

A75
DORIS L. SASSOWER, ESQ. - APPELLANT - IN REPLY
[A75-A79]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
GEORGE SASSOWER and DORIS L. SASSOWER,
Plaintiffs,

Index No.
14373-1982

-against-

Action "A"

ERNEST L. SIGNORELLI,

Defendant.

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DORIS L. SASSOWER and CAREY A. SASSOWER,
Plaintiffs,

Index No.
3607-1979

-against-

Action "B"

ERNEST L. SIGNORELLI, JOHN P. FINNERTY,
WARDEN REGULA, ANTHONY MASTROIANNI, and
THE NEW YORK LAW JOURNAL PUBLISHING
COMPANY,

Defendants.

-----x
STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

DORIS L. SASSOWER, Esq., first being duly
sworn, deposes, and says:

I am the plaintiff in the above entitled actions and submit this affidavit in reply to the affidavit of JEFFREY I. SLONIM, Esq., dated January 10, 1983, with respect to my motion returnable January 14, 1983.

1. The significance of the opposing affidavit lies more in its omissions and misstatements, which it attempts to conceal by meaningless hyperbole.

2. While my instant motion, insofar as it seeks reargument, is addressed to the discretion of the Court, the application for relief not previously requested nor reasonably anticipated, is made as a matter of right.

3. On the initial motions, it was not denied that in my 1982 action, I set forth a cause of action for "malicious prosecution".

a. A portion of the affidavit of GEORGE SASSOWER, Esq., sworn to on October 25, 1982, reads as follows:

"The Attorney General's Office has personal knowledge of DORIS L. SASSOWER's total and complete vindication (since it was the attorney for a party therein), which took place within one year from the commencement of this action.

DORIS L. SASSOWER was not only vindicated, but the Appellate Division, First Department granted her leave to apply for sanctions against her prosecutor (the Attorney General's client) for this meritless prosecution.

Obviously, DORIS L. SASSOWER could not, in 1979, commence an action for malicious prosecution when the vindication took place in 1981. The cause of action for malicious prosecution only arises upon vindication (Whitmore v. City, 80 A.D.2d 638, 436 N.Y.S.2d 323, 324 [2d Dept.]; Peresluha v. New York, 60 A.D.2d 226, 230, 400 N.Y.S.2d 818, 819 [1st Dept.]; Giqlio v. Delesparo, 46 A.D.2d 928, 361 N.Y.S.2d 721, 723 [3d Dept.]; Hines v. City, 79 A.D.2d 218, 225, 436 N.Y.S.2d 512, 518 [4th Dept.]; Boose v. Rochester, 71 A.D.2d 59, 65, 421 N.Y.S.2d 740, 746 [4th Dept.]; Viva v. New York, 104 Misc.2d 958, 961, 429 N.Y.S.2d 346, 348 [Sup. N.Y. per Greenfield, J.]; 36 NY Jur., Malicious Prosecution, § 3, p. 257-258).

Had DORIS L. SASSOWER commenced a malicious prosecution action in 1979 -- prior to vindication -- it would have been dismissed (Embassy Sewing v. Leumi Financial, 39 A.D.2d 940, 333 N.Y.S.2d 106, 108 [2d Dept.]; Flaks v. Bank, 66 A.D.2d 363, 366, 413 N.Y.S.2d 1, 3 [1st Dept.]; Lewis v. Deposit, 40 A.D.2d 730, 336 N.Y.S.2d 672, 674 [3d Dept.], aff'd 33 N.Y.2d 532, 347 N.Y.S.2d 434; 36 NY Jur., supra, § 19, p. 274-276).

Consequently, defendant's alleged defense under CPLR 3211(a)(5) [res judicata, collateral estoppel, and statute of limitations], is wholly and completely specious, without a scintilla of factual or legal support."

b. I respectfully submit that my "First Cause of Action" in my 1982 action (Exhibit #2) sets forth all the elements necessary to support an action for malicious prosecution.

c. Since this Court did not dismiss my 1982 action pursuant to CPLR 3211(a)(7), it follows that the Court, sub silentio, found such cause properly stated.

d. The fact that I employed the term "maliciously published" in my 1979 action, as the Assistant Attorney General alleges (p.3, ¶7), is consistent with my action for compensatory and punitive damages in my prior defamation action. If the defendant now wishes to construe the use of such term in my 1979 action, as alleging a cause of action for "malicious prosecution", then he should have no objection to the amendment of the prior action so as to clearly state that relief is sought for malicious prosecution also.

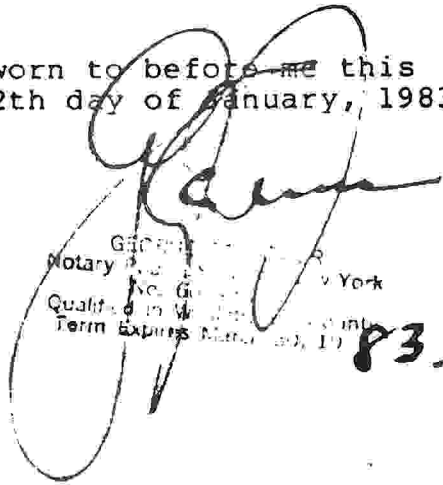
4. Since I have only brought two actions against this defendant, which defendant does not controvert, and for different causes of action, arising at different times, I respectfully submit that this Court unconstitutionally prohibited me from bringing any further legal action (albeit based on subsequent republication), particularly since the Appellate Division has granted me leave to seek sanctions against those responsible for this meritless (disciplinary) prosecution against me.

Nor do I believe that any court can enjoin me from bringing an action against this defendant for tortious conduct thereafter arising out of new and separate circumstances.

WHEREFORE, I respectfully pray that the relief requested herein be granted in all respects.


DORIS L. SASSOWER

Sworn to before me this
12th day of January, 1983


Gloria ...
Notary Public for the State of New York
Qualified in ...
Term Expires March 31, 1983