Tale As Old As Time? Preliminary Thoughts On The Blake Lively & Justin Baldoni Sexual Harassment Suit



There may be more pressing news right now, but the Blake Lively and Justin Baldoni lawsuit caught my eye. If you haven't read about it – in a nutshell, Blake Lively and Justin Baldoni acted as a couple in a recent movie, "It Ends with Us." Following the movie's release, Blake launched a lawsuit against Justin for sexual harassment and alleged that he led a retaliatory "smear campaign" against her after she raised concerns about him during filming. In response to Blake's lawsuit, Justin countersued for libel, defamation, and extortion, among other allegations.

The media seems split, and we don't have any definitive answers at this point as to what happened – but I can't help but give it some thought in relation to my own practice as a sexual harassment workplace investigator. I've heard people question, why didn't Blake speak up sooner, if the allegations are true? Especially given her money, privilege, and power as an A-list celebrity. Although it's a myth that failing to speak up diminishes a party' credibility or the likelihood that sexual harassment happened, it's still fair to think about*how*this could have happened, given Blake's position. My past blogs have covered credibility assessments in a "he said-she said," and how someone powerful can get away with sexual,[1] but I haven't yet covered how someone powerful is potentially *not immune* from it. In this blog, I've considered some of the possible contributing factors in this case, and reflected on how workplaces can protect those at all levels from sexual harassment.

Here are some of the possible contributing factors in this case:

- **An equally powerful respondent**

Despite Blake's celebrity status and role as co-star and producer of the movie, Justin also wore multiple hats; his roles included co-star, producer, director, and head of the studio. In effect, he was Blake's boss on set, and she reported to him. In these types of situations, a complainant could reasonably fear reprisal at work and impacts to their reputation, regardless of their own position.

- **Sensitive nature of the work**

Acting typically allows for creative flexibility and some improvision – and therefore, grey areas with room for interpretation. Consent can be a live issue, as

it may be difficult to establish where the line is, and when it has been crossed, particularly in this case where the scenes involved romance, sex, and domestic violence.

As an example, Blake alleged that Justin made inappropriate comments and attempted to kiss her in an improvised scene that was not scripted to include a kiss. Justin's team later released footage of that scene, which they said corroborated his account, whereas Blake's team believed that the same footage corroborated her account. Even something as "black and white" as video evidence is up for debate and reminds us that allegations of sexual harassment are complex, nuanced, and context-specific.

- **Lack of support**

In this case, an intimacy coordinator[2] was on set, but was not assigned to the improvised scene at issue. Since Justin was directing, managing, co-acting, and producing, it's unclear what supports were available to Blake to navigate any issues with consent.

Takeaways for workplaces

The contributing factors outlined above could be true for any complainant reporting sexual harassment, celebrity or not – particularly in situations where the respondent is powerful, the work is sensitive, boundaries are unclear, and employees lack support. I've thought of a few takeaways for workplaces on how to prevent and manage similar types of situations.

First, when a senior employee is heavily involved in day-to-day operations and has many roles within an organization, workplaces can consider avenues for employees to report them, should they have an issue; for example, via a Board, union, or neutral person/third party.

Second, ongoing communication is key, especially in sensitive roles that involve physical touch or may otherwise occur in the "grey" zone. Communication can be used to brainstorm and outline plans, ensure that all parties are safe and comfortable, and to spot and/or address issues earlier.

Third, even senior employees should not feel isolated when navigating sensitive situations, especially when there is a power dynamic at play. Employers can ensure that access to support is consistently available to employees at all levels, such as an experienced neutral party who can guide parties through sensitive situations.

I may be singing a different tune about the case once we have more information, but wherever the truth lies, workplaces can still consider what they can do to prevent and manage these situations, regardless of the complainant's position.

Footnotes

1. See: Chantel Levy, "Credibility Assessments in a 'He Said-She Said" (May 17, 2022), online (*Insights*): https://rubinthomlinson.com/credibility-assessments-in-a-he-said-she-said/; Chantel Levy, "Welcome to the twilight zone – Reflecting on #MeToo in the wake of the Andrew Cuomo workplace investigation" (September 21, 2021), online (*Insights*): https://rubinthomlinson.com/welcome-to-the-twilight-zone-reflecting-on-metoo-in-the-wake-of-the-andrew-cuomo-workplace-investigation/.

2. An intimacy co-ordinator serves as "an advocate, a liaison between actors and production …in regard to nudity and simulated sex, and other intimate and hyper-exposed scenes." Screen Actors Guild – American Federation of Television and Radio Artists.

The content of this article is intended to provide a general guide to the subject

matter. Specialist advice should be sought about your specific circumstances.

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