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 COMPANY,

Defendants.

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Index #3607/79
Motion Date: 7/16/86
DECISION - ORDER

RUSKIN, J.

This is a motion by defendants Finnerty, Regula and Mastroianni (referred to by counsel in the papers as the "Suffolk County defendants") for summary judgment dismissing plaintiffs' complaint.

The motion is granted in the exercise of discretion. After a careful consideration of all the papers and a searching of the record, the court finds that it is warranted as a matter of law in directing judgment dismissing the complaint insofar as movants are concerned.

It is well settled that upon a motion for summary judgment, a party opposing the motion must assemble and lay bare affirmative proof to establish the existence of genuine triable issues of fact (Shaw vs. Time-Life Records, 38 NY2d 201; Capelin Assn. vs. Globe Mfg. Corp., 34 NY2d 388; Mallad vs. County Fed. Sav. & Loan, 32 NY2d 285; DiSabate vs. Soffes, 9 AD2d 297). Bare conclusory allegations are insufficient for this purpose (Ehrlich vs. Amer. Moninger Greenhouse, 26 NY2d 255). The court is of the view that it should not strain to find issues of fact where they are not genuinely present, and as now Chief Judge Wachtler writing for the majority in Andre vs. Pomeroy (35 NY2d 361, 364) stated, "But when there is no genuine issue to be resolved at trial, the case should be summarily decided and an unfounded reluctance to employ the remedy will only serve to swell the Trial Calendar and thus deny to other litigants the right to have their claims promptly adjudicated.

Here, in the case at bar, there is no dispute about the fact that on the time of the incident alleged in the complaint (June 10, 1978) the defendant Finnerty was the Sheriff of Suffolk County, defendant Regula was a Sheriff's Deputy who administered the Suffolk County Correctional Facility and the defendant Mastroianni was the Public Administrator of Suffolk County. Thus, they were public officers and, in the language of Justice Hopkins in Rottkamp vs. Young (21 AD2d 373, affd. 15 NY2d 831) they were not "responsible in a civil suit for a judicial determination, however erroneous or wrong it may be, or however malicious even the motive which produced it... To fasten responsibility for damages on a public officer for the exercise of judgment or discretion in favor of one disappointed by the result 'would damper the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.'" (See also, Tango vs. Tulevech, 61 NY2d 34; Melone vs. County of Westchester, 112 AD2d 205).

The court finds that movants have made the requisite prima facie showing of entitlement to judgment as a matter of law, and while plaintiffs have alleged, generally and in conclusory language in their complaint, that movants acting in concert with each other and with the other defendants denied plaintiffs (Doris Sassower (then) wife of and attorney for George Sassower (also an attorney) and their plaintiff-daughter Carey A. Sassower the right to visit with George Sassower while he was then incarcerated in the Suffolk County Correctional Facility and in the custody of the defendants as the result of a criminal contempt charge; that plaintiff Doris Sassower, as his attorney, was deprived of the opportunity during visiting hours to consult with her said husband; that the defendants denied them food and water and bathroom facilities, and the opportunity to communicate with others in order to secure aid; and that these defendants harassed the plaintiff Doris Sassower as hostage, in an effort to cause her husband George Sassower to relent, nevertheless they have failed in opposing this motion to make any factual evidentiary showing that the conduct of the moving defendants warranted a departure from

the rules set forth in the above authorities. Plaintiffs have failed to present any evidentiary proof that the moving defendants did anything other than to exercise their discretion under the then existing circumstances, that they acted outside the scope of their duties, or that they did anything other than to exercise their discretion with respect to the safety of George Sassower and confining him while then in their custody by virtue of an order of a court of competent jurisdiction. Even bad faith or malice on the part of the moving defendants would not under the aforementioned cases deprive these defendants of their immunity as public officers.

In the light of the aforementioned the court has not passed upon the res judicata theory advanced by movants for summary judgment dismissing the complaint, nor is it necessary to pass upon the issue concerning the discovery sought by plaintiffs.

Accordingly, and, to repeat, the motion for summary judgment is granted, the complaint is dismissed as against the moving defendants, and the action is severed.

This shall constitute the decision and order of the court.

Dated: August 5, 1986

Alvin R. Ruskin

ALVIN R. RUSKIN, J.S.C.

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