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.

Affidavit in Partial Opposition to Motion to Withdraw as Counsel

Index # 105573/11

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Eric Turkewitz, being duly sworn, deposes and says:

This Affidavit is based on personal knowledge, and submitted in partial opposition to the motion by plaintiffs' counsel to withdraw. I am both a defendant and local counsel to 16 people representing 35 defendants listed on the Rider.

We object to Richard Borzouye being relieved as counsel until there is an attorney to represent the corporate plaintiff, so that an unrepresented party is not before this Court.

Mr. Borzouye began this action as the attorney for one individual plaintiff and one corporate plaintiff, who have sued over 80 entities for defamation based upon the defendants having re-published negative statements made about Joseph Rakofsky by a judge in open court.[1] After the initial complaint was filed, numerous commentators made public statements about the lack of legal and factual support for the claims in the complaint. Instead of withdrawing at that point, or otherwise correcting the grave errors in the initial complaint, Mr. Borzouye amended the complaint on behalf of Mr. Rakofsky and the Rakofsky Law Firm, P.C. to add additional claims and defendants.

[1] Exhibit A, transcript, *US v. Deaner*, criminal action 2008-CFI-30325, April 1, 2011

Now, after defense lawyers have been hired, and motions and answers have started to pour in, Mr. Borzouye asks to be relieved as counsel and requests a stay of the proceedings so that Mr. Rakofsky can obtain a new lawyer.

Our group of defendants has no opposition to Mr. Rakofsky obtaining new counsel if he can find it. Given that he seems in need of legal guidance of some kind, however, we do not relish Mr. Borzouye's departure, notwithstanding our opinion he should never have acquiesced to be counsel in the first place.[2] That said, we limit our objection to Mr. Borzouye being relieved as counsel to a temporal one – he should remain as counsel of record for the corporate plaintiff until either a) that entity departs from this action, or, b) the corporate plaintiff secures alternate counsel. This limited objection is based upon the prohibition on corporations appearing *pro se*. See CPLR 321(a).

The suit revolves around Joseph Rakofsky going to Washington D.C. to defend Dontrell Deaner on charges of murder, in Mr. Rakofsky's first trial of his legal career, in his first year as a lawyer (admitted in New Jersey only). After three days, D.C. Superior Court Judge William Jackson declared a mistrial. Judge Jackson had harsh words about Mr. Rakofsky's lack of skill, experience and ethics. The judge stated on the record:[3]

> I must say that even when I acquired (sic) of Mr. Deaner, I — as to whether or not, when the Court found out through opening, at least near the end of the opening statement, which went on at some length for over an hour, that Mr. Rakofsky had never tried a case before. And, quite frankly, it was evident, in the portions of the trial that I saw, that Mr. Rakofsky – - put it this way: I was astonished that someone would purport to represent someone in a felony murder case who had never tried a case before and that local counsel, Mr. Grigsby, was complicit in this.
>
> It appeared to the Court that there were theories out there – - defense theories out there, but the inability to execute those theories. It was

[2] Exhibit B, Randazza June 3, 2011 email to Borzouye
[3] Exhibit A, transcript, *US v. Deaner*, criminal action 2008-CFI-30325, April 1, 2011

> apparent to the Court that there was a — not good grasp of legal principles and legal procedure of what was admissible and what was not admissible that inured, I think, to the detriment of Mr. Deaner. And had there been – - If there had been a conviction in this case, based on what I had seen so far, I would have granted a motion for a new trial under 23.110.
>
> So I am going to grant Mr. Deaner's request for new counsel. I believe both — it is a choice that he has knowingly and intelligently made and he has understood that it's a waiver of his rights. Alternatively, I would find that they are based on my observation of the conduct of the trial manifest necessity. I believe that the performance was below what any reasonable person could expect in a murder trial…
>
> As I said, it became readily apparent that the performance was not up to par under any reasonable standard of competence under the Sixth Amendment.

An article in the *Washington Post* followed those comments, which was followed in turn by more articles and commentary by others, followed by this suit against everyone who had apparently written on the issues. In this suit, Rakofsky accuses Judge Jackson of colluding with the prosecution and accuses Judge Jackson of defaming him (without naming Judge Jackson as a defendant), and then tries to extract money from each and every member of the press who wrote about the newsworthy event.

From the inception of this case, therefore, Mr. Borzouye must have known that Mr. Rakofsky was not bringing suit for a legitimate reason. Alternatively, he signed a pleading that was written by Mr. Rakofsky without bothering to read it, thereby aiding the unlicensed practice of law.

In either event, he now wants to escape the morass he helped create. As much as we would prefer to keep Mr. Borzouye in this case,[4] however (as he should take responsibility for his actions), we object solely to the timing and not the substance, since

[4] Exhibit B, Randazza June 3, 2011 email to Borzouye

the corporate plaintiff may not appear *pro se* pursuant to CPLR 321(a). Borzouye's withdrawal without incoming counsel would leave a party before the court without anyone to speak for it or bind it to agreements. While we appreciate Mr. Borzouye's desire to distance himself from this case, it cannot be done at the expense of the defendants left behind, who will have no one to serve, or otherwise address, regarding the corporation.

This CPLR 321(a) problem was well-known to Mr. Borzouye, and memorialized in a June 10th email that I sent to him, which said in part:

> I feel deeply uncomfortable talking to Mr. Rakofsky directly while he is represented by counsel. In addition, he is not permitted to speak on behalf of the corporation. So, without any proper CPLR 321 substitution having taken place, you are the only one to deal with.

With respect to Mr. Borzouye's claim of a failure by us to stipulate to an extension of time, this is inaccurate. Mr. Borzouye said he could no longer speak for his client, yet the corporate client cannot speak for itself. This is not a case of disagreeing about a routine extension, but of not having a proper legal representative to deal with. Mr. Rakofsky could not, as a matter of law, stipulate to anything on behalf of the corporation.

With respect to allegations concerning Mr. Randazza -- which seem to have no actual part in this motion to be relieved since Mr. Borzouye and Mr. Rakofsky can part company for any reason at all -- a copy of his affidavits for the *pro hac vice* motion are annexed as Exhibit C, to the extent the court believes the subject needs to be entertained.

We agree that Mr. Rakofsky is entitled to a new lawyer if he so chooses, as it is the policy of the State to recognize "a party's entitlement to be represented in ongoing

litigation by counsel of its choosing."[5] But the withdrawal of counsel should not be permitted to take place without making sure an attorney can appear for the corporation.

Regarding that part of the motion for a stay of this action until new counsel can be found (or the corporation departs the case), we agree with plaintiffs' suggestion of a 30-day stay.

Of course, since the motions for an extension of time to Answer or move and for *pro hac vice* admission of Mr. Randazza are fully briefed, those should not be affected by the stay.

Wherefore, the court should grant the plaintiffs' motion to the extent of allowing Mr. Borzouye to be relieved conditioned upon new counsel being substituted for the corporation, and grant a 30-day stay of proceedings so that Mr. Rakofsky can obtain new counsel.

Dated: New York, New York
June 22, 2011

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

Sworn to before me on the 22nd day of June, 2011:

_____
Notary Public

[5] *Giannotti v. Mercedes Benz U.S.A., LLC*, 20 AD3d 389, 798 NYS2d 141 (2nd Dept. 2005)

Rider

List of Defendants for which Turkewitz is acting as 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