

A8  
NOTICE OF MOTION - PLAINTIFF  
[A8 - A9]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----x  
GEORGE SASSOWER,

Index No.  
78-17671

Plaintiff,

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,  
VINCENT G. BERGER, JR., ALAN CROCE,  
ANTHONY GRYMALSKI, CHARLES BROWN, HARRY E.  
SEIDELL, NEW YORK NEWS, INC., AND VIRGINIA  
MATHIAS,

Defendants.  
-----x

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of GEORGE SASSOWER, Esq., duly sworn to on the 14th day of July, 1982, and all the proceedings had heretofore herein, the undersigned will move this Court at a Special Term Part I held at the Courthouse thereof, Griffing Avenue, Riverhead, Long Island, New York, 11901, on the 28th day of July, 1982, at 9:30 o'clock in the forenoon of that day or as soon thereafter as Counsel may be heard for an Order striking the pleading of the defendant, NEW YORK NEWS, INC., for its wilful failure to respond to plaintiff's Second Set of

Interrogatories, together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE, that the defendant, NEW YORK NEWS, INC., is to serve and file with its opposing papers, if any, its latest Amended Answer pursuant to CPLR 2214(c).

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, are to be served upon the undersigned at least five days before the return date of this motion, with an additional three days added if such service is by mail.

Dated: July 14, 1982

Yours, etc.,

GEORGE SASSOWER, Esq.  
Attorney for plaintiff  
283 Soundview Avenue,  
White Plains, N.Y. 10606  
914-328-0440

To: Patterson, Belknap, Webb & Tyler, Esqs.  
Robert Abrams, Esq.  
David J. Gilmartin, Esq.  
Vincent G. Berger, Jr., Esq.  
New York News, Inc.

A10

PLAINTIFF - MOVING AFFIDAVIT - IN SUPPORT

[A10 - A14

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ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,  
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ANTHONY GRIMALSKI, CHARLES BROWN, HARRY E.  
SEIDELL, NEW YORK NEWS, INC., AND VIRGINIA  
MATHIAS,

Defendants.

-----x  
STATE OF NEW YORK            )  
                                  )ss.:  
COUNTY OF WESTCHESTER    )

GEORGE SASSOWER, Esq., first being duly sworn,  
deposes, and says:

I make this affidavit in support of my motion  
to strike the pleading of defendant, NEW YORK NEWS,  
INC., for its failure to properly respond (Exhibit "1")  
to my Demand for Answers to Interrogatories (Second Set)  
dated and served March 20, 1982.

No motion was made to vacate or modify the  
either the "First" or "Second Set of Interrogatories".

All

Defendant's responses to my First Set of Interrogatories (Exhibit "2") were received while there was pending, sub judici, a decision on my motion to strike this defendant's answer for failure to comply.

The defendant's responses were patently false and evasive, as the libelous publication itself reveals (compare Exhibits "3" and "4" with, e.g., Answers to Interrogatories 7-10). In any event, I proceeded by way of a "Second Set of Interrogatories".

The responses to the "Second Set of Interrogatories" (Exhibit "1") were received on July 3, 1982 after numerous extensions were given to this defendant's attorneys.

I tried amicably to resolve my objections to such Answers by letter dated July 7, 1982 (Exhibit "5"), but to date have received no response.

The action against NEW YORK NEWS, INC., is based upon federal and state law bottomed on the injurious, defamatory publication of two articles (Exhibits "3" and "4").

According to these exhibits, the (false) information for the published articles was received from identified and identifiable persons.

1. Interrogatory 5, 6, 7, 14, 15, 16, 19, and 20, this defendant refused to answer based upon "New York Civil Rights Law §79-h".

a. No such privilege was asserted with respect to the responses to the First Set of Interrogatories (Exhibit "2") wherein similar information was sought (see e.g. Interrogatory 7), and consequently, even if applicable, it has been waived.

b. Manifestly, where the persons who supplied the information are named in the defamatory article or are identifiable, there is no privilege (Hennigan v. Buffalo Courier, 85 A.D.2d 924, 446 N.Y.S.2d 767 [4th Dept.]).

c. To assert the statute, without showing facts revealing the applicability of the statute, is clearly insufficient (Hennigan v. Buffalo Courier, supra, at 925, 768).

d. Any privilege that this defendant may have, as distinguished from the interest of the informer(s), has been waived by the failure to move to vacate or modify, and from the response given to Interrogatory #7 in the First Set.

2. This defendant, having failed to moved to vacate or modify, may not now claim the information sought is "irrelevant", "burdensome", or "subject to at least two different interpretations" (Interrogatory 4, 5, 6, 7, and 19.

3. This defendant, especially having failed to move to vacate or modify, may not direct plaintiff to the New York Public Library for the information requested in Interrogatory 4 (Seiden v. Allen, 135 NJ Super 253, 343 A2d 125, 126-127; Lurus v. Bristol, 89 Wash.2d 632, 574 P2d 391, 393; 96 ALR2d 598).

4. Clearly, this defendant having the burden (Hennigan v. Buffalo Courier, supra, at p. 925, 768), has failed to show any attorney-client privilege with respect to Interrogatory 15 and 16.

5. The reservation of right in defendant's verification is patently improper.

I have orally and in writing requested on several occasions a copy of this defendant's Amended Answer which it claims it served, but have had no response to such reasonable request, and therefore demand that it be served and filed with its opposing papers, if any, pursuant to CPLR 2214(c).

WHEREFORE, it is respectfully prayed that this motion be granted in all respects, with costs.

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GEORGE SASSOWER

Sworn to before me this  
14th day of July, 1982

MURIEL GOLDBERG  
Notary Public, State of New York  
No. 60-4515474 Westchester County  
Commission Expires March 30, 1983