

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.

Turkewitz Affidavit Opposing
Plaintiffs' Cross-Motion to
Amend the Amended
Complaint

Index # 105573/11

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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 about 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 lawyers and bloggers.

2. This affidavit is made on personal knowledge and based on documents filed in this case, as well as documents filed in *Rakofsky v. Washington Post et al.*, Case No. M-162 before the Appellate Division, First Department. The purpose of this affidavit is to, as briefly as possible, give a history of this litigation and the plaintiff's Bunyanesque filings. In that way, the court will hopefully appreciate that Rakofsky's cross-motion is just another attempt to tax the defendants with never-ending legal fees in a matter that he knows is hopeless, as his way of "getting back" at people that said mean things about him on the Internet.

3. As counsel to the defendants and a defendant myself, I have received -- though improperly served, as elaborated in other affidavits -- Rakofsky's Complaint and Amended Complaint, dated May 11, 2011 and May 16, 2011, respectively.

4. After receiving these complaints, the defendants sought to have their counsel of choice, Marc Randazza, admitted *pro hac vice*. Rakofsky bitterly opposed this normally perfunctory exercise and significantly delayed the progress and resolution of this litigation. The frivolous objection – based on his unsworn affirmation that he styled a memo of law -- also necessitated a trip to New York for Mr. Randazza for a hearing.

5. Once the Court granted Marc Randazza's *pro hac vice* admission on September 15, 2011, Rakofsky requested and received a stay of proceedings so that he could retain new counsel. On October 24, 2011, however, Rakofsky attempted to file documents with the court in violation of this very stay that *he* had just requested.

6. Rakofsky again tried to receive *ex parte* relief from the Court on December 23, 2011, bringing an order to show cause that sought a wide range of relief ranging from a second amendment of the complaint, to court orders that involved at least one non-party, Google, Inc. On the face of these papers, it was hard to understand what, exactly, Rakofsky wanted the court to do. The filing was so awful that Justice Goodman, who handled this matter prior to her retirement, denied it on January 3, 2012 as “incomprehensible.”

7. Not content with being admonished in such fashion by Justice Goodman, on or about January 13, 2012, Rakofsky restyled his denied order to show cause as an emergency motion for relief to the First Department. We filed and served our opposition to on January 26, 2012. On February 21, 2012, the First Department denied Rakofsky's emergency motion. His cross-motion to amend the complaint is, in fact, his third attempt to do so.

8. Meanwhile, we prepared a comprehensive 55-page motion to dismiss the

amended complaint. This motion was no small undertaking, costing the defendants thousands of dollars and requiring several weeks to complete due to the extent of the Rakofsky pleadings. This motion was served on or about December 15, 2011, with a return date in March, and I attempted to file their motion with the Court that same day.

9. I was unable to file the papers, however, as we were informed that the filing was too far in advance of the return date, and that our filing would have to wait until March 2012.

10. Thus, on March 9, 2012, I was finally able to file the our motion to dismiss, and did so without any further delay.

11. Rakofsky's cross-motion, seeking leave for the third time to file a second amended complaint, is both pointless and abusive. In addition to the legal defenses articulated in the memorandum of law accompanying this affidavit, transcripts of the *Deaner* trial that are already in the record in this case disprove Rakofsky's allegations – making amendment of the complaint utterly futile.

12. An authenticated, true and correct copy of the April 1, 2012 transcript of *D.C. v. Deaner* – wherein Judge Jackson removed Rakofsky from the case, commenting on the inadequacy of his representation and entering a mistrial – is attached as Exhibit E to the defendants' motion to dismiss. To the extent Rakofsky's claims are not barred by law, they are conclusively disproven by this transcript.

13. Additionally, a copy of Rakofsky's March 31, 2011 status update from Facebook, in which he proudly declares the *Deaner* trial ended in "MISTRIAL!" is attached to the defendants' motion to dismiss as Exhibit F and referenced in our memorandum of law.

14. Based on the proceedings already before this Court and the First Department, it is obvious that any further litigation will provide Rakofsky with little more than a vehicle for new motions and other tactics designed to needlessly increase the defendants' costs of litigation and waste limited judicial resources.

15. As noted in the Doudna motion to dismiss, Rakofsky pressured the defendants to settle this case for \$ 5,000 – something that, according to Court records and Rakofsky's own cross-motion, some of the former defendants have done. Rakofsky's conduct sends a clear and unequivocal message to people that elected to write about the Deaner trial, or the deep well of expertise he claimed to have but didn't, or his efforts to market himself as an attorney in jurisdictions where he is not licensed, or the frivolous and counter-productive nature of this suit. And that message was: Either settle the case for nuisance value far below the cost of defense, or endure the costly wringer of litigation orchestrated by a party who lacks both judgment and competence.

17. Settlement for nuisance value may be, for some, the most economically viable option. But it comes at a breathtaking cost in the abject surrender of First Amendment freedoms of both speech and press. We are unwilling to surrender such rights.

16. As a result of the plaintiffs' conduct there has been a very substantial waste of resources in dealing with, and constantly responding to, the errors. The mountain of paper that now fills the court's desk stands as silent witness to those problems. As much as we hate to burden the court with yet more paper, 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).

17. The First Department has been clear that while it is “well established that leave to amend a pleading shall be freely granted absent prejudice or surprise resulting from the delay, [this Court] has consistently held that in order to conserve judicial resources, an examination of the proposed causes of action is warranted and *leave to amend will be denied where the proposed pleading fails to state a cause of action or is palpably insufficient as a matter of law.*”¹ For the reasons set forth in the Memo of Law, Mr. Rakofsky is unable to state a cause of action against me (or any other defendant) as no legitimate basis exists.

Dated: New York, New York
June 8, 2012

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

Sworn to before me on the 8th day of June, 2012:

NOTARY PUBLIC

¹ *Davis & Davis, P.C. v. Morson*, 286 AD2d 584, 730 NYS2d 293 (1st Dept. 2001); citations omitted, emphasis added; CPLR 3025

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 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