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JOHN B. GARRITY, ESQ.-FOR DEFENDANT-AFFIRMATION-MAY 29, 1980
SUPREME COURT OF THE STATE OF NEW YORK [A20-A23]
COUNTY OF WESTCHESTER

GEORGE SASSOWER,

Plaintiff,

REPLY AFFIRMATION

-against-

INDEX NO. 1979/21226

APPELLATE DIVISION OF THE SUPREME COURT,
SECOND JUDICIAL DEPARTMENT,

Defendant.

I, JOHN B. GARRITY, JR., hereby affirm pursuant to
CPLR 2106, that:

1. I am an Assistant Attorney General, of counsel
to ROBERT ABRAMS, Attorney General of the State of New York,
counsel to defendant, and as such, have been assigned the
defense of this action and am familiar with the facts herein.
I make this Affirmation in reply to plaintiff's application
for default judgment and affidavit in opposition.

2. Plaintiff has not in any papers served on the
defendant to this date set forth the date of service of the
complaint. His failure to show said service is a fatal defect
in an application for default. Plaintiff, in a notice of claim
filed March 9, 1979 (copy attached as Exhibit "A"), alleged
that the publication of the defamation herein complained of
was made November 6, 1979 (an obvious mistake as to the last
digit in the year should have been 1978). In his most recent
affidavit, plaintiff alleges that publication date as November
9, 1978. In any event, the summons herein was served on the

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defendant on November 21, 1979, more than one year after either alleged publication. Now comes the plaintiff to complain that the defense of statute of limitations is frivolous because a person or persons unknown and unidentified gave the summons to the Sheriff of Kings County on November 5, 1979. Plaintiff has again failed to provide this defendant, and apparently the Court, with an affidavit of service of same. I would also like to point out that contrary to plaintiff's assertion, defendant did receive the summons and did annex a copy of same as Exhibit "A" to the affirmation in opposition to default.

3. Plaintiff complains that his "repeated" inquiries (one phone call and one letter) to the New York Office of the Attorney General (approximately five months after the summons was served) and failure to receive answers thereto have caused frustration which results in this application for default.

4. Plaintiff has misunderstood the substance of my conversation of April 30, 1980, except that he is correct when he states that I did request an extension of time to move or answer.

5. Neither the defendant nor the defendant's attorney has acted willfully in this matter as was stated to the Court upon the adjourned date heretofore, May 20, 1980.

6. The proposed verified answer (attached as Exhibit "B" to my previous affirmation in opposition to the application for default), it is respectfully submitted,

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demonstrates the merit of the defense herein and is sufficient for said purpose.

7. No amount of camouflage can disguise plaintiff's cause of action. It is for defamation and has been dismissed in the Court of Claims.

Further, this Court has no jurisdiction to hear and determine causes of action against the State of New York or its departments and agencies.

8. Although plaintiff has not offered proof of the default complained of, if there be one, it is de minimis. As explained to the Court heretofore upon the previous adjourned date of May 20, 1980, it was wholly inadvertant, and now reiterated. I also now reiterate that the length of delay compared to plaintiff's delay in over four months in serving the complaint, does not require any excuse or if one is required that proffered on May 20, 1980, is sufficient.

9. Defendant has this date, by its attorney, rejected plaintiff's complaint for late service, and now renews its demand for dismissal pursuant to CPLR 3012(b) as contained in the original affirmation in opposition (rejection attached hereto as Exhibit "B").

WHEREFORE, Defendant respectfully urges this Court to deny the application for default, direct plaintiff to accept service of Defendant's proposed answer or enlarge defendant's time to move or answer in response to the complaint, or to

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dismiss the complaint pursuant to CPLR 3012(b), or dismiss such complaint for failure to state a cause of action and that the Court lacks jurisdiction and for such other and further relief as to the Court may seem just and proper.

DATED: Poughkeepsie, New York
May 29, 1980

JOHN B. GARRITY, JR.