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AUG 16 1977

NEW YORK CITY OFFICE

ATTORNEY GENERAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GEORGE SASSOWER,

Plaintiff,

Index No.
77 C 1447

-against-

Affidavit in
Opposition.

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:

This affidavit is in opposition to the motion
of Hon. LOUIS J. LEFKOWITZ dated August 8, 1977 and returnable
on August 19, 1977.

I. In the afternoon of August 12, 1977, I was
advised that this Court, sua sponte, adjourned this motion
to September 2, 1977. In view of this unrequested adjournment,
I shall proceed by cross-motion to dismiss this instant motion
for reasons set forth therein.

II. Furthermore, the Notice of Motion indicates
that these moving defendants served only the attorney for the
plaintiff and not the co-defendants or their attorneys, which
I contend, makes this motion defective.

III. The Complaint sets forth three (3) causes of
action, and the instant motion moves against the second and

third cause of action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

A. As to the second cause of action, these defendants contend under Rule 12(b)(6) that the "complaint fails to state a claim upon which relief can be granted" (Notice of Motion).

1. The second cause of action is against the defendant ERNEST L. SIGNORELLI (who has answered and admitted all of the allegations [¶¶25-30] of this cause of action and defendant JOHN P. FINNERTY who has defaulted in answering or moving.

The thrust of this cause of action is the statutory failure to provide a bail procedure by a convicted defendant pending appeal for the Surrogate's Court similar to that which exists in other courts.

The moving memorandum states (p. 6) that because the Supreme Court has annulled the criminal conviction against the plaintiff the matter is now "moot".

By Order to Show Cause issued by and returnable on August 16, 1977 in Surrogate's Court, this criminal contempt proceeding was reinstated and consequently for this and other legal reasons this issue is not legally moot.

2. These defendants refer this Court to their memorandum submitted to this Court on July 22, 1977 in further support of this motion on this cause of action.

a. Insofar as there is extensive material in defendants' memorandum of July 22, 1977 "outside the pleading" it should be "excluded by this court" (Rule 12[b]).

In the event this Honorable Court desires to entertain defendants' motion pursuant to Rule 56, then it is the contention of your deponent that he should be given reasonable forewarning, so that he may submit controverting material and submit further factual and legal material in support of his claim.

b. In my affidavit of July 18, 1977 submitted to this Court, I factually showed that defendants' actions were motivated by a desire to harass and conducted in bad faith, which defendants failed to controvert or dispute.

Annexed (Exhibit 1) is a copy of a letter to Hon. LOUIS J. LEFKOWITZ dated July 9, 1977 which clearly reveals defendants' attempt and desire to harass and their bad faith. The opinion of Hon. GEORGE F.X. McINERNEY confirms my conclusions with respect to the absence of merit on their part.

3. Since defendant LEONARD J. PUGATCH is not included in the second cause of action and the defendant ERNEST L. SIGNORELLI has interposed an answer, a Rule 12(b) (6) is legally inappropriate.

Furthermore, in view of the admissions of defendant ERNEST L. SIGNORELLI and the default of defendant JOHN P. FINNERTY, judgment in favor of plaintiff seems warranted (Rule [c]).

B. As to the third cause of action only the defendant LEONARD J. PUGATCH moves under Rule 12(b)(6).

I have no intention or desire to have this matter transformed into a Rule 56 motion for summary judgment, nevertheless I do believe that the matters hereinafter set forth herein to be properly before this Court.

1. The complaint was drawn to conform to the mandate that it be "short and plain" (Rule 8(a)).

Defendants' tactics must be judged in the light because of illness and accident, I no longer drive an automobile, the public transportation between Westchester County and Riverhead or Hauppauge is long, circuitous, difficult, and arduous. Not only have the defendants failed to make allowances for this situation but have taken advantage of same.

a. Defendants with full knowledge that the criminal contempt conviction against plaintiff was permeated with many jurisdictional defects and could not be sustained, caused plaintiff to make several arduous trips to Riverhead or Hauppauge.

b. Defendants caused plaintiff to make a needless trip to Riverhead when they knew they were going to make an application for an adjournment, on which application I had no objection. Had they communicated with me beforehand, I would have likewise consented and would not have had to make this unnecessary journey.

c. Annexed (Exhibit 2) is my affidavit which clearly speaks of bad faith by the defendants and

their attempt to harass.

2. This complaint was verified on July 10, 1977 and since that time other acts of misconduct by defendants have added tiles to the mosaic better defining the nefarious intent on their part.

Annexed (Exhibit 3) is my letter of August 3, 1977, which reveals that I received defendants' Order with Notice of Settlement after the return date and time and was thereby deprived of the opportunity to submit a counter-order since apparently defendants' proposed order was immediately signed (NYLJ August 5, 1977). The defendants' proposed Order swore that it was mailed on July 29, 1977 but the Post Office postmark was marked "Smithtown, New York, P.M. August 1, 1977".

This type of practice is not only a violation of the governing rules, but of constitutional due process.

As the cross-motion will more completely show this is a type of practice which defendants have engaged themselves in against the plaintiff.

3. The moving defendant makes many unwarranted assumptions as the basis of his instant motion which I believe are unjustified.

a. This ^{moving} defendant assumes that the defendant ERNEST L. SIGNORELLI was acting in his official capacity when he committed the acts complained about by the plaintiff.

The failure of the defendant ERNEST L. SIGNORELLI to move pursuant to Rule 12(b)(6) is recognition of the fact he is being charged with misconduct while not acting as the

as a Judge.

Although the Contempt Order committed plaintiff to jail, the defendant ERNEST L. SIGNORELLI, acting as a jailor confined plaintiff elsewhere and prevented me from having a Writ of Habeas Corpus signed and enjoying other constitutional privileges.

b. This ^{moving} defendant assumes that defendant ERNEST L. SIGNORELLI is entitled to representation by the State Attorney General even when he is charged with acting beyond his jurisdiction and furthermore that such "forced" representation entitles him to some special immunity which private attorneys do not have.

c. This ^{moving} defendant assumes that he has an immunity even when he is not acting as an advocate (Imbler v. Pachtman, 424 U.S. 409, 430-431), and even when he is not acting in good faith (Askew v. Bloemker, 548 F2d 673, 679).

Were this a motion for summary judgment, plaintiff could and would show this Court facts which would deprive this defendant of any such immunity that might ordinarily exist.

d. This ^{moving} attorney assumes that his obligation to the Court is co-extensive with that of a private attorney, which plaintiff disputes.

e. This ^{moving} attorney assumes that because the defendant ERNEST L. SIGNORELLI made false and contrived recitals or certifications in the Contempt Order, he is privileged to assert such falsehoods when he knows same are false. As an example, this defendant, in his memorandum of July 25, 1977,

submitted to Mr. Justice GEROGE F.X. McINERNEY and also to this Court stated:

" Since ...the contempt was committed in the immediate view and presence of the court ... there was jurisdiction... to support a (summary) determination of contempt." (p.2-3).

Were it not for such contrived assertions and certifications the Writ of Habeas Corpus would have been summarily sustained.

f. This ^{moving} defendant assumes that because

"Plaintiff's lengthy memorandum cited virtually all legal authority adverse to the position asserted by the defendant ... no affirmative obligation was imposed on the defendant by law". (Memorandum, Defendants, August 8, 1977, p. 4).

Plaintiff contends that this defendant did have an obligation to advise the Court that since the English Court of the Star Chamber and Spanish Court of Inquisition, there is not a single case of authority which sustained the trial, adjudication, and sentence of a defendant in his absence. Such statement from the plaintiff amounted only in an assertion by an interested party. Such assertion by this defendant would have resulted in a summary termination of the Habeas Corpus proceeding.

It is the conduct of this defendant that must be examined and not his official title (Hampton v. City of Chicago, 484 2d 602).

Despite all this I have no reluctance in

strongly and vigorously stating that this defendant, LEONARD J. PUGATCH, Esq., is a fine, ethical, and competent attorney and person.

I first met him in this matter and have little doubt of the correctness of my high opinion of him.

I appreciate and understand his personal position in being assigned a matter which he may not find to his liking and the intimidation of his client-judge.

The acts and conduct of which I make complaint herein are not the making of defendant, LEONARD J. PUGATCH, Esq., but have all the markings of defendants SIGMORELLI and BERGER.

Nonetheless, the history and tragedy of the Bar in Germany during the Third Reich should not be ignored (20 American Journal of Legal History 1).


If the Office of the Attorney General desires to goose-step to the arrogant commands of the defendants SIGMORELLI and BERGER, they must accept the responsibility for same. Unfortunately, the requirements of statute mandates that defendant LEONARD J. PUGATCH be made responsible when the Office of the Attorney General is the moral culprit.

WHEREFORE, deponent prays that defendants' motion be denied in all respects.



GEORGE SASSOWER

Sworn to before me this
16th day of August, 1977.


DUDLEY GAFFIN
Notary Public, State of New York
No. 31-4620336
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1979