

File

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GEORGE SASSOWER, :
 :
 Plaintiff, : Index 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. :

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MEMORANDUM OF LAW BY THE
ATTORNEY GENERAL IN SUPPORT
OF THE MOTION TO DISMISS

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POINT I

THE COMPLAINT FAILS TO STATE
A CLAIM AGAINST THE DEFENDANT
LEONARD J. PUGATCH UPON WHICH
RELIEF CAN BE GRANTED.

The complaint fails to state a claim against the
defendant Leonard J. Pugatch upon which relief can be granted
by this Court. The defendant is a Deputy Assistant Attorney
General in the office of LOUIS J. LEFKOWITZ, Attorney General

of the State of New York. It is the duty of the Attorney General of the State of New York to prosecute and defend all actions and proceedings in which the state is interested; including, inter alia, the representation of state officials and judges sued for acts done in their official capacity. See New York Executive Law § 63(1); Warren v. Goldstein, 200 Misc 194, 105 N Y S 2d 159 (Sup. Ct. 1951).

The complaint does not allege that the defendant has deprived plaintiff of any rights, privileges or immunities secured by the Constitution or Laws of the United States. It alleges that:

"...without hope of ultimate success and in dereliction of his duty to the Court, the defendant, LEONARD J. PUGATCH, at the behest of the defendants, ERNEST L. SIGNORELLI, and VICTOR BERGER, JR., has failed to disclose to the Court that the Order of Contempt was jurisdictionally and constitutionally invalid and undertook other actions and courses of conduct to harass plaintiff in time, money and effort."

The allegation relates to the defendant's representation of the Hon. Ernest L. Signorelli, the Surrogate of Suffolk County, State of New York in a proceeding commenced by the plaintiff in the Supreme Court of the State of New York, County of Suffolk to annul an order of Surrogate's Court.

The defendant is accused of a violation of the Lawyers Code of Professional Responsibility. The reference is clear:

"In presenting a matter to a tribunal, a lawyer shall disclose:

Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel." (Emphasis added).
Code of Professional Responsibility,
DR 7-106(B) (1).

But no claim cognizable in this Court is stated. The complaint is no less defective because it alleges that the acts complained of were done at the behest of the other named defendants.

The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law. Code of Professional Responsibility,
Canon 7; EC 7-1:

"The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail. His conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is

supportable by a good faith argument for an extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous." Code of Professional Responsibility, EC 7-2.

Copies of the memoranda of law received by the Supreme Court were submitted to this Court. Plaintiff's lengthy memorandum cited virtually all legal authority adverse to the position asserted by the defendant. Thus no affirmative obligation was imposed on the defendant by law.

Moreover the position asserted by the defendant was not frivolous, but the urging of a permissible construction of the law favorable to his client based upon the facts as the defendant found them. See Code of Professional Responsibility, EC 7-4, 7-3.

Furthermore, the acts complained of were performed by the defendant in discharge of his duties as a Deputy Assistant Attorney General of the State of New York and as an attorney duly admitted to practice in the courts of the State of New York. The complaint does not demonstrate otherwise. The law confers an immunity

upon a state's attorney general from liability for damages allegedly flowing from acts committed in the performance of his duties. Scolnick v. Lefkowitz, 329 F. 2d 716 (2d Cir. 1964); Turner v. American Bar Association, 407 F. Supp. 451, 482 (N.D. Texas 1975); Modern Social Education, Inc. v. Preller, 353 F. Supp. 173, 183 (D. Md. 1973); Crafton v. Rose, 369 F. Supp. 131 (E.D. Tenn. 1972); Rodnicki v. McCormack, 210 F. Supp. 905 . R.I. 1962). And the cause of action against LEONARD J. FUGATCH must be dismissed for failure to state a claim upon which relief can be granted.

POINT II

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

The authority of this Court to grant the relief requested in plaintiff's second cause of action was discussed in a memorandum of law submitted to this Court on July 22, 1977. Nevertheless, the Supreme Court of the State of New York, County of Suffolk annulled the adjudication of contempt referred to in plaintiff's second cause of action. And the plaintiff's second cause of action is thereby rendered moot.

CONCLUSION

THE MOTION TO DISMISS SHOULD
BE GRANTED.

Dated: New York, New York
August 8, 1977

Respectfully submitted,
LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Pugatch and Signorelli

LEONARD J. PUGATCH
Deputy Assistant Attorney General
of Counsel