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Oral Argument 152656/2014, Tingling, Nov. 24, 2014, Rm 321, 9:30am

I'm Roy Den Hollander the plaintiff and an attorney admitted to practice before this Court who is representing himself.

I responded to all those lies, prevarications and dissemblings in my papers, what I believe is more important are the perjuries committed by Defendants and attorney Bolger's suborning of those perjuries.

Personal Jurisdiction

Immediate trial CPLR 3211(c) and 2218

The threshold issue and perhaps the only interesting one in this case is whether the Court has personal jurisdiction over the Australian defendants.

> "The jurisdictional question should be disposed of by the Court expeditiously at the threshold of the litigation." *Hammond v. Hammond*, 9 A.D.2d 615, 616 (1st Dept. 1959).

I made a cross-motion requesting discovery on the issue of personal jurisdiction but the defendants' unique ability to repeatedly lie under oath as counseled by attorney Bolger means they will continue to lie in discovery.

The first set of Defendants' affidavits compared to the second set show Defendants committed perjury, and, given the way attorneys operated, attorney Bolger suborned that perjury. (Opp. ¶¶ 6-10, 22-50).

This is not a situation where a party submitted one or two material falsehoods and then realized the error itself and withdrew those falsehoods.

My first set of papers exposed their lies on the issue of personal jurisdiction.

If it hadn't been for my independent research, some of those blatant falsehoods would still be before the Court.

In fact, not all of Defendants initial lies and omissions have been corrected in their second set of affidavits, which demonstrates a continuing proclivity on the defendants' side to hide the truth. That means interrogatories, document requests and even depositions will be met with flat out lies and omissions under oath.

This Court has the power under CPLR 3211(c) and 2218 to hold an immediate trial on the personal jurisdiction issue where it can judge the credibility of Defendants in the witness box and they can be subjected to cross-examination rather than having their attorney manipulate their responses so as to avoid the truth.

> According to David Siegel, "One of the most valuable uses of this power is to resolve . . . a question about whether there is a basis for extraterritorial jurisdiction, such as whether Defendant committed acts within the state justifying longarm jurisdiction under CPLR 302 . . . ." David Siegel, *Practice Commentaries* at 3211:47.
>
> In *Vandermark v. Jotomo Corp.*, 42 A.D.3d 931, 933 (4th Dept. 2007), the Supreme Court dismissed the action for lack of personal jurisdiction under CPLR 302(a)(1) by concluding defendant's website did not amount to transacting business in NY. The Fourth Department "remitted the matter to Supreme Court for an immediate trial pursuant to CPLR 3211(c) on the issue whether [Defendant's] creation and maintenance of a Web site constitute[d] the transaction of business on the Web site sufficient to confer personal jurisdiction against [Defendant] under the long-arm statute."
>
> The courts have approved the principle that a "substantial ... jurisdictional question should be disposed of by the Court expeditiously at the threshold of the litigation" by the ordering of an immediate trial. *See Usher v. Usher*, 41 A.D.2d 368, 343 N.Y.S.2d 212 (3d Dep't 1973).

If it is found that the NY longarm statute does not apply, the need for discovery on the substantive causes of action, summary judgment motion and a plenary trial will have been obviated and, even if the issue is decided differently, a substantial saving of time will still result. *See Usher v. Usher*, 41 A.D.2d 368, 343 N.Y.S.2d 212 (3d Dep't 1973); cf. *Duboff v. Board of Higher Ed. of City of New York*, 34 A.D.2d 824 (2d Dept. 1970).

The importance of an early determination of the jurisdictional question will often be an overriding factor. Such as when the defendant's objection is that the court lacks jurisdiction, it may implicate the statute of limitations. If a dismissal for lack of personal jurisdiction is postponed until after the original statute of limitations has expired, the dismissed plaintiff will find himself barred by the statute of limitations and without the six months that CPLR 205(a) might otherwise offer for a new action. David Siegel, *Practice Commentaries* at 3211:47.

> Injurious Falsehoods—statute expires January 2015
> Tortious Interference—statute expires January 2017
> *Prima Facie* Tort—statute expires January 2015
> Libel—statue expires January and June 2015

[Immediate trials are used even in an instance in which the proof that would support jurisdiction, such as where Defendant is accused of a tortious act under CPLR 302(a)(2), seems also to dispose of the merits. The court would ordinarily be inclined in such an instance to invoke CPLR 3211(d) and defer the jurisdictional issue until the trial, the jurisdictional factors being the same as those that would determine the merits, but the court should not defer it in this instance. David Siegel, *Practice Commentaries* at 3211:47.]

Without such a trial Defendants will continue to lie, prevaricate and dissemble on the threshold issue of personal jurisdiction.

Plaintiff's burden on invoking CPLR 3211(d) under which the court "may make such other order as may be just."

Plaintiff does not have to demonstrate with a preponderance of evidence in affidavits or admissible evidence that personal jurisdiction exists if he shows that facts supporting jurisdiction may exist.

CPLR 3211(d) to quote the Court of Appeals "protects the party to whom essential jurisdictional facts are not presently known, especially where those facts are within the exclusive control of the moving party. The opposing party need only demonstrate that facts 'may exist' whereby to defeat the motion. It need not be demonstrated that they do exist." *Peterson v Spartan Indus.*, 33 N.Y.2d 463, 466 (1974).

According to David Siegel's Practice Commentaries for CPLR 3211 "The court [in *Peterson v. Spartan Indus.*] appeared to be pronouncing a kind of good faith test. Unless the court can be convinced, from what few facts have been shown, that the plaintiff is guilty of bad faith in even arguing that longarm jurisdiction exists, the plaintiff will get the benefit of the doubt and the defendant will be required to furnish further information that may reflect on jurisdiction."

Even purely conclusory allegations present a "sufficient start." Weinstein, *NY Civil Prac.* ¶ 301.03; *Badger v Lehigh Val. R.R. Co.*, 45 A.D.2d 601, 603 (3rd Dept. 1974)(Plaintiff made conclusory allegations that one of defendant's railroad cars entered NY and injured Plaintiff).

The courts have recognized that facts necessary to show personal jurisdiction are usually in the sole control of the defendants. Weinstein, *NY Civil Prac.* ¶ 301.03.

For instance here: the full extent of Defendants' readership in New York State, how Defendants respond to their New York readers, all of what Defendants offer and sell to their New York readers and the complete relationship between Advertiser and News Corp headquartered in NYC, etc.

Plaintiff's discovery of some contacts that Defendants have with NY that they either lied about by commission or omission shows that other jurisdictional facts solely known to them "may exist."

"A prima facie showing of jurisdiction . . . simply is not required and in actual practice, even assuming a workable definition, may impose undue obstacles for a plaintiff, particularly one seeking to confer jurisdiction under the 'long arm' statute. (CPLR 302) In these cases especially, the jurisdictional issue is likely to be complex. [CPLR 3211(d)] is, therefore, desirable, indeed may be essential, and should quite probably lead to a more accurate judgment than one made solely on the basis of inconclusive preliminary affidavits." *Peterson v. Spartan Indus.*, 33 N.Y.2d 463, 467 (1974).

> In *Peterson* the plaintiffs produced records that defendant had made a representation that its product was approved for storage and use by the NYC Fire Department and defendant applied for several permits and received permission to sell and store some of its products

in New York, albeit some years before the event alleged in the complaint in which plaintiff injured by defendant's product in NY.

"The plaintiffs have made a sufficient start, and shown their position not to be frivolous. They should have further opportunity to prove other contacts and activities of the defendant in New York as might confer jurisdiction under the long-arm statute, thus enabling them to oppose the motion to dismiss." *Peterson v. Spartan Indus.*, 33 N.Y.2d 463, 467 (1974).

Plaintiff's Affidavit in Opposition to Defendants Motion to Dismiss indicates the areas in need of accurate facts for determining the issue of personal jurisdiction at ¶¶ 22-52, 54, 56, 100, 103-105, 107, 115, 128, 131, 154-155, 160-163, 165.

Oral motion requesting an immediate trial on personal jurisdiction.

The Court can entertain an oral motion when it appears that no prejudice would result from the informal procedure. No prejudice occurs when both parties are before the court and the court holds off on its decision until the opposing party can submit affidavits. *See Matter of Shanty Hollow Corp. v. Poladian*, 23 A.D.2d 132 (3rd Dept. 1965).

Defendants' ever changing story on their contacts with New York:

Revision in Bold means continuing lie.

*Defendant **Tory Shepherd**, political editor for The Advertiser-Sunday Mail Messenger owned and operated by Advertiser Newspapers Ltd.*

Lie (Aff. 1): Shepherd's only contact with NY was an email and telephone conversation with Plaintiff.
Exposed: Shepherd had contacted Miles Groth, Ph.D., a professor and resident in New York City, with six emails over a period of two months. (Opp. Ex. 4)
Revision: She "forgot." Plaintiff used to be the Political Producer for Eyewitness News and as such kept a list of everyone interviewed.
Question: What else has she forgotten about her contacts with NY, such as researching her articles?

[Lie (Aff. 1): Shepherd's email to Plaintiff "requesting comment on the controversy . . . ."
Exposed: The email did not request comment on any controversy. It stated, "I'm trying to get in touch for a story I'm doing on the UniSA course you're involved with, but can't find a phone number for you-could you please get in touch?" Also at that time, there was no controversy. (Opp. Ex. 11)
Revision: No revision, still claims her email was "requesting comment on the controversy . . . ."
Question: Why does she continue with this lie?]

Lie (Aff. 1): Shepherd wrote only "two" articles regarding the Male Studies courses.

Exposed: She wrote four articles, and maybe more, only she knows. (Am. Cmplnt. Ex. C, E, F, H)
Revision: She wrote "articles" and lists the four.
Question: What other of her writings have been published on the Male Studies courses?

Lie (Aff.1): By inference that the two articles were only published in print in Australia.
Exposed: All four known articles appeared on the WWW.
Revision: Four articles appeared on The Advertiser website under News.

Lie (Aff.1): Two articles "were intended for publication in Australia and were directed at an Australian audience."
Exposed: All four known articles published in New York via the WWW and perhaps print copies if such are printed here.
Revision: All of the four articles "were intended for publication in Australia and were directed at an Australian audience."
Question: Why publish on the WWW if only intended for Australians?
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*Defendant Advertiser Newspapers Ltd. relies on **Michael Cameron**, either National Editorial Counsel at News Corp Australia (doing business as News Limited)(Aff. 1) or National Editorial Counsel at News Limited (doing business as News Corp Australia)(Aff.2). What does Cameron actually do and does he have knowledge of jurisdictional facts?*

Lie (Aff. 1): Advertiser Ltd. controlled by News Corp Australia, but omitted relationship with Murdock's News Corp in New York.
Exposed: News Corp Australia considered part of News Corp NY's identity. (Am. Cmplnt. Ex. M)
Revision: News Corp Australia a wholly-owned subsidiary of News Corp NY, which makes "broad" policy decision but not day-to-day decisions for Advertiser Ltd.
Question: What is the exact relationship between News Corp NY and News Corp Australia?

Lie (Aff. 1): Advertiser Ltd. "did not sell any products in New York."
Exposed: Sale of The Advertiser-Sunday Mail Messenger to the Australian Community in New York City. (Am. Cmplnt. Ex. N)
Revision: Advertiser Ltd. "does not <u>directly</u> sell any products in New York."
Question: Aren't subscriptions to The Advertiser direct sales?

Lie (Aff.1): Advertiser Ltd. "does not publish in New York."
Exposed: Advertiser Ltd. publishes The Advertiser via its website in NY, *Penguin Group (USA), Inc. v. American Buddah*, 16 N.Y. 3d 295, 301 (2011)
Revision: "Anyone with a computer and a credit card can subscribe."
Question: How many New Yorkers subscribe and what type of services are provided them?

Lie (Aff. 1): Advertiser Ltd. "does not target any New York audience."
Exposed: Published at least 12 articles concerning New York and a number of the members of the Australian Community in New York City subscribe to The Advertiser.

Revision: The Advertiser is targeted to an Australian audience, particularly South Australia. Has an "SA News" section.

Lie (Aff. 1): Advertiser Ltd. does not have employees in NY.
Exposed: Bloomberg lists the Chairman for Advertiser Ltd. as Brian Leonard Sallis with a corporate address of 1211 Avenue of the Americas, N.Y., N.Y. (Opp. Ex. 2)
Revision: None

Lie (Aff. 1): Advertiser Ltd. "does not have any business ventures in New York."
Expose: On January 27, 2014, News Corp Australia, owner of Advertiser Ltd., entered into a partnership agreement with Digital First Media, headquartered in New York City, to provide advertising and marketing solutions for all its websites. (Opp. Ex. 3). Sounds like an agent selling News Corp Australia products like The Advertiser.
Revision: None
Question: Can Digital First be considered an agent for Advertiser Ltd.

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*Defendant Fairfax Media relies on its solicitor **Richard Coleman**, which raises the problem that he may not have firsthand knowledge of any jurisdictional facts. He gives advice before something is published.*

Lie (Aff. 1): Fairfax and SMH do not have any office facilities, employees, locations or business ventures in New York.
Exposed: Fairfax does have a "representative" in New York City for selling advertisements in its Sunday newspaper edition: World Media Inc., 19 West 36th Street, 7th Floor, New York 10018. (Opp. Ex. 12)
Revision: None

Lie (Aff. 1): Fairfax Media and The Sydney Morning Herald do not have office facilities, locations, employees, telephone listings and/or bank accounts in New York, which infers they never had such in NY because the market is unimportant to them.
Exposed: Fairfax had at least two correspondents and a NY office. (Opp. Ex. 5 & 6).
Revision: Fairfax did have a correspondent in New York City until 2012.
Question: Did it have one correspondent or more and how long did it have a NY office?

Lie (Aff.1): Fairfax does not target any New York audience.
Exposed: Fairfax published 13 articles so far this year concerning NY and a number of the members of the Australian Community in New York City subscribe to SMH.
Revision: SMH has a section specific to "New South Wales."

Lie (Aff. 1): "Fairfax Media and The Sydney Morning Herald do not directly publish in New York" but SMH is available online.
Exposed: Fairfax publishes SMH via its website in NY, *Penguin Group (USA), Inc. v. American Buddah*, 16 N.Y. 3d 295, 301 (2011)

Revision: Readers of The Sydney Morning Herald are able to subscribe to the online version of The Sydney Morning Herald via its website.
Question: So do they and in what numbers.

Lie (Aff. 1): Fairfax and SMH "do not directly sell any products in New York."
Exposed: Sale of SMH to the Australian Community in New York City. Sydney Morning Herald online provides "access to exclusive discounts, events and competitions, unlimited access to our award-winning tablet apps, interactive quizzes, crosswords, Sudoku free in the iPad app." (First Am. Cmplnt. ¶ 30). Offers an interactive photographer section called "Clique" where readers can publish their photographs, win prizes and receive advice. Offers an online SMH Shop where readers can purchase art and other gifts. Offering a cruise trip for two from Spain to Italy. Offers accounts for readers to receive "tweets." Offers the "goodfood" section that provides recipes. Offers investment research and advice.
Revision: None.
Question: Aren't subscriptions to The Sydney Morning Herald direct sales?

Lie (Aff. 1): Fairfax disturbs a print edition of SMH in the US via Press Reader but has no "control" as to whether its U.S. edition is distributed in New York and failed to say whether it was or was not circulated in NY.
Exposed: Press Reader allows its 30 million users to digitally download The Sydney Morning Herald and SMH advertises an "app" for doing that. (Opp. Ex. 8). Downloading means printing in NY which is publishing here. *Penguin Group (USA)*. "PressReader has developed major partnerships . . . [with] Fairfax Media [and] News Corp [owner of The Advertiser-Sunday Mail Messenger] . . . [that gives] publishers the ability to target audiences . . . [and] allow publishers to use [its] technology and adapt it to their market," and (2) Fairfax is using Press Reader to "grow global circulation and revenues, and increase brand awareness and exposure of their publications in new international markets." (Opp. Ex. 9).
Revision: None
Question: Does Press Reader have an exclusive distributorship with Fairfax? Is Press Reader an agent of Fairfax and where are the printed editions printed.

Lie (Aff.1): "Fairfax Media and The Sydney Morning Herald do not have any business ventures in New York."
Exposed: In 2000, Fairfax entered into a joint venture with the New York company News Alert LLC. Joint venture agreement with News Alert is to create News Alert Asia-Pacific, a subsidiary company that would create a number of web sites aimed at providing financial and business information for the Asia-Pacific region and for investors and business people in the United States interested in researching opportunities in the Pacific. (Opp. Ex. 13 at 6).
Revision: None
Question: The exact nature of the relationship with News Alert.

Defendant McNeilage is the education reporter for the Sydney Morning Herald.

Lie (Aff. 1): She did not intend to target New York readers.
Exposed: She and The Sydney Morning Herald publish the article on The Sydney Morning Herald's interactive website that reaches into New York where Plaintiff conducts his business.
Revision: None

Page Limits

> Rule 14(b) provides for a page limit of 30 pages for a memorandum and "affidavits/affirmations shall not exceed 25 pages each." Bolger's First Affirmation was 428 pages and her Second Affirmation is 501 pages.
>
> But that's no excuse for me unknowingly violating the page limits. Since I did not file a memorandum, if you add together the page limits that gives me 55 pages and the Court can ignore everything after that. Bolger did file a memorandum of law, so everything after the 25th page of her affirmation should also be ignored.
>
> Bolger relies on *Macias v. City of Yonkers*, 65 A.D.3d 1298, 1299 (2d Dep't 2009), which held that "It is not reasonable, however, for a court to accept papers that do not comply with the court's page limitation and then refuse to read the noncompliant pages, denying, as a consequence, substantive relief that may be warranted. Having accepted the [party's] papers, the Supreme Court should have considered the entire affidavit submitted . . . ."

Synopsis of case

An analogy is helpful to understand this case and why it was brought. ISIS is on a Jihad to physically destroy anyone who disagrees with it. The two hardcore feminist reporters in this case, and their attorney, are on a Jihada to verbally destroy anyone who disagrees with them. To do that, they abuse their power of the press and in the law by falsely painting anyone who disagrees with their personal belief system as heretics who should be silenced.

The two man-hating feminists reporters successfully intimidated the University of South Australia to deep-six a group of Male Studies courses, including a section that I was going to teach online from New York on how the law has discriminated against both sexes since the Industrial Revolution.

Their attorney, after whining about *ad hominems*, or more accurately metaphors, (Reply at 1) concerning her clients, embarks on a tirade of modern day epithets of her own against Plaintiff. (Bolger's Reply at 15-16).

Like her clients she takes quotes out of context to infer meanings they do not have in context and uses that false inference to paint Plaintiff as a Visigoth.

> For example, Bolger uses anti-feminist to mean anti-female when Plaintiff uses feminist to mean the "vilification of men, support for female privilege, and a demeaning view of women as victims rather than free agents."

But I shouldn't complain, since the highest form of compliment for an attorney is when his opponent is reduced to name calling.

This case is not here because of what I said about Defendants, but what they said about the compilation "Males and the Law" and me.

Defendants are welcome to bring whatever counterclaims they think are deserving against Plaintiff. But, of course, that is not their intent, which is the same as nasty little school girls verbally disparaging anyone who disagrees with them.

Bolger misleads by claiming this is a case only about Australia. (Mem. at 9). If that were so, then the articles would not disparage two New Yorkers, Plaintiff and Prof. Miles Groth; they would not reference lawsuits brought by the Plaintiff in New York courts or interviews of Plaintiff conducted in New York or writings of Plaintiff created in New York; they would not reference writings or speeches of Prof. Groth made in New York; Defendant Shepherd would not have initiated contact with Plaintiff and Prof. Groth at their offices or residences in New York and then lied about it; and Defendants would not have published on their World Wide Websites digitally reaching over 5,000,000 readers.

Bolger's memorandum of law and reply

1. In considering a personal jurisdictional question, the courts should give added weight to the requirement that a complaint be liberally construed in a plaintiff's favor, which means to construe pleadings and affidavits in the light most favorable to a plaintiff and resolve all doubts in his favor. See, e.g., *Hoag v. Chancellor, Inc.*, 246 A.D.2d 224, 228 (1st Dept. 1998; *Armouth International, Inc. v. Haband Co.*, 277 A.D.2d 189, 190 (2d Dept. 2000).

2. Bolger, however, is asking this Court to construe the complaint and opposition affidavit so that the Injurious Falsehood, Tortious Interference with Prospective Contract and, in the alternative to both, *Prima Facie* Tort causes of action are really actions for libel. By doing so, she only argues personal jurisdiction under CPLR 302(a)(1) and only under its "transacts any business" clause. So if this Court does not re-interpret the First Amended Complaint as alleging only libel, then Bolger's motion to dismiss defaults on personal jurisdiction under the second clause of CPLR 302(a)(1) contracting to sell goods and service in NY and CPLR 302(a)(3) committing a tortious act outside NY causing injury within.

> Injurious Falsehood, Tortious Interference and, in the alternative to both, *Prima Facie* tort only apply to Shepherd's Jan. 12, 2014, article and McNeilage's Jan. 14, 2014 article because it was those two articles that caused the canceling of the Males Studies courses.

> On the morning of January 10, 2014, Roy read an email from Tory requesting his telephone number because as she said, "I'm trying to get in touch for a story I'm doing on the UniSA [University of South Australia] course you're involved with . . . ." By her words, the story was to be about the course and Roy's involvement.
>
> The articles for which libel is alleged against Shepherd start with the Jan. 12, 2014, article and end with the June 18, 2014 article—four in total.

3. In arguing that Defendants do not "transact any business" under CPLR 302(a)(1), Bolger repeatedly claims that for Defendants to transact any, I emphasize any, business in NY that ever single contact they have with NY must be related to the causes of action. Not so.

> In *Licci v. Lebanese Canadian Bank*, 20 N.Y.3d 327, 341 (2012), a Lebanese bank used NY bank to funnel money to terrorists. The Court of Appeals held that not all elements of the causes of action pleaded are related to [the bank's] use of the correspondent account. The arising from prong of section 302(a)(1) does not require a causal link between the defendant's New York business activity and a plaintiff's injury, which were caused by rockets. CPLR 302 (a)(1) does not require that every element of the cause of action pleaded must be related to the New York contacts; rather, where at least one element arises from the New York contacts, the relationship between the business transaction and the claim asserted supports specific jurisdiction under the statute. The bank's funneling of money through NY violated its NY statutory duties just as Defendants funneling false disparaging articles into NY violated NY intentional tort law.
>
> Defendants' New York activities, and their nature and quality, are to be considered in their totality. *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 457 n.5 (1965). The Advisory Committee which drafted the section took cognizance of such statutes in its report (N. Y. Advisory Comm. Rep. [N. Y. Legis. Doc., 1958, No. 13], pp. 39-40) and decided, instead, to follow the broad, inclusive language of the Illinois provision, adopting as the criterion the "transact[ion of] *any* business within the state". The design of the legislation, as expressed by the committee, was to take advantage of the "new [jurisdictional] enclave" (Bomze v. Nardis Sportswear, 165 F. 2d 33, 36, per. L. Hand, J.) opened up by International Shoe where the nonresident defendant has engaged in some purposeful activity in this State in connection with the matter in suit. (See N. Y. Advisory Comm. Rep. [N. Y. Legis. Doc., 1958, No. 13], pp. 39-40; see, also, 1 Weinstein-Korn-Miller, N. Y. Civ. Prac., par. 302.06.) Therefore, even though the last act marking the formal execution of the contract may not have occurred within New York, the statutory test may be satisfied by a showing of other purposeful acts performed by the appellant in this State in relation to the contract, albeit preliminary or subsequent to its execution. *Id.* 456, 457.

Defendants known contacts:

> Shepherd communicated with two New Yorkers she named in her articles.
> Shepherd researched Plaintiff's cases on file here in NY.

Shepherd's employer Advertiser is identified as part of News Corp headquartered in NYC.

The Advertiser-Sunday Mail Messenger has published 12 articles concerning New York.

Bloomberg lists the Chairman for Advertiser as Brian Leonard Sallis with a corporate address of 1211 Avenue of the Americas, N.Y., N.Y.

Advertiser has a partnership with Digital First Media of New York City to display advertising on Advertiser websites. (Opp. Ex. 3).

Fairfax has a "representative" in New York City for selling advertisements in its Sunday newspaper edition: World Media Inc. (Opp. Ex. 12 at 5).

Fairfax had two reporters and an office in NY as of 2012.

The Sydney Morning Herald has published 13 articles concerning New York this year.

PressReader expands print and online circulation in international markets and has major partnerships with Fairfax and News Corp [owner of The Advertiser-Sunday Mail Messenger].

Fairfax has a joint venture with the New York company News Alert LLC to provide business news to people in the US.

Sydney Morning Herald online provides "access to exclusive discounts, events and competitions, unlimited access to our award-winning tablet apps, interactive quizzes, crosswords, Sudoku free in the iPad app." (First Am. Cmplnt. ¶ 30). Offers an interactive photographer section called "Clique" where readers can publish their photographs, win prizes and receive advice. Offers an online SMH Shop where readers can purchase art and other gifts. Offering a cruise trip for two from Spain to Italy. Offers accounts for readers to receive "tweets." Offers the "goodfood" section that provides recipes. Offers investment research and advice.

All of these activities concern and support Defendants' core business of publishing alleged news stories to over 7 million readers and are set forth in Opp. ¶¶ 22-50.

Bolger is really arguing that every contact must be part of the causation of injury, which is wrong. Causation is not required, and the inquiry under the statute is relatively permissive. *Licci v. Lebanese Canadian Bank*, 20 N.Y.3d 327, 339 (2012).

4. Bolger relies on *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 249(2d Cir. 2007), that this Court does not have jurisdiction over Shepherd's libel. But *Best* stated that New York 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. In *Sovik v. Healing Network*, 244 A.D.2d 985, 665 N.Y.S.2d 997 (4th Dep't 1997), for example, the Appellate Division, Fourth Department, concluded that one allegedly defamatory letter sent by the defendants could provide a basis for jurisdiction where the defendants had "drafted the letter and either distributed or authorized the distribution of the letter in the Buffalo area," thereby demonstrating the defendants' "active involvement and personal control over the writing and distribution of the allegedly defamatory statement. Shepherd clearly drafted her articles and her contract with her employer likely authorized distribution over their employers' websites.

5. Bolger failed to address the second clause of CPLR 302(1)(a) that jurisdiction exists where Defendants "contract anywhere to supply goods or services in" NY.

   Plaintiff alleges that Defendants supply goods or services in NY (First Am. Cmplnt. ¶¶ 26-30, Opp. ¶¶ 24, 30, 32, 35, 37-39, 41-42, 44-50, 100-105, 109-110, 113, 121).

   Also, Shepherd and McNeilage's employment contracts with their employers most likely contain a provision in which their articles will be distributed in NY via the WWW and apparently Press Reader.

6. Bolger defaulted on CPLR 302(a)(3) by not addressing it at all. For all of the alternative forms of ongoing activities in 302(a)(3), the causes of action sued upon need not relate to those New York activities. Report of the Judicial Conference on the CPLR to the 1966 Legislature, Leg. Doc. (1967) No. 90, pp. 340-344.

7. Bolger equates anti-feminist with anti-woman, Plaintiff defines feminist as one who believes in the vilification of men, support for preferential treatment of females and a demeaning view of women as victims rather than free agents. Originally used term feminazi but media would edit my quotes, so had to use term feminist with an explanation of what I meant.

Bolger's Memorandum

Mistakenly relies on In *SPCA of Upstate New York, Inc. v. American Working Collie Ass'n*, 18 N.Y.3d 400, 405 (2012) to argue Defendants do not transact any business in NY. *SPCA* deals only with a defamation action and the first clause of CPLR 302(a)(1). The Court held that Defendant's contacts with NY limited and there was no substantial relationship between the allegedly defamatory statements on the website and defendants' New York activities. Defendant did not visit New York in order to conduct research, gather information or otherwise generate material to publish on the group's Web site.

No allegation of jurisdiction over McNeilage. McNeilage intended to target NY otherwise why name Plaintiff and put article on line, she researched cases on file in NY, and the company she works for, Fairfax, has numerous NY contacts. In *Pramer S.C.A. v Abaplus Intl. Corp.*, 76 A.D.3d 89 there was no jurisdiction over both the corporation and the individual who owned the corporation. The case did not involve an employee of a corporation over which the court had jurisdiction. Further, McNeilage can also be viewed as Fairfax's agent.

Bolger relies on *Oriska Ins. Co. v. Brown & Brown of Texas, Inc.*, 2005 WL 894912 for jurisdiction over parent does not mean jurisdiction over wholly owned subsidiary, but *Oriska* is a "doing business" test which falls under CPLR 301 and not the more liberal "transacts business" under CPLR 302.

Bolger relies on *Trachtenberg v. Failedmessiah.com*, --- F.Supp.2d ----, 2014 WL 4286154 for Shepherd not transacting business in NY. In *Trachtenberg* the defendant merely accessed a NY Government website from out of state—that's all. Here Shepherd interviewed Plaintiff over the

telephone, engaged in a two-month conversation via email with another NY resident, researched cases filed in NY and interviews and writings made in NY. *Trachtenberg* relies on cases from 1999 and 1971, for the rule that any research must be done by defendant being physically in NY in this age of digital communication. To require physical presence for research to be considered a contact fails to take into account how research is done today, and contrary to the fact that it has long been observed that technological advances affecting the nature of commerce require the doctrine of personal jurisdiction to adapt and evolve along with those advances. *See Hanson v. Denckla*, 357 U.S. 235, 250-52 (1958).

> The Court of Appeals has eschewed the need for actual physical presence at the time of a transaction, noting that "in this day of instant long-range communications, one can engage in extensive purposeful activity here without ever actually setting foot in the State." *Parke-Bernet Galleries, Inc. v. Franklyn*, 26 N.Y.2d 13, 17 (1970).

Bolger relies on *Copp v. Ramirez*, 62 A.D.3d 23 (1st Dep't 2009), for Shepherd's contacts not being sufficient for transacting business in NY, but *Copp* found no jurisdiction because the alleged nexus between the out-of-state statements and defendants' activities in New York was too attenuated and too separated in time because the statements occurred years after defendants visit NY concerning 911. Further, Shepherd can also be viewed as an agent of Advertiser, which has contacts with NY.

Bolger's Reply

Bolger's Reply is largely redundant of her Memorandum arguments. She refers to her Memorandum four times in her jurisdiction section.

Penguin Group (USA), Inc. v. American Buddah, 16 N.Y. 3d 295, 301 (2011), held that in an infringement action, publication location was where material printed and not where it was upload. It is used to show how Bolger's clients lied with respect to personal jurisdiction concerning all the causes of action, not just libel. But Bolger relies only on a libel case.

Bolger alleges that *Talbot v. Johnson Newspaper Corp.*, 71 N.Y.2d 827, 829 (1988), overruled the U.S. Supreme Court's *Keeton v. Hustler Magazine*, 465 U.S. 770 (1984) and *Calder v. Jones*, 465 U.S. 783 (1984) for NY law purposes. Not so, in *Talbot*, a libel case, the libel occurred two years after the defendant's "transacting any business" with NY, which was attendance at college. The separation in time meant the libel was not sufficiently connected with that attendance.

Causes of Action

Injurious Falsehoods

Elements:

Intentional publication

Of false information: the test for falsity is whether the statement published would have a different effect on the mind of the reader from that which the whole truth would have produced. Lee S. Kreindler, N.Y. Law of Torts, § 1.43

Done with malice:

1. A false statement is maliciously made if known to be false; or
2. Person making it did not know that it was false but made it with reckless disregard as to truth or falsity, without regard to the consequences, and under circumstances which defendant as a reasonably prudent person should have anticipated that injury to another would follow. *Penn-Ohio Steel Corp. v. Allis-Chalmers Mfg. Co.*, 7 A.D.2d 441, 444 (1st Dept. 1959); or
3. Person was motivated by ill will, Restatement Second Torts § 623A, comment d; or
4. Person intended to interfere with another person's interest, *John W. Lovell Co. v. Houghton*, 116 NY 520, 528 (1889).
5. Malice is presumed from proof of falsity of a published statement. See Restatement, Second, Torts § 651, Comment d.
6. Special damages = $1250

Amended Complaint at ¶¶ 55, 56 for Shepherd, ¶¶ 128-130 for McNeilage, including:

Defendant Shepherd's January 12, 2014, news article (First Am. Cmplnt. Ex. C) disparaged all the proposed courses, including the "Males and the Law" section by publishing:

> "Dr Michael Flood, from the University of Wollongong's Centre for Research on Men and Masculinity, said these types of male studies 'really represents the margins'. 'It comes out of a backlash to feminism and feminist scholarship. The new male studies is an effort to legitimise, to give academic authority, to anti-feminist perspectives,' he said."
>
> "Flinders University School of Education senior lecturer Ben Wadham, who has a specific interest in men's rights, said there was a big difference between formal masculinity studies and 'populist' male studies. He said there were groups that legitimately help men, and then the more extreme activists. 'That tends to manifest in a more hostile movement which is about 'women have had their turn, feminism's gone too far, men are now the victims, white men are now disempowered', he said. 'I would argue that the kinds of masculinities which these populist movements represent are anathema to the vision of an equal and fair gendered world.' Dr Wadham said that universities needed to uphold research based traditions instead of the populist, partisan approach driven by some.

The false imputations in both statements were that the content of the "Males and the Law" section was anti-women, opposed to equal rights for females, hostile toward women, a threat to equality and based on flawed research.

"Males and the Law" section "really represents the margins,"
"Males and the Law" section is lacking "in research based tradition" with a "partisan approach,"
"Males and the Law" section is "lacking in academic rigor,"
"Males and the Law" section is "controversial,"
"Males and the Law" section is a "dangerous platform for anti-women views."

Defendant McNeilage disparagement of the "Males and the Law" section:

> The false imputations of her illustration were that the "Males and the Law" section advocated against equality of opportunity for females, was the result of some psychological problems with father figures and the section would be taught as a dialectic in which females were muzzled.
>
> "National Union of Students president Deanna Taylor said . . . . 'It's a slippery slope once you open the door to people with these views and give them a platform … it's not long before proposals like the ones that were rejected actually get approved,' she said."
>
> The false imputation here was that the content of the "Males and the Law" course was so horrendous that college students should be prevented from hearing about how the law has treated the sexes over the past 250 years.

There is a very real distinction between Injurious Falsehood and Defamation. Injurious falsehood originated when a person's greatest wealth lay in property. Any disparaging remark concerning a landholder's rights damaged his economic rights. The claim arose from action on the case for special damages from publications that had an injurious effect on plaintiff's property or business. It is from here that the more generalized economic tort of injurious falsehood arose to compensate specified damages.

[Injurious falsehood also includes non-property injuries resulting from intentional falsehood. *Raschid v. News Syndicate Co.*, 265 N.Y. 1, 4 (1934). The cause of action is not limited to property. It is equally applicable to other publications of false statements that do harm to interests of another having pecuniary value and so result in pecuniary loss. Restatement, Second, Torts § 623A.]

Defamation, however, was designed to recompense injuries to a person's reputation which goes beyond special damages. Kriendler, *NY Law of Torts*, § 3.4

Injurious falsehoods statements such as falsely characterizing the Male Studies courses, including the section "Males and the Law," as extreme right wing, railing against feminism [women], referring to women as bitches and whores, advocating gun violence, lacking in academic rigor, on the margins of society, extreme activists, hostile toward women and non-whites, opposed to an equal and fair world, not objective and dangerous to women.

Tortious Interference

> Business relationship that creates future expectancy of contract rights,
> Defendants interference with that business relationship,
> Defendants' purpose to harm plaintiff or use of wrongful means (misrepresentations and violation of media ethics) and
> Economic injury = loss of contract and lost opportunities for teaching the same section in other universities by damaging Plaintiff's copyright interests.

Kriendler, *NY Law of Torts*, § 3.21

As stated in the First Amended Complaint at ¶¶ 49-51, 56, 60, 62, 94, 98, 128-130, Defendants made deceptive, misleading and untrue statements that disparaged Plaintiff, and by inference the "Males and the Law" section, which interfered with Plaintiff's attempt at employment by falsely reporting to his potential employer that Plaintiff was a member of extreme right wing groups, anti-women and an advocate of gun violence.

Plaintiff and representatives for the University had already reached an agreement on compensation and content of the "Males and the Law" section in which he would be paid a maximum of $1250 depending on the hours involved.

Prima Facie Tort

Malicious intent to harm, including disinterested malevolence = did not publish article about misandry in Women's Studies courses,
Without justification = censorship is not a justification,
By act that would otherwise be lawful, and
Special damages = $1250

Amended Complaint at ¶¶ 55, 56 for Shepherd, ¶¶ 128-130 for McNeilage with respect to Injurious Falsehood and ¶¶ 49-51, 56, 60, 62, 94, 98, 128-130 wrt Tortious Interference.

Libel

False statement or connotation of fact,
Publication,
Made knowing it was false or with reckless disregard, and
Presumed damages since *per se* libel

Shepherd's libelous statements Amended Complaint ¶¶ 179-182.

Today, linking Roy to "extreme men's rights organizations," "to extreme views on men's rights and websites that rail against feminism," to "a hate [web]site," and labeling him as a "more extreme [men's rights] activist[]," "anti-feminist [meaning anti-female]," "misogynist," "pseudoscientific fraudster[]," and a "Hannibal Lecter" who is filled with "hatred of women," "prejudice against women," "serious anger [toward women]" are just as libelous as false accusations of being a Communist in the 1940s because they arouse hatred, contempt, scorn and obloquy.

Bolger runs on at length about her clients' rights to say whatever they want and not be held accountable. Why doesn't that apply to me? Are they somehow entitled to more rights because they subscribe to lefty philosophy? That's not what I learned in my Constitutional Law course.

Comparison to the Nazis

> What's the difference? The Nazis murdered 11 to 12 million people. Hardcore, man-hating feminists murder careers and who knows how many. The Nazis were at it for only 12 years while the hardcore feminists have been at it for over 40 years. Then the question is whether it is better to be dead or spend the rest of one's left, usually a man, at some zombie job. It's an accurate comparison but if you rather than compare them to the commies.

Disparagement

In the spirit of *quid pro quo*—one bad turn deserves another.

But it's important to put this into perspective. Her clients disparaged my copyright work and me in five articles to over 7 million readers. My disparagement of her clients is to this Court.

Shepherd's audience print and online: 1,750,000
McNeilage's audience print and online: 5,580,000

<u>False Disparaging Remarks about the "Males and the Law" compilation, Plaintiff and by implication Plaintiff's work product</u>

The following are just the specific words used but the resulting connotations must also be factored in.

<u>*Shepherd*</u>

"[Plaintiff] identified as belonging to extreme right wing groups in the USA."

January 9, 2014, Shepherd contacted Dr. Gary Misan at the University—Plaintiff's future boss, asking about the Male Studies courses, and claimed that Plaintiff, the creator and slated teacher for the "Males and the Law" section of one course, had been "identified as belonging to extreme right wing groups in the USA."

<u>Jan. 12, 2014 Article (First Am. Cmplnt. Ex. C)</u>

"Anti-feminist"—meaning anti-women

"extreme views" on men's rights (Ex. C)

"rail" against feminism (Ex. C)

"Lecturers . . . linked to extreme views on men's rights and websites that rail against feminism." (Ex. C).

[Injurious Falsehood] "The course, which has no prerequisites . . . ." (Ex. C).

[Injurious Falsehood] "Two lecturers [which included Roy] have been published by prominent US anti-Feminist site A Voice for Men, a site which regularly refers to women as "bitches" and "whores" and has been described as a hate site by the civil rights organisation Southern Poverty Law Centre." (Ex. C). [Southern Poverty Law Center calls the site misogynist; therefore Shepherd's quote means Plaintiff is a misogynist.]

> Tory used "anti-feminist" in her January 12, 2014, article as a disparaging term that communicated the "Males and the Law" section would be taught by "refer[ing] to women as 'bitches' and 'whores,'" "rail against feminism [female rights]," and propagate "hate" toward 51% of the population. (Ex. C). The falsity in her disparaging characterizations is that the "Males and the Law" section is based on the history of the law.

"One American US lecturer . . . has written that the men's movement might struggle to exercise influence but that 'there is one remaining source of power in which men still have a near monopoly—firearms'."

Plaintiff, an attorney, was one of "the more extreme activists." This is as highly injurious to professional reputation as calling an attorney a communist in the 1940s.

[Injurious Falsehood] "Dr Michael Flood, from the University of Wollongong's Centre for Research on Men and Masculinity, said

> "these types of male studies 'really represents the margins'."
>
> "'The new male studies is an effort to legitimise, to give academic authority, to anti-Feminist perspectives.'" (Ex. C).
>
> Shepherd and Flood, however, rely on the term "margins" to hold the courses and its creators up to contempt, ridicule and moral discredit.

[Injurious Falsehood] Shepherd's republications of Ben Wadham statments:

> "Flinders University School of Education senior lecturer Ben Wadham, who has a specific interest in men's rights, said there was a big difference between formal masculinity studies and "populist" male studies. He said there were groups that legitimately help men, and then the more extreme activists. "That tends to manifest in a more hostile movement which is about 'women have had their turn, feminism's gone too far, men are now the victims, white men are now disempowered'," he said. "I would argue that the kinds of masculinities which these populist movements represent are anathema to the vision of an equal and fair gendered world." Dr. Wadham said that universities needed to uphold research based traditions instead of the populist, partisan approach driven by some." (Ex. C).
>
> By inference, the "Males and the Law" section Plaintiff created and would teach: "extreme" right-winger, "anti-feminist," associates with persons who use language Tory disapproves of, believes one remaining source of power in which men still have a near

monopoly is the right to bear arms, calls women's studies "witches studies," wants to eliminate the rights females have as humans, and believes females oppress men.

Shepherd and Wadham rely on the term "populist" to hold the courses and their creators up to contempt, ridicule and moral discredit.

[Injurious Falsehood] Communicated that the "Males and the Law" section was part of a "right wing" conspiracy of groups with "extreme" views against females. (Ex. C).

[Injurious Falsehood] Shepherd used her false representation of Plaintiff's men's rights cases to infer that the "Males and the Law" section and Plaintiff would promote the derogation of rights for females. (Ex. C).

[Injurious Falsehood] The purpose of Shepherd's statement that Plaintiff "argues that feminists [females] oppress men in today's world" was to depict Plaintiff as paranoid and the "Males and the Law" section as the ranting of a paranoid lawyer. (Ex. C).

Jan. 14, 2014 "Snip" article (First Am. Cmplnt. Ex. E)

"The Advertiser revealed yesterday that some of the lecturers listed for the professional certificates had links to extreme men's rights organisations that believe men are oppressed, particularly by Feminists."

"National Union of Students president Deana Taylor said a course like that proposed for the university provided 'a dangerous platform for anti-women views'.

"US 'anti-feminist' lawyer Roy Den Hollander . . . ."

"Mr Den Hollander also stood by his claim that men's remaining source of power was 'firearms'." Here Tory even edited her quoted statement in her January 12th article to ratchet up her obloquy by leaving out "one" as the qualifier for "remaining source of power."

January 14, 2014 "Pathetic" (First Am. Cmplnt. Ex. H)

"Pathetic bid for victimhood by portraying women as villains"

"Big ups to UniSA for having the sense to reject anything linked to those at the very fringe of the men's rights spectrum . . . overseas ring ins."

"You'd think I'd shut up now the plans are off the table, but it's really important to get across the bigger picture. See, most people probably think that the men's rights guys I was talking about - the ones who habitually call women names, argue that they routinely make up rape, and put it about that women either incite their own domestic violence or are the abusers themselves - are just circle-jerk misogynists."

"They are - misogynists, I mean. And we're talking old-school misogyny - the hatred of women - as well as the new-school misogyny - entrenched prejudice against women."

"Not just harmless condescension or unthinking stereotypes, but some serious anger."

"The problem is, the circle is no longer closed, no longer just a bunch of angry guys in a basement. They're trying to get up the stairs and into the light. They want to play outside with legitimate experts in men's issues . . . ."

"They want to play outside with legitimate experts in men's issues . . . ."

"It's a classic tactic, used by pseudoscientific fraudsters. Adopt the language of the actual scientists. Find odd reports and old stories, random statistics and shocking anecdotes, and stitch them into a Hannibal Lecter-style creation that mimics valid inquiry."

"Try to sound like the real deal, and look enough like them to fool some people, some of the time."

"Poor boys, trying desperately to claim the mantle of victimhood. It would be pathetic if it wasn't for the fact that they are trying to make women into villains at the same time."

"It could be dismissed if they weren't trying to creep in where they are not needed, or wanted."

"It could be dismissed . . . . If they weren't trying to lobby for law changes or to brainwash people into thinking black is white."

"But these guys drown out any real discussion with their endless angry spittle. And that's the real bitch."

June 18, 2014 "Bizarre" article (First Am. Cmplnt. Ex. F).

"Mr Den Hollander, representing himself, has penned a legal document . . . that cannot remain between me and my lawyer. It's gold and genius like this should be shared." (Ex. F).

"[B]izarre legal writ . . . ."

"UniSA [the University] was planning a course in men's studies that included men with links to US men's rights extremists . . . ."

"Mr Den Hollander is a proudly 'anti-feminist' lawyer . . . .

Mr. Den Hollander believes in "censor[ship of] a journalist . . . ."

"an extremist by sounding like an extremist."

Shepherd sarcastically demeans Roy's legal complaint against her as "Brilliant, no?"

"In the men's rights vernacular, 'girlie-guys' are usually known as 'manginas'. The terms refer to males who believe in equality for women . . . ."

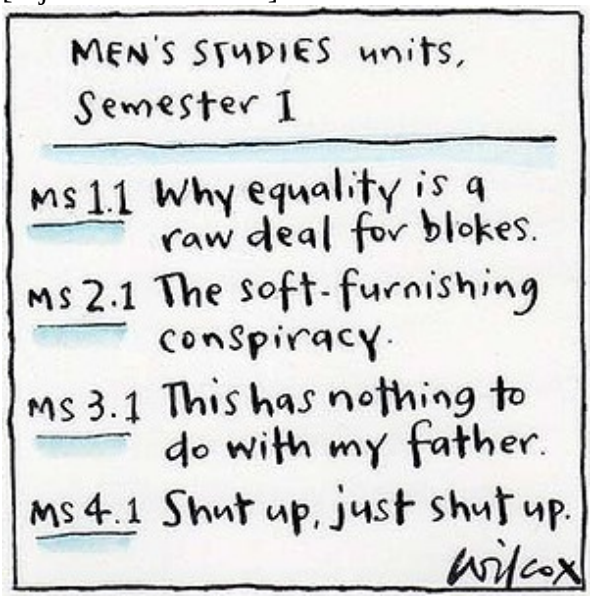
"Why on Earth give such a man more publicity? But it's important, I think, to remain aware and wary of people like Mr Den Hollander."

"I suspect the people at UniSA [the University] who flirted with the idea of bringing him [Roy] over to teach may not have really understood his philosophy."

McNeilage

January 14, 2014 article (First Am. Cmplnt. Ex. D).

[Injurious Falsehood]



[Injurious Falsehood] "hardline anti-feminist advocates" (Ex. D)

"controversial Americans" (Ex. D)

[Injurious Falsehood] "National Union of Students president Deanna Taylor said it was concerning that the academic who founded the course, Associate Professor Gary Misan, was linked to the controversial Americans. 'It's a slippery slope once you open the door to people with these views and give them a platform . . . it's not long before proposals like the ones that were rejected actually get approved' she said."

[Injurious Falsehood] "radical"

Plaintiff had "been published on radical men's rights websites."

[Injurious Falsehood] McNeilage wrote that Plaintiff had "filed a lawsuit against Columbia University for offering women's studies courses that preached a 'religionist belief system called feminism'." (Ex. D). She intentionally cherry picked one issue from the case, which had three issues, in an effort to further disparage Roy and by inference the "Males and the Law" section.

McNeilage printed a Cox quote that derided the creators of the courses and men in general: "men who want to complain that they haven't had enough attention as victims, and that does worry me." (Ex. D).

[Injurious Falsehood] McNeilage wrote the Male Studies courses were "rejected in 2012"

Bolger's fanciful documentary evidence looks like summary judgment

Bolger claims her 496 pages of exhibits are documentary evidence—not so

Opposition ¶¶ 14-21

Attorney Bolger's inclusion of 496 pages of affidavits and exhibits and a self-serving version of alleged facts makes clear that she is really moving for summary judgment before any discovery has occurred and by circumventing the summary judgment requirements that

a. issue must be joined, which Bolger admits in her RJI that it has not;
b. newspaper reports are hearsay and cannot support summary judgment;
c. facts, which are within Defendants knowledge, are necessary on the issue of personal jurisdiction, for example the full extent of Defendants' readership in New York State, how Defendants respond to their New York readers, all of what Defendants offer and sell to their New York readers and the complete relationship between Advertiser and News Corp headquartered at 1211 Avenue of the Americas, New York, N.Y. 10036; and
d. there are factual issues concerning the falsity and misleading characteristics of Bolger's contentions that are really affirmative defenses belonging in an Answer.

Bolger even says "[t]he documentary evidence" are in the attached affidavits. (Mem. at 1, n.1). The problem with this admission is that on a motion to dismiss under CPLR 3211, the Court takes as true the facts as alleged in the complaint and submissions in opposition to the motion—not the affidavits of Defendants.

As for Bolger moving for dismissal under CPLR 3211(a)(1), the Advisory Committee noted that paragraph (1) was added only to cover something like a defense based on the terms of a written contract. 1st Rep.Leg.Doc. (1957) No. 6(b), p. 85. Bolger presents no written contract. The practice commentaries advise that Bolger should have filed an Answer and then moved for Summary Judgment.

Further, in *J.P. Morgan Securities Inc. v. Vigilant Ins. Co.*, 21 N.Y.3d 324, 334 (2013), the court of Appeals held that "to prevail on a motion to dismiss pursuant to CPLR 3211(a)(1), the moving party . . . must establish that the documentary evidence conclusively refutes plaintiff's allegations."

In this action there are conflicting interpretations over the essays, briefs and legal memoranda submitted as part of Bolger's affirmation; therefore, such alleged documentary evidence does not resolve all factual issues as a matter of law and conclusively dispose of the plaintiff's claims as required under 3211(a)(1). *Sbarra Real Estate, Inc. v. Lavelle-Tomko*, 84 A.D.3d 1570, 1571 (3d Dept. 2011).

In addition, a motion to dismiss under CPLR 3211(a)(1) is not available in this case because the paragraph "contemplates that the defense will be established by the 'documentary evidence' alone"—not on affidavits necessary to support the documentary evidence. David D. Siegel, *New York Practice*, § 259, (2014).

Judicial records such as judgments and orders are allowed, but Bolger instead relies on briefs and memoranda of law that are not formal judicial admissions. McKinney's Practice Commentaries C3211:10, Defense Based on "Documentary Evidence".

While Defendants' affidavits are allowable on motions under CPLR 3211(a)(7) & (8), they cannot be used to disprove Plaintiff's allegation of facts, which are assumed true on a motion to dismiss.

Attorney Bolger is simply using her motion to dismiss as a cover for a summary judgment motion because she wants to unfairly deprive a person who does ascribe to the same sociological beliefs as she does of the fair opportunity to marshal evidence through discovery and investigation.

<u>Judicial Notice</u>

Bolger violates the requirements for Replies by introducing the new argument of judicial notice in support of her motion to dismiss. *Watts v. Champion Home Builders*, 12 A.D.3d 850 (4th Dept. 2005).

Courts will take judicial notice of whatever is commonly or generally known provided that it is well and authoritatively settled and not doubtful or uncertain and is known to be within the limits of the jurisdiction of the court. NY Jur. 2d, *Evidence* § 13.

Bolger asks this Court to use judicial notice to substitute her alleged facts for Plaintiff's on a motion to dismiss. The problem is that there exist conflicting interpretations over the essays, briefs and legal memoranda submitted as part of Bolger's affirmation, so what she wants judicial notice on is doubtful and uncertain. For example, how Plaintiff defines "feminist."

"[T]he mere presence of a document in a court file does not mean that judicial notice properly can be taken of any factual material asserted in the document (*Ptasznik v. Schultz*, 247 AD2d 197

[1998]). As observed by the Second Department in *Ptasznik* (247 AD2d at 199): "Court files are often replete with letters, affidavits, legal briefs, privileged or confidential data, in camera materials, fingerprint records, probation reports, as well as depositions that may contain unredacted gossip and all manner of hearsay and opinion." *Walker v City of New York*, 46 A.D.3d 278, 282 (1st Dept. 2007).

The same is true of media reports, media interviews and draft essays.

Damages

Any award of damages from any of the causes of action beyond my disbursements will be donated to a deserving charity.

Documents

CPLR 302
Bolger's tirade
Cameron affidavits 1 and 2
Shepherd affidavits 1 and 2
Coleman affidavits 1 and 2
McNeilage affidavit 2
First Amended Complaint with list of exhibits
Opposition with list of exhibits
Correspondence Bolger knew on Nov. 5, 2014 of pending request for discovery.
Cases

Miscellaneous

Time magazine's poll of which words should be banned from public use, the word "feminist" came in first.

There's an element of the feminism practiced by Defendants and their attorney "that takes 'We know what's best for you' as its starting point."

The goal of hardcore feminists such as Defendants and their attorney is not to seek a world of equality where people find love and mutual respect, but one where they find vindication to punish their "enemies."

A recent study by Netmums found the majority of women felt feminism was too aggressive, de-valued the stay at home mother and applied too much pressure on women to do and be everything. 17% even stated it is oppressive to men.

Feminism is dogmatic. It sets rules. Like a religion it praises particular behavior.

Men are now having to fight for their own power, even to speak.

Authorities

CPLR 3211(d) provides that should it appear from an affidavit submitted in opposition to a motion to dismiss under subdivision (a) that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or order a continuance to permit disclosure or an immediate trial on the facts in issue.

Best Van Lines, Inc. v. Walker, 490 F.3d 239, 250 (2d Cir. 2007).

Best relies on ***Talbot v. Johnson Newspaper Corp.***, 71 N.Y.2d 827, 829 (1988), for requiring that the cause of action arise from at least one of Defendants' contacts with NY. In *Talbot*, the libel did not arise from any of defendants contacts with NY because the 400 printed copies of the newspaper disturbed in NY were printed in Baltimore. Here the articles were published in NY.

Hammond v. Hammond, 9 A.D.2d 615, 616 (1st Dept. 1959).

Jurisdiction is a threshold issue. "Where the facts presented indicate that the claim of lack of jurisdiction is substantial, the jurisdictional question should be disposed of by the Court expeditiously at the threshold of the litigation."

Peterson v Spartan Indus., 33 N.Y.2d 463, 466 (1974).

CPLR 3211(d) "protects the party to whom essential jurisdictional facts are not presently known, especially where those facts are within the exclusive control of the moving party. The opposing party need only demonstrate that facts 'may exist' whereby to defeat the motion. It need not be demonstrated that they do exist. . . . "A prima facie showing of jurisdiction . . . simply is not required . . . ."

In *Peterson* the plaintiffs produced records that show defendant had lied about making a representation that its product was approved for storage and use by the NYC Fire Department and defendant lied about applying for several permits and receiving permission to sell and store some of its products in New York, albeit some years before the event alleged in the complaint in which plaintiff injured by defendant's product in NY.

Duboff v. Board of Higher Ed. of City of New York, 34 A.D.2d 824 (2d Dept. 1970).

If it is found that the NY longarm statute does not apply, the need for a plenary trial will have been obviated and, even if the issue is decided differently, a substantial saving of time will result on the plenary trial.

Usher v. Usher, 41 A.D.2d 368, 343 N.Y.S.2d 212 (3d Dep't 1973).

The courts have approved the principle that a "substantial ... jurisdictional question should be disposed of by the Court expeditiously at the threshold of the litigation" by the

ordering of an immediate trial. Overruled on different point by *Kramer v. Paronen*, 13 Mics. 3d 1235(A)(Sup. Ct. NY 2006).

Vandermark v. Jotomo Corp., 42 A.D.3d 931, 933 (4th Dept. 2007).

The Supreme Court dismissed the action for lack of personal jurisdiction under CPLR 302(a)(1) by concluding defendant's website did not amount to a transacting business in NY. The Fourth Department "remitted the matter to Supreme Court for an immediate trial pursuant to CPLR 3211(c) on the issue whether [Defendant's] creation and maintenance of a Web site constitute[d] the transaction of business on the Web site sufficient to confer personal jurisdiction against [Defendant] under the long-arm statute."

Matter of Shanty Hollow Corp. v Poladian, 23 A.D.2d 132, (3rd Dept. 1965).

The Court can entertain an oral motion when it appears that no prejudice would result from the informal procedure. No prejudice occurs when both parties are before the court and the court holds off on its decision until the opposing party can submit affidavits.