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-

THE WASHINGTON POST COMPANY, et al.,

Defendants.

Consolidated Reply Memo of Law For Defendants' Sanctions Motion *and* Opposition to Plaintiffs' Cross-Motion for Sanctions

Index # 105573/11

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Consolidated Reply Memo of Law For Defendants' Sanctions Motion *and* Opposition to Plaintiffs' Cross-Motion for Sanctions

I. Introduction

On January 4, 2013, 35 defendants moved for sanctions. Rakofsky responded with redundant and dishonest arguments on the merits of the case that are no longer open to dispute and added a frivolous cross-motion for sanctions. The cross-motion is predicated on actions that were addressed and dismissed by both this Court and the Appellate Division for the First Department months ago.

II. Argument

Rakofsky's cross-motion mischaracterizes facts already submitted to and ruled on by this Court and the First Department. Rakofsky's cross-motion thus constitutes additional bad faith conduct.

A. Defendants' Reply In Support of Sanctions Against Plaintiffs and Their Counsel.

The transcripts of the *United States v. Deaner* trial are before the Court and undermine every representation Rakofsky has made in this case (Defts.' Mot. for Sanctions Exhs. E, F). As this Court noted upon review of the *Deaner* transcripts, "every time [Plaintiffs' counsel] state[s] one argument, it's then specifically in the record where it's true," "it looks like [the defendants] have a complete defense to this." (Defts.' Mot. for Sanctions Exh. A at 90:5-7, 90:23-25, 91:4)

However, the best evidence of Rakofsky's duplicitousness and cynical use of this tribunal to subject Defendants to needless litigation is seen from his constantly shifting theory of liability. In opposing this motion, Rakofsky finally admits that the case ended in a mistrial:

> A more careful reading of those minutes [of the Deaner trial] and all other materials in this case unambiguously demonstrate that Rakosky never asserted his motion to withdraw and the declaration to be mutually exclusive. To the contrary, Rakofsky consistently maintains that he both moved to withdraw *and* a mistrial was declared, which is in full accord with the statements cited by the defendants to contradict the conclusion it illogically infers. (Opp. to Mot. for Sanctions ¶ 41)

In contrast, Rakofsky previously argued that:

> **The statements that Mr. Rakofsky has alleged are untrue and defamatory of him state (a) that a mistrial did, in fact and in law, occur** [] and (b) that it was, in fact, declared (if and when it was) by Judge Jackson and was, in fact, at that time, attributed by Judge Jackson to incompetence on the part of Mr. Rakofsky, assuming such incompetence did in fact occur.
> (Pls.' Opp. to Defts.' Mot. to Dismiss at 47) (emphasis added)

Rakofsky's prior position that the *Deaner* trial did not end in mistrial – despite the clear language of the transcript – can be found repeatedly within the Amended Complaint. Rakofsky claims that Judge Jackson "never granted a mistrial" (Am. Compl. ¶ 146); that he merely granted a motion to withdraw as counsel (Am. Compl. ¶¶ 117-119). Rakofsky insists that Judge Jackson "never 'ordered a mistrial'" for "any" reason (Am. Compl. ¶ 156). Throughout the Amended Complaint, Rakofsky maintains that any implication that the *Deaner* trial ended in mistrial, or for

any reason other than his own motion to withdraw as counsel,[1] is defamatory (Am. Compl. ¶¶ 137-138, 145, 180, 185, 192).

Rakofsky now *admits that the Deaner trial ended in mistrial* (Opp. to Mot. for Sanctions ¶ 41), despite maintaining that it did not while opposing Defendants' motion to dismiss. This is precisely the kind of "frivolous and baseless" actions that "will not be tolerated and will result in a strict application of the provisions of CPLR § 8303-a," *Rittenouse v. St. Regis Hotel Joint Venture*, 180 A.D.2d 523, 525 (1st Dept. 1992). Rakofsky's conduct represents a "broad pattern" of sanctionable conduct under 22 NYCRR § 130-1.1 constituting an "overwhelming pattern of delay, harassment and obfuscation." *Levy v. Carol Mgmt. Corp*., 260 A.D.2d 27, 33 (1st Dept. 1999). There is no bolder abuse of judicial process than pursuing extensive litigation based on claims that are not only demonstrably false, but *admitted* to be false.

B. Opposition to Plaintiffs' Cross-Motion for Sanctions.

Rakofsky's retaliatory cross-motion for sanctions is premised entirely upon events that occurred nearly two years ago and have already been addressed and disposed of by this Court and the First Department. Randazza's sur-reply of June 29, 2011, which has already been filed in this action, fully addresses each of these issues. (Exhibit L) This Court granted Randazza's *pro hac vice* admission after a September, 2011 hearing considering each of the issues Rakofsky once again raises in his cross-motion. At that hearing, even after being ruled against, Rakofsky insisted that the court reconsider – which it did – and still ruled against him.

Rakofsky's attempt to relitigate these long-resolved issues under the guise of a sanctions motion (Pls.' Cross-Mot. for Sanctions ¶¶ 17-22) is improper. Even if they had a basis the first

[1] Based upon the transcripts of the *Deaner* trial, it appears that the conflict between Rakofsky and Deaner arose from Rakofsky's incompetence (Defts.' Mot. for Sanctions Exh. F at 5:6-6:17)

time Rakofsky raised them, Rakofsky is collaterally estopped from repeatedly raising issues that he litigated and lost within the same case. A frivolous motion for sanctions may itself be sanctionable conduct under 22 NYCRR § 130-1.1. *Patterson v. Balaquiot*, 188 AD2d 275, 590 NYS2d 469 (1st Dept. 1992); *Southern Blvd. Sound, Inc. v. Felix Storch, Inc.,* 167 Misc.2d 731, 643 N.Y.S.2d 882 (App. Term, 1st Dept. 1996).

III. Conclusion

This case is and has been nothing but a tool for Rakofsky to make Defendants suffer the costs of litigation for lawfully criticizing him. Plaintiffs' counsel cosigned this activity, endorsed it, and frankly made it even worse -- and must also be held responsible for this misuse of the Courts, lest this Court send the message that such conduct is without consequence.

Plaintiffs' cross-motion for sanctions is meritless and, moreover, premised on facts almost two years old that have already been resolved. The retaliatory nature of Plaintiffs' cross-motion is further evidence of their bad faith and desire to do nothing more than needlessly complicate and extend this case.

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Respectfully submitted this ___ day of February, 2013 on behalf of Defendants (1) Eric Turkewitz, (2) The Turkewitz Law Firm, (3) Scott Greenfield, (4) Simple Justice NY, LLC, (5) blog.simplejustice.us, (6) Kravet & Vogel, LLP, (7) Carolyn Elefant, (8) MyShingle.com, (9) Mark Bennett, (10) Bennett And Bennett, (11) Eric L. Mayer, (12) Eric L. Mayer, Attorney-at-Law, (13) Nathaniel Burney, (14) The Burney Law Firm, LLC, (15) Josh King, (16) Avvo, Inc., (17) Jeff Gamso, (18) George M. Wallace, (19) Wallace, Brown & Schwartz, (20) "Tarrant84", (21) Banned Ventures LLC, (22) BanniNation, (23) Brian L. Tannebaum, (24) Tannebaum Weiss, (25) Colin Samuels, (26) Accela, Inc., (27) Crime and Federalism, (28) John Doe # 1, (29) Antonin I. Pribetic, (30) Steinberg Morton, (31) David C. Wells, (32) David C. Wells P.C., (33) Elie Mystal, (34) AboveTheLaw.com, and (35) Breaking Media, LLC

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