UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GEORGE SASSOWER,

Plaintiff,

-against-

Index No. 77 C 1447

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

Defendants.

MEMORANDUM OF LAW BY THE ATTORNEY GENERAL IN SUPPORT OF THE MOTION FOR A JUDGMENT ON THE PLEADINGS

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## Statement of Facts

The court is respectfully referred to the affidavit of Leonard J. Pugatch sworn to the 23rd day of August, 1977 and the exhibits annexed thereto.

## POINT I

PLAINTIFF LACKS STANDING TO MAINTAIN THE FIRST CAUSE OF ACTION.

Plaintiff lacks standing to maintain this action against the defendant, a judge of the Surrogate's Court, Suffolk

County, seeking judgment enjoining certain alleged practices which plaintiff claims are in derogation of certain unspecified rights, privileges and immunities secured by the Constitution and Laws of the United States. When a plaintiff's standing is brought into issue the relevant inquiry is whether the plaintiff has shown an ". . . 'injury in fact', that is, a sufficiently concrete interest in the outcome of his suit to make it a case or controversy subject to a federal court's Article III jurisdiction. Singleton v. Wulff, ___ U.S. ___, 96 S. Ct. 2868, 2873 (1976).

Plaintiff must show an injury to himself that is likely to be redressed by a favorable decision. "Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation." Simon v. Eastern Kentucky Welfare Rights Organization, ___ U.S. ___, 96 S. Ct. 1917, 1924 (1976).

> "Mere interest in, or concern over, a prospective defendant's acts - no matter how deeply felt - is insufficient to demonstrate injury in fact. What must be shown is a 'specific and perceptible harm' - a 'concrete injury' actually suffered by the particular plaintiff, or else clearly imminent, which is capable of resolution and redress in the federal courts." Evans v. Lynn, 537 F. 2d 571, 591 (2d Cir., 1976)

Plaintiff does not allege any specific and perceptible harm that can fairly be traced to the challenged actions of the defendant. Plaintiff merely alleges in conclusory fashion that the defendant is not an impartial judicial officer and his court is not constitutionally administered. This is purportedly a result of the statutory scheme for the appointment and removal of fiduciaries and other court personnel embodied in the New York Surrogate's Court Procedure Act (hereinafter NYSCPA).

Plaintiff also alleges that in adjudications between the appointees of the defendant and others, the defendant has obligations to his friends and political affiliates inconsistent with those of his judicial functions and that said adjudications present an intolerably high and unconstitutional invitation for the defendant to prefer his personal, social and political obligations to that owed to his judicial obligation for a fair trial.

Plaintiff does not allege any concrete injury.

> "Abstract or hypothetical injury is not enough" Evans v. Lynn, supra at 591.

Therefore, plaintiff has not met the standing requirement of "injury in fact" and lacks standing to maintain the first cause of action against the defendant. Thus this Court cannot exercise jurisdiction over his claim.

## POINT II

PRINCIPLES OF EQUITY, COMITY AND FEDERALISM MANDATE DISMISSAL OF PLAINTIFF'S FIRST CAUSE OF ACTION.

Plaintiff by his complaint seeks to govern the procedures for appointments in the extended course of a pending probate proceeding in the Surrogate's Court, Suffolk County.*

> "Probate and domestic relations are matters which have long been recognized as invoking, at least initially, interests which are predominantly of state concern. See In re Broderick's Will, 88 U.S. (21 Wall.) 503, 22 L. Ed. 599 (1875); Barber v. Barber, 62 U.S. (21 How.) 582, 584, 16 L. Ed. 226 (1858). In this narrow area of the law, we should be especially careful to avoid unnecessary or untimely interference with the State's administration of its domestic policies. See Kamhi v. Cohen, 512 F. 2d 1051, 1056 (2d Cir. 1975)." Mendez v. Miller, 530 F. 2d 457, 461 (2d Cir., 1976) (concurring opinion).

* Plaintiff also requests relief mandating that impartial reporters be assigned to the court and relief enjoining the defendant from awarding any fees except as may be provided by statute. However, plaintiff's complaint does not allege that partial reporters are assigned to the court, and plaintiff's complaint does not allege that the defendant has awarded any fees not provided for by statute.

This further distinguishes the instant action from a true case or controversy, characterized by "concrete adverseness" Baker v. Carr, 369 U.S. 186, 204 (1962), subject to a federal court's Article III jurisdiction.

The acts of the defendant complained of were performed in accordance with the provisions of the New York Surrogate's Court Procedure Act. These acts related to matters within the exclusive jurisdiction of the court. See NYSCPA § 201(3).

> "Where as here, the exercise of authority by state officials is attacked, federal courts must be constantly mindful of the 'special delicacy of the adjustments to be preserved between federal equitable power and State administration of its own Law' (citations omitted)" Rizzo v. Goode, ___ U.S. ___ (1976).

Whether one calls it comity or something else, these notions evidence

> ". . . a proper respect for state functions, a recognition of the fact that the entire country is made up of a union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." Younger v. Harris, 401 U.S. 37, 44 (1970).

More significantly, in Huffman v. Pursue Ltd., 420 U.S. 592 (1975); Juidice v. Vail, ___ U.S. ___ (1977) and Trainor v. Hernandez, ___ U.S. ___ (1977) the Supreme Court broadened the doctrine of abstention to preclude federal court interference

with legitimate state court functions in which the state has a particular interest. As the pending proceedings in state court from which this action arises invoke interests which are predominantly of state concern, the granting of the injunctive relief requested, based upon plaintiff's specious allegations, would constitute a most serious offense to the State's interest in the administration of its judicial system and an unwarranted interference with the administration of the Surrogate's Court, Suffolk County.

POINT III

THE THIRD CAUSE OF ACTION FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

The conclusory allegations of plaintiff's complaint stand denied. Said allegations are also devoid of any basis in fact. An objective view of the state court proceedings from which this action arises reveals that at all times the defendant, Ernest L. Signorelli, acted in his capacity as a judge of the Surrogate's Court, Suffolk County. As a result thereof he is immune from liability for damages for those acts; all done in the exercise of his judicial function.

> "Few doctrines are more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in Bradley v. Fisher, 13 Wall. 335 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and it 'is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.' (Scott v. Stansfield, L.R. 3 Ex. 220, 223 (1868), quoted in Bradley v. Fisher, supra, 349, note, at 350.) It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation." Pierson v. Ray, 386 U.S. 547 (1966).

See also Economou v. United States Department of Agriculture, 535 F. 2d 688, 691 (2d Cir., 1976); Pine v. City of New York, 529 F. 2d 70, 73 (2d Cir., 1975); Jones v. Marshall, 528 F. 2d 132, 138 (2d Cir., 1975).

Thus the third cause of action of plaintiff's complaint fails to state a claim upon which relief can be granted against the defendant Ernest L. Signorelli.

CONCLUSION

A JUDGMENT ON THE PLEADINGS DISMISSING PLAINTIFF'S COMPLAINT MUST BE GRANTED.

Dated: New York, New York
August 23, 1977

Respectfully submitted,

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