group has asked the court to certify the case as a class action.

Zell took over Tribune last year by taking it private in an $8.2 billion dollar deal that left the company with more than $13 billion dollars in debt. In a statement Wednesday, Zell said the lawsuit "is filled with frivolous and unfounded allegations, and I hope every partner in this company is as outraged as I am at having to spend the time and money required to defend ourselves against it."

A case like this seems inevitable. Zell has been something of a lighting rod for all that journalists fear about the future of newspapers since taking over Tribune. He has evaluated reporters by how many column inches they produce, turned editorial publications like the Los Angeles Times Magazine over to advertiser control and laid off at least 1,000 employees.

And by all accounts, he has done it with little humility, famously cursing at a South Florida *Sun-Sentinel* staff member who challenged him in January during an open question and answer session with employees. "Zell has a reputation of being a very, very difficult person to deal with," says Neil. Yet, the long-time reporter admits he has never tried to contact Zell about his grievances, saying such an effort would be futile.

Instead, Neil was sucked into this case in July when the law firm that filed it, Cotchett, Pitre & McCarthy, quietly approached him about joining. The firm had been working on the suit for some months along with plaintiff Henry Weinstein, a lawyer and 30-year veteran of the *LA Times* who covered the legal beat before accepting a Tribune buyout this year. Cotchett is no stranger to big class action cases. The 27-lawyer firm champions its history of working on filing big claims, such as class actions alleging price fixing among ocean liners and complaints against Merrill Lynch for hiding subprime loan losses.

If all goes well, this case could be a major talking point for the firm. Toluca Lake, Calif.-based Dish Communications, which describes itself as a boutique PR firm, was distributing copies of the complaint and coordinating interviews with Neil earlier this week. There is quite a lot to talk about.

The ramifications of Zell's--and Tribune's--actions are defined by the Cotchett firm as nothing short of the destruction of American democracy. "Sam Zell exacted a severe, long-lasting damage to an institution that citizens in a democracy rely on and require to effectively speak truth to power," writes lead lawyer Joseph Cotchett.

Zell himself is only named in two of the complaint's eight counts. Most counts focus on Tribune's existing and past board of directors, as well as various trustees for the ESOP. The complicated structure of the multi-part buyout deal may be the reason why. Zell was only personally involved in it during an early stage loan to Tribune that funded the repurchase of some of its stock.

At that time, he allegedly convinced the ESOP to pay too much for Tribune in acquiring the rest of its public stock--$38 per share versus a more reasonable value of something under $10.

"The factual scenario is something of a novel one," says Ian Downes, an ERISA litigator with the law firm Dechert. He says cases like this one could drag on for years and can result in millions of dollars in attorney's fees for a plaintiff's firm involved in the suit.

Newspapers have been under siege since the technology bubble popped in the late 1990s, with problems ranging from declining circulation, advertiser consolidation, classified ads migrating online, rising newsprint costs, bloated debt structures and, yes, over-staffing. Not to mention the rise of Internet news.

"The industry's got enough problems not to need bad management on top of it," says Neil. Or, Zell might say, lawsuits.