

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION—FIRST DEPARTMENT**

-----X

Roy Den Hollander,

Plaintiff-Appellant,

-against-

New York County
Ind. No. 152656/2014
Hon. Jennifer Schecter

Tory Shepherd, Advertiser Newspapers Pty Ltd.,
Amy McNeilage, Fairfax Media Publications Pty Ltd.,

Defendants-Appellees.

-----X

**Memorandum of Plaintiff-Appellant in Reply to Defendants-Appellees' Opposition to
Plaintiff-Appellant's Motion to Strike the Defendants-Appellees' Reply in their Motion to
Dismiss the Appeal or Strike the filed Brief and Appendix**

Roy Den Hollander, Esq.
Pro-se Plaintiff-Appellant
545 East 14 St., 10D
New York, NY 10009
(917) 687-0652
rdenhollander97@gsb.columbia.edu

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Plaintiff-Appellant Roy Den Hollander submits this memorandum of law in reply to Defendants-Appellees' opposition to Plaintiff-Appellant's motion to strike Defendants-Appellees' reply memorandum in support of their motion to dismiss Plaintiff-Appellant's appeal or strike his filed Brief and Appendix.

Preliminary Statement

Defendants-Appellees' attorney, Katherine M. Bolger, is desperately trying to prevent this Court from hearing the appeal in this action by making petty and frivolous objections to Plaintiff-Appellant's Appendix and trivializing this Court's rules requiring the proper service of papers. Attorney Bolger's ("Bolger") failure to follow procedural due process in serving her papers is not a trifling violation of fundamental rights but strikes at the very heart of the democratic concept of fairness. "Indeed, in a broader sense, an underlying assumption of the rule of law is the worthiness of a system of justice based on fairness to the individual." *Regents of University of California v. Bakke*, 438 U.S. 265, 319 n. 53 (1978).

It is no wonder that Bolger wants to avoid an appeal since it will expose her unethical conduct in defending her billion-dollar clients, including Rupert Murdoch's News Corp, in the lower court. Bolger intentionally submitted to the lower court on three different occasions a forged document by deleting a material part of one of the articles at issue in this case. (Plaintiff-Appellant's filed Brief at 6-7 and filed Appendix at 145-146; Record on Appeal at Doc. No. 9 Ex. 5(A), Doc. No. 46 Ex. 5(A), Doc. No. 114 Ex. 5(A) and 9(A)). Bolger attempts to cover-up her forgery fraud on the courts by ludicrously asserting there is "no support" in the record that the version of the article submitted by her was a forgery. (Bolger Mem. In Support of Motion to Dismiss the Appeal and for a Stay at 9). However, a simple comparison of the article as published on the Internet (Record on Appeal at Doc. No. 15, Appendix at 93-94) and the altered

article submitted three times by Bolger shows she deleted a material portion of the article—that’s forgery and that’s a crime. (Bolger’s Forged Article in the Record on Appeal at Doc. No. 9 Ex. 5(A), Doc. No. 46 Ex. 5(A), Doc. No. 114 Ex. 5(A) and 9(A)). The portion deleted was material to showing common-law malice, which is an element of injurious falsehood and tortious interference alleged in the complaint.

Two other obvious reasons that Bolger is sweating an appeal are that she clearly suborned perjury by her clients (Appendix at 100-108), and knowingly violated the Supreme Court’s rules by filing a number of unsearchable PDF documents (Record on Appeal at Doc. No. 46) in order to cheat her way to victory in the lower court as she is attempting to in this Court with her motion to dismiss the appeal or strike Plaintiff-Appellant’s filed Brief and Appendix.

Background

Bolger waited two weeks after receiving Plaintiff-Appellant’s Brief and Appendix before moving this Court to either strike the filed Brief and Appendix or dismiss the appeal. The lower court had decided that two global, multi-billion dollar media corporations, one of which is listed in SEC filings as a “segment” of Rupert Murdoch’s News Corp on Sixth Avenue, and two reporters for the media corporations did not have sufficient contacts with New York for personal jurisdiction. Bolger made her motion to road-block Plaintiff-Appellant’s appeal of the lower court decision without even attempting to contact Plaintiff-Appellant in any effort to resolve her objections and avoid burdening this Court with motions.

Bolger moves to obstruct the appeal by objecting (1) that the Appendix did not contain 496 exhibit pages of mainly irrelevant documents filed by her in the lower court (Record on Appeal at Doc. No. 46), which would of course have made the cost of an appeal prohibitively expensive; (2) to the use of titles in the Appendix for documents that make clear her forgeries

and suborning of perjury; and (3) to a few documents copied from the Internet that are substantively identical but the font and spacing differ as a result of updated browsers—something Bolger also ran into in her exhibit filings. She also alleged, contrary to *Zouppas v. Yannikidou*, 16 A.D.2d 52, 54 (1st Dept. 1962), that this Court could not take judicial notice of a couple of documents, and that she had other issues with the Appendix but failed to specify.

Argument

Bolger submitted two false affidavits—not one, but two false affidavits of service concerning her reply, which evinces once again a proclivity to play fast and loose with the truth. The affidavits were false because one claimed service was made before Bolger’s reply was filed (Ex. A) and the other (Ex. B) infers such. In reality, Bolger’s reply was filed first, then served.

Bolger’s filing of her reply before serving it are not beliefs of Plaintiff-Appellant but are based on the very words of Bolger’s paralegal, “Please find the attached Reply Memorandum and associated filings, which were filed [past tense] with the First Department today in the above-captioned matter.” (Ex. C)

Further, Federal Express tracking records show that her reply was filed first and served later. Bolger tries to trick this Court by arguing that the Federal Express label was “generated” before filing her reply. (Bolger Mem. Opp. Strike Reply at 3). Generating a label, however, is not placing the papers into the “custody” of Federal Express, which is what CPLR 2103(b)(6) requires:

Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service (Emphasis added).

Federal Express did not take custody until after this Court closed on April 13, 2106, which was after Bolger had filed her reply. (Ex. D).

Bolger also argues that the schedule set for her motion to dismiss the appeal or strike the filed Brief and Appendix was not a motion by notice but rather an order to show cause. (Bolger Mem. Opp. Strike Reply at 3). On April 1, 2016, both Bolger and Plaintiff-Appellant were in the Clerk's Office of this Court for Bolger's request for a stay of the appeal. At that time, with Bolger present, a clerk of this Court, in response to a question from Plaintiff-Appellant, said the Court does not do orders to show cause.

Additionally, Bolger chose to bring her motion to dismiss the appeal or strike the filed Brief and Appendix by notice of motion with a return date of April 18, 2016. (Ex. E). This Court changed that date to April 13, 2016. (Ex. F). Under the Court's rules, Bolger was required to serve her reply "at least one day before the return date" or by "4 o'clock in the afternoon" of the day before the return date. Rules § 600.2(a)(5)(i) and (ii). She admits in her memorandum that she did not.

Bolger clearly knew better because her opposition to this motion was served by both email and overnight service in accordance with the rules.

Bolger asserts there is something fishy about this motion and that it is frivolous and harassing. That a 68 year-old sole practicing attorney living at the bottom of the middle-class can harass two multi-billion dollar, global corporations is clearly a ridiculous assertion. As for frivolity and fishiness, it is Bolger who needs false accusations to cover the stench of her falsehoods, forgeries, prevarications and dissembling.

Conclusion

Plaintiff-Appellant requests that this Court strike Bolger's reply in her motion to dismiss the appeal and award him costs and attorney's fees pursuant to 22 NYCRR 130-1.1, and grant such other relief as this Court deems appropriate.

Dated: May 1, 2016

/S/Roy Den Hollander

Roy Den Hollander
Pro se Plaintiff-Appellant
545 East 14 St., 10D
New York, NY 10009
(917) 687-0652
rdenhollander97@gsb.columbia.edu

Exhibit A

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

----- X
ROY DEN HOLLANDER,

Plaintiff-Appellant,

-against-

TORY SHEPHERD, ADVERTISER NEWSPAPERS
PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA
PUBLICATIONS PTY LIMITED,

Defendants-Appellees.
----- X

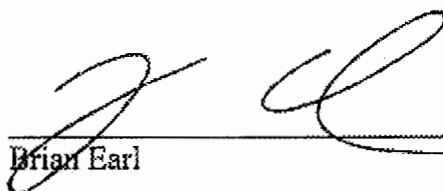
:
: Index No. 152656/2014
:

:
: **AFFIDAVIT**
:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)


Brian Earl, being duly sworn, deposes and says as follows:

1. I am a paralegal with the law firm of Levine Sullivan Koch & Schulz, LLP. I am not a party to this action, am over 18 years of age, and reside in Hudson County, New Jersey.
2. On April 13, 2016, I served on Mr. Hollander, by email and by Federal Express, a copy of Defendants' Reply Memorandum in support of Their Motion to Dismiss the Appeal.
3. Thereafter, on the same day, I filed the same with this Court along with a true and accurate certificate of service.



Brian Earl

Subscribed and sworn to before me
this 14th day of April, 2016



Notary Public

SCOTT BAILEY
Notary Public, State of New York
No. 018A6201502
Qualified in New York County
Commission Expires March 2, 2017

Exhibit B

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

----- X
ROY DEN HOLLANDER,

Plaintiff-Appellant,

-against-

TORY SHEPHERD, ADVERTISER NEWSPAPERS
PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA
PUBLICATIONS PTY LIMITED,

Defendants-Appellees.
----- X

Index No. 152656/2014

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

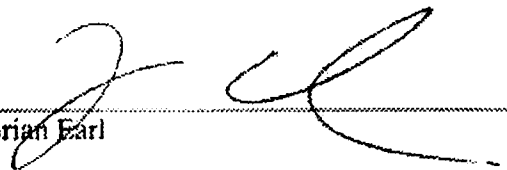
Brian Earl, being duly sworn, deposes and says as follows:

1. I am a paralegal with the law firm of Levine Sullivan Koch & Schulz, LLP. I am not a party to this action, am over 18 years of age, and reside in Hudson County, New Jersey.

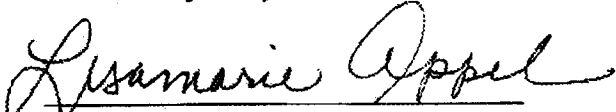
2. On April 13, 2016, I served a true copy of the Reply Memorandum of Law in Support, and the Supporting Reply Affirmation of Katherine M. Bolger with exhibits by Federal Express priority overnight courier and email upon:

ROY DEN HOLLANDER
545 East 14th Street, 10 D
New York, NY 10009
rdenhollander97@gsb.columbia.edu

Plaintiff-Appellant *pro se*


Brian Earl

Subscribed and sworn to before me
this 13th day of April, 2016


Notary Public

LISAMARIE APPEL
Notary Public, State of New York
No. D1AP4869703
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires Sept. 2, 2018

Exhibit C



Roy Den Hollander <roy17den@gmail.com>

152656/2014 - Hollander v. Shepherd, et. al - Defs. Reply Memo in support of Mot. to Dismiss Appeal and for a Stay

Brian Earl <BEarl@lskslaw.com>

Wed, Apr 13, 2016 at 11:26 AM

To: "rdenhollander97@gsb.columbia.edu" <rdenhollander97@gsb.columbia.edu>

Mr. Hollander,

Please find the attached Reply Memorandum and associated filings, which were filed with the First Department today in the above-captioned matter. Please let us know if you have any questions.

Regards,

Brian Earl
Paralegal

321 West 44th Street
Suite 1000
New York, NY 10036
(212) 850-6122 | Phone
(212) 850-6299 | Fax
www.lskslaw.com

3 attachments




-  **Reply Memo (00937197xB68BA).pdf**
692K
-  **Affidavit of Service (00937196xB68BA).pdf**
143K
-  **Reply Bolger Aff. (00937195xB68BA).pdf**
7987K

Exhibit D

FedEx Tracking

Your deliveries. Your schedule.
 FedEx Delivery Manager™
 Reschedule your delivery ▶

Track a Shipment

Help

Enter up to 30 FedEx tracking, door tag or FedEx Office order numbers(one per line).

Track

My Shipments

1

Wed 4/13	Delivered	Thu 4/14
Signed for by: R.ROY		

Print Help

Delivered

Signed for by: R.ROY

Ship date:

Wed 4/13/2016

Actual delivery:

Thu 4/14/2016 10:17 am

NEW YORK, NY US

NEW YORK, NY US

Customize Delivery

Request Notifications

Obtain Proof of Delivery

More actions

Travel History

Help Hide

Date/Time	Activity	Location
4/14/2016 - Thursday		
10:17 am	Delivered	NEW YORK, NY
8:53 am	On FedEx vehicle for delivery	NEW YORK, NY
7:52 am	At local FedEx facility	NEW YORK, NY
3:43 am	Departed FedEx location	NEWARK, NJ
4/13/2016 - Wednesday		
10:34 pm	Arrived at FedEx location	NEWARK, NJ
10:00 pm	Left FedEx origin facility	NEW YORK, NY
5:23 pm	Picked up	NEW YORK, NY
10:54 am	Shipment information sent to FedEx	

Select time zone:

Shipment Facts

Hide

Tracking number	776095355064	Service	FedEx Priority Overnight
Weight	1 lbs / 0.45 kgs	Delivered To	Apartment Office
Total pieces	1	Total shipment weight	1 lbs / 0.45 kgs
Terms	Shipper	Packaging	FedEx Pak
Special handling section	Deliver Weekday, Residential Delivery		



- Customer Focus**
 New Customer Center
 Small Business Center
 Service Guide
 Customer Support
- Company Information**
 About FedEx
 Careers
 Investor Relations

- Featured Services**
 FedEx Delivery Manager
 FedEx SameDay
 FedEx Home Delivery
 Healthcare Solutions
 Online Retail Solutions
 Packaging Services
 Ancillary Clearance Services

Other Resources

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 FedEx Ground
 FedEx Office
 FedEx Freight
 FedEx Custom Critical
 FedEx Trade Networks
 FedEx CrossBorder
 FedEx SupplyChain
 FedEx TechConnect

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Subscribe to FedEx email

FedEx Compatible
Developer Resource Center
FedEx Ship Manager Software
FedEx Mobile

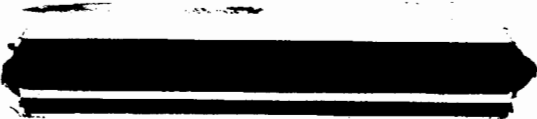
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Exhibit E



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

----- x
ROY DEN HOLLANDER,

Plaintiff-Appellant,

-against-

TORY SHEPHERD, ADVERTISER NEWSPAPERS
PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA
PUBLICATIONS PTY LIMITED,

Defendants-Appellees.
----- x

Index No. 152656/2014

NOTICE OF MOTION

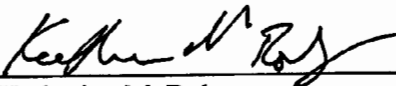
PLEASE TAKE NOTICE that, upon (i) the accompanying Memorandum of Law and (ii) the Affirmation of Katherine Bolger, and the exhibits annexed thereto, and upon all the proceedings in this case to date, Defendants Tory Shepherd, Advertiser Newspapers, Amy McNeilage, and Fairfax Media will move this Court at 27 Madison Avenue, New York, New York 10010, on Monday, April 18 at 10 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 5528 and Section 2105 of the New York Civil Practice Law and Rules and Sections 600.2, 600.10, 600.11, and 600.12 of this Court's Rules (1) dismissing the appeal in its entirety on the grounds that Appellant Roy Den Hollander's appendix includes materials not in the record below while excluding papers upon which the Appellees may reasonably rely and is unsupported by an accurate certification as required, or, alternatively, striking Appellant's brief and appendix from the record and, (2) awarding costs pursuant to CPLR 5528(e), and (3) staying the appeal until determination of this motion, or, in the alternative, adjourning the appeal for the September Term.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2214(b), answering affidavits, if any, are to be served on the undersigned so that they are received no later than seven days before the return date of this motion.

Dated: New York, New York
April 1, 2016

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 
Katherine M. Bolger

321 West 44th Street, Suite 1000
New York, NY 10036
(T): 212-850-6129
(F): (212) 850-6299
Email: kbolger@lkslaw.com

Counsel for Defendants

TO:

Roy Den Hollander, Esq.
545 14th Street, 10 D
New York, NY 10009

Plaintiff *pro se*

Exhibit F

Attorney for Movant

Attorney for Opposition

Name Levine Sullivan Koch & Schulz, LLP

Roy Den Hollander, Pro Se

Address 321 West 44th Street, Suite 1000

545 East 14th Street, 10D

New York, NY 10036

New York, NY 10009

Tel. No. 212-850-6100

917-687-0652

Appearing by Katherine M. Bolger

Roy Den Hollander, Pro Se

(Do not write below this line)

DISPOSITION

Adjourn appeal to September 2016 term

Motion Date	<u>4/13/16</u>	Opposition	<u>4/8</u>	Justice	<input checked="" type="checkbox"/> <u>TKW</u>	Date	<u>4/1/16</u>
		Reply	<u>4/13</u>				

EXPEDITE _____ PHONE ATTORNEYS _____ DECISION BY _____

ALL PAPERS TO BE SERVED PERSONALLY. _____
Court Attorney