

New
matter

Rec'd in Ct
3/22/85 MJC

C 198—Summons with Notice, Supreme Court,
Personal or Substituted Service, 1-711

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62 WHITE STREET, NEW YORK, N. Y. 10013

Supreme Court of the State of New York
County of NEW YORK

HYMAN RAFFE,

Plaintiff(s)

against

CITIBANK, N.A. and JEROME H. BARR, individually and as
executors of the Estate of MILTON KAUFMAN, deceased,
and KREINDLER & RELKIN, P.C.

Defendant(s)

Index No.

Plaintiff(s) designates

County as the place of trial

The basis of the venue is

Residence of defendants.

Summons with Notice

Plaintiff(s) reside(s) at

County of

Nassau

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy
of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's
Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days
after the service is complete if this summons is not personally delivered to you within the State of New York); and in
case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated, March 21, 1985

Defendant's Address:

GEORGE SASSOWER, Esq.

Attorney(s) for Plaintiff(s)
Office and Post Office Address

2125 Mill Avenue,

Brooklyn, New York, 11234

(718) 444-3403

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

-----x
HYMAN RAFFE,

Plaintiff,

-against-

CITIBANK, N.A. and JEROME H. BARR,
individually and as executors of the
Estate of MILTON KAUFMAN, deceased, and
KREINDLER & RELKIN, P.C.,

Defendants.
-----x

Plaintiff, by his attorney, GEORGE
SASSOWER, Esq., complaining of the defendant
respectfully sets forth and alleges:

1. At all of the times hereinafter mentioned
the defendant, KREINDLER & RELKIN, P.C. was a
professional corporation licensed to practice law in the
State of New York.

2. At all of the times hereinafter mentioned
the defendant, CITIBANK, N.A., was a national bank,
licensed to operate in the State of New York.

3. At all of the times hereinafter mentioned
the defendants, CITIBANK, N.A. and JEROME H. BARR, were
and still are the executors of the Will of MILTON
KAUFMAN, deceased.

4. At all of the times hereinafter mentioned the defendant, KREINDLER & RELKIN, P.C. were authorized to act on behalf of the defendants, CITIBANK, N.A. and JEROME H. BARR, in an action pending in this Court under Index No. 16792/1980.

FOR A FIRST CAUSE OF ACTION

5. Plaintiff repeats, reiterates, and realleges each and every allegation of the complaint marked "1" through "4" inclusive, with the same force and effect as though more fully set forth at length herein, and further alleges.

6. In an action pending in this Court bearing Index No. 16792, the plaintiff hereinabove served written interrogatories on defendants herein, which included the following interrogatory:

"2. Set forth all attorney's fees incurred by plaintiffs thus far, annexing any and all documentation for same, including all time sheets, bills rendered, and all payments received, including dates thereof." [emphasis supplied]

7. By Order of the Appellate Division, First Department, of August 18, 1983, the defendants herein were supposed to comply with same, within fifteen days after service of a copy of the Order with Notice of Entry, without cost or expense to plaintiff for same.

8. As of December 19, 1984, the same was not fully complied with by defendants, and thus to save further litigation cost and expense, the plaintiff tendered to the defendant, KREINDLER & RELKIN, P.C. a check of \$200 (Exhibit "A"), in order to promptly receive photostatic copies of the documents that had not been received by him for compliance of the aforementioned interrogatory.

9. The aforementioned check was accepted by KREINDLER & RELKIN, P.C. for such purpose and cashed.

10. Notwithstanding the aforementioned, the defendants have not complied with the contractual understanding, resulting in damage to the plaintiff.

FOR A SECOND CAUSE OF ACTION

11. Plaintiff repeats, reiterates, and realleges each and every allegation of the complaint marked "1" through "4" inclusive, with the same force and effect as though more fully set forth at length herein, and further alleges.

12. On or about the 7th day of October, 1980, the defendants in order to cause the defeat of plaintiff's motion, caused to be submitted to this Court an affirmation by KREINDLER & RELKIN, P.C., a portion of which is annexed hereto (Exhibit "B").

13. That the Court relied on such representation, resulting in the defeat of plaintiff's motion.

14. Thereafter, the defendants, in order to defeat plaintiff's appeal submitted a Brief to the Appellate Division, First Department, a portion of which is annexed hereto (Exhibit "C").

15. That the Court relied on such representation, resulting in the defeat of plaintiff's appeal.

16. That the aforementioned were submitted with the intention of deceiving the plaintiff and the courts, and in fact, did so, and as far as defendant, KREINDLER & RELKIN, P.C., were concerned violated, inter alia, the provisions of the Judiciary Law of the State of New York.

17. As a result of all of the aforementioned the plaintiff has been and will be damaged.

WHEREFORE, plaintiff demands judgment against the defendants in each of the aforementioned causes of action in the sum of \$500,000, together with interest, costs and disbursements.

GEORGE SASSOWER, Esq.
Attorney for plaintiff
2125 Mill Avenue,
Brooklyn, New York, 11234
(718) 444-3403

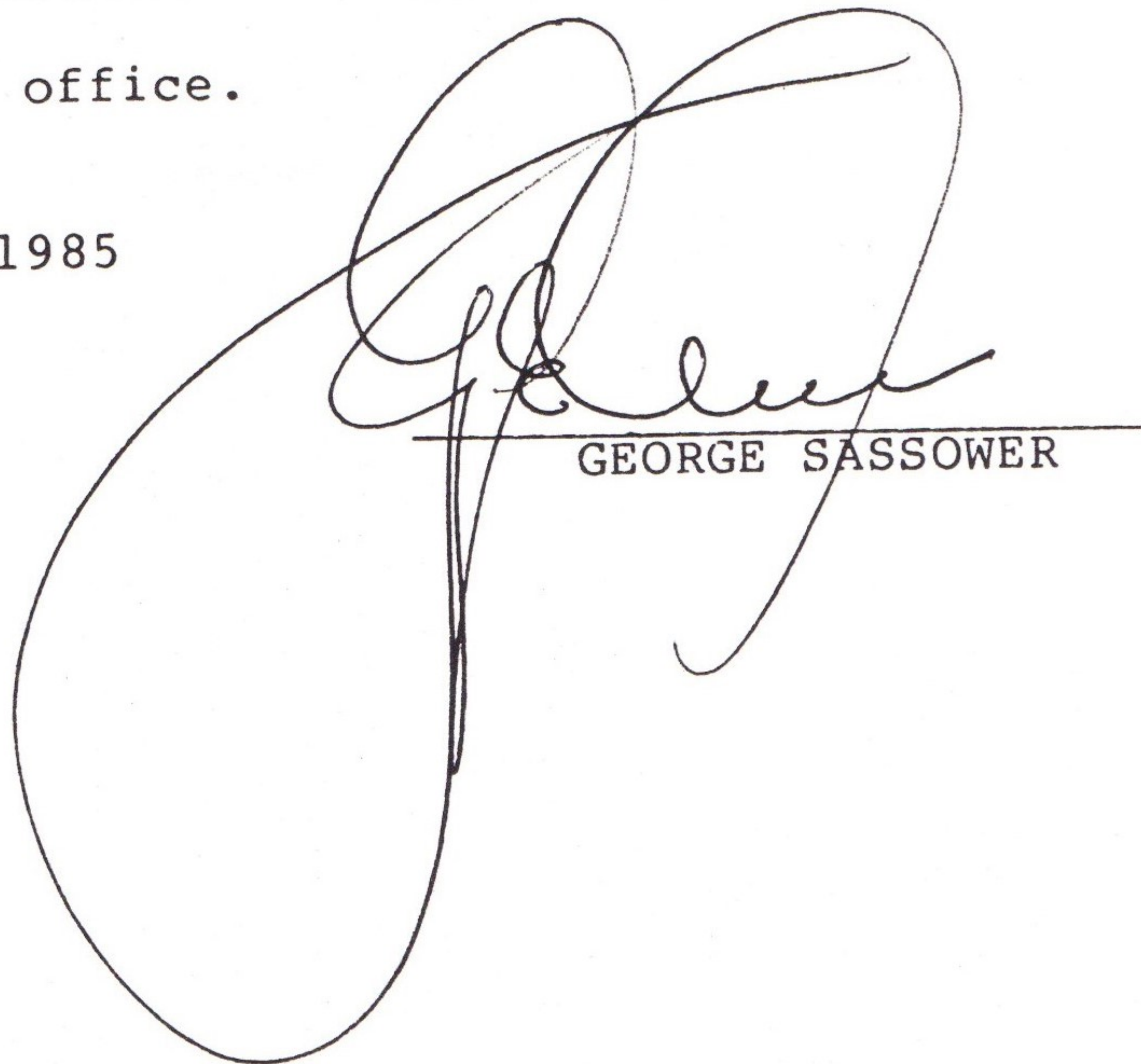
GEORGE SASSOWER, Esq., an attorney admitted to practice law in the courts of the State of New York, affirms the following to be true, under the penalty of perjury:

Affirmant is the attorney for the plaintiff and has read the foregoing complaint and knows the contents thereof.

The same is true to his own knowledge.

Plaintiff is not in the County wherein affirmant has his office.

Dated: March 21, 1985



GEORGE SASSOWER

There is absolutely no basis to defendant's motion. This action is not "based on a prior action". The second cause of action herein seeks to recover plaintiffs' attorneys' fees incurred in this action, not in the prior action as implied in the moving papers. Therefore, there has been no "splitting" as attorneys' fees are only sought in connection with the action now pending before this Court. Likewise, the third cause of action seeks to collect certain costs, penalties and expenses incurred by plaintiffs. These items are not "based on a prior action", and likewise, have not been "split".

(b) Defendant moves, pursuant to CPLR §3211(a)(5), but totally fails to specify which ground, if any, his motion is predicated upon. Defendant also seeks dismissal pursuant to CPLR §3211(a)(7), but fails to set forth the alleged basis for his assertion that the second and third causes of action fail to state a cause of action.

(c) The moving papers fail to attach copies of the complaint herein and fail to provide the Court with any of the papers filed in the prior proceeding referred to in the moving papers. On their face, the moving papers are insufficient to support a motion to dismiss.

FACTS

3. The underlying facts involving this action are set forth in the complaint verified by the plaintiff, Jerome H.

✓
guarantee which plaintiffs have incurred or will incur in connection with this action. Plaintiffs do not seek to recover in this action their attorneys' fees which were incurred in connection with the prior action.


12. In the third cause of action, plaintiffs, pursuant to the express terms of the written guarantee, seek to recover their additional costs, penalties and expenses which they have incurred and continue to incur.

✓
13. The second and third causes of action are not "based on a prior action". They are completely separate and independent causes of action. There has been no "splitting" of any action. Attorneys' fees and costs for the prior action are not sought in this action.

14. Raffe's motion to dismiss is completely frivolous and has been interposed by Raffe as a dilatory tactic to delay and avoid payment by Raffe of his obligations.

WHEREFORE, defendant's motion to dismiss the second and third causes of action of the complaint should be denied in its entirety.

Dated: New York, New York
October 7, 1980


DONALD B. RELKIN

Index No. 21208/79). On April 10, 1980, the Supreme Court, New York County, in a decision by the Honorable Richard S. Lane, (24-29) granted Plaintiffs' Motion for Summary Judgment in Lieu of Complaint against Raffe, Dann and Sorrentino. The Order granting Summary Judgment pursuant to CPLR §3213 was affirmed on appeal by the Appellate Division, First Department on March 12, 1981(30-36).

THE INSTANT ACTION

Since the institution of the prior action, Puccini defaulted in the payment of additional acceptances totalling \$461,933.33, for which amount Citibank charged the account of Kaufman(14). Accordingly, pursuant to the terms of the written guarantees, Plaintiffs-Respondents herein instituted this action to recover \$346,449.99 from Appellant Raffe, which sum represents 75% of \$461,933.33, the amount charged against the collateral deposited by Kaufman with Citibank(14).

In the second cause of action herein(56-57) which is the subject of Appellant's motion to dismiss, Plaintiffs-Respondents seek to recover their attorneys' fees as permitted under the guarantee, which fees they have incurred or will incur in connection with this action. In the third cause of action, which is also the subject of Appellant's motion to dismiss, the Plaintiffs-Respondents, again pursuant to the express terms of the

written guarantee, seek to recover their additional costs, penalties, and expenses which have been incurred and continue to be incurred with respect to the prosecution of this action(15).

The motion for dismissal of the "second" and "third" causes of action was based upon the purported grounds that Plaintiffs-Respondents' have engaged in an impermissible "splitting" of causes of action.

Special Term, per Justice Richard W. Wallach, denied Appellant's motion to dismiss, stating:

"...The moving affirmation is pitifully sparse and insufficient even when read together with the reply affirmation. Movant is under the impression that by making conclusory statements with nothing in support of them and without even attaching exhibits, he can persuade the Court that insofar as the aforesaid causes are based on a prior action resulting in judgment any recovery is barred and that plaintiffs are splitting causes of action." (59-60)

Special Term further invited the Appellant herein to renew his application upon proper papers. The Court specifically stated that it was not passing upon the merits of the application in view of the deficiencies in Appellant's moving papers, which precluded such an analysis.

B. The "Second" And "Third" Causes Of Action
Of Plaintiffs-Respondents' Complaint
Are Valid And Do Not Constitute An
Impermissible Splitting of Causes Of Action.

Appellant's allegation that Plaintiffs-Respondents have committed an impermissible splitting of the "second" and "third" causes of action to the complaint is totally devoid of legal or factual merit.

Since the institution of the prior action, Puccini defaulted in the payment of additional acceptances totalling \$461,933.33, for which amount Citibank had charged the account of Kaufman. Accordingly, pursuant to the terms of the written guarantees, Plaintiffs-Respondents in this action seek to recover from Raffe for the payment of \$346,449.99, which represents 75% of \$461,933.33, the amount charged against the collateral deposited with Citibank by Kaufman.

In the "second" cause of action herein, Plaintiffs-Respondents seek to recover their attorneys' fees, as permitted under the guarantee, which Plaintiffs-Respondents have incurred or will incur in connection with this action. Plaintiffs-Respondents do not seek to recover in this action their attorneys' fees which were incurred in connection with the prior action. In the "third" cause of action, Plaintiffs-Respondents, pursuant to the express terms of the written guarantee, seek to

recover their additional costs, penalties and expenses which they have incurred and continue to incur. In this regard, the "second" and "third" causes of action are not "based on a prior action". They are completely separate and independent causes of action. There has been no "splitting" of any action. Attorneys' fees and costs for any prior action are not sought in this action.

Accordingly, Appellant's allegation that Plaintiffs-Respondents have engaged in an impermissible splitting of causes of action is totally devoid of merit. The "second" and "third" causes of action alleged in the complaint seek to recover fees and expenses with respect to the within action, and do not seek to recover any amounts pertaining to an unspecified prior action. Since Appellant's Brief consists solely of a generalized hornbook recitation of the law regarding splitting causes of action without establishing the principle's applicability to the facts of this case, it is evident that Appellant and his counsel have prosecuted this appeal in bad faith.