

UN I T E D STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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OCT 25 1977

DEPARTMENT OF
NEW YORK CITY OFFICE

77-C-1447

GEORGE SASSOWER,
Plaintiff,
-against-

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

Defendants.

United States Courthouse
Brooklyn, New York
September 2, 1977

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

DENNIS SCHONHAUT
COURT REPORTER

Appearances:

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GEORGE SASSOWER, ESQ., Plaintiff pro se
30 Mildred Parkway
New Rochelle, New York

LOUIS J. LEFKOWITZ, ESQ.
Attorney General of the State of New York
2 World Trade Center
New York, New York
Attorney for Defendants Pugatch and Signorelli

BY: LEONARD J. PUGATCH, ESQ.
Deputy Attorney General

JAMES J. MARSH, ESQ.
Attorney for the Defendant Berger

DAVIDOW & DAVIDOW, ESQS.
Attorneys for Defendants Finnerty, Kroos &
Wisnoski
110 North Ocean Avenue
Patchogue, New York

BY: ANDREW H. WORGIN, ESQ.
and
MICHAEL B. GESELL, ESQ.
of Counsel

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THE CLERK: Civil motion, Sassower v. Signorelli.

THE COURT: I will hear them both. Whose motion is it?

MR. PUGATCH: Your honor, I believe there are several motions on this morning. Mine was the first.

THE COURT: I will hear the motions to dismiss.

MR. PUGATCH: First, I would like to advise the Court I am now not admitted to the bar of this Court.

THE COURT: You may argue the motion.

MR. PUGATCH: I think, first of all, that it is very important to remember that these motions are directed to the pleadings. Excessive material is before this Court on subsequent motions concerning events transpiring subsequent to that date, and I am going to limit my discussions to what is in the pleadings because that is where the motions are addressed.

Plaintiff was adjudicated in contempt of the surrogate's court in Suffolk County by the defendant Ernest L. Signorelli. Plaintiff thereafter commenced a proceeding in the Supreme Court of Suffolk to annul that determination. The deputy assistant attorney general, Leonard J. Pugatch, myself, was appointed to

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represent the surrogate in that cause..

The contempt order was subsequently annulled by the Supreme Court of Suffolk and plaintiff alleges improprieties on my part in the defense of that action. And if I may quote from the pleading --

THE COURT: I am interested in knowing the position of the various parties with reference to the estate and then with reference to the order directing the arrest of the plaintiff.

MR. PUGATCH: O.K.

THE COURT: What was the plaintiff here? He was the trustee of an estate?

MR. PUGATCH: The plaintiff was executor appointed by will.

THE COURT: The executor?

MR. PUGATCH: Right, he was removed as executor in the course of these proceedings and ordered on April 28th to turn over the assets of the estate to the public administrator who had been appointed as temporary administrator of the estate so that the administration of the estate could be gotten on with. If you will let me refer to my affidavit, I can give you the facts in much more fluent form.

THE COURT: This is a substantial estate?

MR. PUGATCH: My understanding is there are

1 assets of \$90,000 in bank accounts and a house, the
2 value of which I do not know. I am sure the plaintiff
3 could apprise you better of that than I, I am quite
4 sure.

5 Anyway, having been ordered on April 28th to
6 turn over the assets of the estate to the public
7 administrator, plaintiff appeared in court in an
8 accounting proceeding. Having been removed as execu-
9 tor, a final account was due.

10 On that day, certain of the representatives of
11 the legatees and the public administrator of Suffolk
12 addressed the problem to the Court but they were not
13 in possession of the records of the estate or the pro-
14 perty of the estate as ordered and asked that the
15 Court deal with that matter as it saw fit. The Court
16 questioned the plaintiff at that time and asked him
17 whether he had complied with the order. The plaintiff
18 said "no." The Court asked him if he intended to com-
19 ply with that order. The plaintiff said he did not
20 know whether he was going to comply.

21 There was some bickering back and forth. The
22 transcript I submitted would really substantiate any-
23 thing I can say.

24 THE COURT: Do you know where the accounts are?

25 MR. PUGATCH: The accounts I do not know. My

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understanding is he has revealed to the surrogate's court in an accounting the bank but not the branch nor the account numbers for the amounts remaining in those accounts.

THE COURT: So the accounts haven't been turned over --

MR. PUGATCH: No, sir.

THE COURT: -- to date?

MR. PUGATCH: To date.

THE COURT: \$90,000's worth?

MR. PUGATCH: Yes, sir, I believe that is the amount.

THE COURT: Plus?

MR. PUGATCH: The deed for the house, the equity in the house. And any records of the estate including motions for tax and tax forms. What happened that day, and this is June 15th I'm speaking about, when Mr. Sassower was in court, the Court commenced to cite him for contempt. At that point, the conversation was held off the record as Mr. Sassower agreed to comply with the order.

The Court told him that full compliance was expected by June 22nd, that was one week's time, and that he was to appear in court on June 22nd.

On June 22nd, Mr. Sassower did not appear in

1 court. Testimony was taken from the deputy public
2 administrator at that time which evidenced the fact
3 that he had failed to comply with the order at all.
4 At that point, the surrogate adjudicated him in con-
5 tempt, issued a warrant of commitment and sent the
6 sheriff out to pick Mr. Sassower up and, pursuant to
7 the order, bring him before the surrogate's court,
8 which they did on the next day. This was on June
9 23rd.

10 On June 23rd he was brought before the court.
11 He was asked whether he was going to comply with the
12 order. He said, and I quote, "I will comply with the
13 law as I see it." And he was then escorted to jail.

14 A writ of habeas corpus was secured in the
15 Supreme Court of Suffolk County. A hearing came on
16 subsequently and the contempt order was annulled and
17 we are here before you now alleging -- plaintiff
18 alleging violations of his civil rights.

19 THE COURT: Was he brought before the surro-
20 gate again?

21 MR. PUGATCH: Again?

22 THE COURT: Yes, since the Supreme Court vacated
23 the order.

24 MR. PUGATCH: He has not appeared before the
25 surrogate, although there was an order to show cause

1 as to why he should not be held in contempt one
2 more time for failing to comply with that April 27th
3 order and there was also a subsequent order for him
4 to appear in court on August 29th, which he did not
5 appear.

6 THE COURT: He just defaulted in appearing?

7 MR. PUGATCH: He defaulted in appearing? Well,
8 I wouldn't say he defaulted because personal appear-
9 ance wasn't required on the order to show cause. He
10 did submit a notice of motion with no supporting
11 affidavit and a request for an adjournment. The
12 adjournment was granted for one week, in which he
13 was ordered to appear back in court with counsel.

14 THE COURT: When?

15 MR. PUGATCH: August 29th.

16 THE COURT: That was the last proceeding in
17 the surrogate's court?

18 MR. PUGATCH: As far as I know.

19 THE COURT: All right, Mr. Sassower.

20 MR. SASSOWER: Your honor --

21 THE COURT: You haven't turned over the assets
22 of the estate pursuant to surrogate's court order?

23 MR. SASSOWER: Without quibbling with your
24 honor, I will say the response is "no." See, I feel
25 your honor assumes certain facts by the questions

1 that your honor asked.

2 THE COURT: Yes.

3 MR. SASSOWER: I don't go along with some
4 of the assumptions that were made.

5 THE COURT: Are you an executor of the estate?

6 MR. SASSOWER: Yes, your honor.

7 THE COURT: You refused to reveal --

8 MR. SASSOWER: Never refused.

9 THE COURT: -- the location and identity of
10 the bank accounts?

11 MR. SASSOWER: Not only did I never refuse to
12 reveal, your honor, but in fact the public adminis-
13 trator himself went over to one bank that I know of
14 and has taken out the assets and has the assets. They
15 don't reveal to you that the public administrator
16 has the assets.

17 THE COURT: This is a civil rights action.

18 MR. SASSOWER: Yes, your honor.

19 THE COURT: I want you to know that I am not
20 making the determination of the state court, but, on
21 the other hand, I don't want you to interpret my
22 statements based on this action as an approval of the
23 disobedience or disobedience of any state court order.

24 MR. SASSOWER: I understand that fully, your
25 honor, and I have never done it in the past and I

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certainly will not do it in the future.

THE COURT: Now, this motion is to dismiss as against the surrogate?

MR. PUGATCH: And as to myself, it was a motion to dismiss as to myself.

THE COURT: What have you got to say about that? Doesn't the surrogate have immunity?

MR. SASSOWER: No, your honor.

THE COURT: Why not?

MR. SASSOWER: Because the allegations of the complaint, your honor, are not with respect to his conduct as a judge in the judicial function. For example, and only by example as spelled out with the complaint, the complaint order required that I be incarcerated for a period of 30 days in the County jail. I was not sent to the County jail, but I was imprisoned by the surrogate, who held me as a warden, as a hostage.

During that period of time, as is set forth in Mr. Pugatch's own paper, I was repeatedly denied the right to have a writ of habeas corpus signed. A Supreme Court justice was not more than 30 or 40 feet away. For four hours, five hours, I was kept under arrest by the surrogate and not permitted to have a writ of habeas corpus signed. Just taking that one

1 example --

2 THE COURT: Now, your complaint makes general
3 and conclusory allegations about conspiracy.

4 MR. SASSOWER: Yes, your honor.

5 THE COURT: I find that the only thing you
6 allege against this surrogate is that he signed a
7 contempt order directing that you be imprisoned. I
8 see nothing of your allegations beside the general
9 conclusory allegations that brings the surrogate out-
10 side the grant of immunity.

11 MR. SASSOWER: Your honor, may I again read
12 to your honor portions of the complaint, in particu-
13 lar Paragraph 35? Now, there is always a problem,
14 your honor, trying to comply with the mandate of the
15 federal rules of civil procedure and try to make a
16 complaint which is plain and concise and at the same
17 time to particularize a complaint so that it has skin
18 on it and has meaning.

19 THE COURT: I have seen it done. I have seen
20 it done, Mr. Sassower. Where a plaintiff has something
21 it is done.

22 MR. SASSOWER: Your honor, may I say, your ho-
23 nor, and there are papers before this court where there
24 is particularization of the acts performed by the
25 defendant Signorelli. And again I'm going to say what

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we have before this court as said by my colleague is a Rule 12 motion.

THE COURT: All right, now point to the action -- the allegations that support an action against the surrogate.

MR. SASSOWER: Oh, another point --

THE COURT: Come to point one, point one.

MR. SASSOWER: Quote from Paragraph 35, "Caused the plaintiff to be detained and imprisoned --" skipping, "tried to defeat, hinder and obstruct plaintiff's right -- plaintiff of his right for a writ of habeas corpus from the state and federal court."

Now, I state, your honor, and certainly this was the intention of the pleading, that when he held me he did not hold me as a judge.

THE COURT: We are talking about the complaint, allegations in the complaint that make out a cause of action against the surrogate.

MR. SASSOWER: That is one.

THE COURT: Anything else, anything else in the complaint?

MR SASSOWER: Fine. May I preface by a remark, your honor?

THE COURT: You are going to do it anyway, so

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Go ahead.

MR. SASSOWER: I comply with your honor's wishes and desires.

THE COURT: If you want to comply with my wishes, give me the allegation of the complaint that make out a claim against the surrogate.

MR. SASSOWER: Made and permitted to be made false statements and certifications on the records of the court. Now, if I may --

THE COURT: Now, you find a need to explain these allegations.

MR. SASSOWER: I'm sorry.

THE COURT: In other words, they are not in the complaint?

MR. SASSOWER: Oh, no, I will rest on that, your honor. We say under the Civil Rights Act and we have at least one case which says this is not within a judicial function. It can be done by a scribe. It can be done by a clerk. It can be done by a stenographer. There is a difference and a distinction between, your honor --

THE COURT: What claim do you have against Mr. Pugatch?

MR. SASSOWER: Only one, your honor, as of the date of the complaint.

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THE COURT: That is all we are talking about. You can bring other civil rights actions later. We are only talking about this one.

MR. SASOWER: The duty of the assistant attorney general as we see it in this case is not as a private attorney, but as the assistant attorney general in the office of the attorney general. Your honor has in the file a letter written to the attorney general which very well sets forth our position and it is a take-off on the Supreme Court decision of, I think, Imbler against Packman. We think in this case there was a duty to disclose to the Supreme Court that the assertions, the certification, the facts set forth in the commitment order were wrong, false and contrived. Instead, we went through a charade for three days --

THE COURT: What did you allege in your complaint against the assistant attorney general?

MR. SASSOWER: "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 COURT: I get the point, all right. By getting the point, I mean that they were intentionally vague and conclusory because he had nothing else.

1 Now, you represent yourself and the surrogate?

2 MR. PUGATCH: Yes, sir, at this point.

3 THE COURT: Who else?

4 MR. PUGATCH: That is it.

5 THE COURT: Anyone else, any other motions to
6 dismiss.

7 MR. MARSH: Yes, your honor. I am James
8 Marsh and I represent the individual defendant
9 Vincent G. Berger, Jr. Mr. Berger is a private
10 attorney who was retained by the public administrator
11 earlier this year to represent him in certain surro-
12 gate court matters that are pending. This is pursu-
13 ant to a statute.

14 I believe Mr. Sassower will stipulate that in
15 March, by order entered in March of '76, over a year
16 ago, he was removed by order of surrogate to act as
17 the executor of the estate. I believe a copy of the
18 order has been filed with the various papers. The
19 only reason I am bringing this up at this time is when
20 your honor questioned Mr. Pugatch about certain of the
21 estates, this isn't directly on Mr. Berger's applica-
22 tion to dismiss, but I feel it is relevant and the
23 court should have the information. I have a copy of
24 two checks that were drawn on the estate account of
25 Eugene Paul Kelly by Mr. Sassower and dated July 26,

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1977, approximately 14 or 15 months after he was removed as executor. And, under the laws of the State of New York he would no longer have any right to write checks against this account, and I would ask that this be submitted to the court to supplement the papers that have already been provided.

THE COURT: Do you know whether these checks were to cover expenses of the estate?

MR. MARSH: Your honor, the way that I came into possession of those two, those two checks were forwarded to Mr. Mastroianni with a covering letter from Mr. Sassower indicating that certain estate expenses had to be met and that he was consequently mailing these checks to him. I believe the intention of Mr. Sassower was to protect himself should any foreclosure action occur, because I believe on that date Mr. Mastroianni might not have received or had sufficient estate assets to cover these expenses.

THE COURT: Is this Mr. Sassower's signature?

MR. MARSH: I believe if you compare it to the others in the file, it is, your honor.

THE COURT: I don't know. I can't make it out.

MR. MARSH: I have the original checks in my possession and they were returned to Mr. Sassower because it is our position that he has no right to issue

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1 checks on the estate account other than to pay the
2 funds over in accordance with the surrogate's order
3 to the public administrator.

4 I might also add that while Mr. Sassower was
5 removed in March, it was almost a year later before
6 the public administrator was appointed and designated
7 to take possession of the assets. It is my understand-
8 ing that the surrogate inserted the public administra-
9 tor at this time because during the interim period
10 Mr. Sassower, after his removal, had attempted to
11 enter into a contract of sale of the real property
12 and the title company picked this up and they reported
13 it to the surrogate's court. That is my information,
14 your honor.

15 THE COURT: Then, your client --

16 MR. MARSH: Is the attorney for the public
17 administrator and he is a privately retained attorney.

18 THE COURT: Is the counsel to the public admin-
19 istrator as an official position in Suffolk?

20 MR. MARSH: Your honor, under the SEPA, Article
21 12 which governs the public administrator, he is
22 granted the right to employ counsel in the cases that
23 he sees fit, and in about January of this year he
24 retained Mr. Berger to represent him in the pending
25 actions that he had in surrogate's court where an

1 attorney would be required.

2 In the first -- and perhaps this would be an
3 opportune time to delve into the first cause of action.
4 The plaintiff's complaint against Mr. Berger attempts
5 to state two causes of action, the first and the third
6 cause of action. Now, the first cause of action is
7 predicated upon Section, I believe it is 1983 of Title
8 42. And he makes allegations in this cause of action
9 that somehow through custom, usage statute the attorney
10 for the public administrator is a puppet of the
11 surrogate. Now, as I have outlined, and I am not
12 going to burden the court with too much
13 repetition, in the memorandum of law that was submitted
14 and also Mr. Berger pointed out in his affidavit in
15 support of this instant motion, that under the SEPA
16 the attorney for the public administrator is retained
17 by the public administrator. Consequently, the duty
18 of the attorney for the public administrator under the
19 canons of professional responsibility are to his client,
20 the public administrator and to no other person. In-
21 sofar as there being any nexus between himself and the
22 court, the public administrator as a matter of law is
23 entitled to a salary, the public administrator of
24 Suffolk County. All commissions or fees that he re-
25 covers on any estate that would be awarded by the sur-

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rogate must be turned over to the county treasurer. He is not permitted to retain any of these.

As far as the fees for the counsel of the public administrator are concerned, they are to be allowed against each estate by the surrogate after reviewing the case, and, of course, the fees would be subject to objection to by any interested party in the accounting proceeding when they are allowed and the surrogate does not have unbridled discretion in awarding these fees. They would be subject to question on appeal if they were deemed to be excessive.

And in any event, it is not the surrogate who appoints the counsel to the public administrator. It is the public administrator, so there is a division here. There is no tie-in as Mr. Sassower in his third cause of action attempted to allege and that is clearly outlined under the SEPA. As I indicated, Mr. Berger is a private attorney. Section 1983 of Title 42 was part of the enforcement statutes that were enacted by Congress to protect the civil rights of certain persons who might have been denied the rights by state action. They are aimed at state action. I believe there a legion of cases where it has been held that an individual acting in an individual capacity cannot violate this section.

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THE COURT: Let's not go into that. The concept of state action has been extended so that even a warehouseman who acts under a state law is considered to be acting under the color of state law, so let's forget state action. Assume state action, what claim does he have against Mr. Berger? What does he say Mr. Berger did in violation of his rights?

MR. MARSH: Your Honor, I am not sure what his specific claim is.

THE COURT: Mr. Sassower, what did Mr. Berger do to deprive you of your right of due process?

MR. SASSOWER: One, assaulted me while I was being held by the defendant Signorelli.

THE COURT: I would like to eliminate any assault case from the civil rights action. Everyone who is assaulted by a state officer these days runs to the federal court and clothes themselves in a federal action under 1983. Why don't you go into a state court and sue him?

MR. SASSOWER: Your Honor, you asked me. I only gave you one example.

THE COURT: Yes, give me another example.

MR. SASSOWER: He was part and parcel --

THE COURT: Where did he assault you and how?

MR. SASSOWER: Judge, I really don't want -

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I think there are things that are more important.

THE COURT: No, this is important to me. Where and when did he assault you and how?

MR. SASSOWER: He started screaming at me, beating me while I was being -- with two sheriffs, being held, being held, could not get my writ of habeas corpus.

THE COURT: Did he ever strike you or touch you?

MR. SASSOWER: No, your Honor.

THE COURT: Did he threaten you with assault or bodily injury?

MR. SASSOWER: Yes.

THE COURT: What did he say?

MR. SASSOWER: Well, among other things, "We will throw you in the can and we will throw the keys away."

THE COURT: And you interpret that as a threat to assault you?

MR. SASSOWER: With all due respect to your Honor, the respect I give to this Court in and out of court is the respect that I expect from another person. And while I am held, while I am held, I don't want to be abused.

THE COURT: Not everything that is said or done

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by one citizen to another citizen amounts to viola-
tion of constitutional rights. You understand that?

MR. SASSOWER: I understand that, your Honor,
and I do not intend to argue that with your Honor, but
right down the line --

THE COURT: I have got an idea of the action
against your client, thank you. I have got to get on
with other matters. I would like to know who you
represent and what claim.

MR. GESELL: My name is Michael Gesell. I am
assistant county attorney and we are here on the mo-
tion, the second motion, the motion of Mr. Sassower
for judgment against the county officers, Mastroianni,
Kroos, the sheriff and Wisnoski.

THE COURT: Why didn't they answer?

MR. WORGIN: Your Honor, if I may, in Suffolk
County we have a civil insurance program for county
employees. The insurance company is called Alexander
and Alexander. They have a panel of law firms that
they appoint to handle suits against county officials.
When this action was started, they sent our firm a
letter asking us to handle the matter. We read Mr.
Sassower's complaint and could not find any cause of
action that has to do with insurance.

The first cause of action, as we read it, was

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to enjoin the surrogate and the public administrator which has nothing to do with insurance. The second cause of action was to suspend or stay his contempt proceeding. That again has nothing to do with insurance. And the third cause of action, as we read it, was for \$5,000,000 in punitive damages. And as we understand it, punitive damages are not covered by insurance. As such, we sent the letter back to Alexander and Alexander telling them of our feelings and we thought that the county attorneys office might be the proper attorney to handle this matter.

THE COURT: Are you ready to answer?

MR. GESELL: We were never advised they were not representing. We were advised, your Honor, that an answer had been served by the insurance company's attorneys. It wasn't until yesterday afternoon at 3 o'clock that I was advised that this motion was on and that an answer was not forthcoming in this case.

THE COURT: Have you decided who is going to represent?

MR. GESELL: Yes, the insurance carrier.

MR. WORG IN: We were informed at approximately 3 o'clock yesterday afternoon that we should.

THE COURT: How much time do you want to answer?

MR. WORG IN: Your Honor, our answer is done.

PENGAD LU, JAYSONE, N.J. 07002 FORM 740

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We did it yesterday in the evening.

THE COURT: Has it been filed?

MR. WORGIN: No, it has not.

THE COURT: Take it out of the file and give it to the deputy. We will call it filed.

Motion for a default judgment denied. You never had the clerk note the default. In this court you must first note the default.

MR. SASSOWER: Your Honor, may I just say that I have no objection to taking an answer when it is right. The only thing I would have appreciated is a telephone call either from the county attorney's office or from the insurance company saying we have certain problems, give us an extension of time. What I don't care for is that I prepare papers, I make motion papers, I come to court, and then I get an answer. That is my only objection to, to the decency that one person imposes or indecency of one person upon another.

THE COURT: Decision reserved on all motions.

MR. SASSOWER: May I say a few statements?

THE COURT: No, I haven't got time for it. It is all in the papers. Whatever I might say there, whatever I do here is going to be done with a view to avoid any interference with any proceedings in the

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surrogate's court. If there is an issue to be tried, it will not be tried until the surrogate's court proceeding has been completed. As for myself, I take a dim view of any lawyer who doesn't follow the order of a state court or federal court. I want to make certain that Mr. Sassower understood that when I said what I said about protecting the constitutional right and his right to a hearing. I meant that he had a right to a hearing and I felt that the state court could safeguard his rights, and only in default of that obligation would I interfere, and that was only to protect his right to due process, which meant procedural due process, his right to a hearing on the contempt, but I disapprove of any action brought here to in any way interfere with the state court practice or to use civil rights as a threat against a proper proceeding in the state court.

I don't say that is what you intended, Mr. Sassower, but I noticed you ran to the state court and to the federal court. You brought everyone in who was in sight. You made general allegations. I have seen nothing specific in your complaint. I am going to look at it very carefully.

I question seriously whether through these allegations you may have any claim, certainly against

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1 the surrogate or Mr. Pugatch. The claim against the
2 lawyers for the surrogate is probably as flimsy a
3 claim as I have ever heard in a civil rights action
4 and we have got some pretty flimsy claims, where be-
5 cause he screamed and said, "We will throw away the
6 key," that that amounted to a violation of your civil
7 rights.

8 MR. SASSOWER: May I --

9 THE COURT: No . this is just a speech
10 I am making. I am not going to debate.

11 MR. SASSOWER: May I have one minute and fif-
12 teen seconds?

13 THE COURT: I have got lawyers with substantial
14 matters. I have got criminal matters. I took this
15 first because you were the only ones that were present.

16 MR. SASSOWER: May I have one minute and fif-
17 teen seconds?

18 THE COURT: I will give you one minute and fif-
19 teen seconds, and that means seventy-five seconds.

20 MR. SASSOWER: Your Honor, these are motions
21 pursuant to Rule 12. I have never objected to this
22 court taking a motion and they are at liberty to make
23 a summary judgment motion, wherein I would have
24 swamped your Honor with facts which I think would have
25 put a different picture on this. Secondly, statements

1 were made by Mr. Pugatch which are absolutely errone-
2 ous, which are contrary to fact. And I say, your
3 Honor, he has no personal knowledge of them. Now,
4 your Honor --

5 THE COURT: For these purposes, I assume the
6 allegation of the complaint to be true.

7 MR. SASSOWER: That is all I want.

8 THE COURT: Don't argue whether they are true
9 or not. I am taking the best view.

10 MR. SASSOWER: And if there is anything that
11 was said, whether it be in the complaint or out of
12 the complaint, which is of interest to your Honor with
13 respect to my actions, I would be only delighted to
14 answer your Honor, but as far as I am concerned --

15 THE COURT: Your seventy-five seconds are up.

16 MR. SASSOWER: Whatever I have done, I have done
17 properly and correctly.

18 THE COURT: I don't reach the merits.

19 MR. MARSH: Your Honor, I have just one ques-
20 tion procedurally. I received a copy of a notice of
21 motion by Mr. Sassower that was dated August 30th. I
22 received it yesterday afternoon in my office. I did
23 not have time to respond.

24 It looks like he is attempting to get an order
25 dismissing our motions which are pending before this

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court. Does your Honor wish an answer to that?

THE COURT: There is no such motion. You answer a motion that is made. You don't move to dismiss the motion that is made.

MR. SASSOWER: Your Honor, I also received this morning a memorandum of law and affidavit --

THE COURT: Every motion will be given the attention it deserves.

MR. SASSOWER: In this he asks that it be turned into a judgment motion this morning. I haven't even responded to it, and if your Honor wants to do it

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THE COURT: Form means little here.

MR. SASSOWER: I just want to know.

MR. PUGATCH: It was served properly yesterday as the court rules under the federal rules of procedure.

MR. SASSOWER: May I just say one thing? If your Honor feels that the complaint is insufficient, formally or informally, may I have leave to amend it?

THE COURT: In a proper case I would give leave. If I find that on these allegations the judge has immunity, I shall dismiss with prejudice. I am not going to permit repeated complaints against an official where it is clear that an action is barred by

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judicial immunity.

There is a reason for giving judicial immunity. When we talk about the independence of the judiciary, that is part of it.

MR. SASSOWER: I understand. At the present time --

THE COURT: A judge should be free to say things that may not be entirely proper just so that he may think freely. I find that sitting on this bench I say many improper things, but because I have been allowed to say many improper things I sometimes say the right thing.

MR. SASSOWER: Your Honor, I don't argue that point with your Honor, legally, factually or philosophically.

THE COURT: It is a very important principal I am thinking of.

MR. SASSOWER: I am not arguing that point.

THE COURT: If you have a claim against Judge Signorelli and I give you leave to amend, it will be on a specific theory and I will say in my opinion the detail in which I expect you to allege it.

MR. SASSOWER: As of this moment, what is before your Honor is essentially a Rule 12 motion, am I correct?

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THE COURT: Of course.

M R. SASSOWER: O.K.

THE COURT: I am just looking at the sufficiency of the complaint.

MR. SASSOWER: Thank you very much, your Honor.

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