UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GEORGE SASSOWER,

Plaintiff,

-against-

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

Defendants.

78 C 124

MEMORANDUM OF DECISION AND ORDER

March 21, 1978

A P P E A R A N C E S

GEORGE SASSOWER, ESQ.
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MISHLER, CH. J.

On September 20, 1977, this court dismissed plaintiff's civil rights action brought against Ernest Signorelli, the Suffolk County Surrogate, and others. Sassower v. Signor-

elli, 77 C 1447 (E.D.N.Y. 1977)[1]. The instant complaint restates many of the same allegations and seeks substantially the same relief. 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. Finding little liklihood that plaintiff will prevail on the merits or suffer irreparable injury; Triebwasser & Katz v. American Telephone & Telegraph Co., 535 F.2d 1356, 1358 (2d Cir., 1976); Sonesta International Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2d Cir.1973), the application is in all respects denied.

Plaintiff's conclusory allegations of "harassment" and "embarrassment" do not give rise to a cause of action under the Civil Rights Act. Mere claims of emotional distress, harassment, mental anguish, humiliation or embarrassment are not actionable under the scheme of civil rights statutes. Taylor v. Nichols, 409 F. Supp. 927, 936 (D. Kan. 1976); see also, Dear v. Rathje, 391 F. Supp. 1, 9 (N.D.Ill. 1975); Bolden v. Mandel, 385 F. Supp. 761, 764 (D.Md. 1974). Beyond that, we perceive no violation of plaintiff's constitutionally protected rights. The allegations of the complaint but vaguely define the injury as one to "rights secured by the Constitu-

[1] The court is advised that an appeal from the dismissal is currently pending.

tution." It is doubtful that the allegations are sufficient to support a claim under 42 U.S.C. §§1983 and 1985.

Nor do we find it appropriate to stay the pending contempt proceedings. The prosecution was commenced back in June, 1977, after Sassower, having been removed as the executor of the estate of Eugene Paul Kelly, allegedly refused to comply with the Surrogate's order to turn over various books and records relating to the estate's administration. Adjudged in contempt and sentenced to thirty days imprisonment, Sassower successfully petitioned the state supreme court for a writ of habeas corpus. The contempt order was thereupon vacated, and an appeal was taken by the Surrogate. The appeal pending, the Surrogate again instituted contempt proceedings after purportedly correcting the procedural defect. An application to stay prosecution was made by plaintiff Sassower, and 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.

Federal courts simply cannot interfere with state court criminal proceedings except in the most extraordinary circumstances. Such a stance derives from the basic doctrine of equity jurisprudence which prohibits the court from awarding injunctive relief to a litigant who is possessed of an adequate remedy at law and who is not threatened with irrepa-

rable injury. Younger v. Harris, 401 U.S. 37, 43-44, 91 S.Ct. 746, 750 (1971). Younger and its progeny, see, Samuels v. Mackell, 401 U.S. 66, 91 S.Ct. 764(1971); Mitchum v. Foster, 407 U.S. 225, 92 S.Ct. 2151 (1972); Kugler v. Helfant, 421 U.S. 117, 95 S.Ct. 1524 (1975), proscribe federal intervention into state criminal prosecutions except where; (1) the prosecution is brought in "bad faith", see, Perez v. Ledesma, 401 U.S. 82, 85, 91 S. Ct. 674, 677 (1971); (2)the law under which the movant is prosecuted is patently or flagrantly unconstitutional, Younger v. Harris, 401 U.S. at 54, 91 S.Ct. at 755; or (3) in the absence of federal court intervention, the plaintiff stands to suffer great and immediate injury, and the federally protected right cannot be asserted as a defense to the state prosecution. Id, 401 U.S. at 46-49, 91 S.Ct. at 751-53.

Plaintiff offers nothing beyond his bald, self-serving allegations evincing bad faith on the Surrogate's part. The proceedings were apparently commenced after Sassower, whether justifiably or not, defied a turn over order. Whether the contempt proceedings are meritorious is not for us to consider. On its face, the prosecution appears to have a good faith basis rendering inappropriate any federal court intervention. Beyond that, Sassower points to nothing evidencing an inability to defend against the charges within the framework of the state prosecution. Plaintiff is possessed of a state court remedy and has in fact sought relief

from the Appellate Division. Whether a stay is to issue is more appropriately left to that court. Accordingly, plaintiff's motion for a preliminary injunction is in all respects denied, and it is

SO ORDERED.

U. S. D. J.