(24)

UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT FOR NEW YORK
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GEORGE SASSOWER, individually, and on behalf of all others similarly situated,

File No.
78 Civ. 124

Plaintiff,

-against-

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

Defendants.

----------x

PLAINTIFF'S MEMORANDUM

GEORGE SASSOWER, Esq.
Attorney for plaintiff-pro se.
75 Wykagyl Station
New Rochelle, New York, 10804

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

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PLAINTIFF'S MEMORANDUM

STATEMENT

Plaintiff's action, individually and as a class, is brought pursuant to 42 U.S.C. §1983, directly under the Constitution of the United States, and pendent jurisdiction.

Defendants' ERNEST L. SIGNORELLI and LEONARD J. PUGATCH move to dismiss pursuant to Rule 12(b)(6) and the defendants' ANTHONY MASTROIANNI, JOHN P. FINNERTY, ALLEN CROCE, and ANTHONY GRZYMALSKI moved to dismiss pursuant to Rule 56.

PLAINTIFF'S
FIRST CAUSE OF ACTION

In the Decision of September 20, 1977, this Court held that the complaint does not "allege an actual case or controversy" (351)*.

Unquestionably the present complaint (brought as a class action) makes such allegation specifically and repeatedly.

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*Record on Appeal-Circuit Court of Appeals-Joint Appendix.

PLAINTIFF'S
SECOND CAUSE OF ACTION

In the Decision of September 20, 1977, this Court held the action "moot" because subsequent to the commencement of the action the criminal contempt conviction had been annulled (352).

This situation does not exist at the present time since there is outstanding an Order of Criminal Contempt and Warrant of Commitment dated March 8, 1978.

As noted by SIGNORELLI's Brief to the Appellate Division (Exhibit E), he contends that from a Criminal Contempt conviction rendered in absence of the accused in Surrogate's Court the Surrogate and only the Surrogate may stay execution of the incarceration since there cannot be an appeal from a default.

PLAINTIFF'S
THIRD THROUGH SEVENTH CAUSES
OF ACTION

As to these causes of action the defendants have not set forth any objections, either in their affidavits or their memoranda, except to state that since the defendant SIGNORELLI has recused himself any injunctive relief against him is "moot".

That contention may have some merit were the defendant SIGNORELLI operating only in a judicial capacity, but the allegations are that he is not acting only in a judicial capacity. Such defendant, for example, as a litigant is pressing forth with an appeal from the Order of Mr. Justice GEORGE F.X. McINERNEY despite the fact that a subsequent

conviction has been secured against the plaintif. A reversal of such appeal would clearly amount to double-jeopardy.

PLAINTIFF'S
EIGHTH AND NINTH CAUSES
OF ACTION

Plaintiff's eighth cause of action is based on the Order of Criminal Contempt dated March 8, 1978, which constitutes more than defamation (Paul v. Davis, 424 U.S. 693 [1976]), for it affects status (Lefkowitz v. Cunningham, 431 U.S. 801 [1977]).

Plaintiff's ninth cause of action is based on the nefarious manner in which the defendants are employing the Warrant of Commitment dated March 8, 1978 (on which plaintiff will request interim relief).

PLAINTIFF'S
TENTH CAUSE OF ACTION

Plaintiff contends that for each and every wrongdoing set forth in the tenth cause of action, case law holds that liability exists.

a. While the Court in Stump v. Sparkman (38 CCH. S.Ct. Bull. p. B1307, B 1322-n.13) refused to decide the issue as to the immunity of others acting in concert with an immune judge, the weight of present authority is that there is no such immunity (Slotnick v. Stavisky, 560 F.2d 3133-1st Cir [1977]).

bl. There is no immunity for a judge if the act is not "judicial" (Stump v. Sparkman, supra).

Instructing the Sheriff as to the manner a warrant will be executed, causing plaintiff to be deprived of his

right to a Writ of Habeas Corpus, or to telephone an attorney, distributing information to the public press, his conduct as a litigant, commentary on what occurred in other courts wherein he was not a judge but a litigant, and communicating with others while not acting as the judge in the matter is not a "judicial act" (Spires v. Bottorhoff, 317 F.2d 273-7th Cir [1963]).

Neither are ministerial acts considered "judicial" acts for which there is any immmunity (Plaintiff's Br.p. 28-31, C.C.A.).

There is no immunity where the judge clearly has no jurisdiction. Such is the situation wherein the defendant SIGNORELLI published a "Decision" which dealt in the main with judicial proceedings in the State Supreme Court and in the Federal Court in which he was a litigant.

2. There is no immunity where the judge knows that he has no jurisction (Stump v. Sparkman, supra., at p. B1314 n. 6 "when the want of jurisdiction is known to the judge, no excuse is permissible.").

3. There is no immunity where the constitutional right is clear and settled (Procunier v. Navarette, U.S. , 46 LW 4144 [1978]).

Clearly as to those who have less than an "absolute" immunity a triable issue of fact exists on which there may not be summary disposition, particularly at the pleading stage.

DEFENDANT'S
MOTIONS SHOULD BE
DENIED

Respectfully submitted,

GEORGE SASSOWER, Esq.
ttorney for plaintiff-pro se.