To be argued by:
GEORGE SASSOWER
TIME: 30 minutes

Supreme Court—State of New York
Appellate Division—Second Department

GEORGE SASSOWER,
Plaintiff-Appellant,

-against-

NEW YORK LAW PUBLISHING COMPANY,
Defendant-Respondent.

APPELLANT'S REPLY BRIEF

GEORGE SASSOWER
Attorney for Appellant
283 Soundview Avenue
White Plains, N.Y. 10606
(914) 328-0440

Dick Bailey Printers 203 Richmond Avenue ■ Staten Island, New York 10302
TEL.: (212) 447-5358 — (516) 222-2470 — (914) 682-0848

I N D E X

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

----------x

GEORGE SASSOWER,

Plaintiff-Appellant,

-against-

NEW YORK LAW PUBLISHING COMPANY,

Defendant-Respondent.

----------x

APPELLANT'S REPLY BRIEF

POINT I

RESPONDENT'S ARGUMENTS ARE MERITLESS

1. With one exception, respondent does not dispute that Appellant's Interrogatories are relevant and material to the issues raised (particularly made so by Respondent's own affirmative defenses).

The single exception relates to respondent's contention that the 1945 statutory enactment of Judiciary Law §91(2) "changed" the holding in Murray v. Brancato (290 N.Y. 52) [Resp. Br. p. 15].

On its face, that assertion is ludicrous since Judiciary Law §91(2) specifically relates only to the Second Judicial Department.

Clearly, had the Legislature desired to modify Murray v. Brancato (supra), it would not have done so only for courts in the Second Judicial Department, but for courts in the other three judicial departments as well.

2. CPLR §3103(a) limits itself to "unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice".

Interrogatories should not be struck because a parties attorney assets, without any evidentiary support, that they are "abusive", "burdensome", "oppressive and/or "harassing".

The underlying facts upon which such assertions are made must be clearly and factually established by a person having knowledge of the burden involved.

Invariably, newspapers (and respondent alleges that it is entitled to a constitutional press guarantee) keep morgues, indexes, libraries, and computers, where its published and unpublished material may be readily retrieved. If respondent does not maintain any of these routinely maintained record-keeping systems, that must and should be shown.

Additionally, it should suggest alternative and less burdensome means whereby such relevant information might be obtained, particularly when there is no allegation or evidence that plaintiff seeks the information merely to harass, burden, or oppress.

3. Most significant is the fact that since service of these Interrogatories, there has been established a good, friendly professional relationship between the attorneys for the parties.

When respondent's attorney desired to dedact certain information from a documents produced, irrelevant to this action (e.g. the liability insurance premium), plaintiff consented. If respondent believes that some interrogatories are susceptible to an "overbroad" interpretation, it may respond pragmatically. There has been no objection to such approach in the interrogatories already answered.

4. As relates to the case at bar, it is plaintiff's understanding that Interrogatories "2" and "3" can be readily answered by respondent. It was substantially answered in a few words in a letter written by IRVING N. SELKIN, Clerk of this Court. But plaintiff's "understanding is not judicially admissible, nor should plaintiff have to resort to a subpoena against this Court on trial for that information, when respondent's short, easily available answer to these interrogatories, would serve the same purpose.

5. Interrogatory "7" (which nisi prius permitted) requests information with respect to defendant's policy concerning Judiciary Law §90(10). Obviously, the response was going to be that it had a policy of obedience to the statute.

Interrogatory "8" requests "copies of all cases published by defendant making reference to professional complaints against attorneys by judges". Respondent objects.

Initially, plaintiff has no objection if respondent identifies same by date, page, and column, instead of furnishing copies of the cases themselves.

There is a distinction between requesting information as to a policy, and requesting examples establishing that such policy is not being followed.

6. Apparently, Charles F. Kiley, Editor-in-Chief, Nelson Seitel, Associate Publisher, and Martin Fox, a member of the editorial staff, all examined the Signorelli diatribe prior to its publication by defendant. Would not a discussion between them that such diatribe, was, in fact, not a decision, i.e., it decided nothing and was not intended to decide anything, that it was therefore, expressly within the purview of Matter of Haas (33 A.D.2d 1, 304 N.Y.S.2d 930); that it violated Judiciary Law §90(10); and it violated the spirit and letter of Shiles v. News (27 N.Y.2d 9, 313 N.Y.S.2d 104) and Williams v. Williams (23 N.Y.2d 592, 298 N.Y.S.2d 473), but that they were going to publish said diatribe nevertheless, be germane to the issues in this case?

It must be recognized that Messrs. Kiley, Seitel, and Fox, full time employees of respondent, need know a very limited number of statutes, cases, and legal principles for the proper performance of their jobs?

If these high-echelon employees are not familiar with statutes relating to confidentiality or publish, despite actual knowledge of such prohibition, are not these matters material to this litigation?

Interrogatories "16" and "17" relate to such issues and are clearly material. The fact that they may relate, in part, to "state of mind" or editorial process is not a basis for non-disclosure.

7. Respondent contends that Interrogatories "11", "18", "20" and "21" are repetitive. They may to some extent be repetitive, due to the manner in which respondent answered other interrogatories. The manner that respondent was going to answer other interrogatories was obviously unknow to either plaintiff or to nisi prius prior to appeal from its Order.

If respondent finds that these interrogatories have been previously answered, a simple reference to such fact will suffice.

8. Interrogatory "19" merely requests respondent's "procedure" in "reviewing" certain material" prior to publication. It is neither "too broad" nor "indefinite", as respondent asserts. It requests relevant information which may be responded to quite simply.

CONCLUSION

THE ORDER APPEALED FROM SHOULD BE MODIFIED, WITH COSTS

GEORGE SASSOWER, Esq.
Attorney for appellant.

Dated: February 7, 1983