UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GEORGE SASSOWER,

Plaintiff,

-against-

File No.
77 C 1447

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

Defendants.

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PLAINTIFF'S MEMORANDUM OF LAW
(SIGNORELLI'S MOTION).

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PLAINTIFF'S MEMORANDUM OF LAW
(SIGNORELLI'S MOTION).

This memorandum is submitted without prejudice to plaintiff's contention, as set forth in his cross-motion, that defendants' motions be dismissed with prejudice and with sanctions.

This memorandum is submitted in the event that this Court decides that defendant's motion be considered on its merits notwithstanding the aforesaid.

Since plaintiff serves copies of his papers on all non-defaulting parties or their attorneys, he will not repeat arguments made in other memoranda submitted to this Court at the same time.

RESPONDING TO DEFENDANT'S
POINT I.

This defendant contends that plaintiff's "First Cause of Action" does not allege a "case or controversy" in words or substance.

1. Considering the mandate of Rule 8(a) that a pleading be "short and plain", plaintiff contends that the complaint meets the mandate of the Rule, gives the Court and the parties notice of the transactions involved in this matter, and that there is no prejudice by any failures in the complaint.

2. Plaintiff contends that the facts in the complaint reveal a "case or controversy" involved herein, and to hold otherwise would be a perversion of the English language (Gompers v. United States, 233 U.S. 604, 610).

3. Plaintiff further contends that only the proof at trial must show a "case or controversy", that it need not be pleaded in so many words, unless it is a serious issue.

4. The cases cited by this defendant are clearly inapplicable, dissimilar, and inappropriate to the case at bar.

RESPONDING TO DEFENDANT'S
POINT II.

As plaintiff has stated on prior papers to this Court in Juidice v. Vail, U.S. , 51 L. Ed 2d 376, 386, the Court stated:

> "This exception may not be utilized unless it is alleged and proven that they are enforcing the contempt procedures in bad faith or motivated by a desire to harass."

In Trainor v. Hernandez, U.S. , 97 S.Ct. 1911, 1920, the Court stated:

> "There is no suggestion that the pending state action was brought in bad faith or for the purpose of harassing appellees."

In the case at bar the plaintiff specifically alleged (¶35) that defendants actions were undertaken in order to "harass plaintiff in time, money, and effort".

Furthermore the entire two pages comprising Paragraph 35 of the Complaint is inconsistent with anything but "bad faith".

Plaintiff has made repeated assertions to this Court, factually supported, that defendants were motivated by "bad faith" and were attempting to "harass" the plaintiff.

At no time has this defendant denied such assertion.

At no time have the other defendants denied plaintiff's assertions of "bad faith" and attempts to "harass", except for the most recent affidavit of VINCENT G. BERGER, JR., an affidavit patently ludicrous.

In view of the discriminary allegations the statement by the Court in Taylor v. Consolidated Edison, (552 F 2d 39, 42-2d Cir) becomes pertinent:

> "...a lesser degree of state involvement is needed to meet the state action requirement in cases alleging such discrimination, than in those claiming denial of due process or infringement of First Amendment rights."

RESPONDING TO DEFENDANT'S POINT III.

1. This is a Rule 12(b)(6) motion and the matters set forth on behalf of this defendant is improper and should not be considered by this Court.

2. Further objectionable is the fact that such material is set forth not by this defendant but by his attorney who has no testimonial qualifications to testify as to much of the material that he sets forth.

3. Immunity is not dependent on the title held by the defendant but on the character of the act (Hampton v. City of Chicago, 484 F 2d 602, 608, per Stevens, J. cert. den. 415 U.S. 917). Many of the acts charged against this defendant were not done in his capacity as a Judge.

In the affidavit of this defendant's attorney, he states that plaintiff was sentenced to the County Jail for 30 days, but instead he was taken to the defendant ERNEST L. SIGNORELLI.

> "In transit plaintiff requested that he be given the opportunity to present an application for a writ of habeas corpus to the Appellate Division of the Supreme Court of the State of New York, Second Department,

> the Supreme Court of the State of New York, County of Queens and the Supreme Court of the State of New York, County of Nassau.
>
> Upon his arrival at the Surrogate's Court plaintiff requested that he be given the opportunity to present an application for a writ of habeas corpus to a justice of the Supreme Court of the State of New York, County of Suffolk." (¶21 p.5-6).

Plaintiff submits that during this period of time the defendant, ERNEST L. SIGNORELLI was acting not as a Judge but as a Warden who denied to plaintiff his constitutional right to secure a Writ of Habeas Corpus.

Immunity to insure fearless decision making does not authorize a Judge to falsely certify facts and records. Such facts and records are ministerial functions, which may be done by a Court Reporter or Clerk, and for such conduct, the defendant, ERNEST L. SIGNORELLI, has the immunity that they would enjoy. There is no doubt that the defendant ERNEST L. SIGNORELLI falsely certified or recited facts so that he could summarily try, judge, and sentence plaintiff in his absence.

There is no question that this defendant recited in his contempt order that plaintiff committed his act of contempt in the Court's presence, a fact found to be untrue and false.

There is no question that this defendant charted a course to harass the plaintiff when the matter was not before him.

That this defendant did not have jurisdiction over the plaintiff when he adjudicated and sentenced him has already been determined.

There is no immunity when a Judge clearly has no jurisdiction or his conduct is an outrage to human standards of decency or his acts are not decision-making (Hampton v. City of Chicago, supra; Sparkman v. McFarlin, 552 F 2d 172; Spires v. Bottorf, 317 F2d 273).

At the appropriate time evidence will be set forth to this Court to show that this defendant is not entitled to judicial immunity just because many of his acts were done in the Courthouse.

Dated: August 31, 1977.

Respectfully submitted,

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