

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-

Sur Reply Affidavit for *Pro
Hac Vice* Motion

THE WASHINGTON POST COMPANY, et al.,

Index # 105573/11

Defendants.

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Eric Turkewitz, being duly sworn, deposes and says:

I am an attorney admitted to practice law in New York, local counsel for 35
defendants in this defamation action, and a defendant.

This Sur-Reply Affidavit on the *pro hac vice* motion addresses the plaintiffs' submission of an altered Memo of Law, as well as two new Affirmations, on the return date.

On June 29th I appeared in Room 130 for the routine submission of our motion regarding Marc Randazza. I had received Mr. Rakofsky's opposition Memo of Law dated June 13th, and promptly submitted my Reply on the original return date, June 20th.

The matter was adjourned to June 29th due to plaintiffs' failure to appear, and Mr. Rakofsky then appeared with his counsel Mr. Richard Borzouye. They submitted an altered memo as well as two new affirmations. This Affidavit addresses those improprieties:

First: A new Memo of Law was submitted on the return date. The memo that I responded to in my Reply Affidavit -- where I pointed out it was actually an unsworn affirmation by Mr. Rakofsky that the court was required to reject -- was re-dated from June 13th to June 29th. It also now bore the signature of Mr. Borzouye, which was not on the copy mailed to me. The copy mailed to me is attached here as Exhibit I.

The plaintiffs, after reading my Reply, took Mr. Rakofsky's affirmation/memo and tried to give it the imprimatur of legitimacy by adding Mr. Borzouye's signature. It is plain from page two of the Memo (both versions), of course, that this is still a factual recitation of events by Mr. Rakofsky. And we know that because Mr. Rakofsky wrote that he was submitting this on behalf of himself, and because he claimed that his prior counsel "had withdrawn from this action."

CPLR 2214(c) is clear that, "Each party shall furnish to the court all papers served by him." Mr. Rakofsky elected to submit different papers to the court than the ones he served two weeks back, and for which I submitted my Reply Affidavit. The statute continues, "Only papers served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion, unless the court for good cause shall otherwise direct." It seems that the only "good cause" the plaintiffs have is a failure to read CPLR 2106 regarding the prohibition on a party submitting unsworn statements, and the plaintiffs' inability to file the papers that had actually been served and responded to.

Second: Recognizing that they now had no opposition to our *pro hac vice* motion because the affirmation/memo was invalid, and apparently believing that even routine motions need full-throated opposition, Mr. Rakofsky tried to alter a second document. On the return date, and while standing before the Referee in Room 130, he took Mr. Borzouye's affirmation from his motion to be relieved as counsel, and asked to submit it instead for this *pro hac vice* motion. The first paragraph plainly states that Mr. Borzouye submits "this Affirmation in support of this application to be relieved as attorney of record for plaintiffs." Or at least it looks plain on the served version dated June 13th, attached as Exhibit J.

But when trying to submit an original to the Court, now re-dated June 29th, Mr. Rakofsky took a pen and scratched out the original reason for the affirmation, and tried to alter it so he could submit it for this motion. The Referee stopped him cold, procured a bottle of Wite-Out, and forced Mr. Rakofsky to change it back to its original form. In 25 years of practicing law, I've never seen a party just take an affirmation from one motion, change the date and alter the reason for its original submission, and submit it on a different motion. Such conduct has no recognizable form in the motion provisions of CPLR 2214. To the extent this Court permits the conduct and entertains the allegations, Mr. Randazza's previously submitted Reply Affidavit should suffice as a response.

Third: Richard Borzouye submitted a sur-rely entitled "Supplemental Affirmation," regarding a settlement phone call between Mr. Borzouye and Mr. Randazza.

It is unclear why the plaintiffs even submitted this sur-reply, when it concerns a civil claim between Mr. Randazza and Mr. Borzouye that would be venued in California. It concerns Mr. Rakofsky illegally eavesdropping on a Borzouye-Randazza phone call and a wiretapping claim against Mr. Borzouye for permitting it to happen. In the event the court elects to entertain the sur-reply of Mr. Borzouye, I refer the Court to Mr. Randazza's Sur-Reply Affidavit attached to these papers.

Given the plaintiffs' problems in simply trying to file motion papers, the Referee called Andrea Fields, and she indicated that the parties could submit any papers (and this response), and the court would later decide whether to accept or reject the arguments.

Since the plaintiffs seem incapable of grasping simple legal procedures -- properly serving and filing papers, and doing so without alteration -- and that has caused time to be needlessly wasted, it is hoped that the Court will consider assessing motion costs.

Dated: New York, New York
June 30, 2011

Eric Turkewitz, *pro se* and as counsel
to 35 defendants listed below

Sworn to before me on the 30th day of June, 2011:

NOTARY PUBLIC

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 Mystel	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