UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

PUCCINI CLOTHES, LTD.,

Plaintiff,

File #
85Civ.3712(WCC)

-against-

Hon. FRANCIS T. MURPHY, Presiding Justice; Hon. THEODORE R. KUPFERMAN; Hon. JOSEPH P. SULLIVAN; Hon. BENTLEY KASSAL; and Hon. ERNST H. ROSENBERGER, Associate Justices, individually and on behalf of the APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT; LEE FELTMAN, Esq.; and DAVID S. COOK, Esq.

Defendants.

----------x

Plaintiff, complaining of the defendants, respectfully sets forth and alleges:

1a. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, §1343, this being a suit in law and equity which is authorized by law, Title 42, United States Code §1983., et seq., brought to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges, and immunities secured by the Constitution and laws of the

Exhibit "A"

United States or any Act of Congress providing for equal rights and due process of citizens and persons. The rights here sought to be redressed are rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution.

b. This action, on behalf of plaintiff, a ward of the state court, seeks the nullification of the Order of the defendant, the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, dated May 9, 1985 (#23136-45N), and related Orders of that Court.

c. The contention is made that where the ultimate beneficiary of judicial action is a helpless trust of the state court, made so by the court itself, the judicial defendants may not deprive such trust of its basic federal legal rights because a judicially appointee defaults in advancing the legitimate legal rights of his judicial trust, without the judicial defendant publicly demanding an explanation for such conduct.

d. As shown herein, the judicial defendants have actual knowledge that plaintiff's judicial appointee is betraying his ward in the judicial forum and they, in bad faith, have taken no steps to remedy the situation.

e. In addition to prejudicing plaintiff's legitimate rights, causing the judicial proceeding to be a farce and mockery of justice, the rights of the public are being transgressed by what is, in effect, a closing of a courtroom on a public matter.

AS A FIRST CAUSE OF COMPLAINT

2a. Until June 4, 1980, the plaintiff was an active domestic New York State corporation, capable of protecting its own constitutional and legal rights.

b. By Order of the Supreme Court of the State of New York, County of New York, of June 4, 1980, the plaintiff was involuntarily dissolved, with its assets and affairs vesting in the state court.

c. From the aforementioned date, when the order of dissolution was entered, the plaintiff, albeit still a person within the meaning of the Constitution of the United States, was legally helpless, except as its conduct and actions were performed for it by the said Supreme Court, New York County, or those acting on its behalf.

3a. From June 4, 1980 until February 1, 1982 there was no one legally authorized to act for and on behalf of the plaintiff, except for the Supreme Court, New York County itself.

b. During such period, from June 4, 1980 until February 1, 1982, the Supreme Court, New York County, albeit the legal custodian, neglected and abandoned all legal, moral, and ethical obligations it had to care for the assets and affairs of the plaintiff.

c. During such period from June 4, 1980 until February 1, 1982, the judicially entrusted assets of plaintiff were massively and unlawfully dissipated, under the orchestration of Kreindler & Relkin, P.C. ["K&R"], and its clients, Citibank, N.A. ["Citibank"] and Jerome H. Barr, Esq. ["Barr"], individually and on behalf of the Estate of Milton Kaufman for their own use and to corrupt others.

4a. Prior to June 4, 1980, the various stockholders in plaintiff had executed various cross-guarantees on behalf of plaintiff, wherein the plaintiff was the ultimate obligor.

b. It is hornbook law in New York, as elsewhere, that prejudicing or destroying the right of indemnification or subrogation, prejudices or destroys the guarantee itself.

c. Consequently, the cross-guarantees that were executed in favor of Milton Kaufman, were nullified totally or pro tanto, by the unlawful dissipation of plaintiffs court entrusted assets.

5a. By Order dated February 1, 1982, the defendant, LF, was appointed by the Supreme Court, New York County, as its agent and receiver, operating under color of local judicial law in the caring for the assets and affairs of plaintiff.

b. Shortly thereafter, the said defendant, LF, designated his law firm, Feltman, Karesh & Major, Esqs. ["FK&M"], to act on his behalf and on behalf of plaintiff, without complying with the mandatory, non-discretionary rule for such designation (22 NYCRR, §660.24), causing such appointment to be "null and of no effect" [subd. "f"].

6a. In moving for summary judgment against one of the cross-guarantors, Hyman Raffe ["Raffe"], without any pre-trial disclosure, K&R and its clients, Citibank and Barr, executed very emphatic and dramatic denials that any dissipation of Puccini's assets had taken place after June 4, 1980.

b. The receiver, LF, his law firm, FK&M, acting as representatives of plaintiff, a third party defendant in such action, being in possession of plaintiff's financial books and records, knew that such assertions were false and perjurious, but nevertheless, operating under an agreement with K&R to corrupt justice, did not expose the falsity of such K&R's representations to the court.

c. The law firm of Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C. ["K&R"], representing other third party defendants in that litigation, also knew such assertions by K&R and its clients to be perjurious, but also under a corrupt agreement did not reveal the truth to the court.

d. LF, FK&M, and ANBL&K, failed to expose such perjury although they had actual knowledge from, inter alia, a prior order of the court, that if such perjurious affidavits and affirmation were believed by the court, which it was, it would result in a judgment over against their third party defendant clients, including Puccini, the helpless ward of the court.

e. As a result thereof, a judgment was recovered over, by Raffe, the third party plaintiff, against the plaintiff, in the sum of $475,425.86.

7. In addition to the above-mentioned, the court appointed receiver, LF, and his law firm, FK&M, were continually acting in concert with the adverse interests of K&R and its clients, in and out of the judicial forum, committing many other acts of fraud and corruption, including:

a. Petitioning the court to appoint Rashba & Pokart, investigate the charges of misconduct made by Raffe against K&R and/or its clients, all at plaintiff's expense, without revealing that in fact that K&R and/or its clients, were indeed the clients of Rashba & Pokart.

b. ANBL&K, the other firm charged by Raffe of serious acts of misconduct, had previously and unlawfully taken $10,000 from plaintiff's judicially entrusted bank assets, had it entered as a "legal" disbursement on plaintiff's books, "laundered" $6,200 of said sum and gave it to Rashba & Pokart in payment of an invoice to K&R, keeping for itself $3,800 as a "laundering fee". This also was not openly revealed to the court.

c. Under New York law, the court may not appoint an investigator to investigate his own client and those who previously "laundered" monies to it, certainly not without full and open disclosure, here totally absent, and such appointment is a nullity, as a matter of law.

d. Such appointment is a further nullity because of the non-compliance with 22 NYCRR §660.24[f].

8a. Upon obtaining some of the "hard evidence" of the larceny of plaintiff's judicially entrusted assets, perjury, and general corruption, which included the court's agent, LF, and his law firm, FK&M as active participants, an action was commenced in federal court, which included the plaintiff, as a party plaintiff.

b. Included as a defendant in that action was the Supreme Court of the State of New York, County of New York, against whom serious but truthful allegations of misconduct were set forth.

c. The aforementioned federal action, the confession of ANBL&K that it had taken funds from plaintiff after June 4, 1980 and given a portion thereof to Rashba & Pokart, the announcement that Rashba & Pokart, also a defendant in the federal action, was now ready to reveal some of the details of the financial dealings concerning plaintiff's affairs after June 4, 1980, prompted ex parte arrangements to be made by and between LF, FK&M, and on information and belief others, with the Administrative Judge of Supreme Court, New York County, Hon. Xavier C. Riccobono and/or his office.

d. Such arrangements included a plan to stonewall any and all normal avenues of legal redress by the victims of the aforementioned corruption and conspiracy, including any redress to the plaintiff herein, directly or indirectly.

9a. The plan, as developed, included a scheme to stonewall any and all relief that might be given plaintiff by the Office of the Attorney General of the State of New York.

b. Business Corporation Law §1214 permits the Attorney General to intervene on behalf of those interested in the assets and affairs of involuntary dissolved corporation, and mandates other action by such office for the protection of involuntarily dissolved corporations, including the filing of financial reports and accountings.

c. In the local area, except for titular superiors, the defendant, Senior Assistant Attorney General David S. Cook, Esq., has long been the foot soldier and five star general in this essentially one man unit, within the litigation bureau of the Attorney General's Office.

d. Legal representation of the judiciary and members thereof, generally follows a rotation system in the approximately 70 man litigation bureau of the Attorney General's Office in the New York area.

e. Contrary to the normal practice and procedure in the Attorney General's Office, and in direct violation of the Canons of Ethics, judicial and professional, Xavier C. Riccobono, the Administrative Judge, on information and belief, commandeered and/or embraced David S. Cook, Esq., as his and his court's exclusive legal representative in the litigation involving plaintiff, when he and members of his court were charged with acting contrary to plaintiff's interests.

f. Defendant, David S. Cook, Esq., was commandeered although the Administrative, Judge Xavier C. Riccobono, knew that he, Mr. Cook, by reason of his governmental position in the Attorney General's Office, had received private and confidential information concerning judicial misconduct, including his own, from Raffe's attorney.

* * *

10a. From the later part of 1983 and through 1984, the judicial defendants were generally aware of the situation prevailing at nisi prius including some of the misconduct that was taking place but nevertheless and invariably abstained, which although faulted, did not rise to a level mandating federal intervention.

b. The first direct challenge to the judicial defendants came on an appeal by Raffe (#667-669), sub judice since January 31, 1985, wherein LF and FK&M did not support Raffe's appeal to vacate a judgement secured by the clients of K&R, although plaintiff was to fully indemnify Raffe for the payment of such judgment.

c. By motion dated December 12, 1984, Raffe's attorney moved at the judicial defendant's court, with the body of the moving affirmation reading as follows:

> "This affirmation is in support of a motion for an Order appointing a Receiver, on behalf of Puccini Clothes, Ltd. ['Puccini'], to supersede Lee Feltman, Esq. ['LF'], with authority to engage counsel, for the purpose of this appeal, together with any other, further, and/or different relief, as to this Court may seem just and proper in the premises.
>
> 2. To assert that a reversal of the Orders appealed from is compelling, would be to lose sight of the fact that absent a clearly meritless situation, Puccini, a once solvent corporation, rendered a legally helpless eunuch, by the courts, is entitled to be vigorously represented at bar.
>
> 3a. On June 4, 1980, Puccini was involuntarily dissolved, its assets and affair became custodia legis.
>
> b. Nevertheless, Puccini remains a person within the meaning of the XIV Amendment of the Constitution of the United States and entitled to 42 USC §1983 relief.

4a. The minimum advantage gained by Puccini as a result of a reversal herein is approximately $550,000.

b. Nevertheless, the Receiver, an agent of the Court, took and takes no position on the matter, causing, perhaps irreparable, prejudice to Puccini, since the bond posted is only $500,000, and the damages greatly exceed same.

Does not the court appointee, the judicial agent, operating under 'color of law', owe this Court, the judicial trustees, and those interested in Puccini's assets, an explanation why?

5a. The assertion by affirmant that the Receiver and his law firm have and are being 'paid off' by the plaintiffs and their attorneys, from Puccini's assets, for 'throwing the game' is significant (Exhibit 'A'), but not central.

b. Also significant, but not central, is that this betrayal of trust by the Receiver, has been a consistent course of misconduct.

Thus, the Kreindler & Relkin, P.C. ['K&R'] firm, whose clients hold a 25% interest in Puccini, consented to give Feltman, Karesh & Major, Esqs. ['FK&M'], almost $200,000 for doing nothing to advance its interests, except by betrayal.

Thus, Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C. ['ANBL&K'], whose clients hold a 50% interest in Puccini, consented to give FK&M for doing nothing to advance its interests, also except by betrayal!

6a. The issue is whether this Court has a non-delegable duty to insure that one incapable of representing itself, because of judicial action, is properly represented in the judicial forum.

b. At least, those who affirmant claims are liable for any deficiency in the posted bond (see Raffe v. State, January 1985 Term, #670), are entitled to notice of the events so that they may protect their interests.

c. Affirmant states that Puccini may be irreparably harmed, because the State claims judicial immunity, an issue without known precedent in this jurisdiction, either way (but see, 48A CJS, Judges, §91, p. 700).

7a. No relief is sought for defendants-respondents, Eugene Dann ['Dann'] and Robert Sorrentino ["Sorrentino"] since, provided they have notice [which affirmant doubts], they and their attorneys may chart any course they desire.

b. Thus, we have a situation wherein ANBL&K, are not supporting appellant, although its clients have a judgment and a claim against them for two-thirds of the approximate sum of $550,000.

c. This freedom of choice is not available to the Receiver, LF, and his law firm, FK&M, for their client is the court's trust, and same is held for the benefit of stockholders, creditors, and other interested parties.

8a. Certainly the Attorney General should be made aware of this egregious states of affairs, since he is Puccini's statutory 'watchdog'.

b. As Winston Churchill would have said, 'What a watchdog'!

9a. Since appellant is a 25% shareholder in Puccini and holds a judgment against it for almost $500,000 (Exhibit 'B'), he has standing (Barrows v. Jackson, 346 U.S. 249), to bring this motion.

b. The Receiver would be well advised to voluntarily resign!"

d. All relief was denied, although the assertions of Raffe's attorney were not controverted.

11. Raffe's attorney was equally, if not more, assertive in his Brief, nevertheless, LF and FK&M, simply did not support him, although, to repeat, plaintiff was a full and complete indemnitor!

12a. In the meantime, the fraud and corruption at nisi prius, and elsewhere, heightened and actions and proceedings were commenced in state, as well as in the federal, courts, with Xavier C. Riccobono and his subaltern and personal designee, Referee Donald Diamond, as named litigants.

b. The misconduct of Xavier C. Riccobono and Referee Donald Diamond made them constitutionally incapable of serving in the judicial process in litigation involving plaintiff, and under state law, they, likewise were jurisdictionally incapable of acting (Judiciary Law §14).

c. Despite the aforementioned disqualifications, said Xavier C. Riccobono and Referee Donald Diamond, continued in their judicial, administrative, and enforcement positions in plaintiff's litigation, to the extent that they were unconstitutionally "directing" other jurists as to the manner they should dispose of matter before them (cf. Balogh v. H.R.B. Caterers, 88 A.D.2d 136, 452 N.Y.S.2d 220 [2d Dept.]), who as a general rule either complied or the matter reassigned.

d. All the plaintiff's or plaintiff's related litigation totally disintergrated and became a patent farce and mockery on justice.

13a. Once again, in the appeal resulting in the Order dated May 9, 1985 (#23136-45N), although plaintiff was and is a full and complete indemnitor of Raffe, an appellant before the judicial tribunal of defendant, the court's appointee did not render any support for a reversal, albeit, on its merits, a reversal is compelling.

b. It is painfully clear that plaintiff, is in the eyes of the state judicial system is nothing more than a "fortune cookie", and to advance that result, it is being deprived of meaningful counsel and representation, and any and all of its constitutional rights, federal and state, in bad faith, in such judicial endeavor.

c. It is also painfully clear, that insofar as the defendant judicial members and the defendant Assistant Attorney General are concerned, the federal rights of plaintiff, must be subservient to the attempts made to whitewash the misconduct, and indeed corruption of state nisi prius, and that of its appointees.

d. On information and belief, Xavier C. Riccobono, knew of the outcome of the aforementioned appeal before its submission, and the panel of the defendant court was altered to insure such desired outcome.

AS AND FOR A SECOND CAUSE OF COMPLAINT

14. Plaintiff repeats, reiterates, and realleges each and every allegation of the complaint marked "1" through "13" inclusive, with the same force and effect as thought more fully set forth herein, and further alleges.

15. Plaintiff demands, by reason of this litigation, reasonable, but substantial counsel fees.

WHEREFORE, it is respectfully prayed that an Order be entered vacating the Order of May 9, 1985 (#23136-45N) together with the underlying judgment, until such time as plaintiff is afforded constitutional protection, whether it be in the state or federal forum, together with such other, further, and/or different relief as to this Court may seem just and proper in the premises.

Yours, etc.,

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

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF KINGS)

HYMAN RAFFE, first being duly sworn, deposes, and says:

I am a 25% stockholder in Puccini Clothes, Ltd., and also have a judgment and other claims against Puccini in a sum in excess of $500,000.

I verily believe I have a constitutional right under the circumstances set forth in the complaint to bring this action on behalf of Puccini Clothes, Ltd.

I have read the foregoing complaint and the same is true of my own knowledge, except as to matter believed to be true on information and belief, and as to thos matters, I believe same to be true.

HYMAN RAFFE

Sworn to before me this
15th day of May, 1985

Kenneth Silverman

KENNETH SILVERMAN
Notary Public, State of New York
No. 24-4608988
Qualified in Kings County
Commission Expires March 30, 1987