

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GEORGE SASSOWER, :
 :
 Plaintiff, :
 :
 -against- : 78 C 124
 : (J.M.)
 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 IN OPPOSITION TO MOTION
FOR PRELIMINARY INJUNCTION

ARGUMENT

THE PRELIMINARY INJUNCTION
SHOULD BE DENIED

George Sassower, by order to show cause dated January 27, 1978, brought on a motion for injunctive relief against Ernest L. Signorelli, Anthony Mastroianni, and Vincent G. Berger, Jr. The specific allegations against Judge Signorelli are set out in paragraphs 1, 4, 5 and 7 of Mr. Sassower's affidavit.

The first allegation is that Judge Signorelli "directed" Mr. Sassower's personal attorney to appear in Surrogate's Court. As the accompanying record indicates, the events which led up to this "direction" involved an accounting proceeding before Judge Signorelli, beginning on January 25, 1978. Judge Signorelli asked Mr. Sassower if Mr. Sassower had complied with the court's previous order directing him to turn over various records (T. 25). Mr. Sassower responded:

"Your Honor, at this point, with all due respect to the court, I choose to remain silent on the matter." (T. 25)

After some discussion, it became evident that Mr. Sassower was relying on the Fifth Amendment for refusing to answer the question (T. 35, 37). When the court persisted in demanding an answer (T. 37-39), Mr. Sassower asked for permission to consult counsel (T. 39-40). When Mr. Sassower returned, the following ensued:

"THE COURT: Did you call your lawyer?

MR. SASSOWER: Yes, I spoke to an attorney.

THE COURT: What was the outcome of that? Is he going to appear for you, or what?

MR. SASSOWER: The attorney I spoke to is in Manhattan, Your Honor, and I am sure, Your Honor, that he would not be able to come out here.

THE COURT: Did you call him to appear for you; that is the question.

MR. SASSOWER: I would certainly love to have another attorney here with me before I answer this question, if Your Honor would adjourn this matter for that purpose.

THE COURT: We will suspend at this point. I will give you an opportunity. Tomorrow morning you appear with your counsel, and we will proceed with regard to this point."

* * *

"MR. SASSOWER: Initially, I am due in the Appellate Division tomorrow morning.

THE COURT: You are before me now, and you are to appear. I am directing you to appear. After we complete what we are working on today -- tomorrow morning at 9L30 with your counsel. (T. 43-44).

It appears from the record, that it was Mr. Sassower who requested an adjournment so that he might appear with counsel. There is certainly no indication that Judge Signorelli "directed" Mr. Sassower's attorney to appear.

The second allegation concerns Judge Signorelli's "direction" to Doris Sassower. The record indicates that Mrs. Sassower is the wife of George Sassower. She is also an attorney and had some professional involvement with the underlying proceeding (T. 49-50).

The third allegation concerns telephone calls to the Appellate Division concerning Mr. Sassower. The date is January 26, the second day of the proceeding. The record explains the reasons for the calls:

"THE COURT: When I arrived at the court house this morning, it had been indicated to me that Mr. Sassower would not appear, notwithstanding the fact that yesterday I directed him to be present in court this morning with his complete file and with his attorney. I was told that he had told someone he had an engagement in the Appellate Division. I then asked Mr. Robert Cimino, my law secretary, to contact the Appellate Division in this area. Mr. Cimino, would you please tell us for the record what your search revealed?

MR. CIMINO: I called the clerk's office of the Appellate Division, Second Department, and spoke to Mr. Mack, the Call Calendar Clerk, who checked the calendars for today's matters, and advised me Mr. Sassower had no matters in the Appellate Division, Second Department today. I called the Appellate Division, First Department, and spoke to Mr. McGuire, the Calendar Clerk, who advised me Mr. Sassower had no matters at the Appellate Division First Department today." (T. 52-53)

At that point there was a recess. Apparently there was another telephone conversation between the Court and the Appellate Division, for when the Court returned, it indicated that it had just learned that Mr. Sassower was arguing a case in the Appellate Division, Second Department (T. 54-55).

The record of the Court proceedings clearly indicates that none of the actions by defendant Signorelli constituted a harassment or violation of Mr. Sassower's rights. Nor are the acts of defendant Signorelli causing Mr. Sassower irreparable harm. Nor has Mr. Sassower shown any likelihood of success on the merits. Indeed, even if Mr. Sassower's allegations were taken as true, it is difficult to see how they constitute a violation of constitutional dimensions.

CONCLUSION

THE MOTION FOR A PRELIMINARY
INJUNCTION SHOULD BE DENIED.

Dated: New York, New York
February 28, 1978

Respectfully submitted,

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