

SUPREME COURT: STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

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

Plaintiffs-Appellants,

-against-

Index No. Court
Below: 105573/11

THE WASHINGTON POST, ET AL.,

Defendants-Respondents.

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NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the notice of appeal, the decision and order appealed from, the annexed Affirmation of Herman Kaufman, the attached correspondence to the this Court's Office of Special Master, and upon the prior proceedings between the parties, the undersigned will move this Court, the Supreme Court, State of New York, Appellate Division, First Department, at the Courthouse, 27 Madison Avenue, Borough of Manhattan, New York, New York, on the 15th day of September 2014 at 9:30 A.M., or as soon thereafter as counsel can be heard, for the following relief:

1. Granting the Appellants an enlargement of time in which to perfect this appeal to the January 2015 Term of this Court; and

2. For such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, are to be served within seven (7) days of the return date of this motion.

Dated: August 18, 2014

Rye, New York

Yours, etc.

Herman Kaufman, Esq.
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To:

Clerk, Appellate Division, First Department

To all counsel of record, as set forth below
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NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that the undersigned counsel hereby
appears as counsel in behalf of the above named appellants, for all purposes
in the above captioned proceeding now before this Court.

Dated: August 18, 2014

Herman Kaufman, Esq.
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To:

Clerk, Appellate Division, First Department

All counsel of record as set forth below

SUPREME COURT: STATE OF NEW YORK
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AFFIRMATION

Herman Kaufman, an attorney admitted to practice in New York, makes the following statement under penalty for perjury:

1. I am the current attorney of record for the Appellants on this appeal, and make this Affirmation in support of the annexed motion for an enlargement to the January 2015 Term of this Court.
2. In essence, the enlargement is requested to allow this Court's Office of Masters to schedule a pre-argument conference, requested by Appellants, and which cannot be scheduled until late September 2014, at the earliest.
3. The conference has been requested for the purpose of obtaining a Court-ordered stipulation withdrawing the appeal; this Court's

assistance and direction is needed to assure that the stipulation of withdrawal includes certain provisions that will assure the finality of this proceeding with no further litigation by any parties to this proceeding. There has been no further application for the relief sought here.

4. Included here is my notice of appearance, the notice of appeal, the decision and order appealed from, and the written request to the Office of the Special Masters of this Court.
5. By way of background, appellants commenced an action for defamation and other claims, arising out of appellant Rakofsky's representation of a homicide defendant in the District of Columbia, which ended with Mr. Rakofsky's court-ordered withdrawal as defense counsel, coupled with a mistrial.
6. The lawsuit was filed against a number of foreign and in-state defendants, based, in part, upon certain media and blogger reports of Mr. Rakofsky's representation in the District of Columbia proceeding.
7. The District of Columbia proceedings had been covered by a reporter from the Washington Post, which published an article on Mr. Rakofsky's legal representation and the trial court's handling of Mr. Rakofsky's withdrawal from the proceedings, which the appellants

had claimed was defamatory. The facts reported in the Post article were soon referenced by other media outlets and bloggers.

8. The court below, following protracted motion practice, delivered a written opinion and decision, dismissing the action, ruling that there existed no jurisdiction over the foreign defendants and, further, that all claims were not actionable.
9. Thereafter, appellants' then counsel filed a notice of appeal, defective as to the Washington Post, which led this Court to set a filing date against the other respondents for the November 2014 Term of this Court.
10. I was retained by the appellants on July 29, 2014 and thereafter immediately digested the complete record on appeal, which consumes some 3,500 pages.
11. It was at this point that I concluded, after consultation with the clients, that pursuing this appeal would be unproductive. It is for that reason that I contacted Ms. Tracy Crump, Esq., who heads the Office of Special Masters to request a pre-argument conference; Ms. Crump, in turn, advised the undersigned that no conference could be scheduled until the end of September 2014, at the earliest.
12. Based upon the foregoing, I therefore request that the enlargement be

granted in order to properly work out with the Respondents,
supervised by the Office of Special Master, the terms of the
stipulation of withdrawal.

By reason of the foregoing, we request that this application be granted in all
respects.

Dated: August 18, 2014

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August 11, 2014

Ms. Tracy Crump, Esq.
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Appellate Division, First Department
41 Madison Avenue
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New York, New York 10010

Re: Rakofsky v. Washington Post, Inc., et al, Index No. Court below: 105573/11

Dear Ms. Crump:

As explained today, I represent the appellant, Joseph Rakofsky, on the pending appeal to this Court; a notice of appeal and pre-argument statement is attached, as well as the decision and order appealed from.

I was retained to handle the appeal on July 29, 2014. We are requesting a pre-argument conference because, upon due consideration and digesting the record on appeal, it is in the client's interest to work out a stipulation withdrawing the appeal with prejudice, subject to certain provisions, which, hopefully, can be resolved with the remaining respondents to the appeal to assure the finality of this proceeding.

The appellant, Joseph Rakofsky, brought a defamation action against the respondents, based upon the respondents' public statements and news coverage of Mr. Rakofsky's representation of a homicide defendant, facing trial in the District of Columbia. The court below, subsequent to proliferated motion practice, dismissed the action in a written opinion and decision, which is attached here.

The court below dismissed the entire action, granting all defendants' motion to dismiss for failure to state a cause of action in defamation; additionally, the court dismissed the foreign defendants for failure to establish long arm jurisdiction under C.P.L.R 302 (a) (1).

Because the perfection date is September 2, 2014, appellant will move for an enlargement in order that a conference may be scheduled at your office's convenience.

Thank you for your consideration.

Sincerely,

/s/ Herman Kaufman

Herman Kaufman
Attorney for the Defendants

Enc./
HK/ds

cc: to all counsel on appeal

Via; Fax: 212-779-1891

