

A14.

GEORGE SASSOWER, ESQ.-PLAINTIFF-AFFIDAVIT-MAY 19, 1980

[A14-A17]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

GEORGE SASSOWER,

Index No.  
21226-1979

Plaintiff,

-against-

APPELLATE DIVISION OF THE SUPREME COURT,  
SECOND JUDICIAL DEPARTMENT,

Defendant.

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

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

I am the plaintiff herein and make this affidavit in response  
to the affirmation of JOHN B. GARRITY, JR., Esq., dated May 8, 1980.

1. Defendant's attorney's application must be denied, as a  
matter of law, since (a) there is no proper affidavit of merit and (b)  
there is no legal excuse for the default.

Furthermore, the default was wilful and public policy man-  
dates that defendant and its attorney be treated like any other litigant  
or attorney engaged in litigation.

2. From the time the summons was given to the Sheriff of the  
City of New York (Kings County Division) on November 5, 1979, until  
April 30, 1980, when defendant's attorney received my proposed order of  
default, I received no correspondence from defendant or its attorney in  
this matter.

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3. When Mr. GARRITY received my aforesaid proposed order, he telephoned me and requested that I withdraw same and give him an extension of time to answer. He stated that he knew nothing about this case, had requested the file from the New York City office a number of times, but had never received same.

I told him that I hoped in the light of his own experience, he could appreciate my frustration in making repeated requests of his New York office regarding a Notice of Appearance, which I did not receive, or information regarding the person who was handling this matter, which I also did not receive.

In any event, I advised Mr. GARRITY since the Attorney General's Office seems to blithely disregard rules of practice and common courtesy, I was not inclined to withdraw my proposed order of default and give him the additional month he requested in order to answer the complaint.

4. Although specifically advised that I would reject any untimely answer, Mr. GARRITY nevertheless served same, which was returned the same day of receipt with a Notice of Rejection (Exhibit "A").

5. An examination of the complaint reveals that the irresponsible denials of every allegation of the complaint, except for paragraph 2, are specious and frivolous.

6. Defendant's answer, as verified by Mr. GARRITY, even denies the contents of a reported decision of the defendant and other specific allegations, the correctness of which is beyond dispute.

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The proposed answer then sets forth affirmative defenses which are patently meritless and obviously made by one not personally familiar with the facts.

a. The proposed answer sets forth the Statute of Limitations as a defense. Yet the decision of the Appellate Division was made on November 9, 1978 and a copy of the summons was given to the Sheriff for service on November 5, 1978 (Exhibit "B") — less than one year later. Mr. GARRITY must have a copy of the Simmons in his possession, since he states he served a Notice of Appearance herein.

b. Had Mr. GARRITY seen the decision of the Federal Court, which relegated plaintiff to the State Court, he would not have interposed the defenses of res judicata or collateral estoppel.

c. Contrary to the assertion made by Mr. GARRITY, the complaint is not only to recover damages for defamation, but for a hearing to purge irrelevant, derogatory and false information affecting plaintiff, for which there is no immunity.

7. I did extend to Mr. GARRITY the courtesy of a two week adjournment so that he could submit to this Court a proper affidavit of merit and legal excuse for the default, which he has failed to do.

8. As the defendant stated in a similar situation (Beetz v. The City of New York, A.D.2d , 423 N.Y.S.2d 503, 505):

"the many attorneys employed ... have an obligation to conduct law suits in a disciplined and efficient manner in order both to protect the interests of the almost 8 million ... and also to assure plaintiffs that their claims will be expeditiously and fairly resolved."

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An affidavit of merit is a mandatory prerequisite to any application to vacate a default (Nobisso v. Fried, A.D.2d , 425 N.Y.S.2d 354 and the "brevity of the default" does not dispense with such requirements (Abrams v. Abrams, 56 A.D.2d 775, 392 N.Y.S.2d 449, 451).

Clearly, defendant's attorney has not only failed to set forth a legal excuse, but in fact, any excuse, (Barasch v. Micucci, N.Y.2d , N.Y.S.2d , #79-3/25/80; Verre v. Rosas, 47 N.Y.2d 795, 417 N.Y.S.2d 929; Kahn v. Columbo, A.D.2d , 425 N.Y.S.2d 33).

On the contrary, defendant's attorney ignoring applicable case law, claims (§17) that he need not tender "an Affidavit of Merit or Affidavit of Excuse".

WHEREFORE, it is respectfully prayed that plaintiff's proposed Order be signed and entered as an Order of this Court and defendant's application be denied, with costs.

  
\_\_\_\_\_  
GEORGE SASSOWER

Sworn to before me this  
19th day of May, 1980

DORIS L. SASSOWER  
Notary Public, State of New York  
No. 60347772  
Qualified in Westchester County  
Term Expires March 30, 1981

*118*  
EXHIBIT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
-----x

GEORGE SASSOWER,

Plaintiff,

Index No.  
21226-1979

-against-

APPELLATE DIVISION OF THE SUPREME COURT,  
SECOND JUDICIAL DEPARTMENT,

Defendant.  
-----x

S I R:

PLEASE TAKE NOTICE, that your "Verified Answer"  
dated April 30, 1979, and served by mail, is hereby rejected  
as untimely.

PLEASE TAKE FURTHER NOTICE, that you were specifically  
advised on April 30, 1980 that such Answer would not be accepted.

Dated: May 1, 1980

Yours, etc.,

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

To: Hon. ROBERT ABRAMS

Exhibit "A"

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EXHIBIT

C 106 - Summons with Notice, Blank Court  
Personal Service

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80 EXCHANGE PL. AT BROADWAY, N. Y. C. 10004

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

GEORGE SASSOWER,

Plaintiff

against

APPELLATE DIVISION OF THE SUPREME COURT,  
SECOND JUDICIAL DEPARTMENT,

Defendant

Index No.

Plaintiff designates  
Westchester  
County as the place of trial

The basis of the venue is  
Plaintiff's residence

Summons with Notice

Plaintiff resides at  
New Rochelle, New York  
County of Westchester.

To the above named Defendant

**You are hereby summoned** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

GEORGE SASSOWER, Esq.

Attorney(s) for Plaintiff -pro se.  
Office and Post Office Address

75 Wykagyl Station  
New Rochelle, New York, 10804  
914-636-4050

Dated, November 5, 1979  
Defendant's address:  
45 Monroe Place,  
Brooklyn, New York.  
Notice: The object of this action is

The relief sought is Mandate a hearing, damages-defamation, invasion of privacy.

Upon your failure to appear, judgment will be taken against you by default for the sum of \$ 100,000 with interest from November 5, 19 79 and the costs of this action.

Exhibit "B"