

Edge Ruskin - 18<sup>th</sup> Fl.  
15/86

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----x  
DORIS L. SASSOWER and CAREY A. SASSOWER,

Plaintiff,

- against -

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

Defendants.

Index No. 3607/79

Opposing  
Affidavit Answering  
Motion for Summary  
Judgment or Other  
Relief

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

DORIS L. SASSOWER, being duly sworn, deposes and says:

1. I am one of the two Plaintiffs in this action, which seeks damages for myself and my daughter on six causes of action that arose out of certain events of June 10, 1978 (See Verified Complaint, Exhibit "A"<sup>1</sup> to Defendants' motion papers), as well as other related preceding events.

2. This motion seeks the extraordinary remedy of summary judgment on the merits as to all causes of action asserted against Defendants Finnerty, Mastroianni and Regula or (alternatively) a protective order to block further discovery efforts by the Plaintiffs.

<sup>1</sup> Letter Exhibit references herein refer to Exhibits in Defendants' appendix of exhibits on this motion, unless otherwise indicated.

3. The alleged grounds for summary judgment boil down to some fancied relationship between the Plaintiffs' claims in this action and various claims the Plaintiffs' former attorney (my former husband, George Sassower) has asserted in other actions of his own, wherein Plaintiffs in this action had no participation. In brief, an attempt is made to effect a sort of "guilt-by-association" through attempted linkage of those actions by my former attorney (and former husband) with this action --an action involving only wrongs to me and my daughter by various Defendants.

4. The florid supporting Affidavit of attorney Calica glibly asserts (§1)

"The myriad [other] actions [this motion is based on] alleging virtually identical claims have been... commenced by either George Sassower, Doris Sassower...Carey Sassower or various combinations of the three."

Thus, Mr. Calica contends, this action by me and Carey Sassower must fall entirely as against Defendants Finnerty, Regula and Mastroianni (hereinafter the "Suffolk County Defendants").

That action -- only against Defendant Signorelli herein -- was indeed dismissed (See Exhibit "B"). Since no claims against Surrogate Signorelli are involved in this motion, however, that case has no application. There is also reference in the unsworn Memorandum of Law on this motion to a "virtually identical" lawsuit in Federal Court by me and Carey Sassower, which has been allegedly dismissed. Significantly, no documentation of this allegedly "identical" federal action, or its dismissal (or reasons therefor) is contained in the sworn motion papers, however, so it will not be addressed further herein.

5. Most remarkably, however, all the legal actions discussed in the motion (Exhibits "B" through "D") show no involvement whatever in any of them by Carey Sassower and show my involvement in only one<sup>2</sup> (in a case involving none of the three Suffolk Defendants involved in this motion).

6. The foregoing indisputable facts, I submit, are entirely determinative of this summary judgment motion --wherein my rights and my daughter's are sought to be foreclosed against the three Suffolk County Defendants solely due to litigation conducted by another person, on his own behalf, in lawsuits where neither Plaintiff herein had any participation at all, and whose focus was alleged wrongs against Mr. Sassower himself, and not wrongs to either Plaintiff herein.

7. It is for that reason, of course, that Mr. Calica's conclusory Affidavit at no point makes any direct connection between this lawsuit and these three Defendants and the other suits he cites (with Mr. Sassower as Plaintiff)... except the name "Sassower" in the Plaintiff slot. This Court, on this

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motion, is called upon to see linkages that simply do not exist, so as to apply the doctrine of res judicata and stare decisis against the two Plaintiffs herein as to their claims herein, although flatly admitting (movants' Affidavit, page 7) that

"...the instant Plaintiffs were not parties in the dismissed federal or state court actions [serving as bases of the alleged res judicata and stare decisis claims underpinning this summary judgment motion].

8. That extraordinary indirect preclusive effect is sought to be achieved -- under this motion's theory -- because

"A non-party is prevented from relitigating claims previously determined if, as is plainly the case here, the non-party shared in control of the prior litigation." (Movant's Affidavit, page 8. Emphasis in original).

Therefore, the simple fact issue to be resolved on this motion is whether either Plaintiff in this action shared in control of any of the other actions by Mr. Sassower against any of the three Suffolk County Defendants. And, that fact issue is simply resolved by this plain declaration: I did not share in control in any way in any of those actions, nor did my daughter Carey, who is not an attorney. I defy Mr. Calica to demonstrate his conclusory assertion by one single sworn fact or document showing any such "shared control".

9. Going on to the June 10, 1978 facts of the two Plaintiffs' claims in this action, and their intersection with certain wrongs against Mr. Sassower that may indeed have been

decided adversely to him in other actions: The fact that Mr. Sassower may have been found to have suffered no cognizable damage from the events does not mean that I and my daughter were not harmed as the Complaint charges. He was detained under some "color" of legal right (however slight); I and my daughter, ✓ however, were mistreated in entirely different ways and with no color of right whatever. Thus, the respective participants in the June 10, 1978 events were not similarly situated - not at all.

10. This motion also disregards completely the fact that Mr. ✓ Sassower and I are now divorced, and have been for some time... having had our share of marital differences during the periods when he was pursuing his actions in which I supposedly "shared control". The supposed unity of husband and wife -- a legal myth from bygone ages, long dead in our law -- surely did not apply in any way as to his own cases that may have involved the three Suffolk County Defendants in this action.

11. The cases cited by Defendants to support their "shared control" notions simply do not furnish any such support in this case. Without going into detail as to the blatantly distinguishing features of the cited cases' respective fact patterns, suffice it to say that each and every one of them shows ✓ clear "shared control" of the non-party persons sought to be precluded by the prior cases' rulings, whereas no "shared control" whatever has been shown as to me and Carey Sassower in the other cases of George Sassower and the three Suffolk County Defendants this case involves.

12. Recognizing the obvious flimsy character of the "shared control" theory, Mr. Calica next asserts that his three clients (the Suffolk County Defendants) are immune from tort liability under recently decided appellate cases (movant's affidavit p.9, ¶9). Again, the cited law is correct, but the application to this case's facts is "off" by a country mile.

13. The Complaint in this action -- insofar as it deals with the three Suffolk County Defendants -- do not involve discretionary acts by governmental officials dealing with (for instance) a confined prisoner. The acts covered in the Complaint ✓ herein involved ministerial duties only, such as: The duty to allow visits with a prisoner during regular hours (First Cause of ✓ Action); the duty to allow an attorney to confer with a client (Second Cause of Action); the duty to honor a writ of habeas corpus and not to detain or imprison persons who are not under arrest (Third Cause of Action); the duty not to harass a person merely because she is married to a person the officials are dealing with (rightly or wrongly) (Fourth Cause of Action). (The Fifth and Sixth Causes of Action have no application to the three Suffolk County Defendants, so they will not be treated further herein.)

14. It is thus clear that the three Defendants are not free ✓ of tort liability, since the Complaint charges them with acts that are violative only of non-discretionary ministerial duties vis-a-vis the two Defendants. As stated in the Tango v. Tulevech

AFFIDAVIT OF SERVICE

case cited by Defendants' counsel:

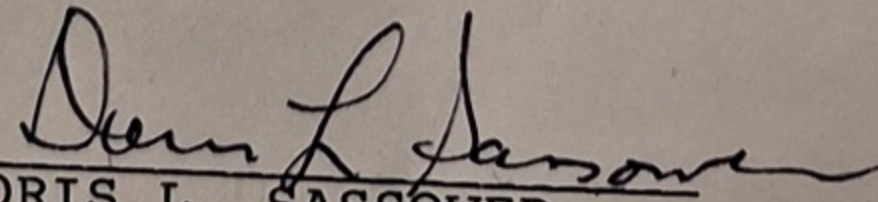
"...when the [challenged] action is exclusively ministerial, the [public] official will be liable if it is otherwise tortious and not justifiably pursuant to statutory command..."

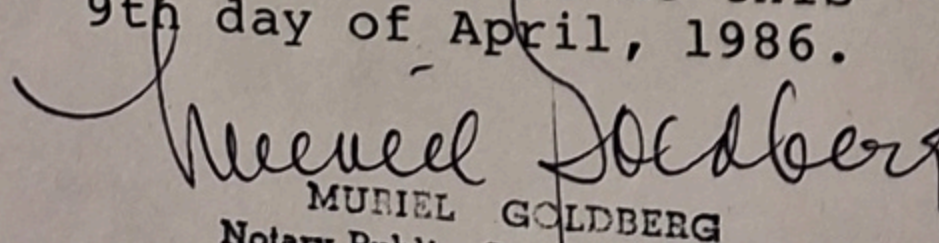
The Attempt To Thwart Disclosure

15. Here, again, the prior acts of George Sassower in his own cases are sought to stop me and Carey Sasower in this case. My deposition notice (Exhibit "P") supposedly signals that I am going to cover precisely the same ground George Sassower did in his own cases' depositions -- depositions I was not party to, nor do I have copies of same. Obviously, I am not interested in wasting time or money to obtain answers already sworn to by Defendant Finnerty, and I will be happy to use those prior depositions as my own if I am given signed copies, and if and to the extent they answer questions I would otherwise ask myself. I surely am not to be precluded as to my claims, and Carey's, however, by Mr. Sassower's deposition questions that undoubtedly focussed on his own claims against Defendant Finnerty.

16. The protective order, therefore, is surely not warranted any more than summary judgment relief.

WHEREFORE, it is respectfully prayed that defendant's motion be denied in all respects, with costs.

  
DORIS L. SASSOWER

Sworn to before me this  
9th day of April, 1986.  
  
MURIEL GOLDBERG  
Notary Public, State of New York  
No. 60-4518474 Westchester County  
Commission Expires March 30, 1987