

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

-----x
HAROLD COHEN, individually, and on behalf of
those similarly situated,

Petitioner,

against-

HON. ELLIOT WILK, ACTING JUSTICE OF THE
SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK, and THE JUSTICES and
ACTING JUSTICES OF THE SUPREME COURT OF THE
STATE OF NEW YORK, COUNTY OF NEW YORK,

Respondents.

For a Writ of Prohibition.

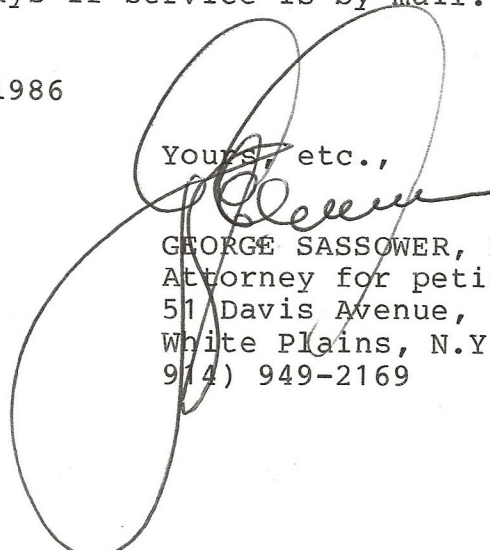
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S I R S:

PLEASE TAKE NOTICE, that upon the annexed petition
of HAROLD COHEN, dated September 20, 1986, and all the pleadings
and proceedings had heretofore herein, the undersigned will move
this Court at a Stated Term of this Appellate Division, First
Judicial Department, held at the Courthouse thereof, 25th Street
and Madison Avenue, New York, New York, 10010, on the 21st day of
October, 1986, for a Writ of Prohibition against the respondents,
together with any other, further, and/or different relief as this
Court may seem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE, that opposing papers, if any, are to be served upon the undersigned at least seven (7) days before the return date of this cross-motion, with an additional five (5) days if service is by mail.

Dated: September 20, 1986

Yours, etc.,



GEORGE SASSOWER, Esq.
Attorney for petitioner,
51 Davis Avenue,
White Plains, N.Y. 10605
914) 949-2169

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

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HAROLD COHEN, individually, and on behalf of
those similarly situated,

Petitioner,

-against-

Hon. ELLIOT WILK, ACTING JUSTICE OF THE
SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK, and THE JUSTICES and
ACTING JUSTICES OF THE SUPREME COURT OF THE
STATE OF NEW YORK, COUNTY OF NEW YORK,

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TO THE JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK:
FIRST JUDICIAL DEPARTMENT:

The petition of HAROLD COHEN, by his attorney,
GEORGE SASSOWER, Esq., respectfully shows this Court, and
alleges:

1a. Petitioner respectfully requests that the
respondent, ELLIOT WILK, be prohibited from proceeding with a
non-summary criminal contempt proceeding against him, by the
Attorney General, for a variety of reasons, all collateral to
petitioner's guilt, vel non.

b. Since this type of improper practice by the
Attorney General is not unusual, on information and belief,
petitioner believes that with respect to some aspects of this
petition, the rights of others similarly positioned be
adjudicated.

2a. Petitioner was served with a Notice of Motion with supporting papers, within the original proceeding itself, which weighed, three (3) pounds and three (3) ounces, or fifty-one (51) ounces.

b. Except for a recitation of Judiciary Law §770, the clear intent of the proceeding (Exhibit "A") is one of criminal, rather than civil, contempt, by some ex post facto process.

c. To such motion, petitioner's plea was essentially one of not-guilty, and such plea was eventually accepted by the Attorney General and by the Court.

d. Petitioner asserts that such criminal contempt proceeding, is an independent proceeding, with a new title, a new index number, and a new format, and that petitioner is prejudiced both at nisi prius and on review by such improper form, as will be partially shown hereinafter herein.

3a. If the Attorney General had, in an independent proceeding, set forth his charges in a clear and concise manner, in accordance with basic and accepted pleadings, a respondent would know instantly what the charges were, without delving through several pounds of papers.

b. According to petitioner's attorney, after reading mountains of material contained in the supporting papers, the criminal charges against petitioner is that he caused to be issued process, in several instances, from the wrong venue -- nothing more!

c. Nevertheless, neither petitioner nor his attorney, is certain that the respondent, Hon. ELLIOT WILK, will come to the same conclusion, after hours of reading, infected initially, with a demand that the Attorney General is claiming monetary fines approximating \$5,000,000, in addition to incarceration.

d. Contrary to the Attorney General's repeated assertions, on information and belief, there can be no criminal contempt for the failure of the petitioner to pay \$2,000 or any other sum of monies that a Court may direct! Certainly a fine of \$5,000 per day and incarceration cannot be the consequence, especially without prior notice!

e. Contrary to the Attorney General's repeated assertion, on information and belief, there can be no criminal contempt for the failure of the petitioner to perform an act, particularly those acts which the Attorney General alleges.

f. Contrary to the Attorney General's repeated assertion, on information and belief, there can be no criminal contempt, which is conditioned on future performance, e.g., \$5,000 for each day of violation.

g. To repeat, petitioner's failure, vel non, as alleged by the Attorney General, is merely that petitioner caused to be issued process, in several instances, from the wrong county, and as to those instances, as far as one can determine from the voluminous papers, the Statute of Limitations, has caused same to be non-actionable in a criminal contempt proceeding, entitling petitioner to a Writ of Prohibition on those charges.

4a. The criminal charges against petitioner, are subject to a constitutional and statutory mandate that petitioner be prosecuted within a specified period of time or with reasonable dispatch.

b. This criminal proceeding should have been given a priority over civil proceedings, but apparently it was not.

c. The Attorney General made no attempt to expeditiously comply with disclosure mandates until a few days before the matter was set down for trial when he simply stated it had no "United States v. Agurs material" -- nothing more!

d. The respondent, Hon. ELLIOT WILK, made no attempt to provide pre-trial disclosure, or afford petitioner any of his criminal constitutional or statutory rights! This unquestionably was essentially the fault of the Attorney General who, on information and belief, brings on these matters, as if they are simple motions in a civil proceeding, like the failure to make alimony payments on time, rather than an independent criminal proceeding!

e. An independent criminal proceeding, with a criminal title, would unquestionably put not only the petitioner on notice, but also the court!

5a. On information and belief, it has long been the law that in contempt proceedings, "the appearance of justice" is the constitutional requirement for adjudication.

b. There is no way that the "appearance of justice" can be satisfied, when the trier of fact, if it be the respondent, Hon. ELLIOT WILK, is caused to read irrelevant and not sustained charges which have been leveled at the petitioner by a few disgruntled customers. Of course, a few of petitioner's thousands of customers have made complaints about either the service, the charges, or the attention that was given to a particular complaint!

Why must the trier of fact be exposed to such complaints, when they are not the basis of any charges against petitioner?

Petitioner is reasonably certain that there are some litigants who complain about the best of judges! So what! Is that a cause for disqualifying a judge, or subjecting him or her to disciplinary proceedings?

c. Even as to the charges themselves, the difference between a customer responding to a Small Claims summons at Center Street or Borough Hall in Brooklyn, is only a few stops on the subway! Allegations that some customers were compelled to travel to "distant" forums, is not a proper pleading, but, at best a closing statement to a jury!

d. Would the Attorney General be satisfied if petitioner brought his small claims cases against his lower Manhattan customers, in the Harlem branch, and his up-town customers in the lower Manhattan branch?

6. If the consequences of the charges against the petitioner is as set forth in Exhibit "A", petitioner believes that the crime should be prosecuted by a presentment to a Grand Jury, prosecuted by the District Attorney, with all the criminal rights afforded to petitioner, since the Attorney General desires, not only about \$5,000,000, but to have petitioner incarcerated, as well, or that is the way the Notice of Motion reads!

7a. Although petitioner has been informed that on this prohibition request, the merits of the charges are not in issue, the Order which the Attorney General contends that petitioner violated contained the following proviso:

"ORDERED, ADJUDGED, AND DECREED that petitioner (the Attorney General) may make further application, on five (5) days notice, for the implementation and enforcement of the provisions of this Order."

b. If Mr. Justice MARTIN EVANS or the Attorney General were of the opinion that petitioner should be fined \$5,000 a day and/or be incarcerated for simply not paying \$2,000 costs (cf. Amendment VIII, U.S. Constitution), then petitioner should have been put on notice of such consequence!

c. Petitioner asserts that the Attorney General or the Court would be "shocked" if on receiving a "ticket" for overtime parking, they would thereafter learn, on paying the ticket, one week later, that the fine was \$5,000 per day, until paid!

8. If the consequences are, as alleged herein by the Attorney General, petitioner further prays that the respondent, Hon. ELLIOT WILK, be restrained from trying this matter until His Honor affords petitioner the right to a trial by jury, and the full panoply of constitutional and statutory criminal rights, matters on which petitioner reasonably believes that His Honor has no intention of doing at the present time!

9a. To the extent that this type of "abusive litigation practices" are generally employed by the Attorney General, petitioner respectfully requests that all the Justices of the Supreme Court of New York County be restrained by way of a Writ of Prohibition against them.

b. If the Attorney General intends to engage in in terrorem tactics, by thrusting such abusive papers upon the citizens of this State, then at least this Court should compel him to certify that he has read, understands, and is obeying the mandate of Gompers v. Buck's Stove 221 U.S. 418) or similar authoritative cases on the subject.

If anyone is engaging in abusive tactics or not giving obedience to the law, it is the Attorney General, not petitioner!

c. As the highest law enforcement authority in this State, the Attorney General should obey the law, not abuse same, or so petitioner and his attorney believe!

WHEREFORE, petitioner respectfully prays that this proceeding be granted in all respects, with costs.

Dated: September 20, 1986


HAROLD COHEN

~~CONFIDENTIAL~~

Nov. 27
October 1985, at 9:30 a.m. or as soon thereafter as counsel may be heard, why an order should not be entered:

1. Pursuant to the provisions of sections 750(A)(3) and 753(A)(3) of the Judiciary Law and section 5104 of the Civil Practice Law and Rules, adjudging the respondent guilty of criminal and civil contempt of court and punishing him by incarceration and appropriate fines upon the ground that he has willfully disobeyed the Order and Judgment of this Court dated February 24, 1984, and entered March 15, 1984, which disobedience has impaired, impeded, prejudiced, and defeated the rights of the petitioner and the public whom he is sworn to protect; and

2. Pursuant to the provisions of section 751(4) of the Judiciary Law, imposing a fine upon the respondent in the amount of \$5,000 for each day that he has willfully violated the Order of this Court dated February 24, 1984, and entered March 15, 1984; and

3. Ordering the respondent to comply fully with all of the directives of the Order of this Court dated February 24, 1984, and entered March 15, 1984; and

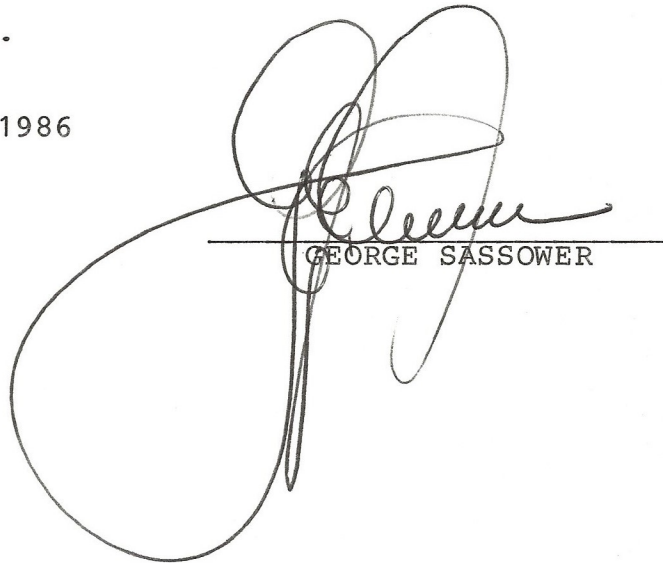
4. Directing the respondent to pay the costs of this application and such other and further relief as the Court may deem just and proper.

SUFFICIENT CAUSE APPEARING, pursuant to Judiciary Law ~~§761~~, let personal service of a copy of this Order together with the papers on which it is granted, upon the respondent on or before Nov 14, 1985, be deemed good

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

That he is the attorney for the petitioner herein, has read the foregoing petition and knows the contents thereof. That the same is true to his own knowledge, except as to matters stated on information and belief, and as to those matters he believes same to be true.

Dated: September 20, 1986



GEORGE SASSOWER