

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

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JOSEPH RAKOFSKY, and :
RAKOFSKY LAW FIRM, P.C. : Index No. 105573/11
 :
Plaintiffs, : Justice Emily Goodman
 : IAS Part 17
- against - :
 :
THE WASHINGTON POST, et al., :
 : **AFFIDAVIT OF AMY AUSTIN**
 : **IN SUPPORT OF DEFENDANTS'**
Defendants. : **MOTION TO DISMISS AMENDED**
 : **COMPLAINT**
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DISTRICT OF COLUMBIA)
) ss.:
CITY OF WASHINGTON)

Amy Austin, being duly sworn, deposes and says:

1. I am over the age of 18, a resident and citizen of Washington, D.C. and competent to make this affidavit. I have personal knowledge of the statements sworn to below. I submit this affidavit in support of the motion of defendants CL Washington, Inc. (“CL Washington”), Creative Loafing, Inc. (“Creative Loafing”) and Rend Smith to dismiss the Amended Complaint in this action.

2. I am and have been at all relevant times the Publisher of *The Washington City Paper* and its website washingtoncitypaper.com (“WCP”), the publication at issue in this action. WCP is owned and operated by defendant CL Washington (incorrectly sued as “Washington City Paper”), a Florida corporation with its principal place of business at 2390 Champlain Street, NW, Washington, D.C.

3. My work address is 2390 Champlain Street, NW, Washington, D.C.

4. WCP is a free, controlled-circulation weekly newspaper. Each week, approximately 73,000 print copies of the newspaper are distributed to D.C. metro area¹ residents via news-racks and brick and mortar locations in the District of Columbia and in the surrounding suburbs of Maryland and Virginia. An online edition of WCP is published at washingtoncitypaper.com. Not all of the content published on the website is published in the print edition of WCP.

5. WCP, in both its print and online edition, is targeted toward a Washington D.C. audience. WCP specializes in features that focus on D.C. politics, arts, entertainment, restaurants and the peculiar pros and cons of city life in Washington D.C. In addition, each issue of WCP contains comprehensive lists of D.C.-area film, theater, music, galleries, dance, and museums, as well as a large classified advertising section. WCP is well-known as a showcase for some of Washington D.C.'s most talented journalists, critics, and artists.

6. Virtually all of the advertisements placed in the classified section of WCP are submitted by and for residents of the D.C. metro area. Similarly, almost all of the other advertisements that appear in WCP are purchased by local businesses from the D.C. metro area, though CL Washington also sells a small amount of advertising to national advertisers, some of which are located in New York.

7. The WCP article challenged in the Amended Complaint in this action, entitled "N.J. Lawyer Doesn't Care What D.C. Thinks of Him," by Rend Smith (the "Article"), was uploaded onto washingtoncitypaper.com on April 4, 2011 from our offices at 2390 Champlain Street, NW, Washington, D.C. The article was not published in the print edition of WCP.

¹ By "D.C. metro area," I mean Washington D.C. and its surrounding suburbs in northern Virginia and southern Maryland.

8. Rend Smith, a WCP reporter, researched and wrote the Article. All work relating to the research, writing, editing, and publication of the Article was performed by Mr. Smith and other CL Washington employees in the District of Columbia.

9. At no time did Mr. Smith or any other representative of CL Washington travel to New York, or otherwise communicate with anyone in New York in the process of investigating, writing, editing, or publishing the Article.

10. I did not know that the plaintiff Joseph Rakofsky was a resident of New York state at the time the Article was published, and I did not learn this alleged fact until the filing of this lawsuit. No other representative of CL Washington knew that the plaintiff Joseph Rakofsky was a resident of New York at the time the Article was published, nor did they discover this alleged fact until the filing of this lawsuit.

11. CL Washington is not registered to do business in the State of New York. It does not does not have any offices, employees or other corporate presence in New York. Nor does it own any property, maintain any bank accounts, or pay any taxes in New York. Reporters for WCP do not routinely travel to New York as part of their business duties.

12. CL Washington is a wholly-owned subsidiary of Creative Loafing, Inc. (“Creative Loafing”). It is my understanding that Creative Loafing is a corporation organized and existing under the laws of the State of Florida. Creative Loafing’s principal place of business is 1911 North 13th Street, Suite W200, Tampa, Florida.

13. Creative Loafing does not own or publish the *Washington City Paper* or its website washingtoncitypaper.com. It does not do so now and it did not do so in April 2011 when the Article was published on washingtoncitypaper.com.

14. CL Washington is adequately capitalized, maintains separate corporate books from Creative Loafing, and maintains its own office space and equipment.

15. Creative Loafing does not engage in the preparation of content published in WCP. Creative Loafing did not have any role in preparing, editing or deciding to publish the Article at issue. Such decisions are made by the publisher and/or editorial staff of CL Washington.


AMY AUSTIN

Sworn to before me this
19 day of July, 2011


Notary Public

