UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

GEORGE SASSOWER, individually, and on behalf of all others similarly situated or affected,

Plaintiff,

-against-

File No.
78 Civ. 124
(J.M.)

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI, VINCENT G. BERGER, JR., JOHN P. FINNERTY, ALLAN CROCE, ANTHONY GRZYMALSKI, CHARLES BROWN, LEONARD J. PUGATCH, and THE COUNTY OF SUFFOLK,

Defendants.

----------x

STATE OF NEW YORK)
) ss.:
COUNTY OF)

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

That he is the plaintiff pro se and with constraint makes this affidavit pursuant, but not limited to, 28 U.S.C. §144.

1a. In a "Memorandum of Decision and Order" dated March 21, 1978, Mr. Chief Judge JACOB MISHER stated that

> "Plaintiff moves, by order to show cause dated March 1, 1978, for a preliminary injunction barring defendants from (1) 'harassing' plaintiff, and (2) continuing his prosecution for criminal contempt." (at p. 2).

Continuing, and with unequivocal precision, the Court stated:

> "An application to stay prosecution was made by plaintiff Sassower, and

(22)

that matter currently pends before the Appellate Division, Second Department. Notwithstanding the pendency of plaintiff's state court application, he now seeks the same relief from this court." (p. 3)

"Plaintiff is possessed of a state court remedy and has in fact sought relief from the Appellate Division." (p. 4-5).

Your deponent has examined his copies of all papers submitted on this motion and finds no statement respecting any such application made by plaintiff in the Appellate Division.

While the positioning of non-arguing counsel makes listening difficult in His Honor's Courtroom, your deponent believes he heard all of defendants' counsels' arguments and has no recollection of any such statements being made.

So that there can be no doubt counsel is ordering such stenographic transcript, but reluctantly makes this affidavit before the receipt of same since deponent does not desire that there be any question of waiver by reason of pending matters before this Court.

In any event, deponent has little doubt that no such statement was made since he believes that opposing counsel are honorable and would not utter something so egregiously false.

It therefore irresistably follows that any such heresy was received by this Court from an extrajudicial source.

As a surgeon or his patient would insist upon an

wholly antiseptic operating room, I believe that I am entitled to an uncontaminated judgmental process and insist upon same herein.

b. The very fact that defendants' competent counsel did not submit any affidavit or document evidencing any such decisive assertion is clearly indicative of the non-existence of any such application in the Appellate Division.

c. Deponent assumes that such ex parte information was imparted to this Court between Friday afternoon, March 17th, 1978 (oral argument) and the date of the decision, Tuesday, March 21, 1978, since this Court on oral argument, did not question deponent with respect to same. Had such information been in the possession of the Court on or prior to oral argument, the Court would have certainly questioned deponent regarding same.

d. The Court must have received this most specific factual information from a source that His Honor considered very reliable since it ignored deponent's unrebutted representation that no previous application had been made to any Court or Judge for the relief requested, as part of his application for such Order to Show Cause.

Deponent was mortified* that this Court should have accepted such extra-judicial statement at face value

---

* The pronouncement having come from the citadel, it may now be quoted with impunity cf. ¶124(a) of plaintiff's amended complaint.

overriding deponent's representation negating prior applications (which if false, is a disbarable transgression- In re Joseph Warde, N.Y.L.J. March 23, 1978 p. 1).

e. The aforementioned irresponsible factual assertion (not opinion) by this Court secured from some unknown source, which this Court has sanctified without further inquiry from the parties, is flatly and unhesitatingly denied by your deponent.

f. Your deponent verily believes that the aforementioned evinces a personal bias against your deponent or, more probably, in favor of the defendant, ERNEST L. SIGNORELLI. The interests of justice mandates that Mr. Chief Judge JACOB MISHLER proceed no further herein, and that another judge (preferably from another district) should be assigned to hear such proceeding, which judge should be appointed by chance and not designated.

g. Your deponent is a member of the bar of the United States District Court of the Eastern District of New York and the aforementioned application is made in good faith.

2. In view of the fact that only one such application is permitted, deponent is constrained to set forth some of the misgivings that your deponent has had in this matter and in this Court.

Your deponent is cognizant of the fact that such other material is not ground for disqualification and inconclusi Nevertheless they are "tiles in the mosaic" upon which the aforementioned asserted impropriety must be viewed.

a. In this very application before this Court, no affidavit was submitted by the defendant, ERNEST L. SIGNORELLI, (nor was any affidavit submitted by said defendant on any matter before His Honor in this case), although same was called for in order to rebut the specific assertions by plaintiff.

Only an eviscerated transcript of the proceedings were submitted and same generally supported deponent's assertions and unquestionably showed that the defendant, ERNEST L. SIGNORELLI, through his attorney falsely represented the facts to this Court.

Had the defendant not been a Judge, it is fair to assume that this Court would have required an affidavit executed by him. It seems that this Court would have at least required an affidavit to substantiate the oral assertions made by his attorney (who disclaimed personal knowledge of his statements to the Court).

Plaintiff believes that there can be no reasonable dispute that the defendant, ERNEST L. SIGNORELLI is entitled to no different treatment than any other litigant in this Court, a proposition which has apparently not been followed by this Court on this application.

b. At the very outset of this litigation, His Honor expressed the definite feeling that the Order of Committment dated June 22, 1977 was unlawful on the grounds that plaintiff was not present when testimony was taken.

The certainty of such attitude may be summed up by

statement that in the event Mr. GEORGE F.X. McINERNEY did not sustain the Writ of Habeas Corpus, that my first telephone call should be to His Honor, clearly indicating that His Honor would stay any incarceration under the circumstances.

Since that time no one has ever come forth with any respectable case that the Order of Committment, as found by Mr. Justice McINERNEY, had any validity, not the Attorney General, not Signorelli, not the County Attorney, not Berger, nor Mastroianni.

If the Order of June 22, 1977 was bad, then the same Order of March 8th, 1978 is worse.

While the Order of June 22, 1977 contained contrived statements in an attempt to partiallly obscure its jurisdictional invalidity, the Order of March 8th, 1978 does not even make that attempt.

Although the validity of the March 8th, 1978 Order was not properly before His Honor since plaintiff only became apprised of its existence a few minutes before oral argument and the Court only became apprised to its existence during argument, His Honor, in his decision of March 21, 1978, gratutitously refers to it as "purportedly correcting the procedural defect (of the Order of June 22, 1978)", when His Honor knows full well that said Order is invalid, inter alia, for the very same reason that the Order of June 22, 1977.

The Order of March 8, 1978 clearly states:

> "...and no appearance having been made by the said GEORGE SASSOWER, and a hearing having been held on that day before the undersigned ..."

In the decision of Mr. Justice McINERNEY the Court stated:

> " The issue before this Court is whether a judge of a court can summarily find an attorney guilty of a criminal contempt and immediately impose a jail sentence upon him, when the attorney was not present before him when the adjudication was made, and when it was necessary for the Court to take testimony to determine whether the contempt had been committed."

Judge McINERNEY held in the negative, a proposition, I repeat, has not been contested by anyone since that time.

Additionally the Order of March 8, 1978 was morally odious, since the judge, HARRY E. SEIDELL, knew at the time that plaintiff was actually engaged on trial in the Supreme Court at the time of my non-appearance.

Can not a rational uncynical person reasonably suspect that this Court was the subject of foreign influence between mid-1977 and today in view of the aforementioned change of position on so fundamental and immutable a legal proposition?

I have little doubt that if freely permitted to expre$s an opinion that defendant's attorney, EMANUEL M. KAY, Esq., and the defendant, LEONARD J. PUGATCH, Esq., would agree that the Order of March 8, 1978 is invalid.

Even the Assistant County Attorney had some doubts

about the validity of said Order after we went (with His Honor's Law Secretary) to the Court Library and he was shown In re Oliver (333 U.S. 257).

Since deponent intends to make application to stay such Warrant of Committment in this Court no further comment is necessary except that I cannot believe that under the circumstances even my adversaries could possibly maintain the same degree of faith in the integrity of this Court as it did prior to this action.

c. On other motions pending before His Honor, I am aware that the Appendix and Briefs pending in the Circuit Court of Appeals. I am further aware that parts of my Brief was very critical of His Honor including my Point III-D which bore the title " The District Court's Action with respect to defendant, Berger was outrageous.".

It was and still is an honest opinion and I hoped that notwithstanding same this Court would treat it as an boni fide opinion on my part.

Whether this Court treated it as such, I have no way of knowing, but I assume that it did not help my cause in this Court.

d. This Court's consideratiion of extrinsic evidence despite its explicit representation that it would only consider the sufficiency of the pleadings is not a matter which could possibly instill confidence in the integrity of this Court, a matter which is set forth in the Appendix and Brief on appeal and therefor will not be belabored herein.

3. I sincerely regret this turn of events and the necessity of this application. I am very mindful of the courtesy and dignity afforded me by His Honor and members of his staff.

Having been so denigrated recently by the defendant, SIGNORELLI, I am more conscious of the moral seriousmess of this application.

If there is any innocent circumstance that I have overlooked to explain away the assertions herein, I stand ready to listen and apologize to His Honor if warranted. I must confess that I view any unauthorized ex parte communication however well intended, as repugnant.

Notwithstanding our antagonistic positions, I have treated and have been treated in the kindest of fashions by EMANUEL M. KAY, LEONARD J. PUGATCH, and ERICK F. LARSEN, Esqs. That we may hold on some issues differences of opinon is of no moment in our very frequent and extraordinarily amiable conversations.

To the extent that my view may differ with His Honor, I can only assure this Court that such differences have not entered into the picture on this application.

At this juncture, in view of the aforementioned, I do not believe that I can obtain a constitutionally fair hearing, and respectfully request that His Honor recuse himself by virtue of the Constitution and Statutes of the United States, excepting that His Honor vacate the Order of March 21, 1978.

WHEREFORE, deponent prays that this affidavit

be filed and the application granted together with any other, further, and/or different relief as may be warranted in the premises.

GEORGE SASSOWER

Sworn to before me this
27th day of March, 1978.