

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

-----X  
Roy Den Hollander,

Plaintiff-Appellant,

Ind. No. 152656/2014

-against-

**NOTICE OF MOTION**

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

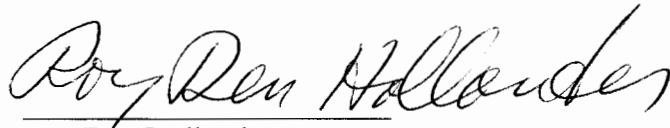
Defendants-Appellees.

-----X

**PLEASE TAKE NOTICE** that, upon the accompanying Affidavit of Plaintiff-Appellant Roy Den Hollander, and the exhibits annexed thereto, and upon all the proceedings in this case to date, Plaintiff-Appellant Roy Den Hollander will move this Court at 27 Madison Avenue, New York, New York 10010, on Monday, May 6, 2016, at 10 AM, or as soon thereafter as counsel can be heard, for an order pursuant to CPLR 2103(b)(6), CPLR 2214(b), and section 600.2(a)(5) of this Court's Rules (1) dismissing or striking the Defendants-Appellees' Reply, which was submitted in their motion to dismiss the appeal, on the grounds that the Reply was not properly served and (2) awarding costs to Plaintiff-Appellant in making this motion.

**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, NY  
April 16, 2016



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

To: Katherine M. Bolger, Esq.  
Levine Sullivan Koch & Schulz, LLP  
321 West 44th Street, Suite 1000  
New York, N.Y. 10036  
(212) 850 6123  
KBolger@lskslaw.com

**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 Ltd.,

Defendants-Appellees.  
-----X

Ind. No. 152656/2014

**AFFIDAVIT IN SUPPORT OF  
MOTION TO DISMISS OR  
STRIKE REPLY OF  
DEFENDANTS-APPELLEES**

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

ROY DEN HOLLANDER, being duly sworn, deposes and says:

1. I am the Plaintiff-Appellant in the above captioned case and an attorney admitted to practice in the Appellate Division-First Department.

2. On April 1, 2016, counsel for Defendants-Appellees, Katherine M. Bolger (“Bolger”) of the national law firm Levine Sullivan Koch & Schulz made an application for “a stay of the briefing schedule on appeal pending the disposition of the motion to dismiss the appeal, or, alternatively, strike the Appellant’s brief and appendix filed herewith.” (Ex. A).

3. Justice Troy K. Webber adjourned the appeal to the September Term of 2016 and set April 13, 2016, as the Motion Date on Bolger’s motion to dismiss or strike Plaintiff-Appellant’s brief and appendix. (Ex. B).

4. Both sides agreed to service by email. (Ex. C).

5. On April 13<sup>th</sup>, at 11:26 AM, Plaintiff-Appellant received via email Bolger's Reply, which had been filed before her email service. (Ex. D). Documents are supposed to be served first and then filed; otherwise, the sworn affidavit of service is false.

6. The email from Bolger's paralegal stated that her Reply was filed first and then served. The email states, "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. D). As such, the affidavit of service submitted under Bolger's supervision was false when it was filed with this Court. (Ex. E).

7. On April 13<sup>th</sup>, I filed a letter addressed to the motions clerk stating, in part, that Bolger had filed her Reply first and then served it via email. (Ex. F, letter without exhibits).

8. Bolger responded with an April 14<sup>th</sup> letter providing an affidavit from her paralegal that stated:

Para. 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.

Para. 3. Thereafter, on the same day, I filed the same with this Court along with a true and accurate certificate of service.

(Ex. G, letter and affidavit).

9. With regard to the alleged Federal Express service, that affidavit is false. Under CPLR 2103(b)(6):

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 . . . .

10. According to Federal Express Tracking at <http://www.fedex.com/us/track>, when the Tracking No. 7760 9535 5064 (Ex. H) is entered, a chronology of the overnight mailing of Bolger's Reply is listed, (Ex. I). The middle section of Exhibit I shows that Bolger's Reply was

put into the “custody” of Federal Express at 5:23 PM on 4/13/2016. That is when it was served via overnight delivery under CPLR 2103(b)(6). Bolger’s Reply, therefore, could not have been filed with this Court after 5:23 PM because the Court closes at 5 PM. Therefore, the Reply was filed before it was served via Federal Express.

11. Further, on April 13<sup>th</sup> at 1 PM, I visited this Court’s clerk’s office, and after an individual checked on the Court’s computer, I was told that Bolger’s Reply had already been filed and was filed in paper and not electronically. The affidavit of service submitted by Bolger on April 13<sup>th</sup> (Ex. E) and in her April 14<sup>th</sup> letter (Ex. G) are therefore both false as to service via Federal Express because her Reply was served after it was filed.

12. Additionally, Rule § 600.2(a)(5)(i) and (ii) state that Reply papers must be served either under (i) at least one day before the return date, CPLR 2214(b), or (ii) by 4 o’clock in the afternoon of the business day preceding the return date, since that is when a Reply must be filed with this Court with proof of service. Bolger violated both requirements by having her Reply served on the return date of April 13<sup>th</sup>.

13. In her April 14<sup>th</sup> letter, Bolger calls such assertions of violating the rules as “quibble[ing] with the language.” (Ex. G, second paragraph). Words, however, matter, especially by a national media firm practicing the law because it is the only way a court can determine the truth.

14. As stated above, one letter from Plaintiff-Appellant dated April 13<sup>th</sup> (Ex. F, without exhibits) and one letter from Bolger dated April 14<sup>th</sup> (Ex. G), were submitted to this Court. When Plaintiff-Appellant tried to submit a follow-up letter dated April 15<sup>th</sup> that included the Federal Express evidence showing that Bolger violated CPLR 2103(b)(6), a young, unshaven

man who identified himself as the "Supervising Clerk" arrogantly refused to accept it, which made this motion necessary.

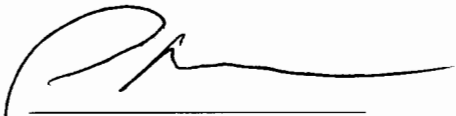
15. A true and correct copy of the trial court's January 8, 2016, Decision and Order dismissing the First Amended Verified Complaint is attached hereto as Exhibit J.

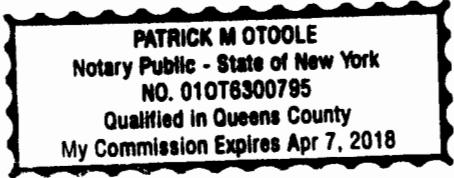
16. A true and correct copy of Plaintiff-Appellant's Notice of Appeal is attached hereto as Exhibit K.

**WHEREFORE**, Plaintiff-Appellant requests that Bolger's Reply be dismissed or stricken.

  
ROY DEN HOLLANDER

Sworn to before me on the  
16th day of April 2016

  
\_\_\_\_\_  
Notary Public





**SUMMARY STATEMENT ON APPLICATION FOR  
EXPEDITED SERVICE AND/OR INTERIM RELIEF  
(SUBMITTED BY MOVING PARTY)**

Date 4/1/16

Title Roy Den Hollander Index/Indict # 152646/2014  
of  
Matter v. Tory Shepherd, Advertiser Newspapers, Amy McNeillage, Fairfax Media

Appeal  order of judgment of  Supreme Surrogate's Family  
by Plaintiff          from decree          County New York  
Court entered on Jan. 8, 2016

Name of Judge Jennifer G. Schecter Notice of Appeal filed on Feb. 2, 2016

If from administrative determination, state agency         

Nature of action or proceeding Defamation action against four Australian defendants dismissed for lack of personal jurisdiction

Provisions of  order of judgment appealed from "[E]ach and every part as well as the whole decree of the Decision, Order and Judgment."

This application by  appellant  respondent is for a stay of the briefing schedule on appeal pending the disposition of the motion to dismiss the appeal, or, alternatively, strike the Appellant's brief and appendix filed herewith.

If applying for a stay, state reason why requested If Respondents are forced to defend this appeal while the Court considers the now-pending motion. Respondents will suffer an undue burden as the appendix filed by Appellant is inaccurate and based on a false certification.

Has any undertaking been posted No. If "yes", state amount and type         

Has application been made to court below for this relief No. If yes, state Disposition           
Has there been any prior application hereto in this court No. If "yes", state dates and nature         

Has adversary been advised of this application Yes. Does he/she consent No.





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 4/13/16 Opposition 4/8 Justice TKW ✓ Date 4/1/16 Reply 4/13

EXPEDITE \_\_\_\_\_ PHONE ATTORNEYS \_\_\_\_\_ DECISION BY \_\_\_\_\_

**ALL PAPERS TO BE SERVED PERSONALLY.**

EMH  
Court Attorney

c



Roy Den Hollander <roy17den@gmail.com>

---

**Hollander v. Advertiser**

---

**Kate Bolger** <KBolger@lskslaw.com>  
To: Roy Den Hollander <roy17den@gmail.com>

Mon, Apr 4, 2016 at 11:16 AM

Dear Mr. Hollander

Will you please email me a copy of the brief you file on Friday that day? Thank you.

Kate Bolger

Katherine M. Bolger



321 West 44th Street  
Suite 1000  
New York, NY 10036  
(212) 850-6123 | Phone  
(212) 850-6299 | Fax  
[www.lskslaw.com](http://www.lskslaw.com)

PGP: 8CB7 D747 11B6 651D 93ED 97B0 8CE9 E074 0091 9D30



Roy Den Hollander <roy17den@gmail.com>

---

**Hollander v. Advertiser**

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**Roy Den Hollander** <roy17den@gmail.com>  
To: Kate Bolger <KBolger@lkslaw.com>

Mon, Apr 4, 2016 at 4:56 PM

Dear Ms. Bolger,

I will send you my opposition by email. Please send me your reply by email.

Sincerely,  
R. Den Hollander  
Attorney at Law  
New York, N.Y.  
[roy17den@gmail.com](mailto:roy17den@gmail.com)  
(917) 687-0652

[Quoted text hidden]



Roy Den Hollander <roy17den@gmail.com>

---

## Hollander v. Advertiser

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**Kate Bolger** <KBolger@lskslaw.com>  
To: Roy Den Hollander <roy17den@gmail.com>

Mon, Apr 4, 2016 at 5:20 PM

Agreed

Katherine M. Bolger



(212) 850-6123 | Phone  
www.lskslaw.com

**From:** Roy Den Hollander [mailto:roy17den@gmail.com]  
**Sent:** Monday, April 04, 2016 4:56 PM  
**To:** Kate Bolger  
**Subject:** Re: Hollander v. Advertiser

[Quoted text hidden]

D



Roy Den Hollander &lt;roy17den@gmail.com&gt;

---

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

---

Brian Earl &lt;BEarl@lskslaw.com&gt;

Wed, Apr 13, 2016 at 11:26 AM

To: "rdenhollander97@gsb.columbia.edu" &lt;rdenhollander97@gsb.columbia.edu&gt;

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  
Paralegal321 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



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  
:

:  
: **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.

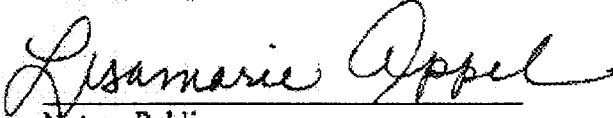
2. On April 13, 2016, I served a true copy of the Reply Memorandum of Law in Support, and the Supporting Reply Affirmation of Katherine M. Bolger with exhibits by Federal Express priority overnight courier and email upon:

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. 01AP468970S  
Qualified in Richmond County  
Certificate Filed in New York County  
Commission Expires Sept. 2, 2018

**F**

**ROY DEN HOLLANDER**  
**Attorney at Law**

545 East 14th Street, 10D  
New York, N.Y. 10009

Tel: (917) 687-0652  
rdenhollander97@gsb.columbia.edu

April 13, 2016

Motions Clerk  
Appellate Division-First Department  
27 Madison Avenue  
New York, NY 10010

**RECEIVED**  
**APR 13 2016**  
**SUP COURT APP. DIV.**  
**FIRST DEPT.**

Hollander v. Shepherd, et al., New York County Index No.152656/2014

Dear Presiding Justice:

This letter concerns the Defendants-Appellees violation of this Court's rules in filing and serving their reply on their motion to dismiss the above captioned appeal or strike the Plaintiff-Appellant's Brief and Appendix that had already been filed.

I am Roy Den Hollander the Plaintiff-Appellant, and I am also an attorney admitted in the First Department.

The Defendants-Appellees are represented by Katherine M. Bolger of the firm Levine Sullivan Koch & Schulz. Ms. Bolger moved on April 1, 2016, for this Court to dismiss the appeal or strike my brief and appendix. (Bolger Memorandum at 13). This Court set a briefing schedule on her motion of April 8<sup>th</sup> for my opposition, which I served and filed on April 7<sup>th</sup>, and April 13<sup>th</sup> for Ms. Bolger's reply. (Ex. A).

Ms. Bolger and I agreed to serve each others papers by email. (Ex. B).

On April 13<sup>th</sup>, at 11:26 AM, I received via email Ms. Bolger's reply, which had been filed before her email service. (Ex. C). Documents are supposed to be served first and then filed; otherwise, the sworn affidavit of service is false. The email from Ms. Bolger's paralegal confirms that her reply was filed first and then served. The email states, "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). As such, the affidavit of service submitted under Bolger's supervision was false when it was filed with this Court. (Ex. D). The affidavit also states the reply was served by overnight mail on April 13<sup>th</sup>, which was not the means of service agreed to.

More importantly, Rule § 600.2(a)(5) states that reply papers must be served either under (i) at least one day before the return date, CPLR 2214(b), or (ii) by 4 o'clock in the afternoon of the business day preceding the return date, since that is when a reply must be filed with this Court

with proof of service. Ms. Bolger violated both requirements by having her reply served on the return date of April 13<sup>th</sup>.

Ms. Bolger works for a major national law firm, she knows better; therefore, I am requesting that her reply be dismissed or stricken from the record.

Thank you for your time.

Sincerely,



Roy Den Hollander, Esq.  
Plaintiff-Appellant Attorney

Copy via email to:

Katherine M. Bolger, Esq.  
Levine Sullivan Koch & Schulz, LLP  
321 West 44th Street, Suite 1000  
New York, N.Y. 10036  
(212) 850 6123  
KBolger@lskslaw.com

**G**

April 14, 2016

Motions Clerk  
Appellate Division, First Department  
27 Madison Avenue  
New York, NY 10010

**Re: *Hollander v. Shepherd, et al.*, N.Y. County Index No.  
152656/2014**

Dear Sir or Madam:

This firm represents Defendants in the above-captioned matter. On April 13, 2016, I received correspondence from Plaintiff in which Mr. Hollander makes two assertions: (1) my Firm submitted a false affidavit of service and (2) served Defendants' Reply Memorandum in further support of their Motion to Dismiss Plaintiff's Appeal ("Reply") a day late. *See Ex. 1.* Both assertions are baseless.

*First*, attached hereto is an affidavit executed by Brian Earl, affirming that he first emailed Mr. Hollander the Reply and then filed it with the Court. *See Ex. 2.* Mr. Hollander bases his contrary assertion on quibbles with the language used in the email serving him with the Reply. The attached affidavit and the original affidavit of service—both signed under the penalty of perjury—should put these baseless assertions to rest.

*Second*, attached as Exhibit A to Mr. Hollander's own correspondence is this Court's order directing Defendants to serve their Reply on April 13, 2016. Defendants, therefore, violated no rule in serving the Reply on April 13, 2016. Thus, Mr. Hollander's claim that the Reply is untimely is also entirely baseless.

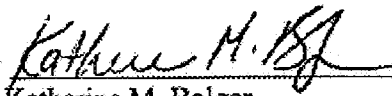


Motions Clerk,  
Appellate Division,  
First Department  
April 14, 2016  
Page 2

For these reasons, Mr. Hollander's application should be denied. Please feel free to contact me if you should have any questions.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By:   
Katherine M. Bolger

cc: Roy Den Hollander, Esq. (by Fedex and email)  
545 East 14<sup>th</sup> Street, 10D  
New York, NY 10009  
917-687-0652  
rdenhollander97@gsb.columbia.edu

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

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: Index No. 152656/2014  
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: **AFFIDAVIT**  
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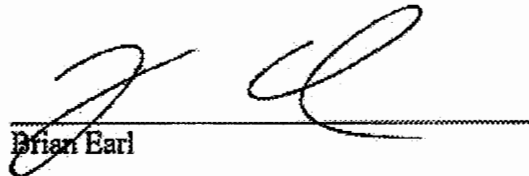
STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF NEW YORK        )

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

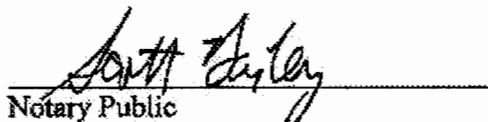
1. I am a paralegal with the law firm of Levine Sullivan Koch & Schulz, LLP. I am not a party to this action, am over 18 years of age, and reside in Hudson County, New Jersey.

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. 01BAS201502  
Qualified in New York County  
Commission Expires March 2, 2017

H



1

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	<b>Delivered</b> <i>Signed for by: R.ROY</i>	Thu 4/14
-------------	---	-------------

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
<b>- 4/14/2016 - Thursday</b>		
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
<b>- 4/13/2016 - Wednesday</b>		
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

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- Packaging Services
- Ancillary Clearance Services

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

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JENNIFER G. SCHECTER
J.S.C.
Justice

PART 57

Index Number : 152656/2014
DEN HOLLANDER, ESQ, ROY
vs
SHEPHERD, TORY
Sequence Number : 002
DISMISS ACTION

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to 3, were read on this motion to/for dismiss

Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s) 1
Answering Affidavits - Exhibits No(s) 2
Replying Affidavits No(s) 3

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying decision

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 1/8/16

HON. JENNIFER G. SCHECTER
J.S.C.

- 1. CHECK ONE: CASE DISPOSED (checked), NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED (checked), DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 57

-----x  
ROY DEN HOLLANDER,

Plaintiffs,

Index No. 152656/14

-against-

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

Defendants.  
-----x

JENNIFER G. SCHECTER, J.:

Defendants move to dismiss the complaint pursuant to, among other sections, CPLR 3211(a)(8). Their motion is granted.

Background

Plaintiff Roy Den Hollander (Den Hollander) is a New-York County resident (Bolger Aff, Ex 1, Amended Complaint [Complaint] ¶ 21). In 2014, he commenced this action against (1) Tory Shepherd (Shepherd), the Political Editor of *The Advertiser-Sunday Mail Messenger* (*The Advertiser*) (*id.* at ¶ 22), (2) Advertiser Newspapers Pty Ltd. (Newspapers), "which does business under the name of *The Advertiser-Sunday Mail Messenger*" (Complaint at ¶ 23), (3) Amy McNeilage, the Education Reporter for *The Sydney Morning Herald* (*The Herald*), which is part of Fairfax Media Publications Pty Limited (Fairfax) (*id.* at ¶¶ 24-25) and (4) Fairfax. All of the defendants are based in Australia.

Den Hollander claims that because of newspaper articles that Shepherd wrote in *The Advertiser* and an article that McNeilage wrote in *The Herald*, he and his copyrighted

property--"Males and the Law," a section of a Males-Studies course that he was supposed to teach at the University of South Australia (University)--were damaged. He claims that because of the articles, the University canceled his course, causing him to lose up to \$1,250 in compensation. He further alleges that an article written by Shepherd in June 2014 damaged his reputation. In his amended complaint, Den Hollander asserts causes of action against all of the defendants for "injurious falsehoods, tortious interference with a prospective contractual relation and *prima facie* tort" (Complaint at 1). He also asserts a libel claim against Shepherd.

Defendants move to dismiss for lack of personal jurisdiction. In support of the motion, Shepherd states that she wrote articles about the prospective male-studies course, which appeared in *The Advertiser* and were available on its website (Bolger Aff, Ex 3 [Shepherd Aff] at ¶¶ 4-9). She explains that the articles were related to a controversy in Australia and "were directed at an Australian audience" (*id.* at ¶ 9). Shepherd asserts that, in researching the article, she sent one email to Den Hollander "requesting comment on the controversy" and spoke to him by telephone (*id.* at ¶¶ 11-12). In connection with her articles, she also exchanged several emails with a professor in New York (*id.* at ¶ 14). She swears

that besides the emails with the professor, "the email sent to Mr. Den Hollander, and the single telephone call with Mr. Den Hollander," she had no contact with anyone else in New York in preparing the articles (*id.* at ¶ 15).

McNeillage swears that her piece was intended to target an Australian audience and that she "made no contact with anyone in the United States or New York in the process of reporting on the controversy" (Bolger Aff, Ex 5 at ¶¶ 5, 7).

Defendants also submit affidavits from employees of Newspapers and Fairfax who swear that their newspapers are targeted to Australians, published in Australia and are available online. Michael Cameron, counsel to Newspapers, swears that Newspapers "does not publish in New York and does not directly sell any products in New York" (Bolger Aff, Ex 2 at ¶ 7). Richard Coleman, a Solicitor of Fairfax, swears that Fairfax and *The Herald* "do not directly publish in New York and do not sell any products in New York" (Bolger Aff, Ex 4 at ¶ 4). He explains that Fairfax has a contract with an independent company that prints copies of *The Herald* to be distributed in the United States, but neither Fairfax . . . nor *The Herald* . . . has any control over whether copies printed by [the independent company] are distributed in New York" (*id.* at ¶ 5). Coleman also swears that *The Herald* "formerly had correspondents in New York City, but has not

done so since 2012, almost two years before the Article was published" (*id.* at ¶ 8). The newspaper defendants both make plain that they have no offices or employees in New York and do not target New York (Bolger Aff, Ex 2 at ¶¶ 9-11; Ex 4 at ¶¶ 6,8).

In opposition to the motion, Den Hollander urges that the newspapers have global ties and have written articles about New York (Affidavit in Opposition [Opp Aff] at ¶¶ 22, 24, 32, 35). He emphasizes that the allegedly defamatory articles were available on the newspapers' interactive websites and on apps and that the websites give the newspaper defendants a "virtual office in the State" (Opp at ¶¶ 36, 38, 43, 53, 123). He seeks discovery to ascertain whether defendants expected publication of the article to have consequences in New York, to explore the newspaper defendants' relationships with advertising representatives, affiliates and agents and to see if defendants pay taxes in New York (*id.* at ¶¶ 31, 37, 40, 41). He maintains that there is jurisdiction in New York based on CPLR 302(a)(1) and (a)(3) (Opp at ¶¶ 87-166). Based on precedent, the Court disagrees.

#### Analysis

CPLR 302 sets forth acts that can serve as a basis for obtaining jurisdiction over non-domiciliaries in New York (*SPCA of Upstate N.Y., Inc. v American Working Collie Assn.*,

18 NY3d 400, 403-404 [2012]). Generally, long-arm "jurisdiction can be premised on the commission of a tortious act-perpetrated either within the state or outside the state, causing injury within the state" (*id.* at 403). Defamation, however, is specifically carved out of the rule "to reflect the State's policy of preventing disproportionate restrictions on freedom of expression" (*id.* at 404; see also *Legros v Irving*, 38 AD2d 53, 56 [1st Dept 1971] [Advisory Committee did not "wish New York to force newspapers published in other states to defend themselves in states where they had no substantial interests"], *appeal dismissed* 30 NY2d 653 [1972]).

Long-arm jurisdiction in defamation actions is governed by CPLR 302(a)(1), which provides that a court may exercise personal jurisdiction over a non-domiciliary that "transacts any business within the state" so long as the cause of action arises from the in-State activity. "New York Courts construe 'transacts any business within the state' more narrowly in defamation cases than they do in the context of other sorts of litigation" (*SPCA of Upstate N.Y., Inc.*, 18 NY3d at 405; *Best Van Lines, Inc. v Walker*, 490 F3d 239, 248 [2d Cir 2007]).

Particular "care must be taken to make certain that non-domiciliaries are not haled into court in a manner that potentially chills free speech" (*SPCA of Upstate N.Y., Inc.*, 18 NY3d at 406). There must therefore be a showing that

defendants engaged in purposeful activities within the State that would justify bringing them before New York courts and that there is a "substantial relationship" between these in-State activities and the defamation (*id.* at 404). When contacts are not directly related to the defamatory statements, defendants have prevailed in obtaining dismissal on jurisdictional grounds (*id.*).

There is no jurisdiction over Defendants in New York. The contacts here "are not as significant as the few cases finding long-arm jurisdiction when defamation was asserted" (see *SPCA of Upstate N.Y., Inc. v American Working Collie Assn.*, 74 AD3d 1464, 1466 [3d Dept 2010], *affd* 18 NY3d 400, 403-404 [2012]; see also *Trachtenberg v Failedmessiah.com* 4 F Supp 3d 198, 202 [EDNY 2014] [stating that New York courts have only found transaction of business in New York in satisfaction of CPLR 302(a)(1) "when the content in question was based on research physically conducted in New York"]).

In *Montgomery v Minarcin*, for example, it was undisputed that "all of the operative facts giving rise to plaintiff's claims occurred in this State. The television news reports were broadcast by Minarcin in this State . . . [and the] newscasts were researched, written, produced and reported by Minarcin in this State" (263 AD2d 665, 667 [3d Dept 1999]). Minarcin "extensively investigated" the reports over a six-

week period in New York, interviewing New York residents and elected officials and reviewing documents located in New York. These activities were deemed substantial enough for purposes of concluding that Minarcin transacted business in New York "within the intendment of CPLR 302(a)(1)" (*id.* at 668).

Similarly, in *Legros v Irving*, New York jurisdiction was upheld as it was "clear that virtually all the work attendant upon publication of the [allegedly defamatory] book occurred in New York. The book was in part researched in this State by defendant . . . ; negotiations with McGraw-Hill [the publisher and distributor] took place in New York; the contract with McGraw-Hill was executed in New York [and] the book was printed in New York" (38 AD2d at 56).

Here, in stark contrast, defendants have very minimal, attenuated New York contacts. The only defamation-related contacts with New York were Shepherd's limited emails, which could have been retrieved by their recipients wherever they may have been, and her phone call to Den Hollander. She was never physically present in the State and no research or other work was performed by anyone associated with Newspapers in New York. McNeilage had no arguable contact whatsoever with New York. Defendants certainly did not engage in any activities within New York related to the allegedly defamatory articles whereby they invoked the benefits and protections of New



York's laws (see *Best Van Lines, Inc.*, 409 F3d at 249 ["courts have found jurisdiction in cases where the defendants' out-of-state conduct involved defamatory statements projected into New York and targeting New Yorkers, but only where the conduct also included something more"]; *Symmetra Pty Ltd. v Human Facets, LLC*, 2013 WL 2896876 at \*9 [SDNY 2013] [controlling "precedent establishes that jurisdiction over a claim for defamation will lie (under CPLR 302[a][1]) only if the plaintiff shows that: (1) the defamatory utterance was purposefully directed at New York, as opposed to reaching New York fortuitously; and (2) the defendant transacted other business in New York that was directly connected to the claim asserted"]; see also *Talbot v Johnson Newspaper Corp.*, 71 NY2d 827, 829 [1988] [no jurisdiction over individual who participated in phone interview from California]; *Trachtenberg v Failedmessiah.com* 4 F Supp 3d at 204 [reliance on a New York source and research through a New York State Court website insufficient]).

Courts, moreover, have repeatedly held that placement of defamatory content on the internet and making it generally accessible to members of the public does not constitute transaction of business in New York even when it is likely the material will be read by New Yorkers (see e.g. *SPCA of Upstate N.Y., Inc.*, 18 NY3d at 402 [no personal jurisdiction in action

based on placement of comments on a website despite the fact that defendant had members in New York]; *Best Van Lines, Inc.*, 409 F3d at 250; *Rakofsky v The Washington Post*, 39 Misc 3d 1226[A] [Sup Ct, NY County 2013] ["it is insufficient to gauge the overall commercial activity of the defendant on its website alone, without determining whether such purposeful activities in this state were substantially related to the defamatory statements"--there were no purposeful activities in the State as "defendants neither wrote the alleged defamatory statements in this state nor did they direct them to our state alone" the "statements were posted on the internet with potential world-wide accessibility")].

In the end, there is no authority for subjecting defendants to jurisdiction in New York based on articles published outside New York for a non-New York audience. Shepherd's phone calls and emails do not allow the court to hale her into this forum and McNeilage has zero contacts with the State. Potential relationships that the newspaper defendants have with other entities are unavailing as no purposeful New York contacts are alleged that are substantially related to the defamation. Therefore, there is no basis for granting discovery or a hearing/trial limited to personal jurisdiction (*Findlay v Deadhead*, 86 AD2d 789, 791 [1st Dept 1982]).

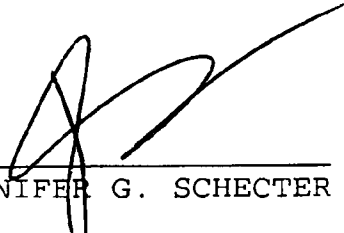
In fact, much of the discovery that plaintiff seeks is relevant only if CPLR 302(a)(3) were applicable and it is not regardless of how his causes of action are denominated (see *Cantor Fitzgerald, L.P. v Paisley*, 887 F3d 152, 157 [2d Cir 1996] [CPLR 302(a)(2) and (3) inapplicable to injurious falsehood and tortious interference with prospective economic advantage causes of action as plaintiffs "may not evade the statutory exception by recasting their cause of action as something other than defamation"]; *Reich v Lopez*, 38 F Supp 3d 436, 458-459 [US Dist Ct, SD NY 2014]; cf. *Perez v Violence Intervention Program*, 116 AD3d 601, 602 [1st Dept 2014]; *Entertainment Partners Group, Inc. v Davis*, 198 AD2d 63, 64 [1st Dept 1993]).

Accordingly, it is

ORDERED that defendants' motion to dismiss is granted and the complaint is dismissed in its entirety with costs and disbursements to defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly.

This constitutes the Decision, Order and Judgment of the Court.

Dated: January 8, 2016

  
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HON. JENNIFER G. SCHECTER

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

-----X  
Roy Den Hollander,

Plaintiff-Appellant,

-against-

Tory Shepherd, Political Editor of The Advertiser-  
Sunday Mail Messenger;  
Advertiser Newspapers Pty Ltd., d/b/a The Advertiser-  
Sunday Mail Messenger;  
Amy McNeilage, Education Reporter for The Sydney  
Morning Herald; and  
Fairfax Media Publications Pty Ltd., d/b/a The Sydney  
Morning Herald;

Defendants-Respondents.  
-----X

Index No.  
152656/2014

**NOTICE OF  
APPEAL**

PLEASE TAKE NOTICE, that the plaintiff appeals to the Appellate  
Division of the New York Supreme Court in and for the First Department, from the  
Decision, Order and Judgment in the above-entitled proceeding granting motion to  
dismiss in favor of the defendants against the plaintiff, Motion No. 002, document  
number 119, entered in the office of the Clerk of the County of New York on the  
12th day of January, 2016,. This appeal is taken from each and every part as well  
as the whole of the Decision, Order and Judgment.

Dated: New York, N.Y.  
February 2, 2016

/S/ Roy Den Hollander  
Roy Den Hollander  
Attorney-Plaintiff

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**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

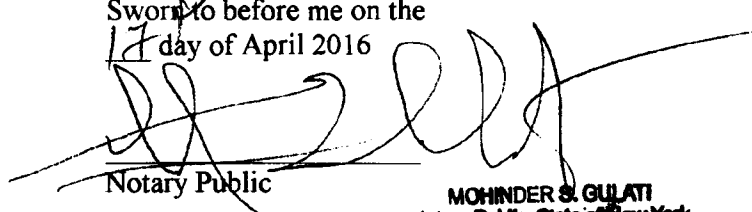
**AFFIDAVIT OF SERVICE OF MOTION TO DISMISS OR STRIKE DEFENDANTS'  
REPLY ON THEIR MOTION TO DISMISS THE APPEAL**

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

ALAN FLACKS, being duly sworn, deposes and says: I am not a party to this action, am over the age of 18 years and reside in New York County. On April 17, 2016, I served by overnight U.S. Post Express Mail in a postage paid envelope deposited at the James A. Farley Post Office, 421 Eight Avenue, NY, NY 10001, one copy of Plaintiff-Appellant's notice of motion and the affidavit in support with exhibits of Plaintiff-Appellant's motion to dismiss or strike Defendants-Appellees' Reply in their motion to dismiss the appeal on attorney Katherine M. Bolger at the law firm of Levine Sullivan Koch & Schulz, LLP, 321 West 44th Street, #1000, New York, NY 10036, which represents the Defendants-Appellees.

  
\_\_\_\_\_  
ALAN FLACKS

Sworn to before me on the  
17 day of April 2016

  
\_\_\_\_\_  
Notary Public

**MOHINDER S. GULATI**  
Notary Public, State of New York  
No. 01GU4659357  
Qualified in New York County  
Commission Expires Nov. 30, 2018