

DEFENDANT'S NOTICE OF MOTION
[4-5]

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 August 13, 1982, upon the plaintiff George Sassower's "First Set of Interrogatories", dated August 4, 1982, served upon defendant 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 2nd day of September, 1982, 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 §3013(a) and §3133(a), vacating and striking plaintiff's First Set of Interrogatories on the grounds:

1. The Interrogatories seek information obviously for use in connection with a motion pending in this Court in a related action where, by law, discovery is now stayed.

2. The Interrogatories 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
August 13, 1982

Yours, etc.

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

TO: George Sassower, Esq.
Attorney for Plaintiff
283 Soundview Avenue
White Plains, N.Y. 10606

BURTON M. ABRAMS, ESQ. - DEFENDANT
IN SUPPORT
[6 - 16]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

GEORGE SASSOWER,

Plaintiff,

AFFIDAVIT

-against-

Index No. 3608-1979

NEW YORK LAW PUBLISHING COMPANY,

Defendant.

-----X

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

Burton M. Abrams, 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, 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 First Set of Interrogatories, dated August 4, 1982, on the grounds:

(a) The Interrogatories seek information obviously for use in connection with a motion pending in this Court in a related action where, by law, discovery is now stayed.

(b) The Interrogatories 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 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 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:

(i) 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.

Substantially identical claims are set forth as the "Fifth" and "Sixth" causes of action in a complaint filed in this Court as a companion action by Doris L. Sassower and Carey A. Sassower against Law Publishing and the Suffolk Officials (Index No. 3607-1979, the "Doris Action").

The Motion for Protective Order

4. This action and the Doris Action were commenced in April 1979, and after responsive pleadings, remained dormant until July, 1982. Under date of July 20, 1982, the plaintiff in the Doris Action moved, inter-alia, to strike the eight affirmative defenses set forth in the answer of Law Publishing and for summary judgment against it. In opposition, Law Publishing submitted the affidavit of Nelson Seitel, sworn to July 28, 1982, (the "Seitel Affidavit"), a copy of which is attached to this affidavit as Exhibit "B" and made a part hereof. The plaintiff's motion in the Doris Action was originally noticed for August 3, 1982, and at that time was adjourned, by the Court, until September 2, 1982.

5. The Seitel Affidavit, submitted in opposition to the plaintiff's motion in the Doris Action generally covers the following matters:

(a) Identification and background of Nelson Seitel and his duties with the Law Journal. (pars. 1 and 2)

(b) Designation of the Law Journal, under Judiciary Law §91(2), as an official reporter to publish decisions of courts within the Second Judicial Department. (pars. 3 and 4)

(c) Existence and scope of a contract between the Law Journal and the Appellate Division, Second Judicial Department, for the publication of opinions and decisions of certain courts, including those within the Tenth Judicial District (Suffolk County). (par. 5)

(d) Established policies of the Law Journal to publish each decision and order issued by the nine Surrogate Courts within the Law Journal's designated area. (par. 5)

(e) Circumstances surrounding the receipt of the Decision of Surrogate Signorelli and its publication by the Law Journal in its March 3, 1978 edition. (par. 6 and 7)

(f) Fact that Mr. Seitel read the Decision before it was published and that nothing came to his attention that the Decision was anything other than the proper exercise of a judicial function by a sitting Surrogate in a matter under his jurisdiction or that the Law Journal should be precluded from printing it as written. (par. 8 and 9)

6. The plaintiff in the Doris Action is stayed by virtue of the provisions of CPLR §3214 from conducting further disclosure proceedings until the determination by the Court of her motion to dismiss Defendant's affirmative defenses and for summary judgment.

7. A reading of the twenty-one separate Interrogatories sets forth in the First Set of Interrogatories served by the plaintiff herein will show an obvious effort to "cross-examine" Mr. Seitel upon the matters set forth in the Seitel Affidavit. The Interrogatories, in effect, relate to the same matters and issues set forth in the Seitel Affidavit as follows:

(a) Identification and background of Nelson Seitel and his duties with the Law Journal - Interrogatory 20

(b) Designation of the Law Journal, under Judiciary Law §91(2), as an official reporter to publish decisions of courts within the Second Judicial Department - Interrogatories 2 and 3

(c) Existence and scope of a contract between the Law Journal and the Appellate Division, Second Judicial Department, for the publication of opinions and decisions of certain courts, including those within the Tenth Judicial District (Suffolk County) - Interrogatories 1 and 4

(d) Established policies of the Law Journal to publish each decision and order issued by the nine Surrogate Courts within the Law Journal's designated area - Interrogatories 5 through 9, inclusive

(e) Circumstances surrounding the receipt of the Decision of Surrogate Signorelli and its publication of the Law Journal in its March 3, 1978 edition - Interrogatories 10 through 19, inclusive

(f) Fact that Mr. Seitel read the Decision before it was published and that nothing came to his attention that the Decision was anything other than the proper exercise of a judicial function by a sitting Surrogate in a matter under his jurisdiction or that the Law Journal should be precluded from printing it as written. - Interrogatory 21

8. The pleadings in this action consist of a summons, a complaint received on April 30, 1979, and an answer served on May 18, 1979. Plaintiff's First Set of Interrogatories was served by mail on August 4, 1982, and under the CPLR §5134, the answers would be due prior to the scheduled hearing date on the pending motion in the Doris Action. It is apparent, indeed obvious, that the First Set of Interrogatories was devised solely as a mechanism to obtain possible additional material for use in support of the pending motion in a different action. Accordingly, the service of the First Set of Interrogatories, at this time, is clearly improper and abusive and Law Publishing is entitled, under CPLR §3103(a) to a protective order vacating such interrogatories in their entirety.

Interrogatories Nos. 2, 3 and 4.

10. Interrogatories Nos. 2, 3 and 4 request information during "the past 45 years" relating the requirements for publication of decisions by the Law Journal and its agreements with and requests from the Appellate Division for the First and Second Judicial Departments for publication of decisions. In other words, the plaintiff wants this defendant to go back to the year 1937 and to trace, up to the present, the policies, changes in policies, legal requirements, contracts, agreements and requests from the Appellate Division with respect to the publication of all "decisions" and "opinions" of the courts. Supposedly, all of this work and effort somehow is claimed to relate to the single event which occurred on March 3, 1978, the publication of Surrogate Signorelli's Decision entered in the subject probate proceeding. It defies all reason and logic to contend that policies and procedures in effect during the 45-year period from 1937 to 1982, could be material or necessary to the prosecution of the plaintiff's case, which concerns the publication of a single decision in 1978.

Interrogatory No. 8

11. Interrogatory No. 8 requests the defendant to annex to its answers a copy of each decision making reference to a professional complaint against a lawyer by any judge

published in the Law Journal, "within the last ten years". In other words, the plaintiff demands that this defendant read each and every decision published in more than 2,000 editions of the Law Journal during the past 10 years (some tens of thousands of decisions) in order to cull therefrom the various decisions in which judges have made professional complaints against attorneys. If the plaintiff wants this work done, he should do it himself; but it certainly is abusive and an unreasonable annoyance, expense and prejudice to expect this defendant to do it for him.

Interrogatories Nos. 1, 5 through 7, inclusive and 19 through 21, inclusive.

12. Each of these Interrogatories, by direct reference, or by incorporation, requests information specifically concerning the period as of February and March 1979. Par. 8 of the complaint herein alleges that the Decision was published and printed on March 3, 1979. Par. 9 of the answer of this defendant denies such allegation and alleges that the Decision was published in the March 3, 1978 edition of the Law Journal. It was assumed by this defendant that the reference to the year 1979 in Par. 8 of the complaint was a typographical error in that the complaint at various places identifies the decision as having been dated February 24, 1978 (see complaint, Pars. 11 and 13).

13. This defendant is charged under Article 31 of the CPLR to make disclosure of the material as asked or object thereto. It is therefore a unreasonable annoyance, expense and prejudice to this defendant to furnish information with respect to a date which has no relevance to the law suit and cannot be deemed necessary to the prosecution of the plaintiff's case.

14. CPLR §3301(a) reads as follows:

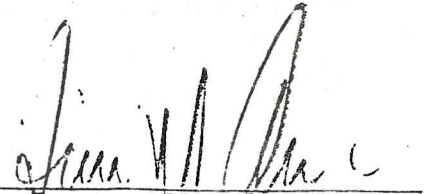
(a) Prevention of abuse. The court may at any time on its own initiative, or on motion of any party or witness, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.

As stated in Allen Corp. v. International Business Machines Corporation, 76 App. Div.2d 873, 429 N.Y.S.2d 33 (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[a]; 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).


15. On the basis of the foregoing the subject Notice is improper and should be vacated and stricken by the Court.

WHEREFORE, it is respectfully prayed that the motion of the Defendant New York Law Publishing Company be granted in all respects together with such other and further relief as this court may deem just and proper in the premises.



Burton M. Abrams

Sworn to before me this
13th day of August 1982



Notary Public

ARNOLD M. SHELDON
Notary Public, State of New York
County of _____
Commission Expires _____ 1984