

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JOSEPH RAKOFSKY and RAKOFSKY LAW FIRM, P.C.,

Plaintiffs,
-against-

Turkewitz Reply Affidavit in
Support of Motion to Dismiss

THE WASHINGTON POST COMPANY, et al.,

Index # 105573/11

Defendants.

-----X
Eric Turkewitz, being duly sworn, deposes and says:

1. I am an attorney admitted to practice law in New York and a defendant in this action along with 80 other lawyers, law firms, media companies, and John Doe / pseudonymous defendants. I am also local counsel to 35 defendant entities, along with Marc Randazza as *pro hac vice* counsel. Our clients – listed on the Rider – are mostly attorneys and law bloggers.

2. This Reply Affidavit is made on personal knowledge, and focuses on two issues: Plaintiffs' *blunt concession that claims of incompetence are expressions of opinion and therefore not actionable*, and the failure to timely serve all opposing papers to the motions.

3. Most significantly, suit was brought against me based on a single claim that my allegation of incompetence against Rakofsky was defamatory.¹ The entire claim against me is based on this single paragraph that I wrote:²

Ethics also comes into play with deception, as evidenced by one **Joseph Rakofsky**, a New York lawyer with scant experience, but whose website sung his praises in oh so many ways. Then he got a real client. Defending a murder case. Which of course, he was utterly incompetent to do and after being exposed in the [Washington Post](#), the story is now buzzing around the blogosphere ([Gamsso](#); [Bennett](#); [Elefant](#); [Greenfield](#); [Tannebaum](#); [Mayer](#); [Koehler](#), [Above the Law](#)).

¹ Ex. C, Amended Complaint, paragraph 172

² Lawyers and Advertising (The New Frontier); *New York Personal Injury Law Blog*, <http://www.newyorkpersonalinjuryattorneyblog.com/2011/04/lawyers-and-advertising-the-new-frontier.html> (last viewed June 8, 2012)

4. The plaintiffs now concede that the allegation of incompetence is, as a matter of law for all defendants, mere opinion. In page 47 of the Rakofsky Memo of Law related to my group of defendants he finally admits – after we spent substantial time defending this matter:

“Whether Mr. Rakofsky was, in fact, incompetent is not itself an issue as to which Plaintiff alleges he was defamed by Defendants. This would be a matter of opinion that would be neither provably true nor provably untrue.” (Emphasis in original.)

Given that the assertion of incompetence was the entire premise of his action against me, and so many others, this is an astonishing admission after a year of litigation and multiple attempts to amend the pleadings with prodigious filings.

5. It’s also worth noting that while Mr. Rakofsky finally concedes that his incompetence is a matter of opinion, he nevertheless *continued that claim in his cross-motion* to amend the complaint a second time (paragraph 345). Mr. Rakofsky then tops it off by asking for \$10,000,000 in damages for a defamation claim that he now acknowledges is without merit.

6. Regarding the procedural deficiency of failing to timely serve opposition to the motions to dismiss, this court made abundantly clear at the March 21st conference that the plaintiffs’ deadline for service was May 18th.³ The court said it would “not allow any wiggle room” in this “final date,” that there are “no exceptions” and that this ruling was “hard and fast.”⁴ But despite more than ample opportunity to respond -- most motions were served by December -- the plaintiffs failed in this simple mission of mailing the papers on time.

³ Exhibit W, stenographers minutes of court conference, March 21, 2012

⁴ Exhibit W, page 5

7. The plaintiffs' errors have been a hallmark of this litigation, in starting suit, making motions and service of papers. Abundant evidence of the paper tsunami he started now overflows the court. While we could not stop the voluminous paper filings, as this case sadly missed the new ECF system, defendants sought to ease the deluge by agreeing to service by email. The plaintiffs refused, preferring to mail volume after volume of paper, much of it merely re-stating the same "facts" they hope will one day rescue them from sanctions. But the plaintiffs now reap what they have sown, having created massive quantities of opposing papers and then failing to keep up with it and properly serve them as the court directed.

8. When the defendants served their opposing papers on me they made reference to other memos of law for our co-defendants, yet failed to serve us with copies. Only the papers that opposed our motion were included, and the papers for the other 12 were mysteriously absent. Subsequently, I received a copy of the opposing papers for co-defendants *Washington Post* and *Reuters*, with the package mailed on May 22nd (Exhibit X).

9. But *still* missing from that second set of papers was the opposition for all the other motions to dismiss. Those were mailed via UPS on May 24th.⁵ This box contained 10 new Memos of Law, for the following parties:

Michael Doudna and Doudna Law
American Bar Association, ABA Journal.com, Debra Cassens-Weiss and Sarah Randag
Jeanne O'Halleran and O'Halleran Law
Gamso, Helmick and Hoolahan
Jamison Koehler and Koehler Law
Mace J. Yampolsky and Mace J. Yampolsky LTD
The Washington City Paper and Rend Smith
Allbritton Communications Company and TBD.com

⁵ Exhibit Y, UPS Tracking number receipt

Miriam Seddiq and Seddiq Law
Maxwell Kennerly and The Beasley Firm

10. Despite the May 22nd postmark for one set of papers, and the clear UPS receipt for the other set for May 24th, plaintiffs' counsel insisted in an email to Mr. Randazza that:⁶

All papers in opposition were mailed to the moving defendants on May 18.

11. In sum, the Rakofsky plaintiffs seem to have made every conceivable mistake in trying to start and maintain a lawsuit, and then persisted in making mistakes once it was started, including a \$10,000,000 claim that he now concedes is frivolous yet wants to continue. These errors were documented in my two affidavits to support the opinion that Mr. Rakofsky was incompetent, as Judge Jackson had noted when he said that there "not [having] a good grasp of legal principles and legal procedure"⁷ in the underlying Deaner trial.

12. As a result of the conduct of the plaintiffs there has been a very substantial waste of resources in dealing with and constantly responding to the errors. We intend to move for sanctions after this matter is dismissed if the court does not award them *sua sponte* pursuant to CPLR 8303(a) (frivolous claims) and 22 NYCRR 130-1.1 (frivolous conduct).

Dated: New York, New York
June __, 2012

Eric Turkewitz, *pro se* and as counsel
to the defendants listed on the Rider

Sworn to before me on the ___ day of June, 2012:

NOTARY PUBLIC

⁶ Exhibit Z, email from Goldsmith to Randazza

⁷ DeVoy Affidavit, Ex. A, p. 4

Rider:

Parties represented by Marc Randazza (*pro hac vice*) and Eric Turkewitz (local counsel)

| Writer/Defendant | Associated Entities | Amended Complaint ¶¶ | Jurisdiction, per Amended Complaint | Total Defendants |
|-------------------------|--|-----------------------------|--|-------------------------|
| Eric Turkewitz | The Turkewitz Law Firm | 47-48; 172 | Washington, DC | 2 |
| Scott Greenfield | Simple Justice NY, LLC blog.simplejustice.us Kravet & Vogel, LLP | 19-21; 148-152; 212 | New York | 4 |
| Carolyn Elefant | MyShingle.com | 16-17; 146-147; 201 | Washington, DC | 2 |
| Mark Bennett | Bennett And Bennett | 32-33; 160; 206 | Texas | 2 |
| Eric L. Mayer | Eric L. Mayer, Attorney-at-Law | 22-23; 153; 203 | Kansas | 2 |
| Nathaniel Burney | The Burney Law Firm, LLC | 82-83; 193-194; 198 | New York | 2 |
| Josh King | Avvo, Inc. | 78-79; 202 | Washington State | 2 |
| Jeff Gamso | | 24-25; 154 | Ohio | 1 |
| George M. Wallace | Wallace, Brown & Schwartz | 57-58; 180-181 | Florida | 2 |
| “Tarrant84” | Banned Ventures Banni | 65-67; 185 | Colorado | 3 |
| Brian L. Tannebaum | Tannebaum Weiss | 55-56; 179 | Florida | 2 |
| Colin Samuels | Accela, Inc. | 80-81; 192; 199 | California | 2 |
| John Doe #1 | Crime and Federalism | 26-27; 155-157 | Unknown | 2 |
| Antonin I. Pribetic | Steinberg Morton | 51-52; 175; 205 | Canada | 2 |
| Elie Mystal | AboveTheLaw.com; Breaking Media, LLC | 9-11; 143; 200 | New York | 3 |
| David C. Wells | David C. Wells, P.C. | 12-13; 182; | Florida | 2 |
| 16 individuals | | | | 35 entities |