

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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

File No.  
78 Civ. 124

Plaintiff,

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI, **FILED**  
VINCENT G. BERGER, JR., JOHN P. FINNERTY, IN CLERK'S OFFICE  
ALLAN CROCE, ANTHONY GRZYMALSKI, CHARLES S. DISTRICT COURT E.D.N.Y.  
BROWN, LEONARD J. PUGATCH, and THE COUNTY  
OF SUFFOLK, ★ APR 5 - 1978 ★

Defendants.

TIME A.M. ....  
P.M. ....

-----x  
Upon reading and filing the annexed affidavit  
of GEORGE SASSOWER, Esq., duly sworn to on the 27th day of  
March, 1978, with exhibits annexed thereto, its is

ORDERED, that the defendants show cause before  
this Court in <sup>Civil</sup> Room # 5, at the United States Courthouse, 225  
Cadman Plaza East, in the Borough of Brooklyn, City and  
State of New York on the 3<sup>rd</sup> day of <sup>April</sup> ~~March~~, 1978, at 9:30  
o'clock in the ~~fore~~ noon of that day or as soon thereafter  
as Counsel may be heard for an Order permitting plaintiff  
to file and serve a second amended complaint adding  
BARRY E. SFLDBELL as a party defendant and restraining the  
enforcement of the Order of Surrogate's Court : Suffolk  
County dated March 8, 1978 which sentenced the plaintiff  
to be incarcerated, together with any other, further, and/or  
different relief as may be just and proper in the premises,

(2)

and it is further

*Grant*  
~~ORDERED, that pending the determination of this motion that the defendants be restrained from enforcing the said Order of Criminal Contempt dated March 8, 1978, it appearing to the satisfaction of the Court that it was adjudicated without the presence of the plaintiff.~~

SUFFICIENT CAUSE having been shown therefore, let copies of this Order together with copies of the papers upon which it is based be served upon the attorneys for the defendants on or before the <sup>at or before 4:30 P.M.</sup> 30<sup>th</sup> day of March, 1978, be deemed good and sufficient service.

Dated: Brooklyn, New York  
March ~~27~~<sup>30</sup>, 1978

@ 8:30 A.M

*James M. ...*  
UNITED STATES DISTRICT JUDGE.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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

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, and THE COUNTY  
OF SUFFOLK,

Defendants.  
-----x

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

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

This affidavit is in support of a motion for  
leave to file and serve a second amended complaint, adding  
as a defendant, HARRY E. SEIDELL and to stay enforcement  
of a patently unconstitutional Order of Commitment dated  
March 8, 1978.

Thus far no answers have been served or filed on  
behalf of the defendants although there are motions pursuant  
to Rule 12(b)(6) and Rule 56 pending.

Heretofore, plaintiff served an amended complaint  
as of right, essentially, in order to plead events that had  
occurred since the preparation of the initial complaint.

Again your deponent desires to amend the complaint  
to include events that have transpired since the preparation of

the amended complaint and which includes as an additional party defendant, HARRY E. SEIDELL.

It would seem that economy of judicial time and effort would be served by amending once more the complaint herein, rather than commencing a new action.

1. At the outset I note the statement by the Court in Bradley v. Fisher (80 U.S. 335, 20 L. ed. 646 [1872]), that there is no judicial immunity:

"when the want of jurisdiction is known to the judge, no excuse is permissible..." (at p. 352, 651).

On March 8, 1978, the said HARRY E. SEIDELL, Acting Surrogate of Suffolk County adjudicated your deponent to be guilty of criminal contempt and imposed a sentence of thirty (30) days in the County Jail (Exhibit A).

In the very same case and for the same conduct, Mr. Justice GEORGE F.X. McINERNEY, sustained your deponent's Writ of Habeas Corpus in an Order and Decision dated July 28, 1977, wherein the Court stated:

" The issue before this Court is whether a judge of a court can summarily find an attorney guilty of 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."

The Court reviewed controlling decisions, including those of the United States Supreme Court, and held that such conviction could not be sustained under the circumstances

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and no one to the knowledge of your deponent has disputed the correctness of such proposition since its rendition.

On the face of the Order adjudicating your deponent in criminal contempt, dated March 8, 1978, it reveals that your deponent was absent when the Court took testimony.

These defendants and HARRY E. SEIDELL knew that they had no jurisdiction to find and sentence your deponent for criminal contempt in his absence.

That was the specific holding of Mr. Justice GEORGE F.X. McINERNEY by his decision of July 28, 1977, and even were it not good law (which it is) the Court and the parties are bound by the Order entered thereon until it is reversed.

This Order of Criminal Contempt is morally odious since it was entered the first time this matter has been before the Acting Surrogate, HARRY E. SEIDELL, and he knew that at the time deponent was actually engaged on trial in Supreme Court: Bronx County.

As the complaint and other papers reveal, this deprivation of plaintiff's constitutional rights is part of a deliberate program on the part of the defendants.

With respect to this patently unconstitutional conviction, we draw the attention of this Court to the fact that according to Rule 691.7(b) of the Rules of the Appellate Division : Second Department, same is considered a "serious crime" for which a disciplinary hearing must be held at which (c) "the attorney may not offer evidence inconsistent

with the essential elements of the crime for which he was convicted".

On or prior to the return date of this motion, your deponent will submit a copy of his proposed second amended complaint, which is quite lengthy and will need several days of typing.

2. The question of injunctive relief is not dependent on relief in damages.

Assuming arguendo, that a judge is immune from damages in the case at bar, such immunity does not extend to injunctive relief.

In the recent case of Shipp v. Todd (568 F.2d 133-9th Cir), the Court stated:

"we agree that the Civil Rights Act does not abrogate the quasi-judicial immunity accorded him in the exercise of his judicial functions. (case cited). That immunity, however, is limited to actions for damages and does not extend to suits for injunctive relief" (at p. 134).

The Order of Commitment herein (Exhibit B) specifically states:

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

The facts set forth herein show bad faith on the part of the defendants and HARRY E. SEIDELL, as a prima facie allegation, and is almost conclusive in view of the other matters that have occurred herein, thereby negating the necessity of resorting to State courts in the first

instance.

Furthermore, the state remedy is ineffectual and as bad as the disease which it is designed to cure.

The defendants SIGNORELLI, MASTROIANNI and BERGER, know that until deponent exhausts any State remedy, the period of incarceration will have expired and with their power they have a reasonable chance of sufficiently influencing a judge in Suffolk County to decide or proceed in accordance with their wishes.

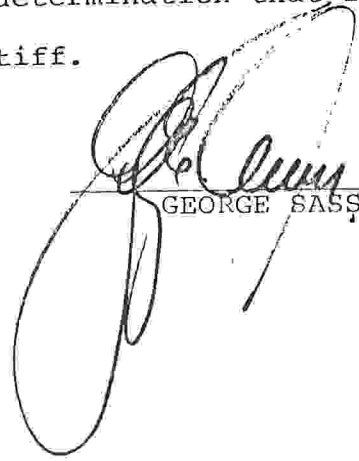
3. Just prior to argument on March 17th, 1978, before Hon. JACOB MISHLER, your deponent learned of the existence of the Warrant of Arrest and Order of Commitment and made reference to same. These documents were examined by the Court, although not properly or formally before it, although reference was made to same by the Court's decision of March 21, 1978. There was before the Court a motion to restrain defendants from proceeding towards such Order on different grounds.

The statements in that decision notwithstanding, no prior relief has been requested in the Appellate Division with respect to such Warrant or Order or proceedings leading to same.

Excepting that which is contained herein, no previous application for this relief has been made to any Court or Judge.

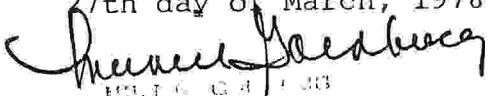
WHEREFORE, deponent respectfully prays that this

motion be granted, and pending determination that interim relief be afforded to the plaintiff.



GEORGE SASSOWER

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



Notary Public  
County of ... State of ...