

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GEORGE SASSOWER, :
 :
 Plaintiff, : 78 Civ. 4989 (GLG)
 :
 -against- :
 :
 ANTHONY GRZYMAŁSKI, et al., : M E M O R A N D U M
 : D E C I S I O N
 Defendants. :
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The plaintiff in this action has made two rather unusual motions. The first seeks to remove the case from the suspense calendar, vacate the dismissal of the action as against two defendants, file an amended complaint as against those defendants, and simultaneously grant him summary judgment against them and the other two defendants, against whom the action was not dismissed but stayed. The second motion requests an order "granting requesting Hon. JACOB MISHLER [Senior District Judge of the Eastern District of New York] to set forth in admissible form the events before His Honor on March 17, 1978 in this matter"

This is one of a number of cases that had their genesis in judgments of the Suffolk County Surrogate's Court, which convicted the plaintiff of criminal contempt. That contempt judgment resulted from a Surrogate's determination that the plaintiff (an attorney) had interfered with the

administration of an estate of which he had formerly been the executor by failing to comply with the turn-over order of the Surrogate requiring the transfer of all estate documents to a public administrator. (The public administrator had been designated temporary administrator in Sassower's place in order that an accounting could be had.) Sassower appealed the second contempt finding and the Appellate Division, Second Department, ordered the appeal held in abeyance pending a remand to the trial court to determine whether Sassower's default in appearance at the contempt trial was excusable. The remand has never been conducted so that appeal from the contempt is still "in abeyance."

Although the remand and the appeal from the adjudication of criminal contempt have not been prosecuted, Sassower commenced on numerous actions in federal and state courts seeking to recover damages from two Suffolk County surrogates, the Suffolk County Sheriff and several of his deputies (who arrested Sassower), the public administrator, various attorneys, and other parties. Two actions were brought in the Eastern District of New York before Judge Mishler and were dismissed with prejudice. These dismissals were affirmed by the Second Circuit in an unreported memorandum decision, 594 F.2d 852 (2d Cir. 1978), which rejected Sassower's claims of illegality. Sassower also brought virtually identical civil actions in the state courts, one of which is presently pending

in New York County with a motion for summary judgment by defendants sub judice.

The action in this district was filed in 1978 and assigned to then District Judge Lawrence W. Pierce. On August 1, 1979, Judge Pierce dismissed the action as to all the Suffolk County defendants except the first two named, who were the deputy sheriffs who had arrested and incarcerated Sassower in connection with the conviction of criminal contempt. As to these defendants, Judge Pierce ordered the action stayed to abide the determination in the earlier filed state court proceedings.

Recently, Sassower attempted to revive the two dismissed Eastern District actions and to commence a third action, requesting relief somewhat similar to that sought in the first motion before this Court. In his recent decision denying those applications, Judge Mishler summarized the prior proceedings and factual background of these litigations as follows:

This action is the most recent in a series of state and federal court actions arising out of Sassower's administration of the estate of Eugene Paul Kelly. Most of the underlying facts of this action have been summarized in one of the previous memoranda of decision and orders by this court, Sassower III [Sassower v. Signorelli, No. CV 78-124 (E.D.N.Y. April 20, 1978)] (unpublished decision), aff'd, 594 F.2d 852 (1978) (unpublished decision) and are as follows:

"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 relinquish control and surrender the documents to the court.

"The [Surrogate's] court ordered Sassower to show cause why he should not be punished for contempt of court on account of his willful 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 commitment 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. [No. CV 77-1447.] 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 28 order. Thereafter Judge Signorelli (and co-defendants) challenged the sufficiency of the complaint filed in this court. [No. CV 77-1447.] This court, in considering various motions for dismissal and judgment on the pleadings, found the complaint defective and accordingly entered an order of dismissal. [Sassower v. Signorelli, No. CV 77-1447 (E.D.N.Y. Sept. 20, 1977)] 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 turnover 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 v. Signorelli, No. CV 78-124 (E.D.N.Y. Mar.

21, 1978) (unpublished decision) ("Sassower II").]

"Sassower, having received notice of the impending contempt proceedings, failed to appear on the scheduled return date because of a previous trial commitment. Acting Surrogate Seidell conducted a hearing, found Sassower guilty of contempt, and imposed a thirty (30) day prison term. Judgment was entered on March 8, 1978, and a warrant of commitment issued."

Sassower III, supra, slip op. at 3-6.

This court then turned to the substance of that previous action and dismissed the various causes of action stated in plaintiff's complaint on the following grounds: (1) res judicata; (2) failure to state a claim upon which relief can be granted; (3) Younger abstention; (4) claims of emotional distress are not actionable under § 1983; and (5) defendants, as public officials acting within the judicial process, are immune from suit. Sassower III, supra.

Since the last decision (Sassower III), the following relevant events occurred. On June 19, 1978, Sassower was arrested and taken into custody under the auspices of Suffolk County Sheriff John Finnerty (defendant in this action) pursuant to the warrant of commitment issued on March 8, 1978. Sassower commenced a second habeas corpus action in state court as well as various other actions against the defendants herein and others in state court sounding in tort theories of liability. Sassower's petition for habeas corpus was denied after a "summary hearing" in Special Term of New York State Court. The Appellate Division for the Second Department remanded the habeas corpus proceeding back to Special Term for a fuller evidentiary hearing on the issue. Sassower v. Finnerty, 96 A.D.2d 585, 465 N.Y.S.2d 543 (1983).

Sassower v. Signorelli, No. 77 C 1447, slip op. at 4-9 (E.D.N.Y. Nov. 29, 1984) (Mishler, J.).

Sassower's reasons for believing he could obtain the extraordinary relief sought by his first motion are not at all apparent. He does claim that it was unanticipated by Judge Pierce that defendant Grzymalski would refuse to submit to an examination before trial, with the result that his answer was stricken in the state court action. On the other hand, he seems to be urging that this action no longer be stayed because he has not been afforded the discovery to which he is entitled in the state action and the state courts are failing to deal with the situation. (The defense counsel maintains that there has been exhaustive pretrial discovery in the state court, all of which establishes that the defendants are entitled to summary judgment in that proceeding.) The reasons that caused Judge Pierce to dismiss part of this action and stay the remainder are at least as strong now as they were in 1979.

The second motion, which is even more unique, apparently results from the claim that the defendants relied upon off-the-record, or unofficial, expressions by Judge Mishler in his consideration of the first two Eastern District actions. The defendants flatly dispute any such claim and state that they relied solely on the written decisions and orders of Judge Mishler dismissing the plaintiff's actions.

In any event, we can see neither the need nor the authority for granting such an application.

The defendants do not merely urge the denial of the present motions, but vigorously seek the assessment of attorneys' fees because of the conduct of the plaintiff. The Appellate Division, Second Department, recently said in affirming an injunction against further litigation by this plaintiff:

This appeal is the latest in a series of frivolous and repetitious claims, motions, petitions, collateral proceedings and appeals arising from the rulings of the defendant, the Surrogate of Suffolk County, which required plaintiff George Sassower to account for his activities as a fiduciary. We affirm the order insofar as appealed from, and utilize this opportunity to caution these plaintiffs [referring to George Sassower and his attorney-wife Doris Sassower] as well as others, that this court will not tolerate the use of the legal system as a tool of harassment.

* * *

To be sure, public policy mandates free access to the courts and zealous advocacy is an essential component of our legal system and, ordinarily, the doctrine of former adjudication will serve as an adequate remedy against repetitious suits.

Nonetheless, a litigious plaintiff pressing a frivolous claim can be extremely costly to the defendant and can waste an inordinate amount of court time, time that this court and the trial courts can ill afford to lose. Thus, when, as here, a litigant is abusing the judicial

process by hagridding individuals solely out of ill will or spite, equity may enjoin such vexatious litigation.

That plaintiffs are attorneys does not bar the issuance of an injunction. Indeed, attorneys who participate in such manipulation of the legal process are subject to strong disciplinary sanctions.

In short, Special Term acted properly in putting an end to plaintiffs' badgering of the defendant and the court system.

Sassower v. Signorelli, 99 A.D.2d 358, 472 N.Y.S.2d 702, 703-04 (2d Dep't 1984) (citations omitted).

If that injunction was intended to apply to federal proceedings, it has been grossly ignored by the proceedings in the Eastern District referred to above and the applications before this Court. This Court would be seriously inclined to assess substantial costs against the plaintiff were it not for the fact that, in his most recent decision, Judge Mishler has already done so and the papers that have been submitted in the two district courts are substantially similar. Moreover, Judge Mishler not only found that the present claims were "frivolous and wholly without merit, but based upon the pleadings before the court, and our previous decisions in Sassower I, Sassower II, and Sassower III, we further conclude that this suit and Sassower's onslaught of voluminous motions before this court and to the opposing parties was entirely vexatious." Sassower v. Signorelli, No. 77 C 1447, slip op. at 13-14 (E.D.N.Y. Nov. 29, 1984).

In addition to ordering the assessment of attorneys' fees and costs, he also, as a deterrent to further frivolous litigation by Sassower, directed him to refrain from filing any further suits in federal court or motions in connection with the matter until he paid the attorneys' fees and costs to be assessed. It would appear that direction covers all federal courts. If it does not, we adopt it insofar as this Court is concerned. Under these circumstances, any further action by this Court would (hopefully) appear unnecessary.

SO ORDERED.

Dated: New York, N.Y.
January 10, 1985



GERARD L. GOETTEL
U.S.D.J.