UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GEORGE SASSOWER,

Plaintiff,

- against -

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.

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78 C 124

Memorandum of Decision and Order

April 20, 1978

A P P E A R A N C E S :

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MISHLER, CH. J.

His previous action dismissed, see Sassower v. Signorelli, 77 C 1447 (E.D.N.Y. September 20, 1977), plaintiff George Sassower filed another complaint, and thereafter an amended complaint, the latter of which recites eight causes of action based on the Civil Rights Act of 1870, 42 U.S.C. §1981 et seq., in some thirty five pages of text. Plaintiff now petitions this court for leave to file a second amended complaint of similar length which purports to add another defendant and two more causes of action. Defendants Signorelli, Pugatch, Mastroianni, Finnerty, Croce, Grzymalski and Suffolk County, in turn, move for an order of dismissal arguing that the complaint fails to state a claim upon which relief can be granted, Rule 12(b)(6) F.R.Civ.P. /1 We accept as we must, in considering the instant motions, the truth of the allegations asserted. Fine v. City of New York, 529 F.2d 70, 75 (2d Cir. 1975).

/1 Defendants Mastroianni, Finnerty, Croce, Grzymalski and Suffolk County alternatively move for summary judgment pursuant to Rule 56, F.R.Civ.P.

Under the will of Eugene Paul Kelly, who died in April, 1972, George Sassower was nominated as executor of his estate. The appointment was subsequently confirmed by order of the Suffolk County Surrogate, and the will ultimately admitted to probate on September 9, 1974. A petition praying for an executor's accounting was thereafter filed, and by order dated March 27, 1975, was granted. The accounting, however, was not rendered. Plaintiff's failure was met by an order of the Surrogate's Court dated March 9, 1976 which purportedly removed him as executor.

The accounting was eventually filed and objections noted. On a legatee's application, defendant Mastroianni was appointed temporary administrator by order dated March 25, 1977. Sassower, however, allegedly continued in possession of certain books and records pertaining to the estate. Therefore, on April 28, 1977, plaintiff was directed to relinguish control and surrender the documents to the court.

The court ordered Sassower to show cause why he should not be punished for contempt of court on account of his wilfull failure to comply. On June 22, 1977, the scheduled return date, Sassower failed to appear. The court held a

hearing on the application, found plaintiff in contempt of court, and sentenced him to thirty days imprisonment. A warrant of committment thereupon issued.

On June 23, 1977, plaintiff was arrested at his home by defendants Croce and Grzymalski, both Deputy Sheriffs of Suffolk County. Sassower was transported forthwith to the Surrogate's Court, the officers rejecting his request, after conferring with supervisors, that he be permitted access to a neighboring Supreme Court to file a writ of habeas corpus. Arriving at the court, plaintiff was detained for more than two hours and denied access to all avenues of relief; on orders of Surrogate Signorelli, plaintiff was refused permission to file a writ of habeas corpus and denied the opportunity to make any telephone calls. Sassower was ultimately brought before the court and given the chance to purge himself of the contempt. He refused and was thereupon remanded to the Suffolk County Jail.

That very afternoon, plaintiff petitioned the State Supreme Court for a writ of habeas corpus and was admitted to bail pending its determination. Before the scheduled hearing date on that application, plaintiff filed suit in this court

charging the defendants with a series of civil rights violations. An application for preliminary relief was denied by this court, but plaintiff was successful in prosecuting his application for a writ of habeas corpus. By order dated July 28, 1977, the writ issued, and the adjudication of contempt was annulled.

Judge Signorelli immediately appealed from the July 28th order. Thereafter Judge Signorelli (and co-defendants) challenged the sufficiency of the complaint filed in this court (77 C 1447). This court, in considering various motions for dismissal and judgment on the pleadings, found the complaint defective and accordingly entered an order of dismissal. In the meantime, with the appeal of Judge Signorelli still pending, Acting Surrogate Seidell instituted contempt proceedings grounded on Sassower's continued refusal to comply with the Surrogate's April 28, 1977 turn-over order. Again Sassower filed suit in this court and applied for preliminary relief in the form of an injunction barring his prosecution. Again the application was denied.

Sassower, having received notice of the impending contempt proceedings, failed to appear on the scheduled return date because of a previous trial committment. Acting Surrogate

Seidell conducted a hearing, found Sassower guilty of contempt, and imposed a thirty (30) day prison term. Judgement was entered on March 8, 1978, and a warrant of committment issued. To date it remains unexecuted.

The allegations of the amended complaint in this action track the events leading up to the second adjudication of contempt. To say the least, plaintiff's claims are far reaching, multifarious in nature and in some instances indecipherable. Resolution of the instant motions is best facilitated by a summary of the several causes of action. We turn, therefore, to count one of the complaint.

Plaintiff's first cause of action consists of a broad based attack on the structure, practices, and administration of the Suffolk County Surrogate's Court. In large part, it all but mirrors word for word count one of the complaint in Sassower's prior action, 77 C 1447, which this court dismissed as failing to comply with the "case or controversy" requirement of Article III. To the extent this claim is a mere restatement of allegations previously asserted, it is barred on res judicata grounds. Expert Electric, Inc. v. Levine, 554 F.2d 1227, 1232-33 (2d Cir.) cert. denied, ___

U.S. ___, 98 S.Ct. 300 (1977).

Plaintiff attempts to remedy the defect by raising the claim on behalf of himself and "...all non-judicially appointed litigants, estates, and beneficiaries wherein judicial appointees are involved..." (Amended Complaint §1(b)). Plaintiff maintains that the Surrogate's "obligations" to appointees taints the fairness of proceedings to the prejudice of non-judicially appointed litigants. Accepting the truth of the allegation, the claim nevertheless remains insufficient. Firstly, the class definition is too indefinite in scope. DeBremaecker v. Short, 433 F.2d 733, 734 (5th Cir. 1970). Beyond that, the claim does not allege specific instances of injury to any of the so-called members of the purported class, O'Shea v. Littleton, 414 U.S. 488, 494, 94 S.Ct. 669, 675 (1974). Injury is alleged only in the most general terms.

On his own behalf, plaintiff claims injury by adverse rulings of the court. Such "injury" however does not give rise to a civil rights claim. Medved v. Hallows, 392 F.Supp. 656, 658 (E.D. Wis. 1975) see also Ginsberg v. Stern, 251 F.2d 49, 50 (3d Cir. 1958). We find plaintiff's first cause of action insufficient on its face, and it is therefore

of defects in both contempt proceedings and asks this court to enjoin execution of the warrant of committment issued on March 8, 1978. Only last year, the Supreme Court in Juidice v. Vail, ___ U.S. ___, 97 S.Ct. 1211 (1977) considered the applicability of federalism and comity principles enunciated in Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971) and Huffman v. Pursue, Ltd., 420 U.S. 592, 95 S.Ct. 1200 (1975) to cases involving the State's contempt process. Under the imminent threat of imprisonment having been adjudged in contempt of court, the plaintiffs in Juidice sought to challenge the constitutionality of New York State's contempt procedures, Judiciary Law §§ 750 and 756, et seq., in a federal court §1983 action. As is the case here, plaintiffs had all been served with notice of the impending proceedings, but failed to appear on the scheduled return date; adjudications of contempt were entered in their absence and sentences imposed. Holding federal intervention into the state contempt process improper, the court noted:

> A state's interest in the contempt process,

> through which it vindicates the regular operation of its judicial system, so long as that system itself affords the opportunity to pursue federal claims within it, is surely an important interest....Whether disobedience of a court-sanctioned subpoena, and the resulting process leading to a finding of contempt of court, is labeled civil, quasi-criminal, or criminal in nature, we think the salient fact is that federal court interference with the State's contempt process is 'an offense to the State's interest...' (citation omitted) Id. at ____, 97 S.Ct. at 1217.

That plaintiffs absented themselves from the state proceeding was of little consequence. The Court found that plaintiffs:

> had an opportunity to present their federal claims in the state proceeding. No more is required to invoke Younger abstention. There is no support...for the belief that the state courts must have an actual hearing (to which a recalcitrant defendant would presumably be brought by force) in order for Younger and Huffman to apply. Appellees need be accorded an opportunity to fairly pursue their constitutional claims in the ongoing state proceedings, and their failure to avail themselves of such opportunities does not mean that the state procedures were inadequate. (citation omitted) Id. at ____, 97 S.Ct. at 1218.

Following the mandate Juidice, we decline to enjoin execution of the warrant of committment. Sassower clearly had the opportunity to present his double jeopardy

claim in the context of the second contempt proceeding and can still by way of a motion to vacate pursuant to CPLR §5015. If committed, plaintiff can petition the state court for a writ of habeas corpus and be admitted to bail pending its determination. Thus, there is no clear threat of irreparable injury, Younger v. Harris, 401 U.S. at 46-49, 91 S.Ct. at 751-53, and no basis for injunctive relief. Plaintiff's bald and conclusory allegation of bad-faith is insufficient to rescue the claim from dismissal, see Grandco Corp. v. Rochford, 536 F.2d 197 (7th Cir. 1976).

Sassower claims in his third cause of action that defendant Charles Brown, a former employee of Suffolk County, has exhibited a "spurious badge or shield" to plaintiff's embarrassment. Plaintiff seeks an order enjoining the continued unauthorized use of such badge by Brown and others. In short, mere claims of emotional distress, harrassment, 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. Rarbie, 391 F.Supp. 1, 9 (N.D. Ill. 1975); Bolden v. Mandel, 385 F.Supp.

761, 764 (D.Md. 1974). Notwithstanding Brown's failure to move, the claim is dismissed as frivolous. Likewise, plaintiff's fourth cause of action, challenging on due process grounds the bail procedures employed by the state court, is dismissed as frivolous.

As and for his fifth cause of action, plaintiff alleges that defendants' failure to properly serve his subpoenas has effectively denied him access to the courts. We are again hardpressed to find, assuming the truth of the allegation, any constitutional deprivation. There is absolutely no requirement that a sheriff serve a litigant's subpoena; CPLR §2303 when read in conjunction with CPLR §2103(a) expressly provides for services by anyone over the age of 18 who is not a party to the action. Thus the claim cannot stand.

Plaintiff complains in his sixth cause of action that defendants have misused state statutes and the authority of the Surrogate's Court to "annoy, harass, embarrass, and investigate" him. As noted before, claims of harassment and embarrassment do not give rise to a cause of action under the Civil Rights Act. Taylor v. Nichols, 409 F.Supp. at 936. Beyond that, the claimed misuse of state statutes does not

entail a constitutional deprivation. Browne v. Dunne, 409 F.2d 341, 343 (7th Cir. 1969). Accordingly, the claim is dismissed.

Similarly, we find little basis to plaintiff's seventh cause of action. Plaintiff claims to have turned over "certain documents and papers" to defendants Berger and Mastroianni relying on their representation that copies would be made and turned back. Sassower maintains that defendants' failure to return the copies "prejudiced" him. Notwithstanding the vagueness of the allegations, such an omission hardly constitutes a constitutional deprivation. Finding the claim specious, it is therefore dismissed.

Plaintiff's eighth cause of action consists of a rambling series of allegations, contained in some 76 paragraphs, against all of the named defendants. Sassower seeks $10 million in damages alleging, in essence, that each and every transaction with defendants since his purported removal as executor was tainted by illegality. Plaintiff, through an indiscriminate recitation of factual allegations, complains that he was the target of a vicious conspiracy designed to defame him and strip him of all constitutional rights. In

short, plaintiff charges that his removal was unauthorized; that his contempt trial typified a "star-chamber" proceeding; that his arrest and return to the Surrogate's Court violated the mandate of the contempt order which directed immediate incarceration in the Suffolk County Jail; that the arresting officers' refusal to permit him access to a neighboring state court before returning him to the Surrogate's Court violated his constitutional rights; that defendants unlawfully refused, during Sassower's two hour detention at the Surrogate's Court, all requests to make telephone calls; that defendants caused false and misleading statements to be circulated to the press; that defendants improperly served his subpoenas; that defendants unlawfully instituted a second set of contempt proceedings; that defendants obstructed plaintiff in his attempt to secure a writ of habeas corpus; and that defendants, through their counsel, made false representations to this court. The allegations, while exhaustive, cannot withstand dismissal.

We note at the outset that the rambling nature of the 76 paragraph claim violates the command of Rule 8(a)(2) F.R.Civ.P. requiring a short and plain statement of the grounds for relief. Boruski v. Stewart, 381 F.Supp. 529, 533 (S.D.N.Y.

1974); Prezzi v. Bersak, 57 F.R.D. 149, 151 (S.D.N.Y. 1972). Beyond that, the essence of the claim but mirrors the third cause of action in 77 C 1447 which this court dismissed with prejudice. To that extent, the claim is barred by the doctrine of res judicata. Expert Electric, Inc. v. Levine, 554 F.2d at 1232-33.

That new facts have been pled does not change the result. The allegations against defendant Signorelli center around actions performed in the course of his judicial duties. As such, he is cloaked with immunity from damage claims. Stump v. Sparkman, 46 U.S.L.W. 4253, 4255 (March 28, 1978); Pierson v. Ray, 386 U.S. 547, 553-55, 87 S.Ct. 1213, 1217-18 (1967); Bradley v. Fisher, 80 U.S. 335, 351 (1872). Having the power to adjudicate someone in contempt, it cannot be said that Judge Sigorelli acted in "clear absence of all jurisdiction." Stump v. Sparkman, 46 U.S.L.W. at 4255. That the contempt proceedings, to defendant's knowledge, may have been infected by procedural defects is of no consequence. Id. at 4256; see also Berg v. Cwiklinski, 416 F.2d 929 (7th Cir. 1969). The cloak of immunity is nevertheless absolute and defeats the claim.

So too, defendant Mastroianni, serving as public administrator, and defendant Pugatch, as counsel to Judge Signorelli, are immune from damage claims for their actions respectively taken in prosecuting and appealing the contempt citation. Imbler v. Pachtman 424 U.S. 409, 424-31, 96 S.Ct. 984, 990-95 (1976). Defendants Croce and Grzymalski, deputy sheriffs acting pursuant to a facially valid warrant in arresting plaintiff, are as well immune from suit. Lockhart v. Hoenstune, 411 F.2d 455, 460 (3d Cir. 1969); Hevelone v. Thomas, 423 F.Supp. 7, 9 (D. Neb.), aff'd., 546 F.2d 797 (8th Cir. 1976); Meyer v. Curran, 397 F.Supp. 512, 519 (E.D. Pa. 1975). And of course, the County of Suffolk, not being a "person" within the meaning of §1983, is not amenable to suit under the Civil Rights Act. Aldinger v. Howard, 427 U.S. 1, 8, 96 S.Ct. 2413, 2421 (1976). For this multitude of reasons, the claim is dismissed.

We turn lastly to plaintiff's application for leave to serve a second amended complaint. Plaintiff seeks to add as a defendant, Acting Surrogate Harry E. Seidell, and raise claims going to the conduct of the second contempt proceeding. Since such claims would be barred under the doctrine of

judicial immunity, there is little purpose in permitting the amendment.

Accordingly, plaintiff's motion for leave to serve a second amended complaint is denied with prejudice. Defendants' motions to dismiss are in all respects granted. The Clerk of the Court is directed to enter judgment in favor of defendants and against plaintiff dismissing the complaint with prejudice, and it is

SO ORDERED.

U. S. D. J.

A TRUE COPY
ATTEST
DATED 6-5, 1981
RICHARD H. WEARE
CLERK
BY Rosemary Mancuso
DEPUTY CLERK