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

ROY DEN HOLLANDER, Plaintiff-Appellant, -against- TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA PUBLICATIONS PTY LIMITED, Defendants-Appellees.	:	New York County Ind. No. 152656/2014 Hon. Jennifer Schecter

REPLY MEMORANDUM OF DEFENDANTS TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA PUBLICATIONS PTY LIMITED IN SUPPORT OF MOTION TO DISMISS THE APPEAL AND FOR A STAY

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Defendants Tory Shepherd, Advertiser Newspapers Pty Ltd. ("Advertiser Newspapers" or "*The Advertiser*"), Amy McNeilage, and Fairfax Media Publications Pty Limited ("Fairfax Media" or "*The Herald*"), by and through their undersigned attorneys, submit this reply memorandum of law in support of their motion to dismiss the appeal or in the alternative a motion to strike Plaintiff-Appellant Roy Den Hollander's ("Plaintiff" or "Hollander") brief and appendix and for a stay pending resolution of this motion 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.

PRELIMINARY STATEMENT

Plaintiff sued four Australian Defendants in New York County for accurately reporting in Australia on matters of public concern to Australians. The court below dismissed the lawsuit, applying well-settled principles of personal jurisdiction. Plaintiff appealed that decision and certified that he submitted an appendix that contained "true copies of th[e] originals of the record on appeal." A192. As Plaintiff concedes in his opposition, however, this certification was false. He now admits to modifying documents in his appendix, omitting others, and adding still more that were never before the court below. And he is wholly unapologetic about it—repeating the very *ad hominem* attacks on Defendants' counsel that were rejected below and somehow invoking Donald Trump—as excuses for the altered record. But the only relevant point here is that the appendix is not identical to the record below—indeed, it bears no resemblance to it. This Court, therefore, should either dismiss Plaintiff's appeal or, alternatively, strike the brief and appendix and require Plaintiff to file an accurate appendix.

ARGUMENT

BECAUSE PLAINTIFF ADMITS THE ERRORS IN THE APPENDIX, HIS APPEAL SHOULD BE DISMISSED

Plaintiff's opposition does not contest any of the numerous errors in the appendix that the Defendants pointed out previously. Rather, he spends the lion's share of it explaining why this Court should excuse his departure from the rules of the CPLR and this Court. None of his explanations, all of which are either unsupported or supported by inapposite authority should be credited.

First, Hollander admits that his appendix includes several documents not in the record below. Opp. Mem. at 9-10. He admits that his appendix now includes an "Information Sheet" describing a men's rights class, A95-96, "Internet data about two correspondent reporters," A159-62, and a contract between him and the University of South Australia, A97-98. He has no excuse for including any of these documents in the appendix now except to say that they either (1) are generally related to this case or (2) are subject to judicial notice. Hollander cites no case law, however, permitting a litigant to dump "related" documents into the appendix that neither the court below nor Defendants have *ever* seen. And, merely claiming that some are subject to judicial notice does not answer the question of whether they are properly a part of the appendix. *See, e.g.*, *People v. Calaff*, 22 N.Y.3d 1125, 1126 (2014) (denying motion to include "off-the-record documents" in appendix or take judicial notice of them and granting motion to strike same).

Second, Hollander admits that "the lower court has not settled the statements" in lieu of a transcript that he includes in the appendix. Opp. Mem. at 10. He has no excuse for including these documents, explaining only that "this Court may or may not consider" them. *Id.* But settling transcripts is for the trial court to do, not this court. *See, e.g.*, *Long Oil Heat, Inc. v.*

Polsinelli, 128 A.D.3d 1296, 1297 (3d Dep't 2015) (dismissing appeal in light of unsettled transcript); *People v. Laracuente*, 125 A.D.2d 705, 706 (2d Dep't 1986) (same). For this reason alone, courts have repeatedly dismissed appeals.

Third, Hollander candidly concedes that he has edited the substance of at least one document in his appendix. Mem. Opp. at 4-5. While Hollander only admits to changing one question in this document, he changed other parts of the document as well. *Compare, e.g.*, A102 ("which is wholly owned by News Corp Australia which is a segment of News Corp in New York City.") *with* Bolger Aff., Ex. 17 (Document as it Appeared Below) (omitting allegation regarding News Corp). His lack of candor further draws into question the validity of not just this document, but his entire appendix.

Fourth, Plaintiff appears to admit that he compiled his appendix by printing documents he obtained online rather than reproducing the record below and admits that they are different than those in the record below. Opp. Mem. at 10-11. Hollander nevertheless argues that some are not, *see id.* at 10, but even a glancing comparison of these documents demonstrates that he is wrong. All of the documents are in different formats and include different language. *Compare* A81-85 *with* Reply Affirmation of Katherine M. Bolger, Exs. 1, 2. Hollander dismisses these differences as non-substantive but misses the broader point: Defendants have the right to defend this appeal based on the record below—not on new documents cobbled together by Plaintiff long-after the lower court issued its opinion.

Fifth, Plaintiff argues that he has not omitted any documents on which he reasonably believes Defendants may rely. Mem. Opp. at 1-2. He does so because he included Defendants' affidavits. *Id.* Yet he admits to omitting nearly all of the exhibits attached to those affidavits. Hollander dismisses these exhibits as "bizarre" and irrelevant, but his subjective views of them is

beside the point.[1] As this Court explained in similar circumstances, "The omission from the appeal record . . . of much of the record before the Supreme Court . . . is not only in violation of the [CPLR] but is highly unprofessional . . . ." *2001 Real Estate v. Campeau Corp. (U.S.), Inc.*, 148 A.D.2d 315, 316 (1st Dep't 1989); *see also Cuttler v. Cuttler*, 130 A.D.3d 672, 673 (2d Dep't 2015) (dismissing appeal for failure to compile adequate appendix).

Finally, Hollander defends his choice to pepper his appendix with argumentative (and unsupported) assertions by arguing that Defendants are trying to silence him. Opp. Mem. at 11. Again Hollander misses the broader point. Defendants have no issue with Hollander making his arguments to this Court, although they maintain that none has any merit. Those arguments, however, should be made in his briefs to the Court, not in the appendix on which this Court and the parties must rely. *See generally* 22 NYCRR § 600.10(c)(2) (describing contents of appendix and cautioning against "misleading" materials).

Plaintiff at his own peril has knowingly compiled an appendix that does not reflect the record below and done so while certifying falsely that it does. This Court cannot consider the merits (or lack thereof) of the appeal on this appendix. In light of the substantial modifications, Defendants cannot rely on it either. Therefore, contrary to Plaintiff's suggestions, *see* Opp. Mem. at 8, this is not just a case where an appellee can supplement the appellant's appendix. If Plaintiff's appeal is not dismissed or the appendix stricken, Defendants would be forced to defend an appeal on new evidence while at the same time compiling an entirely new appendix,

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[1] At any rate, the documents he asserts are "bizarre" appear to be exhibits of Hollander's own writings, describing for example a federal judge as a "lady judge" unable to make a detached assessment of one of the numerous prior lawsuits he has brought against all kinds of defendants. *See* Reply Bolger Aff., Ex. 3 ("That's factually wrong, but try telling that to a lady judge if you're a man.").

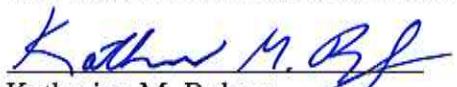
from top down, to submit with their brief. There is no support in the law or commonsense for this approach. Plaintiff's appeal should be dismissed.

CONCLUSION

For each and all the foregoing reasons, Defendants respectfully request that this Court dismiss the appeal or, alternatively, strike from the record Plaintiff's opening brief and the appendix.

Dated: April 13, 2016

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 

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ROY DEN HOLLANDER,	:	
	:	Index No. 152656/2014
Plaintiff-Appellant,	:	
-against-	:	**AFFIDAVIT OF SERVICE**
TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA PUBLICATIONS PTY LIMITED,	:	
Defendants-Appellees.	:	

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. 01AP4869703
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires Sept. 2, 2018