

ERICK F. LARSEN, ESQ. - AFFIRMATION IN OPPOSITION - COUNTY ATTY
[A51-A57]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

GEORGE SASSOWER,

Plaintiff,

-against-

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

Defendants.

:
:
: Index No.
78-17671

:
: AFFIRMATION
: IN OPPOSITION

-----X

STATE OF NEW YORK)
:
COUNTY OF SUFFOLK)

ERICK F. LARSEN, an attorney, under penalties of perjuries pursuant to CPLR 2106 affirms the truth of the following:

1. I am associated as an Assistant County Attorney with David J. Gilmartin, Suffolk County Attorney, attorney for defendants Anthony Mastroianni, Public Administrator, John P. Finnerty, Sheriff of Suffolk County, and Deputy Sheriffs Alan Croce and Anthony Grymalski (hereinafter Suffolk defendants).

2. I make this Affirmation in opposition to plaintiff George Sassower's application to compel the Suffolk defendants to respond to the plaintiff's Interrogatories dated July 30, 1982 (annexed to plaintiff's moving papers as Exhibit "F"), and striking their answer if they fail to do so.

3. Predictably, plaintiff pro se George Sassower has failed to inform this Court in his moving papers that early on in this litigation he demanded and received a Bill of Particulars from the Suffolk defendants. Plaintiff's demand in this action for a Bill of Particulars dated November 18th, 1978 is annexed as Exhibit "A".

4. The Suffolk defendants' timely application including supporting affirmation and relevant exhibits concerning plaintiff's demand for a Bill of Particulars is annexed as Exhibit "B".

5. Plaintiff's cross-motion and supporting affidavit dated December 8, 1978 concerning plaintiff's demand for a Bill of Particulars is annexed as Exhibit "C".

6. The Suffolk defendants reply affirmation dated December 18, 1978 is annexed as Exhibit "D".

7. The previous Order of this Court concerning plaintiff's demand for a Bill of Particulars dated December 22, 1978 (Thom, J.) is annexed as Exhibit "E".

8. The Suffolk defendants Verified Bill of Particulars dated January 23, 1979 is annexed as Exhibit "F".

9. The early history of this action is detailed in the affirmations included in Exhibits "B" and "D", supra. Currently, the majority of this action is upon the plaintiff's insistence currently upon appeal in the Appellate Division, Second Department. Argument upon the appeal of this action was heard by the Court on Thursday, June 24, 1982. All parties are currently awaiting the decision of the Appellate Division.

10. A copy of the Suffolk defendants (respondents) Brief and Supplemental Appendix submitted in the Appellate Division is submitted herewith as Exhibit "G".

11. The biting decision of this Court dated March 20, 1980 (Gowan, J.) from which Sassower has appealed is annexed as Exhibit "H". As can be clearly seen from Judge Gowan's decision but for the pending appeal plaintiff Sassower should be incarcerated in the County Jail for his flagrant contempt of the Surrogate's Court.

12. Upon receipt of plaintiff's "First Set of Interrogatories" (Exhibit "F" to plaintiff's affidavit) your affirmant promptly replied to the plaintiff with a written notice of rejection (annexed as Exhibit "I") upon the basis of CPLR §3130 which in pertinent part states:

"A party may not serve written interrogatories on another party and also demand a bill of particulars.....".

It is on this basis that your affirmant respectfully requests that this Court deny plaintiff's application to compel the Suffolk defendants to respond to plaintiff's Interrogatories.

13. At the very least the Suffolk defendants respectfully request that this Court deny the relief sought by plaintiff and order that all proceedings in this action by any party be stayed pending the determination of the Appellate Division, Second Department on the pending appeal of this action.

14. In the event that this Court is disposed to grant plaintiff's application to compel the defendants to answer the Interrogatories it is respectfully requested that the Court consider the following objections:

15. Plaintiff's Interrogatories numbered 1 through 5 exclusively concern the authority and jurisdiction of the Sheriff and his deputies (Police Officers) to execute the formal mandates of the Surrogate's Court, Suffolk County throughout the State of New York and to make arrests. In light of the current status of these proceedings these Interrogatories are unfair, burdensome and vexatious. The authority and jurisdiction of the Deputy Sheriffs is set forth at pages 1 through 7 of Exhibit "G", supra, (Suffolk defendants Brief in the Appellate Division).

16. Moreover, this legal issue has been decided by the Federal courts against the plaintiff on six separate previous occasions. The Chief Judge of the United States District Court for the Eastern District of New York found against plaintiff on this issue at pages 38 and 52 through 55 of Exhibit "G", supra. Plaintiff's pre-Federal appeal application to the Second Circuit to restrain execution of a Suffolk Surrogate's Arrest Warrant by Suffolk Deputy Sheriffs outside of Suffolk County was denied (Exhibit G, at page 73). The Federal District Court also denied similar relief sought by plaintiff on two other occasions (Exhibit G, at pages 59 through 63 and 83 through 84.)

17. Finally, this issue was put to rest by the distinguished panel of Judges Friendly, Mansfield, and Meskill of the United States Court of Appeals for the Second Circuit on December 19, 1978, when it stated:

"In particular, the Sheriff and Deputy Sheriffs acted with reasonable grounds to believe that they were authorized to execute the arrest warrant pursuant to its terms in Westchester County. The process of the Suffolk County Surrogate's Court, including an arrest warrant, extends State-wide, and the Sheriff and the Deputy Sheriffs are obligated to execute the mandate issued by the Surrogate of Suffolk County according to its command."

Exhibit G, at page 96, supra, citations omitted. Notwithstanding this historical context plaintiff Sassower pro se, an admitted practicing attorney, has the audacity to make instant application to this Court to compel the Suffolk defendants in this action to explain by answering Interrogatories their jurisdiction to execute a Suffolk Surrogate's Warrant of Commitment in Westchester County. It is respectfully suggested that it is about time that the full sanctions of this Court be brought to bear against this plaintiff for his incredible abuse of our judicial system.

18. Turning now to plaintiff's Interrogatories numbered 6 through 25 it is painfully obvious that the answers to these questions are almost entirely irrelevant within the context of this litigation. Moreover, the information sought is peculiarly within the knowledge of the plaintiff and his wife and daughter. Upon information and belief, as well as

limited personal knowledge, plaintiff is currently on speaking terms with his wife and resides in the same household.

Therefore, it is patently unreasonable for the plaintiff to demand that the defendants tell him what time his wife and daughter requested to see him on June 10, 1978 (Interrogatory Number 11). Similarly, in Interrogatory Number 21, plaintiff seeks the substance of all conversations with the plaintiff between March 8th and June 10th, 1978. Who better than the plaintiff knows the answer to this question?


19. Interrogatories, which merely call for the production of documents such as those number 18 through 20, are improper. To the extent that plaintiff has sufficiently identified the documents requested since they are a matter of public record, he may appear at the Correctional Facility and inspect them himself. To the extent that plaintiff has failed to identify the specific documents sought as, for example, in question 19, it is unduly burdensome and unfair to require defendants to attempt to comply.

20. Questions 22 and 23 are absolutely improper. Not only are they irrelevant but since when does a Deputy Sheriff Police Officer waive his doctor-patient privilege merely because he is sued by a recalcitrant inmate. By law not even the Sheriff has access to his deputies' medical records without a written authorization or court order.

21. On the basis of the foregoing the Suffolk defendants respectfully request that the plaintiff's application be denied in its entirety with costs to the defendants, and such other, further and different relief as this Court deems in the interest of justice including an award of reasonable attorney's fees, should be made in favor of the defendants.

Dated: Hauppauge, N.Y.

August 27, 1982

A handwritten signature in cursive script, appearing to read "Erick F. Larsen". The signature is written in dark ink and is positioned above a horizontal line.

ERICK F. LARSEN
Assistant County Attorney