

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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GEORGE SASSOWER,

Plaintiff,

NOTICE OF MOTION  
FOR PROTECTIVE ORDER

-against-

Index No. 3608-1979

NEW YORK LAW PUBLISHING COMPANY,

Defendant.

-----x

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Burton M. Abrams, Esq., sworn to February 7, 1983, upon plaintiff George Sassower's "Second Set of Interrogatories", dated January 26, 1983, served upon defendant The New York Law Publishing Company ("Law Publishing") and upon the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a Special Term, Part I thereof, to be held at the County Courthouse, 111 Grove Street, White Plains, New York 10601, on the 25th day of February, 1983, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant

to CPLR §3103(a) and §3133(a), vacating and striking plaintiff's Second Set of Interrogatories on the grounds:

(a) The Interrogatories contain scandalous and prejudicial matter which would impose upon Law Publishing and the Court an unreasonable annoyance, embarrassment and other prejudice; and

(b) The Interrogatories are vague, repetitive and seek information which would impose upon Law Publishing an unreasonable burden of work and effort which is not, in any way, material or necessary to the prosecution of the plaintiff's case.

and for such other, further and different relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Civil Practice Law and Rules, Rule 2214(b), demand is hereby made

that all opposing papers be served upon the undersigned  
at least five (5) days before the return date of this motion.

Dated: New York, New York  
February 7, 1983

Yours, etc.

ABRAMS & SHEIDLOWER  
Attorneys for Defendant,  
The New York Law  
Publishing Company  
598 Madison Avenue  
New York, New York 10022  
(212) 688-4200

TO:  
GEORGE SASSOWER, ESQ.  
Attorney for Plaintiff  
283 Soundview Avenue  
White Plains, N.Y. 10606

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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GEORGE SASSOWER,

Plaintiff,

AFFIDAVIT

-against-

Index No. 3608-1979

NEW YORK LAW PUBLISHING COMPANY,

Defendant.

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

Burton M. Abrams, Esq., being duly sworn, deposes  
and says that:

1. I am an attorney at law admitted to practice  
in the Courts of the State of New York and a member of the  
firm of Abrams & Sheidlower, attorneys for defendant, The  
New York Law Publishing Company ("Law Publishing"). I make  
this affidavit in support of the motion of Law Publishing,  
pursuant to CPLR §3103(a) and §3133(a), for an order  
vacating and striking plaintiff's Second Set of Interrog-  
atories, dated January 26, 1983, on the grounds:

(a) The Interrogatories contain scandalous and prejudicial matter which would impose upon Law Publishing and the Court an unreasonable annoyance, embarrassment and other prejudice; and

(b) The Interrogatories are vague, repetitive and seek information which would impose upon Law Publishing an unreasonable burden of work and effort which is not, in any way, material or necessary to the prosecution of the plaintiff's case.

A copy of the plaintiff's Second Set of Interrogatories is attached to this affidavit as Exhibit "A" and made a part hereof.

2. Defendant Law Publishing publishes the New York Law Journal ("Law Journal") which serves as the official daily newspaper for the First and Second Judicial Departments of the Supreme Court of the State of New York covering New York, Bronx, Kings, Queens, Richmond, Westchester, Nassau, and Suffolk Counties. The Law Journal publishes the calendars and decisions of courts of record of such Judicial Departments and judicial and other legal notices as well as columns, editorials and other items of particular interest to lawyers, judges and the legal profession.

NATURE OF ACTION

3. This is one of a number of actions commenced by the plaintiff, his wife, Doris L. Sassower and his daughter, Carey A. Sassower (the "Sassowers") against Surrogate Signorelli of the Surrogate's Court, Suffolk county and other law enforcement officials of Suffolk County (collectively the "Suffolk Officials"), which have arisen out of the service by George Sassower as Executor under the Last Will and Testament of Eugene Paul Kelly, filed for probate in said Surrogate's Court on May 10, 1972. The sole involvement of defendant Law Publishing in the controversies among the Sassowers and the Suffolk Officials arises from the verbatim publication, in the March 3, 1978 edition of the Law Journal, of what appears as a decision and order of Surrogate Signorelli (the "Decision") filed and entered in the probate proceeding which, according to the plaintiff, as set forth in the "First" and "Second" causes of action of the complaint herein, constitutes:

(1) the publication of a professional complaint against the plaintiff allegedly in violation of the Judiciary Law §90(10); and

(ii) the publication of a libel against him.

Motion for Protective Order

A. Certain Interrogatories Contain  
Scandalous and Prejudicial Matters

4. Interspersed through the various Interrogatories is the impertinent reference to the Decision as the "Signorelli diatribe". (See Interrogatories Nos. 10, 12 and 17)

5. We are aware, of course, that a critical issue to be raised at the trial of this action is whether the Decision was connected with the exercise of a judicial function by Surrogate Signorelli. The plaintiff is free to frame his pre-trial discovery and prepare for trial in any manner that he sees fit, limited, by the applicable rules of procedure and evidence. He cannot be permitted, however, to go beyond the bounds of decency and judicial decorum. Regardless of any attempt to soften the meaning of the word "diatribe", it obviously conveys, and was intended by the plaintiff to convey, a vulgar and vituperative connotation.

6. Unless the Interrogatories were to be stricken, the responses would be available for use as evidence-in-chief in the presentation of the plaintiff's case and could be read to the jury, as questions and answers. (See

Siegel, Practice Commentaries, McKinney's Cons. Laws of NY, Book 7B, CPLR C3103;1 "Use of Interrogatories"). It is gainsaid that the Court would not permit the term "Signorelli diatribe" to be used at the trial for the purpose of questioning witnesses. It must, therefore, strike down its use in the Second Set of Interrogatories.

7. The Court is directed by CPLR §3103(a) to limit and regulate the use of any discovery device so as to prevent abuse by way of unreasonable annoyance, embarrassment or other prejudice to any party or the courts. This includes striking "scandalous matters", which has been defined to cover: words "capable of producing harm without justification in court" Hewitt v. Maass, 41 Misc.2d 894, 246 N.Y.Supp.2d 670, 674 (Sup.Ct. Suffolk Co., 1964); words which are both "immaterial and reproachable" McAuliffe v. Henry George School of Social Science, 99 N.Y.Supp.2d 132, 136 (Sup.Ct. Kings Co., 1950); and words which are "totally needless and defamatory" Meinhardt v. Britting, 10 Misc.2d 757, 169 N.Y.Supp.2d 925, 929 (Sup.Ct. Suffolk Co., 1958). Certainly these standards apply to the phrase here in question.



B. Certain Interrogatories are Vague,  
Repetitive, Burdensome and Abusive

8. As the Court is aware, defendant objected to various of the twenty-one interrogatories contained in plaintiff's First Set of Interrogatories and moved for a protective order with respect thereto. Under the date of December 23, 1982, the Court granted such motion to the extent of striking ten separate Interrogatories. Under the date of December 24, 1982, the plaintiff appealed from said Order to the Appellate Division in the Second Judicial Department and the matter is noticed for the March term of that Court.

9. Without waiting for a determination of the pending appeal, the plaintiff has, once again, served a Second Set of Interrogatories which contain vague, repetitive, burdensome and abusive questions, as follows:

Interrogatories Nos. 2, 3 and 4

10. In its response to Interrogatory No. 4 of the First Set of Interrogatories, defendant identified a meeting in 1972 with the Surrogates of Queens, New York and Kings Counties, at which Law Publishing was requested to publish in full each decision, opinion and memorandum issued by each of the Surrogates' Courts. Having been advised as to what happened at the meeting, the plaintiff now wants copies of "all writings which preceded said meeting, notes of said meeting, and copies of all correspondence confirming the

events and understandings thereat" as well as the substance of all conversations and events which took place. Plaintiff has failed in any way to limit the scope of his question to material and necessary material relating to the prosecution of this action. As now framed, the response to the Interrogatories must cover all matters dealt with at the meeting however remote from any issue in this lawsuit and as such is clearly burdensome and abusive. In addition, documents called for by Interrogatories must be identified with specificity and cannot be made to cover "all documents, etc."

Interrogatory No. 5

11. Plaintiff inquires in this Interrogatory as to the amount of revenues received "then and now" as a result of notices or publications authorized by the Surrogates' Courts. Apart from his failure to show any relevance or materiality of this question to any issue in this action, the Interrogatory, as framed, is so vague and indefinite as to be meaningless and not reasonably susceptible of response.

Interrogatory No. 6

12. Plaintiff inquires, again, concerning the general policy of the Law Journal in February and March 1978, as to which decisions were to be printed in full, by digest or by abstract. We fail to discern any difference between Interrogatory No. 6 of the Second Set and Interrogatory No. 5 of the First Set, which has already been answered. The question is merely repetitive.

Interrogatory No. 7

13. Plaintiff requests the defendant to set forth forth, as of February and March 1978, those non-appellate decisions which the editorial staff of the Law Journal considered "best to serve the interest of the Bar". On its face, this Interrogatory is vague, indefinite and not susceptible to a meaningful answer. The defendant should not be put to the burden of attempting to answer a question its counsel cannot understand.

Interrogatory No. 8 (a) and (b)

14. Plaintiff requests the identification of all decisions during the past ten years which were not published in full because they were known or believed to have been prohibited by Judiciary Law §90(10). This Interrogatory appears to be a counterpart of stricken Interrogatory 8 of the First Set, which asks the defendant to identify all such decisions which were in fact published, but otherwise is vague, indefinite and abusive.

Interrogatory Nos. 9, 10, and 11

15. These Interrogatories appear, insofar as they are relevant to the matters in this action, to be repetitive of the information already covered by and responded to in the First Set.

Interrogatory No. 12

16. This Interrogatory requests the substance of any conversation between Messrs. Kiley, Seitel and Fox and any other employee of Law Publishing from March 1, 1978 through March 3, 1978; and requests that all memoranda exchanged between them or prepared by them be furnished. This Interrogatory, as framed, is obviously improper and objectionable being limited neither as to subject matter or content and extends beyond issues that could be relevant to this action.

Interrogatory No. 13

17. This Interrogatory, again, is not susceptible to a meaningful response in that it is not capable of being understood.

Interrogatory No. 14

18. This Interrogatory inquires as to the length of time Messrs. Kiley, Seitel and Fox have been "associated" with the defendant. This question is obviously vague and indefinite in that it calls for interpretation of the word "associated".

Interrogatory No. 15

19. This Interrogatory inquires as to whether the defendant has any policy regarding the publication of material

submitted to them by the Sassowers. Again, we fail to comprehend the meaning or substance of this question or how the general subject matter could have any bearing on the issues to be raised in this action.

Interrogatory No. 16

20. This Interrogatory requests the defendant to set forth a copy of an article prepared by Mr. Fox concerning plaintiff's wife in or about 1979 relative to her race for the American Bar Association House of Delegates, and to set forth "the action taken with respect thereto". Once again, we fail to understand the meaning of the question or its relation to this action.

Interrogatory No. 17

21. This Interrogatory requests the defendant to state whether the Appellate Division in the First or Second Departments ever commented upon or approved the defendant's policy regarding publication of all decisions of the Surrogates' Courts and requests that defendant annex "all correspondence relative thereto or the substance of all conversations respective thereto, identifying the persons involved". This Interrogatory is burdensome and abusive in that it is not limited as to time, nor directed as to subject matter, and requires defendant to attempt to search for unidentified documents on a matter that is not at issue in this action.

C. The Second Set of Interrogatories Should Be Stricken in their Entirety as Burdensome and Abusive

22. The discussion above shows that virtually all, if not all, of the Interrogatories are palpably improper, vague, repetitive, burdensome, and abusive. The plaintiff has failed to devote sufficient time and effort in framing his questions to present a set of interrogatories reasonably calculated to meet the requirements of CPLR 3101(a) or reasonably susceptible of response. Whether or not purposeful, his failure to be specific, to limit his questions as to date, time, subject matter or purpose, has made meaningful responses by the defendant impossible and impractical.

23. The duty to frame proper interrogatories rests solely upon the party propounding the same. Where, as in this case, the Interrogatories are replete with scandalous matter, and are indefinite, abusive, and burdensome, the Court should not be called upon to seek out one or two Interrogatories which can possibly be allowed. The proper remedy is to strike the entire Set. As stated in Faith v. Boston Old Colony Insurance Company, 76 A.D.2d 900, 420 N.Y.Supp.2d 47 (2d Dept., 1980) wrote:

"We have stated in the past that we will not engage in pruning where the interrogatories are excessively oppressive or burdensome (Feinman v. Menachemi,

75A.D.2d 838, 428 N.Y.S.2d 1006  
[1980]; Hall v. Craig, 60 A.D.2d 896,  
415 N.Y.S.2d 890; Blasi v. Marine Midland  
of Southeastern N.Y., N.A., 59 A.D.2d 932,  
399 N.Y.S.2d 445). Such abuse does not  
invite judicial assistance."

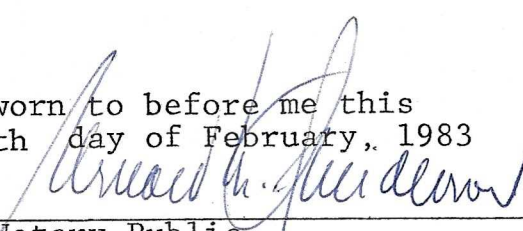
Also, as stated in Allen Corp. v. International  
Business Machines Corporation, 76 App. Div.2d 873, 429 N.Y.S.2d  
22 (2nd Dept., 1980):

"\* \* \*When the disclosure process is  
used to harass or unduly burden a party, a  
protective order eliminating that abuse is  
necessary and proper (see CPLR 3103, subd[d];  
Siegel, Practice Commentaries, McKinney's  
Cons Law of NY, Book 7B, CPLR C3103:1,  
3A Weinstein-Korn-Miller, NY Civ Prac, par.  
3103.05; cf. Commissioners of State Ins.  
Fund v. News World Communications, 74  
AD2d 764)."

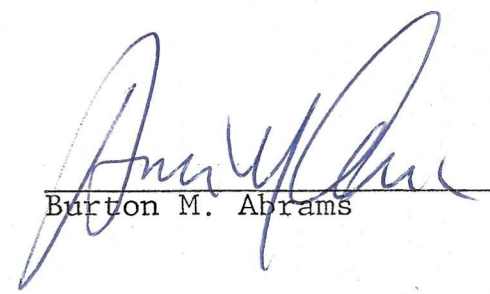
24. On the basis of the foregoing, the Second  
Set of Interrogatories is improper and should be vacated  
and stricken by the Court in its entirety.

WHEREFORE, it is respectfully prayed that the  
motion of the defendant The New York Law Publishing Company  
for a protective order be granted in all respects, together  
with such other and further relief as this Court may deem  
just and proper in the premises.

Sworn to before me this  
7th day of February, 1983

  
\_\_\_\_\_  
Notary Public

ARNOLD M. SHEIDLOWER  
Notary Public, State of New York  
No. 30-4714929  
Qualified in Nassau County  
Commission Expires March 30, 1984

  
\_\_\_\_\_  
Burton M. Abrams