

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GEORGE SASSOWER,

Plaintiff,

-against-

File No. 77C 1447

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

Defendants.

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STATE OF NEW YORK)
 : SS.:
COUNTY OF SUFFOLK)

VINCENT G. BERGER, JR., being duly sworn, deposes
and says:-

1. I am one of the defendants in the above action
and my involvement with this matter is solely as counsel to
ANTHONY MASTROIANNI, the Public Administrator of Suffolk County.
I make this affidavit in opposition to plaintiff's motion for
an order enjoining and restraining the Surrogate's Court of
Suffolk County from prosecuting him for criminal contempt of
court.

2. On September 9th, 1974, Letters Testamentary
were issued by the Surrogate's Court of Suffolk County to the
plaintiff in the estate of EUGENE PAUL KELLY, who died a re-
sident of Suffolk County on April 26th, 1972. Those letters
were revoked by the Surrogate of Suffolk County, on March 9th,

1976. Thereafter, by decree of the Surrogate made and entered on March 25th, 1977, my client, the Public Administrator of Suffolk County, was appointed the temporary administrator of the estate. Temporary Letters of Administration were issued to the Public Administrator on March 29th, 1977 after the filing of a bond in the sum of \$50,000.00 which was ordered by the court. A copy of the Certificate of Temporary Letters of Administration is annexed hereto as Exhibit A.

3. On April 28th, 1977, an order was made and entered in the Surrogate's Court of Suffolk County, which provided, in part, as follows:-

"It is ORDERED that GEORGE SASSOWER transmit to the Temporary Administrator, ANTHONY MASTROIANNI, all books, papers and other property of the estate of EUGENE PAUL KELLY in his possession or under his control on or before May 5, 1977."

A copy of said order is annexed hereto as Exhibit B. A copy of said order was personally served upon the plaintiff in open court on April 28th, 1977.

4. Subsequent to the above events, plaintiff failed to transmit to the Public Administrator, as Temporary Administrator, all books and papers in his possession or under his control. He also failed and refused to transmit any property of the estate whatsoever to the Public Administrator. Said failure and refusal to transmit all of the books, papers and property of the estate to the Public Administrator has continued and persisted to the date of this affidavit. On one occasion I actually saw documents which appeared to be bank statements

and cancelled checks in a briefcase which was in the possession of the plaintiff. At that time he indicated that he would photocopy same and turn them over to the Public Administrator but, several minutes later, he suddenly closed his briefcase and fled claiming that he had to "catch a bus". On another occasion, the plaintiff transmitted two checks to my client, drawn on the estate of EUGENE PAUL KELLY, which checks were returned to him with an admonition that said plaintiff had no legal authority to issue such checks since his Letters Testamentary were revoked. Thus it is clear that the property of the estate is within the possession and control of the plaintiff but that he feels no compulsion to comply with the order of the Surrogate directing him to turn over such property to the Public Administrator.

5. Several attempts were made to compel compliance with the Surrogate's order of April 28th, 1977, without success. On June 22nd, 1977, an order of contempt was rendered by the Surrogate against plaintiff, which order was annulled by decision of the Supreme Court, Suffolk County, dated July 28th, 1977, "without prejudice to such other contempt proceedings as the court may be advised to bring." On August 10th, 1977, I obtained an order to show cause to punish for criminal contempt from Oscar Murov, Acting Surrogate of Suffolk County, which was made returnable on August 16th, 1977. The order, with supporting papers, was personally served upon the plaintiff in this action and a court appearance was made by me and my client on the return date, August 16th, 1977. The plaintiff

herein failed to call my office or to notify the court and made no appearance on that date. After a three hour waiting period, testimony was taken of the Public Administrator who substantially indicated that the records and assets of the estate had not yet been turned over to him pursuant to the order of the Surrogate's Court of April 28th, 1977. The Acting Surrogate then reserved decision. The next day, my office received a written request for an adjournment for one month for all purposes from the plaintiff herein, a copy of which is annexed hereto as Exhibit C. The Acting Surrogate then rendered a decision and order, dated August 19th, 1977, a copy of which is annexed hereto as Exhibit D, directing the plaintiff herein to appear before the Surrogate's Court of Suffolk County on August 29th, 1977, at 9:30 A.M. This court will be informed of the events of that day on the return date of the instant application.

6. The above facts and circumstances clearly establish that the estate of EUGENE PAUL KELLY has been prejudiced and will continue to be prejudiced unless the plaintiff herein is compelled in some way to turn over the books, papers and assets of the estate so that the Public Administrator can properly discharge his duties as Temporary Administrator. The moving papers fail to allege a factual basis for the relief sought by the plaintiff. The plaintiff discusses various physical problems and difficulties with transportation, with which I sympathize but which obviously have no relevancy to the

merits of his application. On numerous occasions he simply failed to appear or notify anyone of his non-appearance using such difficulties as the basis for his non-attendance and non-communication with the court or counsel. In fact, the only time that plaintiff actually appeared in court each and every day on time was when he argued his writ of habeas corpus before Mr. JUSTICE McINERNEY in the Supreme Court, Suffolk County, a matter with which he was personally concerned.

7. A reading of the moving papers with a view most favorable to the plaintiff clearly reveals that plaintiff does not and can not sustain the bald conclusions that he makes in support of his instant application. I know of no instance in which the plaintiff was deprived of any of his legal or constitutional rights, nor do his papers indicate any such occasions. Persons interested in the estate of EUGENE PAUL KELLY have been ignored and disregarded continuously and intentionally by the plaintiff who is an attorney and a former Executor of the estate. There is no logical reason whatsoever why the estate should not be administered as expeditiously as possible while the plaintiff litigates the various issues which he feels involves him and which are pending before this and other courts. Plaintiff could render most of these proceedings instantly academic by merely turning over the books, papers and property of the estate to my client, the Public Administrator of Suffolk County. For some reason, known only to him, the plaintiff has decided to withhold the books, papers and property belonging to the estate from those legally entitled

to sane. The contempt proceeding pending in the Surrogate's Court of Suffolk County is brought solely as a means of enforcing the order of that court and obtaining compliance by the plaintiff with those provisions of the order which direct plaintiff to turn over the books, papers and property to the Public Administrator.

8. Since the moving papers fail to assert why such relief should be denied to the estate, even on a temporary basis, the plaintiff's application should be denied in all respects.

WHEREFORE, your deponent respectfully requests that plaintiff's motion for an order enjoining and restraining the Surrogate's Court of Suffolk County from prosecuting him for criminal contempt of court be denied in all respects.

Sworn to before me this
25th day of August, 1977.

VINCENT G. BERGER, JR.

HELEN G. CALISIURI
NOTARY PUBLIC, State of New York
No. 52-9821140 Suffolk County
Commission Expires March 30, 1978