

2 days

SA194

Summons and Complaint 78 Civ 6070

(SA194-SA204) CIVIL ACTION FILE No. 78 Civ.

JUDGE BRIEANT

GEORGE SASSOWER,

78 CIV. 6070

Plaintiff

SUMMONS

v.

APPELLATE DIVISION OF THE SUPREME COURT, THE SECOND JUDICIAL DEPARTMENT OF THE STATE OF NEW YORK,

Defendant

RECEIVED
78 DEC 19 PM 3:19
DEPT. OF LAW
STATE OF N.Y.

To the above named Defendant :

You are hereby summoned and required to serve upon

GEORGE SASSOWER, Esq.

plaintiff's attorney, whose address

75 Wykagyl Station
New Rochelle, New York, 10804

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date: December, 1978.

[Seal of Court]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
GEORGE SASSOWER,

Plaintiff,

-against-

APPELLATE DIVISION OF THE SUPREME COURT,
THE SECOND JUDICIAL DEPARTMENT OF THE
STATE OF NEW YORK,

Defendant.
-----x

Plaintiff complaining of the defendant respectfully sets forth and alleges:

1. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, §§1331 and 1343, this being a suit in equity authorized by law under Title 42, United States Code §1983, brought to redress the deprivation under color of state law, statute, ordinance, regulation, custom, or usage the rights, privileges, and immunities secured by the Constitution and laws of the United States providing for equal rights and due process of citizens; Amendment XIV of the Constitution of the United States. The rights here sought to be redressed are rights guaranteed by the due process, privileges and immunities, and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and Title 42 of the United States Code §1983.

2. That at all the times hereinafter mentioned, plaintiff was and still is a resident and citizen of the United States.

3. That at all of the times hereinafter mentioned the defendant was and still is an intermediate appellate tribunal in the judicial system of the State of New York.

4. That on the 22nd day of June, 1977, plaintiff was tried, adjudicated, and sentenced to be incarcerated for criminal contempt, all in absentia by ERNEST L. SIGNORELLI (hereinafter called "SIGNORELLI"), Surrogate of Suffolk County and in violation of established and unequivocal fundamental constitutional principles.

5. As a result thereof, plaintiff was unlawfully arrested and incarcerated.

6. That the Contempt Order and Warrant of Commitment under which plaintiff was arrested and incarcerated contained false and contrived recitations therein by "SIGNORELLI", and was in other ways defective.

7. Plaintiff's writ of habeas corpus challenging the legality of the aforementioned incarceration was thereafter sustained by Special Term of the state Supreme Court.

8. The said "SIGNORELLI", by his attorney, appealed to the defendant from the aforementioned eminently correct Order.

9. That while such appeal was pending, the said "SIGNORELLI", recused himself from presiding over any further litigation involving the plaintiff.

10. After said ERNEST L. SIGNORELLI recused himself, and while his appeal was pending before the defendant, "SIGNORELLI", circumvented his attorney, issued a communication

to the defendant, complaining, inter alia, that:

" On (June 23, 1977), he (plaintiff) procured a writ of habeas corpus from a Justice of the Appellate Division, Second Department, who scheduled a hearing on the following day, June 24th, 1977, in Suffolk County Supreme Court. The said Appellate Division Justice denied his application for bail. Later, that same day, he applied for and received another writ of habeas corpus from a Suffolk County Supreme Court Justice which contained a provision for bail. In both habeas corpus applications, he alleged that no previous application had been made for the relief requested." (emphasis supplied).

11. That both "SIGNORELLI" and the defendant knew that any complaint that he or any other person had against plaintiff should properly have been directed to the Joint Bar Association Grievance Committee of the Ninth Judicial District and that such complaints are by statute "private and confidential".

12. That such communication by "SIGNORELLI" was made to the defendant for the purpose of inflaming and prejudicing the defendant against plaintiff in his pending appeal and for other improper purposes.

13. That the only relevant issues to the determination of the appeal before the defendant were whether jurisdiction existed for the incarceration of plaintiff and the appropriateness of habeas corpus relief.

14. Despite such limited issues, in affirming the Order which sustained the writ of habeas corpus, the defendant

adopted the raise factual extra-judicial

"SIGNORELLI", stating:

" He (plaintiff) then petitioned this court for a writ of habeas corpus and asked for bail pending the hearing. A hearing on the writ was directed for the following day (June 24, 1977), but bail was denied.

Within a few hours of that determination, petitioner (plaintiff) made application for a writ of habeas corpus to a Justice of the Supreme Court in Suffolk County, without mentioning the prior application to this court. This was in violation of the statute that the petition for a writ 'shall state ... the date, and the court or judge to whom made, of every previous application for the writ, [and] the disposition of each such application' ...".
(emphasis added/deleted).

15. That the aforementioned irrelevant and factually erroneous remarks in the opinion of the defendant were wholly dehors the Briefs or Appendices of the parties submitted to the defendant.

16. Since the matter was submitted to defendant without oral argument, it cannot be contended that the aforementioned false and irrelevant remarks appearing in the opinion of the defendant were orally conveyed by the attorneys for the parties.

17. That because plaintiff is not legally "aggrieved", by virtue of the successful outcome on the appeal of "SIGNORELLI", he is not entitled to seek redress from any higher state court.

18. That there was other material in the opinion of

the defendant which likewise was irrelevant, gratuitous, and denigrating to plaintiff.

19. Thereafter, plaintiff moved defendant

"(1) to recall (defendant's) decision ... and to expunge therefrom all verbiage after the third paragraph and (2) to direct the respondent to produce before (defendant) all records that it may have which would indicate the time a Legal Aid attorney visited (plaintiff) on June 23, 1977, the time his office was presented with the writ of habeas corpus, and the time that (plaintiff) was released."

20. Albeit "no papers filed in opposition", defendant saw fit to dispose of plaintiff's motion with the designation "denied with \$20 costs."

21. Plaintiff contended on his aforesaid motion, and still contends that he never executed nor presented two writs, that the writ presented to Special Term in Suffolk County preceded that issued by defendant or was issued concurrently therewith.

The documentary records reveal that the writ presented to defendant was executed and tendered by a third person, who became aware of plaintiff's predicament. Defendant issued its writ no earlier than 4:33 p.m. Prior thereto, plaintiff's writ was given to a Legal Aid attorney so that it could be presented to Special Term of the Supreme Court, Suffolk County.

Plainly since plaintiff was incarcerated in Suffolk County he could not have presented any application to the defendant in Kings County.

Obviously, had the person who presented the writ of habeas corpus to defendant, known that plaintiff had already been able to forward his writ to Special Term he would not have fruitlessly presented his own prepared writ to defendant.

Unquestionably, keeping plaintiff unlawfully incommunicado for substantial periods of time on June 23, 1977, caused the situation complained of by the defendant.

22. There were other irrelevant, gratuitous, improper, egregious, and denigrating remarks made in the aforementioned opinion of the defendant, on which matters plaintiff has never been afforded a hearing.

23. Clear recognition that the opinion of defendant is defamatory, is evidenced by its publication in the New York Law Journal (Nov. 9, 1978 p. 15, col. 6), which omitted the names of the litigants from the title (plaintiff and "SIGNORELLI"). The printed text however, clearly identifies the plaintiff by name.

24. That on information and belief, such defamatory and denigrating material will shortly appear in the advance sheets published by Lawyers Co-operative Publishing Co. and West Publishing Co. and thereafter in bound permanent volumes.

25. That plaintiff is a practicing attorney, with his earnings and employment opportunities directly dependent upon his reputation. The aforementioned opinion adversely reflects upon his integrity and good faith, causing tangible consequences to him.

26. Furthermore, the publication of plaintiff's name by defendant in connection with a censurable act or event, signifies to the legal profession a change of status, since by statute and custom the breach of confidentiality signifies that an attorney has been disbarred or suspended from the practice of law.

27. That under extant state law, judicial immunity does not protect material which is not possibly pertinent to the issues.

28. Moreover, the statutory law of this State is that any complaint to defendant of misconduct on the part of attorneys and any investigation or papers relating thereto is confidential prior to adjudication adverse to said attorney.

29. That the aforementioned opinion of the defendant which contains material completely devoid of relevancy, is derogatory to plaintiff and affects his liberty and property interests, recognized by state law and federal law in such instances.

30. That as to such irrelevant matters plaintiff has never had a trial or hearing so that he could dispute and thereby rebut and negate defendant's infamous charges.

31. That the conduct of the defendant is inexplicable except as an attempt to divert attention from the egregious misconduct of two members of the judiciary, who usurped basic constitutional, legal, and moral principles, and/or for other reasons legally untenable.

WHEREFORE, plaintiff respectfully prays that the defendant be mandated and directed to grant to plaintiff an

immediate constitutional hearing on those portions of the decision of the defendant which it has refused to expunge, or alternatively expungement of the factually unsupported or irrelevant defamatory statements, together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

Yours, etc.,

GEORGE SASSOWER, Esq.
Attorney for plaintiff-
pro se.
75 Wykagyl Station
New Rochelle, New York, 10804
914-636-4050

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

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

That he is the plaintiff in the within action,
has read the foregoing complaint and knows the contents thereof.

That the same is true to his own knowledge.

GEORGE SASSOWER

Sworn to before me this
15th day of December, 1978.

NOTICE OF ENTRY

Notice that the within is a (certified)

office of the clerk of the within
19

Yours, etc.,

and Post Office Address

Index No.
78 Civ.

Year 19

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
GEORGE SASSOWER,

Plaintiff,
-against-

APPELLATE DIVISION OF THE
SUPREME COURT, THE SECOND
JUDICIAL DEPARTMENT OF THE
STATE OF NEW YORK,

Defendant.

SUMMONS AND COMPLAINT.

GEORGE SASSOWER

Attorney for Plaintiff-pro se.

Office and Post Office Address Telephone
5 Wykagyl Station,
New Rochelle, New York, 10804
914-636-4050

Yours, etc.,

and Post Office Address

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72 DEC 13 PM 3:18

DEPT. OF JUSTICE
STATE DEPT.

Lawrence J. ...

To
Attorney(s) for

Service of a copy of the within

Dated,

is hereby admitted.

Attorney(s) for