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Fox News, Others Hit With Voting Co.'s \$2.7B Defamation Suit

By **Hailey Konnath**

Law360 (February 4, 2021, 9:47 PM EST) -- Electronic voting technology provider Smartmatic slapped Fox News, several of its on-air personalities, and attorneys Rudy Giuliani and Sidney Powell with a \$2.7 billion defamation suit Thursday, accusing them of dragging the Florida-based company into a false election fraud narrative because "they needed a villain."

The unfounded election fraud conspiracy theories peddled by Fox News and its hosts Lou Dobbs, Maria Bartiromo and Jeanine Pirro significantly damaged Smartmatic USA Corp.'s business, according to a 285-page complaint filed in New York state court. Giuliani and Powell were named in the suit because they appeared as guests on Fox News while representing former President Donald Trump.

"The Earth is round," Smartmatic said in the suit. "Two plus two equals four. Joe Biden and Kamala Harris won the 2020 election for president and vice president of the United States."

Giuliani and Powell knew this, but they wanted to overturn the election's results in Trump's favor, Smartmatic said. Thus, they concocted the stolen election story, and Fox News and its hosts got on board with the conspiracy, according to the suit.

But they needed someone to blame, Smartmatic said.

"Without any true villain, defendants invented one," the company said. "Defendants decided to make Smartmatic the villain in their story."

Smartmatic only provided election technology and software to Los Angeles County in the Nov. 3 election. But Fox News and the individual defendants made up a wildly different story for the company, according to the suit.

They stated that Smartmatic was a Venezuelan company being controlled by dictators from socialist countries, the company said. And they told viewers that Smartmatic's election technology was used in many of the states where the election results were close, it said.

Specifically, Fox News, its hosts and the attorneys told millions of viewers and readers that Smartmatic's technology sent votes to foreign countries to be tabulated and manipulated, that its software was hacked during the election and that its technology was specifically designed to rig and fix elections, per the suit.

"Defendants' story was a lie," Smartmatic said. "All of it. And they knew it. But, it was a story that sold."

In the wake of Fox News' election coverage, Smartmatic and its employees began receiving hate mail and death threats, it said. Its clients and potential clients panicked. The company's reputation had been irreparably harmed, it claimed.

Meanwhile, Fox News used the story to grip readers and curry favors with the outgoing Trump administration, Powell used it to raise money and enrich herself and Giuliani used it to keep Trump on the line and to sell products, according to the suit.

The story went beyond making them money, Smartmatic said. It undermined people's belief in democracy and "turned neighbor against neighbor," the company claimed.

"The story led a mob to attack the U.S. Capitol," Smartmatic added.

Smartmatic is alleging 16 claims of defamation and disparagement against the network and the individuals. On top of the \$2.7 billion in economic and noneconomic damages, the company is seeking unspecified punitive damages, attorney fees and court costs.

A Fox News Media spokesperson said in a statement Thursday that the company is "committed to providing the full context of every story with in-depth reporting and clear opinion."

"We are proud of our 2020 election coverage and will vigorously defend this meritless lawsuit in court," the spokesperson said.

Powell told Law360 on Thursday that she hadn't yet received the complaint.

"This is just another political maneuver and outrageous abusive 'lawfare' by the radical left that has no basis in fact or law," she said.

Giuliani couldn't be immediately reached for comment Thursday.

Smartmatic **had warned** Fox News and other conservative-leaning news outlets that litigation was imminent. In December, the company sent legal notices and retraction demand letters to Fox News, Newsmax and One America News Network. Powell and Giuliani received similar letters, according to the company.

Later that month, Fox News aired a segment featuring a nonpartisan voting technology expert, who debunked the election fraud claims against Smartmatic.

But Smartmatic said in Thursday's suit that the segment — which aired on "Lou Dobbs Tonight," "Sunday Morning Futures" and "Justice with Judge Jeanine" — was not a retraction. And Fox News could've brought in the expert at any time before that, but the network chose not to, Smartmatic said.

"The Fox defendants did not put [the expert] on the air until after receiving Smartmatic's retraction demand letter because the Fox Defendants had agreed with Mr. Giuliani and Ms. Powell to spread the disinformation campaign for as long as they could," the company said.

According to information provided by the company and posted on its website, including a "response to misinformation," Smartmatic was founded in Florida in the wake of the closely contested 2000 U.S. presidential election with the mission of developing technology to ensure the integrity of elections.

Since then, it said that it has designed and implemented secure election technologies in 25 countries and helped record over 5 billion votes without a single security breach. It added that all of those votes were "secure and fully auditable."

While its founders were born in Venezuela, the company was established in the United States, it said. It has run past election projects in Venezuela but stopped doing business there after blowing the whistle on false turnout reports from the government in 2017 and has no current operations there, it said.

Thursday's suit joins a flurry of litigation surrounding the November presidential election. In early January, Dominion Voting Systems Corp. sued Powell for defamation in D.C. federal court over accusations that she span similar voting machine rigging stories about Dominion. In that suit, Dominion is seeking **\$1.3 billion** in compensatory and punitive damages.

In December, Dominion's security director sued Powell, Giuliani, the Trump campaign and others for defamation, civil conspiracy and intentional infliction of emotional distress. And the city of Detroit has

asked a Michigan federal judge to impose sanctions on Powell and refer her for disbarment over her challenging of the Wolverine State's election results.

Similarly, Dominion has sued Giuliani **alleging defamation**, also seeking \$1.3 billion in damages, in D.C. federal court.

"As a result of the defamatory falsehoods peddled by Giuliani" and several other Trump allies, "Dominion's founder and employees have been harassed and have received death threats, and Dominion has suffered unprecedented and irreparable harm," the company said in its suit, filed in late January.

Smartmatic is represented by J. Erik Connolly and Nicole E. Wrigley of Benesch Friedlander Coplan & Aronoff.

Counsel information for the defendants wasn't immediately available Thursday.

The case is Smartmatic USA Corp. et al. v. Fox Corp. et al. in the Supreme Court of the State of New York, County of New York. A case number wasn't immediately available Thursday.

--Additional reporting by Nathan Hale, Khorri Atkinson and Jack Karp. Editing by Michael Watanabe.

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