

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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GEORGE SASSOWER,

Plaintiff,

-against-

NEW YORK PUBLISHING COMPANY,

Defendant.

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VERIFIED ANSWER

Index No. 3608-1979

Defendant, The New York Law Publishing Company ("New York Law"), by its attorneys, Abrams & Sassower, for its answer to the complaint herein, states as follows:

WITH RESPECT TO THE FIRST CAUSE OF ACTION

1. Denies each and every allegation set forth in paragraph "4" of the complaint, except admits and alleges that The New York Law Journal ("Law Journal"), includes a part of its publication selected material from various courts which its editorial staff believes of legal interest to members of that profession; however, as a matter of policy and regular procedure, the Law Journal publishes each decision and order received by it from the clerk of each of the Surrogate's Courts included in

the First Judicial Department and the second, tenth and eleventh judicial districts of the Second Judicial Department, including Suffolk County.

2. Denies each and every allegation set forth in paragraph "5" of the complaint, except admits and alleges that the Law Journal is staffed and edited by persons some of whom are attorneys or familiar with legal principles.

3. Denies each and every allegation set forth in paragraph "6" of the complaint, and refers the Court to §90 of the Judiciary Law for a full and complete statement of the provisions thereof.

4. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "7" of the complaint.

5. Denies each and every allegation set forth in paragraph "8" of the complaint, except admits and alleges that the particular words complained of, as set forth in Exhibit "A" to the complaint, were included in a decision and order of the Surrogate's Court, Suffolk County, in the Matter of Eugene Paul Kelly, deceased (Surrogate Signorelli), published in the March 3, 1978 edition of the Law Journal.

6. Denies each and every allegation set forth in paragraph "9" of the complaint.

WITH RESPECT TO THE SECOND CAUSE OF ACTION

7. Repeats and realleges each and every assertion set forth in paragraphs "1" through "6" hereinabove, inclusive, with the same force and effect as if the same were fully set forth at length herein.

8. Denies each and every allegation set forth in paragraphs "11" and "12" of the complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "13" of the complaint.

10. Denies each and every allegation set forth in paragraph "14" of the complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "15" of the complaint.

12. Denies each and every allegation set forth in paragraphs "16" through "24", inclusive, of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. The complaint fails to state a claim against defendant upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14. Pursuant to authority conferred by §91 of the Judiciary Law, the Law Journal has been designated as the official

daily newspaper for the Second Judicial Department, and has contracted with the Justices of the Appellate Division of the Second Judicial Department to print calendars, decisions, opinions, disposition of cases, judgments and other matters relating to the courts in the second, tenth and eleventh judicial districts, including Suffolk County.

15. The words set forth in Exhibit "A" to the complaint as having been published by defendant concerning plaintiff was a verbatim publication of a judicial opinion and order rendered and filed by a court of competent jurisdiction within the tenth judicial district of the Second Judicial Department and said words were not otherwise or elsewhere published by defendant.

16. The publication and dissemination of the judicial opinion and order referred to in paragraph "5" hereof, was an intrinsic part of the official function granted to the Law Journal pursuant to its designation and authorities under §91 of the Judiciary Law and is absolutely privileged.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

17. Defendant repeats and realleges each allegation set forth in paragraph "14" and "15" of this answer to the complaint.

18. The publication and dissemination of the judicial decision and order referred to in paragraph "5" hereof, was and

is a fair and true report of a judicial proceeding and a civil action cannot be maintained against defendant therefor by virtue of the provisions of §74 of the Civil Rights Law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

19. Defendant repeats and realleges each allegation set forth in paragraphs "14", "15" and "18" of this answer to the complaint.

20. The publication and dissemination of the judicial decision and order referred to in paragraph "5" hereof was and is a fair and true report of a judicial proceeding and is absolutely privileged.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

21. Defendant repeats and realleges each allegation set forth in paragraphs "14", "15" and "18" of this answer to the complaint.

22. The words set forth in the complaint as having been published by defendant concerning plaintiff were true in that defendant did nothing more than to publish and disseminate a true and accurate version of an opinion.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

23. Defendant repeats and realleges each allegation set forth in paragraphs "14", "15", "18" and "22" of this answer to the complaint.

24. The words set forth in the complaint as having been published by defendant were true in that defendant did nothing more than to publish and disseminate a true and accurate opinion and order, published without in any way indicating judgment or conclusion of defendant or the Law Journal or recommendation for readers to form any conclusion one way or the other. Such publication was in the ordinary course of business and without malice.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

25. Defendant repeats and realleges each allegation set forth in paragraphs "14", "15", "18", "22" and "24" of this answer to the complaint.

26. The granting to plaintiff of damages as demanded by the complaint by reason of the publication and dissemination by defendant of the judicial opinion and order referred to in paragraph "5" hereof would be violative of the rights of defendant and of the Law Journal guaranteed to them under the First Amendment to the Constitution of the United States with respect to freedom of the press.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

27. Defendant repeats and realleges each allegation set forth in paragraphs "14", "15", "18", "22", "24" and "26" of this answer to the complaint.

28. The granting to plaintiff of damages as demanded by the complaint as a result of the publication and dissemination by defendant of the judicial opinion and order referred to in paragraph "5" hereof would be violative of the rights of defendant and of the Law Journal guaranteed to them under Article I, §8 of the Constitution of the State of New York with respect to freedom of the press.

WHEREFORE defendant demands judgment dismissing the complaint herein, and awarding to it the costs and expenses of this action, and such other and further relief as to this Court seems just, equitable and proper.

Dated: New York, New York
May 17, 1979

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Verified May 18th, 1979 by E. Lawrence Perkins
Vice President-New York Law Publishing
Company