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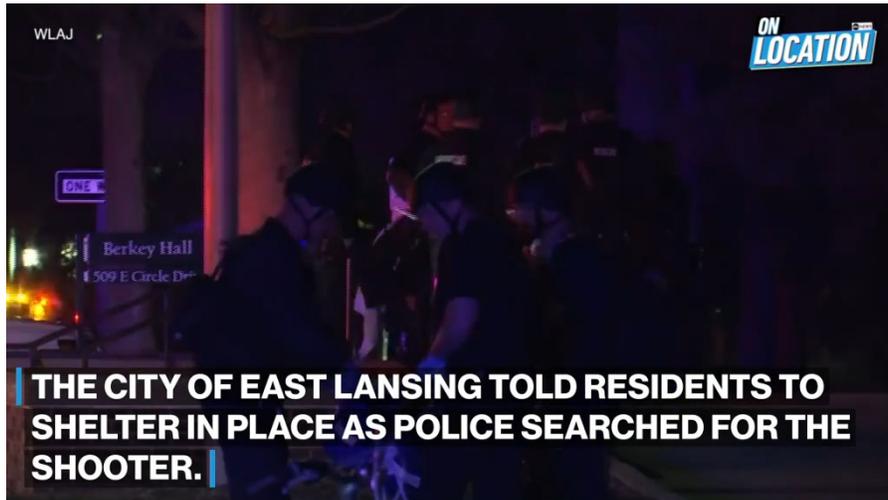
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NY court nixes Fox News' bid to end voting tech firm's suit

A New York appeals court has rejected Fox News' bid to shut down a multibillion-dollar defamation lawsuit accusing the network of spreading lies that a voting-technology company helped "steal" the 2020 election from then-U.S. President Donald Trump

By JENNIFER PELTZ Associated Press

February 14, 2023, 1:57 PM



NEW YORK -- A New York appeals court on Tuesday rejected Fox News' bid to shut down a multibillion-dollar defamation lawsuit accusing the network of spreading lies that a voting-technology company helped "steal" the 2020 [election](#) from then-U.S. President [Donald Trump](#).

A five-judge panel ruled unanimously against the network, host Maria Bartiromo and former host Lou Dobbs. They said they were simply reporting the news when they broadcast unsupported claims from Trump lawyers Rudy Giuliani and Sidney Powell about Smartmatic USA. The claims were false.

The state Supreme Court's Appellate Division, a mid-level appeals court, said there were "significant allegations" that Giuliani and Powell defamed the company.

“The complaint alleges in detailed fashion that in their coverage and commentary, Fox News, Dobbs, and Bartiromo effectively endorsed and participated in the statements with reckless disregard for, or serious doubts about” whether there was any reliable evidence for them, the judges wrote. They also reinstated similar claims against Fox News host Jeanine Pirro, claims a lower court had thrown out.

Messages seeking comment were sent to Smartmatic and Fox News; the network's lawyers are also representing the hosts.

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Fox News had argued that it and its hosts did what the media do and the First Amendment protects: inform the public about newsworthy, if controversial, claims that an important figure was making about a matter of public concern.

Smartmatic maintained that Fox News can't claim free speech protections for inviting guests to circulate damning falsehoods, without evidence, as part of what the voting company calls a "disinformation campaign."

Federal and state election officials, exhaustive reviews in battleground states and Trump's own attorney general found no widespread fraud that could have changed the outcome of the 2020 election. Nor did they uncover any credible evidence that the vote was tainted. Trump's allegations of fraud were also roundly rejected by dozens of courts, including by judges whom Trump had appointed.

Smartmatic isn't alone in suing Fox News over its election coverage. The network is also fighting a \$1.6 billion defamation lawsuit in Delaware from another voting machine company, Denver-based Dominion Voting Systems; and a federal defamation case filed by a Venezuelan businessman who said he was wrongly accused of trying to corrupt the election.

Florida-based Smartmatic said it played a small role in the 2020 U.S. national election: Its technology and software were used only in California's Los Angeles County. The heavily Democratic county and state weren't considered battlegrounds and went, as expected, for Democratic nominee and now-President Joe Biden.



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But Smartmatic says Fox News and the three prominent hosts at the time — Bartiromo, Dobbs and Pirro — repeatedly allowed Trump's lawyers to falsely portray Smartmatic as a foreign company involved in a sprawling, multi-state operation to “flip” votes to Biden from the Republican incumbent.

During a series of appearances following the Nov. 3, 2020 election, Giuliani asserted that the company had been “formed in order to fix elections.” Powell called it a “huge criminal conspiracy” and the two jointly claimed that proof would be forthcoming.

Fox News eventually aired an interview with an election technology expert who said there was no evidence that Smartmatic's technology had monkeyed with the election results. He refuted various claims that Giuliani and Powell made. That interview came after Smartmatic's lawyers demanded a retraction.

The company says business tanked and executives and customer-support workers received death threats because of the bogus allegations. It's seeking more than \$2.7 billion in damages.

“These reports by these three anchors were not objective pieces. These were endorsement pieces of something that they knew was not true,” Smartmatic lawyer J. Erik Connolly told the appeals judges during arguments in December.

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But Fox News lawyer Paul Clement said the lawsuit “strikes at the heart of the First Amendment.”

“When the sitting president of the United States and his lawyers make allegations of fraud and indicate that the president’s legal team will be challenging the results of the election in multiple states, those allegations are unquestionably newsworthy. They remain newsworthy whether or not they seem plausible or likely to succeed,” Clement told the appeals court.

A message seeking comment on Tuesday's ruling was sent to Giuliani’s lawyer. He has said Giuliani's statements were protected by the First Amendment and other laws and principles, and his lawyers asked the appeals court to dismiss all the claims against him.

A lower court dismissed claims against Powell, a Texan who argued that she couldn’t be sued in New York over the matter.



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