

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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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

COPY OF THE WITHIN PAPER
RECEIVED
DEPARTMENT OF LAW

JUN 16 1977

NEW YORK CITY OFFICE

ATTORNEY GENERAL

PLAINTIFF'S MEMORANDUM OF LAW.

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

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PLAINTIFF'S MEMORANDUM OF LAW.

POINT I.

PLAINTIFF'S SECOND CAUSE
OF ACTION IS VALID AND
DEFENDANT'S MOTION SHOULD
BE DENIED.

In view of the admissions in the answer of the defendant ERNEST L. SIGNORELLI and the default of the other defendant, JOHN P. FINNERTY, plaintiff's second cause of action seems appropriate for summary disposition.

If the default of the defendant, JOHN P. FINNERTY continues, plaintiff intends to move for judgment on the pleadings in his favor.

Plaintiff finds no authority in defendants' memorandum which would support a dismissal of this cause of action.

The assertion that the matter is "moot" is not factually or legally supportable.

POINT II.

PLAINTIFF'S THIRD CAUSE
OF ACTION AGAINST THE
DEFENDANT, LEONARD J.
PUGATCH, IS LEGALLY
VALID AS AGAINST A
RULE 12(b)(6) MOTION.

Given the mandate that the complaint should be "short and plain" and liberally construed, it may not be said that a valid cause of action is not pleaded against this defendant LEONARD J. PUGATCH (Hampton v. City of Chicago, 484 F. 2d 602, cert denied, 415 U.S. 902).

Defendant's motion is based on factual and legal assumptions which are unwarranted and unjustified.

The failure of defendant, ERNEST L. SIGNORELLI to make a similar motion is an implicit recognition of the fact that such defendant does not have judicial immunity for some or all of his conduct. Consequently this defendant may not contend that he is immune because he acted in concert with one who did have immunity.

In any event, the question of this defendant's liability and immunity is a mixed question of law and fact at this point which is still developing because the underlying proceeding still is active.

POINT III.

DEFENDANTS' MOTION SHOULD
BE DENIED IN ALL RESPECTS.

Respectfully submitted,

GEORGE SASSOWER, Esq.
Attorney for plaintiff-pro se.

August 16, 1977.