

Benjamin

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GEORGE SASSOWER, :

Plaintiff, :

- against - :

ERNEST L. SIGNORELLI, ANTHONY :
MASTROIANNI, VINCENT G. BERGER, JR., :
JOHN P. FINNERTY, ALLEN KROOS, :
ANTHONY WISNOSKI and LEONARD J. :
PUGATCH, :

Defendants. :

-----X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of GEORGE SASSOWER, Esq., duly sworn to on the 3rd day of October, 1977, and all pleading and proceedings had heretofore herein, the undersigned will move this Court before Hon.

JACOB MISHLER, Room 5, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201 on the 21st day of October, 1977, at 10:00 o'clock in the forenoon of that day or as soon thereafter as Counsel may be heard for an

[Handwritten mark]

Order permitting reargument and permitting the acceptance of the annexed affidavit on such reargument and/or renewal of the motions heard on September 2, 1977, based upon the annexed affidavit of GEORGE SASSOER and upon such reargument and/or renewal vacating and modifying the determination of this Court dated September 20, 1977, together with any other, further and/or different relief as to this Court may seem just and proper in the premises.

Dated: October 3, 1977

Yours etc.,

GEORGE SASSOWER, Esq.
Attorney for plaintiff-pro se.
75 Wykagyl Station
New Rochelle, New York 10804
(914) 636-4050

TO: HON. LOUIS J. LEKKOWTIZ
JAMES C. MARSH, Esq.
DAVIDOW & DAVIDOW, Esqs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

GEORGE SASSOWER,

Plaintiff,

File No.
77 C 1447.

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,
VINCENT G. BERGER, JR., JOHN P. FINNERTY,
ALLEN KROOS, ANTHONY WISNOSKI, and
LEONARD J. PUGATCH,

Defendants.

-----x

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

GEORGE SASSOWER, first being duly sworn, deposes,
and says:

That he is the plaintiff in the above action
and makes this affidavit with respect to the Order/Decision
of this Court dated September 20, 1977.

The purpose of this affidavit is to reveal to this
Court that factual matter outside the pleadings which this
Court accepted as "fact" was error in fact, as well as error
in law.

1. This Court stated and accepted as fact that

" [b]y order of the Surrogate's
Court dated March 9, 1976,
plaintiff was removed as executor
for failure to render an accounting."
(p. 2).

On June 8th, 1972 I was issued Preliminary Letters
Testamentary with respect to the Estate of EUGENE PAUL KELLY
and Letters Testamentary on September 9, 1974.

Months prior to March 9, 1976 I served my accounting and the Order of March 9th, 1976 did not remove me as the executor (contrary to the statement by this Court).

Defendants' allegations of my removal on March 9, 1976, is an assertion which, like a chameleon, changes according to the circumstance at hand.

In any event there is not a scintilla of evidence to support any assertion of my removal on March 9, 1976 until the records of the Surrogate's Court were doctored almost a year later, as may be substantiated by the following:

a. With full knowledge and without objection from anyone and particularly the defendant, ERNEST L. SIGMORELLI, I made all mortgage payments on the real estate owned by the deceased for one year after March 9, 1976.

b. With the specific consent of all involved, including the defendant, ERNEST L. SIGMORELLI, I entered into a contract of sale for the real property in December of 1976 and obligated myself, as executor, to a broker for commission.

c. Annexed (Exhibit A) is a photostatic copy of a Certificate of Letters Testamentary, dated March 14th, 1977, which shows and certifies me as Executor as of that day.

d. By its very nature this estate had to have a fiduciary at all times and besides myself there was no one

one else appointed or recognized between March 9, 1976 and March 17, 1977.

e. That between March 9, 1976 and March 17, 1977, everyone including the defendant, ERNEST L. SIGNORELLI, all Surrogate Court personnel, and representatives of all the parties recognized me and only me as the executor of this estate. The minutes of March 17, 1977 which were being withheld from me did not come into my possession until recently and then only after the intervention of the Judicial Conference.

f. The decision of January 28, 1976 (on which the Order of March 9, 1976 was based) makes no mention of my removal.

g. It is hornbook law that constitutionally an executor may not be removed without citing all interested parties, which was not done here.

h. There are at least six (6) persons, not associated with me familiar with the estate after March 9, 1976 who knew of no order of my removal prior to March 1977.

i. Paragraph 8 of the affidavit of defendant, LEONARD J. PUGATCH, sworn to on June 10, 1977, submitted to Supreme Court : Suffolk County states:

" By order of the Surrogate's Court dated March 9, 1976, petitioner (plaintiff herein) was conditionally removed as executor of the estate unless he filed the previously ordered accounting within thirty days. A copy of said order is annexed hereto as Exhibit B."

When the defendant, LEONARD J. PUGATCH, and others learned that in fact such accounting had been filed, the version was revised. It is this revised version that has been presented to this Court and which this Court accepted as fact.

The statement that I was removed as Executor on March 9, 1976 is a fabrication manufactured in March of 1977 (one year later).

2. The statement that for my

"repeated refusal to comply with this order..." (p. 2)

is a canard that was destroyed by the testimony of VINCENT G. BERGER, JR. before Hon. GEORGE F.X. McINERNEY, on July 20, 1977. It was during such testimony that the Hon. GEORGE F.X. McINERNEY halted the hearings and sustained my Writ of Habeas Corpus.

3. This Court incorrectly stated (p. 3) that

" It is these facts which presumably induced plaintiff to file his pro se complaint."

This Court is entitled to come to any conclusion it desires, but I respectfully submit that it should hear all the relevant facts before coming to any conclusion.

4. With respect to the defendants FINNERTY, KROOS, and WISMOSKI this Court stated (p. 9):

"The affidavits filed by the moving moving parties disclose that (these) defendants' sole participation consisted of taking plaintiff into custody pursuant to the validly-issued order of contempt and warrant of commitment."

I do not know which "affidavits" the Court is referring to and it has already been determined that such order of contempt and warrant of commitment was not "validly issued.

Nevertheless the Order of Commitment states:

" ORDERED and ADJUDGED that the said GEORGE SASSOWER be imprisoned in close custody in the jail of th County of Suffolk for a period of 30 days, and it is further"

Had I been taken to the County Jail I would have been able to immediately obtain my Writ of Habeas Corpus. The fact is in this respect these defendants disobeyed the Order of contempt

5. On page 10 of the Order/Decision of the Court reference is made to my remark at oral argument.

Annexed hereto is a transcript of that portion of the proceedings and it is clear that this Court

"elevates to a literalistic definitional status what was obviously meant to be illustrative and nonexhaustive." (Mr. Justice Brennan in Trainor v. Hernandez, [U.S. , , 97 S. Ct. 1911, 1925, 52 L ed. 2d 486, 504]).

6. That I have ordered the entire transcript of such argument and since reference was made to same by this Court, I respectfully submit that the entire proceeding be made part of the record so that it may properly be reviewed by the Circuit Court.

WHEREFORE, deponent respectfully prays that this

affidavit be made part of the record of this Court
as part of this application for reargument and renewal,
together with any other, further, and/or different relief
as to this Court may seem just and proper in the premises.

GEORGE SASSOWER

Sworn to before me this
3rd day of October, 1977.

DUDLEY GAFFIN
Notary Public, State of New York
No. 37-4620839
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1978

Certificate of Letters Testamentary

P NO 58839

Surrogate's Court — Suffolk County

The People of the State of New York

To All to Whom These Presents Shall come, or may Concern, Greetings:

IT IS HEREBY CERTIFIED that on the 24 day of September, 1974

Letters Testamentary of the Last Will of _____

_____ deceased,

late of _____ Suffolk County, New York,

was duly issued by the Surrogate's Court of Suffolk County in _____

the Execut^{or} _____ is said will named and that the same are still valid and in full force.

IN TESTIMONY WHEREOF this certificate is issued under the seal of the court.

WITNESSED IN MY OFFICE, ERNEST L. NICHOLLELL, Surrogate, at Riverhead, N. Y., Suffolk County,

New York this _____ day of _____, 1974.

(SEAL)

EDWARD H. WOODARD
Chief Clerk Surrogate's Court
Suffolk County, New York

Exhibit A.

Colloquy

THE COURT: Mr. Sassower, what did Mr. Berger do to deprive you of your right of due process?

MR. SASSOWER: One, assaulted while I was being held by the defendant Signorelli.

THE COURT: I would like to eliminate any assault case from the civil rights action. Every one who is assaulted by a State Officer these days runs to the Federal Court and clothes themselves in a Federal action under 1983. Why don't you go into a State Court and sue him?

MR. SASSOWER: Your Honor, you asked me. I only gave you one example.

THE COURT: Yes, give me another example.

MR. SASSOWER: He was part and parcel--

THE COURT: Where did he assault you and how?

MR. SASSOWER: Judge, I really don't want-- I think there are things that are more important.

THE COURT: No, this is important to me. Where and when did he assault you and how?

MR. SASSOWER: He started screaming at me, berating me while I was being--with two sheriffs-- being held, being held, could not get my writ of habeas corpus.

THE COURT: Did he ever strike you or touch you?

Colloquy

MR. SASSOWER: No, your Honor.

THE COURT: Did he threaten you with assault or bodily injury?

MR. SASSOWER: Yes.

THE COURT: What did he say?

MR. SASSOWER: Well, among other things, that we will throw you in the can and we will throw the keys away.

THE COURT: And you interpret that as a threat to assault you?

MR. SASSOWER: Sir, with all due respect to your Honor, the respect I give to this Court in and out of Court, is the respect that I expect from another person. And while I am held, while I am held, I don't want to be abused.

THE COURT: Not everything that is said or done by one citizen to another citizen amounts to violation of Constitutional rights, you understand that?

MR. SASSOWER: I understand that, your Honor, and I do not intend to argue that with your Honor, but right down the line--

THE COURT: I have got an idea of the action against your client, thank you. I have got to get on with other matters. I would like to know who you represent and what claim.