

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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DORIS L. SASSOWER and CAREY A. SASSOWER,

Plaintiffs,

-against-

ERNEST L. SIGNORELLI, JOHN P. FINNERTY,
WARDEN REGULA, ANTHONY MASTROIANNI and
THE NEW YORK LAW JOURNAL PUBLISHING CO.,

Defendants.

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STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

REPLY AFFIDAVIT

Index No. 3607/79

Justice Assigned:
Hon. Alvin R. Ruskin

ROBERT M. CALICA, being duly sworn, deposes and says:

1. I am a member of the firm of Reisman, Peirez, Reisman & Calica, Esqs. My firm is "of counsel" to the County Attorney of Suffolk County (Martin Bradley Ashare, Esq.), attorney for defendants John P. Finnerty, Warden Regula, and Anthony Mastroianni ("the Suffolk County defendants"). I make this affidavit in further support of the Suffolk County defendants' motion for summary judgment dismissing the complaint.

2. In my prior affidavit, we demonstrated that plaintiff's claims are virtually identical to the several dismissed claims brought by George Sassower, Esq., plaintiffs' former attorney, against the same parties, in

various forums. The Sassower litigations are so intertwined, that summary judgment is warranted based upon the preclusive effect of the dismissal of virtually identical claims brought by George Sassower, Esq., individually. In our supporting memorandum of law, we demonstrated that non-parties will be bound by prior adjudications where, as here, a person has so participated or involved himself in the prior litigation as to effectively be considered in "privity" with actual parties. (Watts v. Swiss Bank Corporation, 27 N.Y.2d 270, 317 N.Y.S.2d 315, discussed in defendants' memorandum).

3. As was documented in my prior affidavit, George Sassower asserted virtually the same claims in his dismissed Federal and State actions that Doris Sassower and Carey Sassower assert in this action. Furthermore, Doris Sassower and George Sassower represented each other in various proceedings, all arising out of the same set of facts and circumstances. In fact, Mrs. Sassower's second cause of action arises out of her role as attorney for George Sassower, and George Sassower was the attorney of record in this action.

4. That plaintiff shared control of these actions with her former husband and former attorney, George Sassower, is conclusively shown by the affidavits of both George Sassower and Doris Sassower, submitted in support of plaintiff's prior motion for summary judgment in this action. (Exhibit A hereto) In the lengthy affidavit of

George Sassower, the content of which was adopted in Doris Sassower's affidavit, he stated:

"b. The attorneys representing the defendants Finnerty, Regula, and Mastroianni, in this action are the same as those representing the Suffolk County defendants in the deponent's actions heretofore mentioned in the other courts.

Consequently, the attorneys for the Suffolk County defendants in this action, have in their possession the documents mentioned herein and were present at the examinations before trial on which this motion is based. (emphasis supplied)

That this action is enmeshed with George Sassower's other actions, and that Doris Sassower's shared control in those actions, is scarcely debatable since Mrs. Sassower's motion for summary judgment was predicated upon discovery obtained in George Sassower's actions. Her supporting affidavit said:

"[George Sassower's] probative affidavit of this date, sets forth the surrounding circumstances, as well as the relevant evidence [derived from George Sassower's cases] in support of this motion."

5. In opposition to the documentary proof regarding the tandem character of the Sassower litigations, Doris Sassower makes the bare, conclusory "declaration" that:

"I did not share in control in any way in any of those actions, nor did my daughter Carey, who is not an attorney." (Sassower affidavit, p. 4)

Such an unsupported assertion, which flatly contradicts the documentary proof, is insufficient to defeat a summary judgment motion.*

6. Moreover, plaintiffs' contention that the dismissal of actions in which they were not parties cannot warrant the dismissal of their claims, is meritless, in view of the Court of Appeals' dispositive holding in Watts v. Swiss Bank Corporation, supra, treated in our memorandum. Further, plaintiff Doris Sassower has apparently forgotten that she and her daughter Carey Sassower commenced a virtually identical action in the Federal Court (Sassower affidavit, p. 3, footnote **). Annexed as Exhibit B is the summons and complaint filed by Doris and Carey Sassower in the United States District Court for the Southern District of New York. That action has since been dismissed.

7. Plaintiffs cannot overcome the dispositive treatment of the "immunity" doctrine contained in our principal memorandum, deriving from controlling Court of Appeals and Second Department authorities, Tango et al v. Tulevech, 61 N.Y.2d 34, 471 N.Y.S.2d 73; Melone v. County of Westchester, 112 A.D.2d 205, 491 N.Y.S.2d 428, by merely

* As the Appellate Division held in New York State Urban Development Corp. v. Marcus Garvey Brownstone, 98 A.D.2d 767, 469 N.Y.S.2d 789:

"The burden cast upon ... the party opposing the motion for summary judgment, is not met by bald conclusory assertions which defy reality and are inconsistent with the pattern of events and the documentary evidence in support thereof."

contending, without more, that those authorities are inapplicable. As the Court of Appeals stated in Tango v. Tulevech, supra,:

"[W]hen official action involves the exercise of discretion, the officer is not liable for the injurious consequences of that action even if resulting from negligence or malice."

The Second Department applied the Tango v. Tulevech holding in Melone v. County of Westchester, supra, in affirming summary judgment in an action brought against prison officials, like defendants Finnerty and Regula herein, stating:


"Defendants' official actions in the course of transporting, processing and confining plaintiff, a civil prisoner, involved an exercise of governmental discretion for which no liability attaches. (citing cases)"

8. Finally, in response to the Suffolk County defendants' alternative request granting a protective order against any further discovery in this action, Mrs. Sassower asks to be provided with signed copies of deposition transcripts from George Sassower's actions. The deposition transcripts of the Suffolk County defendants consist of in excess of 500 pages of testimony. These voluminous transcripts, which are in the possession of Mrs. Sassower's former attorney, George Sassower, were relied upon by Mrs. Sassower upon her own prior motion for summary judgment in this action. Accordingly, Mrs. Sassower can obtain copies of

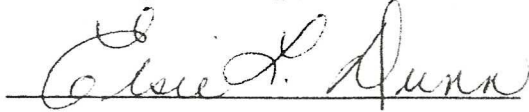
the deposition transcripts from her former attorney, George Sassower and it is anomalous to impose that burden upon the defendants.

9. Further comment upon the meritless, unsupported assertions contained in Mrs. Sassower's affidavit is unnecessary. The facts establishing the identity of claims in the Sassower litigations have been documented in my prior affidavit, which documentary proof, all derived from filed judicial proceedings, cannot be disputed by the unsupported, conclusory claims made by Mrs. Sassower.

10. For the foregoing reasons, the Suffolk County defendants' collateral estoppel-based motion for summary judgment should be granted.


ROBERT M. CALICA

Sworn to before me this
12th day of May, 1986.



ELSIE L. DUNN
Notary Public, State of New York
No. 4827148
Qualified in Nassau County
Commission Expires 10-31-88