To be argued by
JEFFREY I. SLONIM
15 minutes

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division - Second Department

GEORGE SASSOWER and DORIS L. SASSOWER,

Plaintiffs-Appellants,

-against-

ERNEST L. SIGNORELLI,

Defendant-Respondent.

DORIS L. SASSOWER and CAREY A. SASSOWER,

Plaintiffs-Appellants,

-against-

ERNEST L. SIGNORELLI,

Defendant-Respondent,

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

Defendants.

BRIEF AND APPENDIX FOR DEFENDANT-RESPONDENT

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BRIEF FOR DEFENDANT-RESPONDENT

Questions Presented

1. Should a complaint be dismissed where it presents nothing more than a rehash of allegations previously asserted in one form or another, in one forum or another, and either dismissed or presently pending?

Special Term held in the affirmative, and dismissed the complaint.

2. Should an injunction be entered prohibiting the commencement of further litigation where the history of prior repetitious actions makes clear that plaintiffs have embarked on a course of endless, unceasing, vexatious litigation directed at the defendant?

Special Term held in the affirmative and entered the injunction.

3. Should the Attorney General be disqualified from fulfilling his statutory obligation to represent courts, judges, agencies and officers in pending litigation where no showing has been, or could be, made of any improper activity by the Attorney General or his Assistants?

Special Term, which denied the motion to disqualify, implicitly held in the negative.

4. Should reargument of a decision be granted where no showing has been, or could be, made that the Court, in its prior decision, overlooked some question decisive of the issue or that the decision was in conflict with a statute or a controlling decision?

Special Term held in the negative and denied the motion for reargument.

5. Should leave to amend the complaint in one action be granted where the requested amendment would only add claims, made in another action, which were dismissed because they were repetitive of allegations already made in other actions by the same plaintiffs against the same defendant?

Special Term held in the negative and denied the motion for leave to amend.

Preliminary Statement

This brief is respectfully submitted on behalf of defendant-respondent Ernest L. Signorelli ("defendant"), the Surrogate of Suffolk County, and in response to the brief submitted by plaintiffs-appellants George and Doris Sassower ("plaintiffs"). Because the record amply demonstrates that Special Term was correct in finding that the "instant action involves nothing more than a rehash of allegations previously asserted in one form or another, in one forum or another, and

either dismissed or presently pending" (A-90)*, and that Special Term was also correct in finding that "plaintiffs have embarked on a course of endless, unceasing, vexatious litigation directed at the defendant herein" (id.), the orders dismissing the action, enjoining plaintiffs from commencing still further repetitions of the same claims, and denying reargument and leave to amend, should all be affirmed.

Statement of the Case

This action** was commenced by the service of a summons, without a complaint, on or about August 9, 1982. (A-12, SA-1) Contrary to the express requirements of CPLR 305(b), the summons failed to state the nature of the action. Apparently in response to a demand duly made, plaintiffs then served their complaint. (A-12)

* References to pages of the appendix served, and presumably filed, by plaintiffs-appellants appear herein as "A- ". References to pages of plaintiffs-appellants' supplemental appendix, served and filed pursuant to this Court's March 25, 1983 Order, appear as "SA- ".

** Plaintiffs-appellants have unilaterally, and without seeking or obtaining the consent of the Court, consolidated appeals in two actions, which they have styled "Action A" and "Action B". See Statement Pursuant to CPLR 5531 (A-1). In Action A, they have appealed from an order dismissing their complaint and enjoining them from commencing further repetitive litigation. (A-5). In Action B, both plaintiffs have appealed from an order denying only plaintiff Doris Sassower leave to amend her complaint in that action -- already separately before this Court on substantive appeals and cross-appeals from the denials of cross-motions for summary judgment and from various other orders -- to add the allegations already made, but dismissed, in Action A. (A-8) Because the order in Action B was expressly based on the prior order in Action A, references herein to "this action", unless specifically identified to Action B, refer to Action A.

By a notice of motion dated October 15, 1982 (A-9), defendant timely moved to dismiss the complaint on the grounds that it was barred by res judicata, collateral estoppel and statute of limitations; that there were other actions pending between the same parties for the same claims asserted herein in courts of the state or the United States; and that the complaint failed to state a cause of action upon which relief could be granted against defendant. By the same motion, defendant also sought an order permanently enjoining plaintiffs from commencing any action or proceeding against defendant in any New York court based upon the same facts and occurrences at issue in the previous actions brought against him by either or both of plaintiffs.*

The basis for defendant's motion, in large part, was the history of suits brought by the Sassowers against Surrogate Signorelli, all of them arising out of a proceeding entitled Matter of Eugene Paul Kelly which was once pending before the Surrogate. (A-12) George Sassower had been executor of that estate but was removed because of his continued failure to file an accounting. Sassower v. Signorelli, 65 A.D. 2d 756 (2d Dep't

* In addition, defendant sought an order prohibiting plaintiffs from commencing any action or proceeding for money damages against the Attorney General or any Assistant Attorney General for defending any action brought by plaintiffs against defendant. That part of the motion was denied by Special Term, without prejudice to renewal upon appropriate showing that the relief was required. (A-7) Defendant has not appealed from that part of Special Term's order, but plaintiffs have, for some reason, appealed from "each and every part" of the order (A-3), presumably including denial of defendant's motion to prohibit further suits against the Attorney General.

1978); see also Sassower v. Finnerty, N.Y.L.J., July 29, 1983, at 13, col. 4 (2d Dep't). Doris Sassower, his wife, had represented him in that proceeding. (SA-2) As defendant's motion in Special Term showed, although it was difficult to tell from the bare-bones conclusory assertions of the present complaint what exactly this particular case was about, it apparently resulted, like many other Sassower actions, from a decision rendered by Surrogate Signorelli in that proceeding on or about February 24, 1978, which was subsequently published by the New York Law Journal on or about March 3, 1978. (A-12, SA-2)

In that decision (SA-2), the Surrogate set forth some of the procedural history of that proceeding and referred a pending contempt application to an Acting Surrogate for consideration. He also referred the entire litigation to the Acting Surrogate and, significantly, has not presided over any part of that case since that February 1978 decision. (A-13) The Surrogate discussed the conduct of George and Doris Sassower and concluded that Mr. Sassower had "impeded the orderly administration of this estate" and had "willfully and intentionally failed to heed any and all directives of this court." (SA-3) The Surrogate concluded by directing the Chief Clerk to forward a copy of his decision to the Presiding Justice of the Appellate Division, Second Department, for such disciplinary action as he might deem appropriate with regard to the conduct of George and Doris Sassower.*

* Plaintiffs alleged in their complaint that the disciplinary proceedings commenced against them resulted in their "complete vindication". (A-13, 81, 84)

The motion before Special Term discussed several of the Sassower actions against Surrogate Signorelli which have arisen from the Kelly matter, and provided pleadings, papers and decisions in those cases for examination and comparison by Special Term. Thus, for example, Special Term saw that, in 1977, George Sassower commenced an action against Surrogate Signorelli and others in the United States District Court for the Eastern District of New York. In a Memorandum of Decision and Order dated September 20, 1977, Chief Judge Mishler of that Court dismissed the action. (A-14; SA-4) Mr. Sassower then commenced a new action against the same defendants and others, again in the Eastern District of New York. In a Memorandum of Decision and Order dated April 20, 1978, Chief Judge Mishler dismissed that action also. (A-14; SA-15) Mr. Sassower appealed both dismissals to the United States Court of Appeals for the Second Circuit, and the Court of Appeals affirmed. (A-14; SA-31)

In 1978, George Sassower commenced an action entitled Sassower v. Grzymalski, et al., against Surrogate Signorelli and others in the United States District Court for the Southern District of New York. (A-14; SA-33) According to the Court's docket sheet for that action, no disposition was ever made therein as to defendant Signorelli, but the action was "statistically closed" in 1981. (A-14-15)

In 1978, George Sassower also commenced an action against Surrogate Signorelli and others in the Supreme Court, Westchester County. (A-15, SA-40) The action was transferred by that Court to the Supreme Court, Suffolk County, where it was dismissed. (A-15) This Court (Damiani, J.P.; Weinstein, Rubin and Boyers, JJ.) recently affirmed dismissal of that action against Surrogate Signorelli. Sassower v. Finnerty, N.Y.L.J., July 29, 1983, at 13, col. 4 (2d Dep't).

In 1979, Doris Sassower commenced an action in her own behalf and in behalf of her daughter Carey against Surrogate Signorelli and others in the Supreme Court, Westchester County. (A-15, 72) (It is that action which plaintiffs have here styled "Action B" and which is, in addition to the present appeal, already on appeal to this Court from substantive orders.) In entering the order dismissing their complaint and enjoining them from bringing the same suits yet again, Special Term reviewed copies of the July 20, 1982 affidavits of Doris and George Sassower submitted in support of a motion for summary judgment in that earlier action. (A-15; SA-85, 171) Those affidavits demonstrated the identity of issues in that 1979 action and the present one.

Yet another action was commenced against Surrogate Signorelli, on or about August 18, 1982, in Supreme Court, Nassau County by George Sassower, "individually and on behalf of others similarly situated." (A-15; SA-174) That action, on application of Mr. Sassower, was transferred to the Supreme Court, Westchester County, where it, too, was dismissed. Mr.

Sassower has served a notice of appeal to this Court from that order, but has never taken any steps to perfect that appeal.

In addition to the foregoing Sassower v. Signorelli actions -- presented as illustrative, and not exhaustive, of this repetitious series of litigation (A-16) -- Special Term also reviewed other actions brought by the Sassowers arising from Matter of Eugene Paul Kelly. These actions included at least three against this Court itself, as well as against the Appellate Division, First Department. (A-16, SA-194, 205, 214) Mr. Sassower has also sued at least two Assistant Attorneys General for defending Surrogate Signorelli (A-16, 17; SA-4, 15, 282), and threatened to sue at least one other. (A-17).

In response to defendant's motion, plaintiffs submitted a forty-three page affidavit of George Sassower (A-21) and a cross-motion to disqualify the Attorney General from continuing to represent the Surrogate. (A-19) The Attorney General, on behalf of defendant, submitted a memorandum in reply to the Sassower affidavit and in opposition to the cross-motion. (RA-1)*

* References to pages of defendant-respondent's appendix, annexed to this brief, appear herein as "RA- ".

Special Term granted defendant's motion and denied the cross-motion to disqualify the Attorney General. In its decision (A-89), the Court, having reviewed the history of the Sassower litigation, found that "plaintiffs have embarked on a course of endless, unceasing, vexatious litigation directed at the defendant herein." Id. Because the present action presented "nothing more than a rehash of allegations previously asserted in one form or another, in one forum or another, and either dismissed or presently pending," (A-90), the Court dismissed the complaint. Id. As the Court wrote:

> "[T]here must come a time when the multitudinous actions and the mountains of papers generated therefrom must cease in the interest of preventing judicial grid-lock. To my view, that time has arrived." Id.

For the same reasons, Special Term also enjoined the Sassowers from instituting any further proceedings in any New York state courts based upon incidents relating to Matter of Eugene Paul Kelly. As Special Term wrote, it granted that branch of defendant's motion because "plaintiffs are bent upon a course of litigation harassment" and in order to "avoid an unnecessary erosion of judicial resources." (A-90). Finally, the court summarily denied plaintiffs' cross-motion to disqualify the Attorney General from continuing to represent defendant. (Id.)

By a notice of motion dated December 31, 1982, made jointly in Actions A and B (A-64), plaintiff Doris Sassower, the only plaintiff named in both actions, moved for reargument of Special Term's decision in Action A or, alternatively, for leave to amend her complaint in Action B to add the claims pleaded, but already dismissed, in Action A. After opposition by defendant (A-70) and reply by Mrs. Sassower (A-75), Special Term denied both motions (A-8). Reargument was denied because there was no showing by plaintiffs that the Court had overlooked some decisive question or that the decision was in conflict with a statute or controlling decision. (Id.) The alternative relief of amendment was denied for the reasons stated in the court's prior decision. (Id.)

Plaintiffs, by a single notice of appeal filed jointly in both actions (A-3), have appealed from "each and every part" of both orders.* Because the principal action here was, as Special Term found, "nothing more than a rehash of allegations previously asserted in one form or another, in one forum or another" (A-90), Special Term was correct in entering each of its orders, and those orders should accordingly be affirmed.

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* It is unclear why plaintiffs have appealed from that part of the order in Action A that denied defendant's motion to enjoin further personal damages actions by plaintiffs against the Attorney General or his Assistants based upon their defense of the Surrogate.

POINT I

THE ORDER DISMISSING THE COMPLAINT SHOULD BE AFFIRMED BECAUSE THE COMPLAINT WAS BARRED BY RES JUDICATA, COLLATERAL ESTOPPEL AND THE EXISTENCE OF PRIOR PENDING ACTIONS.

As has been seen, Special Term granted defendant's motion to dismiss the complaint based upon its finding that the present action involved "nothing more than a rehash of allegations previously asserted in one form or another, in one forum or another, and either dismissed or presently pending." (A-90) Special Term made that finding after reviewing the complaint and comparing it with pleadings, papers and decisions in various of the other Sassower actions. (A-89) Because the record itself makes clear that Special Term was correct in its findings, the order should be affirmed.

Plaintiffs, in their brief in this Court, have not directly addressed the point that their complaint was barred by their prior litigation of the same allegations. Instead, apparently preferring simply to rehash their papers in Special Term, plaintiffs dwell on attempting to show that their complaint, standing alone, stated a cause of action. (See Appellants' Brief, Points I, II, III and IV). That is, of course, entirely beside the point, as Special Term recognized. (A-89-90)

The complaint was dismissed not because it failed to state a cause of action -- although that was a possible ground for dismissal, see Point II, infra -- but because any claim it attempted to raise had already been, or could have been, raised in other, prior proceedings. (A-90) Thus, for example, plaintiff Doris Sassower's claim in the present action that defendant "maliciously caused [a] complaint [against her] to be publicly and extensively published" (A-81) was already at issue in at least one other Sassower v. Signorelli action (SA-82, 89). Plaintiff George's similar claim (A-83-84) was barred by one of his prior actions. (SA-50-53). Similarly, plaintiffs' claims that defendant caused the "destruction or suppression" of unspecified documents was already sub judice in a prior Sassower v. Signorelli action in which Doris Sassower was plaintiff and in which her husband, George Sassower, actively participated. (SA-131, 137).

Plaintiffs cannot seek to hide from the bar imposed by their prior actions by contending, as they do (App. Br. 2, 3), that George is plaintiff in some and Doris is plaintiff in others. It is a well-settled rule in New York that a person may be bound by a prior judgment to which he was not a party of record where that person controlled the prior action, although not formally a party to it, or where that person's interests were represented by a party to the action. Watts v. Swiss Bank

Corp., 27 N.Y. 2d 270, 277 (1970); 9 Carmody-Wait 2d § 63:233 (prior judgment is conclusive as to a non-party who "prosecuted the action or the defense thereto, on behalf of a party, or assisted the latter or participated with him in the prosecution of such action or its defense."); 5 Weinstein-Korn-Miller ¶ 5011.33. Cf. Shire Realty Corp. v. Schorr, 55 A.D. 2d 356 (2d Dep't 1977). Authorities are in accord that a person may so involve himself with litigation in which he is interested that the result is conclusive against him. Watts v. Swiss Bank Corp., supra, 27 N.Y. 2d at 277, and authorities cited. Restatement, Second, Judgments § 39, provides that:

> "A person who is not a party to an action but who controls or substantially participates in the control of the presentation on behalf of a party is bound by the determination of issues decided as though he were a party."

Examination of the record and the history of Sassower v. Signorelli and related proceedings makes clear that Doris and George Sassower, who are husband and wife (SA-174), are, for all practical purposes in these litigations, entirely interchangeable. They appear as counsel on each other's behalf, as in the Kelly matter before Surrogate Signorelli (SA-2) as

well as the instant matter (A-4, A-65). They submit affidavits in each other's actions. (SA-171) Indeed, they have been known to submit extensive affidavits which are substantially identical, except that one was executed by George and one by Doris. Compare (A-35-59) (George) with (SA-122-144) (Doris).* And they appear in Court, inseparably, to argue motions. (A-6) In short, despite the name they may choose to appear in the caption in any given proceeding, it is clear from the record that George and Doris Sassower are alter egos operating as a unit in their suits against Surrogate Signorelli and that they share control of those actions against defendant herein.

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* Apparently, the Sassowers use an electronic word-processor to enable them to mass produce their litigation. This is evident not only from the virtually identical content of their papers, but occasionally also from the errors which occur when they forget to adapt their epic to its latest context. For example, in setting forth part of a transcript (A-57), Mr. Sassower parenthetically commented upon a statement made in the transcript by Judge Signorelli by remarking, supposedly in the words of George Sassower:

> "[the Court transcript reveals that my husband told it to Judge Signorelli himself in open court the previous day]" (emphasis added)

Doris Sassower made exactly the same comment in her own affidavit (SA-142), where it might, presumably, have had more reasonable relation to its context.

Conversely, in that self-same affidavit, Doris Sassower repeatedly referred to "my wife" (SA-143). It is readily apparent that even the Sassowers themselves have difficulty sorting out who is appearing in what action at any given time.

In determining whether a non-party to a prior action is bound, in a subsequent action, by that earlier litigation, no single fact is determinative but all the circumstances must be considered from which one may infer whether or not there was participation amounting to a sharing in control of the litigation. Watts v. Swiss Bank Corp., supra, 27 N.Y. 2d at 277. In that case, it was found to be of "singular significance" that the two actions there at issue were prosecuted simultaneously by the same law firm, which supported a strong probability that parties, represented by that firm, who controlled the second action were "inextricably involved" in the progress of the first. Id. at 278. Here, of course, the parties plaintiff and their "attorneys" are one and the same, and, because they jointly control their suits against Surrogate Signorelli, should each be bound by the existence of, and result in, each of those suits, at least for the purpose of barring future relitigation of identical claims against the same defendant.

Accordingly, Special Term was correct in dismissing the complaint based on the existence of prior actions and proceedings between the same parties raising the same allegations, and its order should, therefore, be affirmed.

POINT II

THE ORDER DISMISSING THE COMPLAINT SHOULD BE AFFIRMED BECAUSE EACH OF THE SIX PURPORTED CAUSES OF ACTION FAILED TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED.

As has been seen, Special Term was correct in dismissing the complaint based on its finding that the complaint was simply a "rehash" of prior actions and proceedings. For that reason alone, the order appealed from should be affirmed. Moreover, that order can also be affirmed on a ground presented to, but not decided by, Special Term: that the complaint failed to state a cause of action against defendant upon which relief could be granted.

Plaintiffs' alleged causes of action will be dealt with in the order in which they appeared in the complaint.

a. The First Purported Cause of Action (Doris)

In the first alleged claim (complaint ¶¶ 1-5) (A-80-81), plaintiff Doris Sassower claimed that Surrogate Signorelli "instigated, initiated, and compelled a disciplinary proceeding to be prosecuted" against her. (¶ 3). The proceeding, according to Mrs. Sassower, resulted in her "complete vindication" (¶ 4) and, therefore, plaintiff contended that she suffered general and special damages. (¶ 5)

That "cause of action" could have been dismissed because defendant is protected from this action by the absolute immunity which attaches to a person who files with the appropriate disciplinary body a complaint of dishonest or unethical conduct by a lawyer. Wiener v. Weintraub, 22 N.Y. 2d 330 (1968). The basis for that sweeping protection is found in the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of lawyers to impart that knowledge to a Grievance Committee or some other designated body for investigation. Id.*

b. The Second Purported Cause of Action (Doris)

The second claims (¶¶ 6-8) (A-82), after incorporating the allegations contained in the first, contended that plaintiff Doris sustained damages because Surrogate Signorelli, in the aforesaid disciplinary proceeding, allegedly caused the "destruction or suppression" of unspecified documents and "in other respects" misled the prosecuting authorities (¶ 7).

* The fact that the Surrogate's decision was subsequently reported by the New York Law Journal cannot affect the Surrogate's immunity for referring that complaint to the Grievance Committee. Moreover, to the extent that the complaint alleged that Surrogate Signorelli "maliciously caused such complaint to be publicly and extensively published," (¶ 3) (A-81) that alleged claim was unquestionably already sub judice before the Supreme Court in at least one other Sassower v. Signorelli action. (SA-82) See also Sassower v. Finnerty, supra, N.Y.L.J., July 29, 1983, at 13, col. 4 (2d Dep't), where this Court determined, on these same facts, that Surrogate Signorelli could not be held liable for "procur[ing] the publication of a judicial decision or opinion in the New York Law Journal."

To a large extent, the second purported cause of action failed to meet even the liberal pleadings requirement of CPLR 3013, which specifies that a pleading:

> "shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved."

Furthermore, insofar as that claim attempted to plead some sort of action for fraud or misrepresentation, it failed to comply with CPLR 3016(b), which requires that such a complaint state in detail the circumstances constituting the wrong. Even liberally construed, the second alleged "cause of action," standing alone, gave no notice whatsoever of the claim plaintiff was apparently attempting to make, and could have been dismissed for that reason as well.* Moreover, since plaintiffs both alleged that those disciplinary proceedings resulted in their "vindication" (A-81, 84), plaintiffs could not, in any event, legitimately claim any damage from the alleged "destruction or suppression" of documents in those proceedings.

c. The Third Purported Cause of Action (Doris)

Finally, the third claim alleged by plaintiff Doris contended that Surrogate Signorelli "conducted himself towards plaintiff ... in a shocking and outrageous manner, exceeding all bounds of civilized human decency," and that she was therefore entitled to damages. (¶ 10) (A-83).

* In any event, plaintiff had already attempted to plead the same claims in her prior action, now pending in this Court on substantive cross-appeals. (SA-131-137)

It is unclear, at best, from the complaint how defendant Signorelli "exceed[ed] all bounds of human decency" or how plaintiff was in some way harmed as a result. In any event, however, it is clear that the Surrogate was immune from that claim for damages. As has already been seen, the complainant in a disciplinary proceeding is absolutely privileged in filing such a complaint of unethical or dishonest conduct. Wiener v. Weintraub, supra, 22 N.Y. 2d 330 (1968). Statements made to a body properly investigating such a complaint are similarly absolutely protected. Id. Thus, to the extent that Surrogate Signorelli's alleged conduct -- whatever it might have been -- occurred in the course of the disciplinary proceeding which seems to underlie this action (just as it was at the heart of plaintiff's other actions against the Surrogate), that conduct must be protected.

Moreover, to the extent that defendant's alleged conduct -- again, whatever it might have been -- was done while he was acting in a judicial capacity, he is protected by the absolute immunity accorded to judges for their judicial acts. Sassower v. Finnerty, supra, N.Y.L.J., July 29, 1983, at 13, col. 4 (2d Dep't); Virtu Boutique, Inc. v. Job's Lane Candle Shop, Inc., 51 A.D. 2d 813 (2d Dep't 1976). Judges are immune from civil liability for all acts performed in the exercise of their judicial functions, even if such acts are in excess of their jurisdiction and are alleged to have been done maliciously

or corruptly. Id.; Stump v. Sparkman, 435 U.S. 349 (1978); Pierson v. Ray, 386 U.S. 547 (1967); Bradley v. Fisner, 80 U.S. (13 Wall.) 335 (1872).

Consequently, whatever conduct plaintiff complained of here was protected by an absolute immunity and, for that reason also, the third "cause of action" could have been dismissed.

d. The Fourth Purported Cause of Action (George)

The fourth "cause of action" (A-83-84), which was the first alleged by plaintiff George, was identical to the first "cause of action" alleged by plaintiff Doris (A-80) and could have been dismissed for the same reasons. That claim was barred by the absolute immunity given to complainants in attorney disciplinary proceedings, and thus no cause of action was stated against Surrogate Signorelli for allegedly initiating a disciplinary proceeding against Mr. Sassower.

e. The Fifth Purported Cause of Action (George)

The fifth purported cause of action (A-84) paralleled the second, alleged by plaintiff Doris (A-82). Because it was, standing alone, inadequately pleaded, and because the acts apparently complained of had already been made the subject of at least one other pending action (SA-131-137, 171), that "cause of action" could have been dismissed on its face.

f. The Sixth Purported Cause of Action (George)

Finally, the sixth claim (A-85), like the third (A-82), alleged that Surrogate Signorelli "conducted himself in a shocking and outrageous manner, exceeding all bounds of human decency." (¶ 19). Unlike the third, however, the sixth "cause of action" set forth the "egregious actions" by defendant (¶ 20) (A-86). That paragraph, nearly two pages long, was a list of activities which are plainly judicial conduct. And, as has already been seen, a judge, like defendant here, is absolutely immune from civil liability for all acts performed in a judicial capacity, even if such acts are in excess of his jurisdiction and are alleged to have been done maliciously or corruptly. Sassower v. Finnerty, supra, N.Y.L.J., July 29, 1983, at 13, col. 4 (2d Dep't); Virtu Boutique, Inc. v. Job's Lane Candle Shop Inc., supra, 51 A.D. 2d 813 (2d Dep't 1976); Stump v. Sparkman, supra, 435 U.S. 349 (1978); Pierson v. Ray, 386 U.S. 547 (1967); Bradley v. Fisher, supra, 80 U.S. (13 Wall.) 335 (1872). Because defendant's alleged conduct was protected by absolute immunity, the sixth purported cause of action, like the five before it, could have been dismissed.

Thus, each of the six purported causes of action alleged in the complaint could have been dismissed by Special Term on the ground that it failed to properly set forth a cause of action against defendant upon which relief could have been granted. In addition to the fact that the present action was

repetitive of, and consequently barred by, prior Sassower v. Signorelli actions, the action could have been dismissed by Special Term on the face of the pleading alone. Accordingly, the order of Special Term, dismissing the complaint, should be affirmed.

POINT III

THE ORDER ENJOINING PLAINTIFFS FROM RECOMMENCING THE SAME ACTION YET AGAIN SHOULD BE AFFIRMED BECAUSE PLAINTIFFS' ACTIONS AGAINST DEFENDANT HAVE NOT BEEN BROUGHT IN GOOD FAITH BUT, RATHER, HAVE BEEN BROUGHT SOLELY TO HARASS.

After reviewing the pleadings, papers and decisions in prior Sassower v. Signorelli matters, Special Term found that plaintiffs have "embarked on a course of endless, unceasing, vexatious litigation directed at the defendant herein" (A-89) and that they were "bent upon a course of litigation harassment." (A-90) Accordingly, Special Term determined that the "time has arrived" "when the multitudinous actions and the mountains of papers generated therefrom must cease in the interest of preventing judicial grid-lock." (Id.) Thus, in order to "avoid an unnecessary erosion of judicial resources" (id.), the Court enjoined plaintiffs from instituting any further actions or proceedings in any New York State Courts based upon incidents relating to the Matter of Eugene Paul Kelly. (A-7)

Because that order was, and is, warranted on the facts and the law, it should be affirmed.

It is well settled that the Supreme Court, sitting as a court in equity (N.Y. Const. Art. VI § 7 subd. a), has the power to enjoin the commencement of actions which are not brought in good faith but, rather, are brought for the purpose of vexing or harassing a particular defendant. See, e.g., Quinlan v. Lender, 102 Misc. 2d 127 (Sup. Ct. N.Y. Co. 1979); Brewster Aeronautical Corp. v. Fener, 196 Misc. 208 (Sup. Ct. N.Y. Co.), aff'd, 275 A.D. 1040 (1st Dep't 1949); Miller v. Myers, 75 Misc. 297 (Sup. Ct. N.Y. Co. 1912). It is readily apparent from the multitude of actions and proceedings brought by the Sassowers in various state and federal courts that their purpose is not to correct any perceived errors in the judicial proceeding once pending before defendant -- the regular appellate and disciplinary processes exist for just that purpose -- but solely to harass and annoy him on a personal basis. Such harassment is an abuse of the judicial system and, as Special Term recognized, should not be permitted to continue.

Because access to the courts is one of the cherished freedoms of our system of government, the use of an injunction to bar persistent litigants from court should be reserved for the prevention of repetitious, baseless or harassing lawsuits.

Morgan Consultants v. American Tel. & Tel. Co., 546 F. Supp. 844, 848 (S.D.N.Y. 1982), citing Browning Debenture Holders' Committee v. DASA Corp., 605 F.2d 35 (2d Cir. 1978). See also Quinlan v. Lender, supra; Brewster Aeronautical Corp. v. Fener, supra. The facts presented here make such an injunction appropriate.

The history of this litigation shows it to consist of multiple lawsuits on sometimes varying theories but always on the same underlying circumstances. The long established rule governing res judicata in New York is that "[o]ne who has nad his day in court should not be permitted to litigate the question anew." Becker v. State, 79 A.D. 2d 599, 601 (2d Dep't 1980), app. denied, 52 N.Y. 2d 1030 (1981), quoting from Good Health Dairy Products Corp. v. Emery, 275 N.Y. 14, 18 (1937). The rule has always been that an existing judgment

> "is binding upon the parties and their privies in all other actions or suits on points and matters litigated and adjudicated in the first suit or which might have been litigated therein." Becker v. State, supra, quoting Israel v. Wood Dolson Co., 1 N.Y. 2d 116, 118 (1956) (emphasis added by Becker Court).

Any new or different theories on which plaintiffs might want to proceed could, and should, have been presented to any of the courts considering their many prior actions. But they should not be permitted to continue bringing new actions each time they conceive of another format for presentation of

the same facts. As the United States District Court for the Southern District of New York wrote in granting a similar injunction in Kane v. City of New York:

> "[W]hen it becomes clear that the courts are being used as a vehicle of harassment by a 'knowledgeable and articulate experienced pro se litigant' who asserts the same claims repeatedly in slightly altered guise, the issuance of an injunction is warranted."

468 F. Supp. 586, 590 (S.D.N.Y.) (Weinfeld, J.) (footnotes omitted), aff'd, 614 F. 2d 1288 (2d Cir. 1979).

As Special Term recognized, the history of Sassower v. Signorelli, in all its different forms, justified the issuance of an injunction against still further suits by the Sassowers. The Court, sitting in equity, therefore prohibited the Sassowers from commencing any further actions or proceedings against Surrogate Signorelli in any New York State Court based upon incidents relating to the Matter of Eugene Paul Kelly. That order should not now be disturbed.

POINT IV

THE ORDER REFUSING TO DISQUALIFY THE ATTORNEY GENERAL SHOULD BE AFFIRMED BECAUSE THERE WAS, AND IS, NO REASON FOR SUCH DISQUALIFICATION.

In its order, Special Term denied plaintiffs' cross-motion to disqualify the Attorney General from continuing to represent defendant. (A-7) Plaintiffs now premise their appeal from that denial principally on their contention (App. Br. 14, 15, 29; emphasis original) that the cross-motion was, as they repeatedly and strenously assert, "unopposed."

Plaintiffs are in error. Defendant submitted to Special Term a reply memorandum directly responding to plaintiffs' cross-motion and showing why it should be denied. A copy of that reply memorandum, together with its affidavit of service on plaintiffs, demonstrating the blatant falsity to the contention made in plaintiffs' brief here, is included in respondent's appendix to this brief. (RA-1, 5)

Furthermore, the very order from which plaintiffs here appeal recites (A-6) that the Attorney General, by one of his Assistants, "appeared and argued in support of the motion and in opposition to the cross-motion." (emphasis added) Plaintiffs never opposed inclusion of that recital in Special Term's order, nor did they ever seek to resettle the final order. Plainly,

plaintiffs' entire argument here is bottomed on their own decision to omit defendant's reply memorandum from their original and supplemental appendices, and then to pretend that that reply memorandum never really existed at all.

In any event, it is clear that Special Term did not err in denying the cross-motion. Such a motion is addressed to the discretion of the Court. Matter of Erlanger v. Erlanger, 20 N.Y. 2d 778 (1967). The parties moving to disqualify opposing counsel have the burden of showing that the litigation would not be conducted in fairness and that the parties would not be properly represented unless the adversary is disqualified. Wolf v. Wolf, 70 Misc 2d 620, 622 (Sup. Ct. Monroe Co. 1972).

Plaintiffs failed even to attempt to carry that burden in Special Term. They did not offer any showing -- nor could they -- that the Attorney General or any Assistant acted improperly, or threatened to act improperly, in any aspect of representing defendant here, or any other state officer or agency. Plaintiffs' mere speculation, unsupported by any such showing, cannot be enough to require the disqualification of the Attorney General, particularly in light of the statutory obligation imposed on him by the Legislature to represent the courts, judges, agencies and officers whom the Sassowers repeatedly sue. Executive Law § 63; Public Officers Law § 17.

Accordingly, because there was, and is, no basis for plaintiffs' cross-motion to disqualify the Attorney General, the order of Special Term denying that cross-motion should be affirmed.

POINT V

THE ORDER DENYING PLAINTIFF DORIS SASSOWER REARGUMENT IN "ACTION A" AND LEAVE TO AMEND IN "ACTION B" SHOULD BE AFFIRMED FOR THE REASONS SET FORTH BY SPECIAL TERM.

Special Term denied plaintiff Doris Sassower's motion for reargument of its decision dismissing the complaint in "Action A" or, in the alternative, for leave to amend her complaint in "Action B" to add her claims made, but dismissed, in "Action A".* (A-8) That order should also be affirmed in all respects.

As Special Term recognized (A-8), Mrs. Sassower made no showing that the Court in its prior decision overlooked some question decisive of the issue or that the decision was in conflict with a statute or a controlling decision, to which the attention of the Court had not been drawn. Such a showing is required. 2A Weinstein-Korn-Miller, New York Civil Practice ¶ 2221.03.

* Although he has appealed from the order denying that motion (A-3), plaintiff George Sassower did not make a similar motion.

Rather, here, Mrs. Sassower made clear that the sole purpose for which the motion was made was "simply because the unsuccessful counsel ... would like to again argue the very question" previously decided. Id. at 22-127, quoting from Fosdick v. Town of Hempstead, 126 N.Y. 651 (1891). The law is uniform that the plain dissatisfaction of a party with a decision is insufficient basis for the reargument of the underlying motion, and the order denying that motion should, therefore, be affirmed.

Similarly, the motion to amend the complaint in Action "B"* in an attempt to revive the dismissed complaint in Action "A" was also nothing more than frivolous, and should have been -- as it was -- denied for the very reasons set forth in the Court's decision dismissing the complaint in Action "A". As has been seen, the Court there held (A-90) that the alleged claims, which Mrs. Sassower now sought to add to her earlier complaint, were "nothing more than a rehash of allegations previously asserted in one form or another." As Special Term correctly held, there was simply no reason to allow that "rehash" to be revived and added onto another action, especially where the very same allegations were already at issue in that prior action. Thus, that order, denying leave to amend, should also be affirmed.

* Plaintiff Carey Sassower did not join in that motion.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that the orders appealed from should be affirmed in all respects, with costs to defendant-respondent.

Dated: New York, New York
August 16, 1983

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendant-
Respondent

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MELVYN R. LEVENTHAL
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JEFFREY I. SLONIM
Assistant Attorneys General
of Counsel

A P P E N D I X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

GEORGE SASSOWER and DORIS L. SASSOWER,

Plaintiffs,

-against-

ERNEST L. SIGNORELLI,

Defendant.

Index No. 14373-1982

DEFENDANT'S REPLY MEMORANDUM OF LAW

This memorandum is respectfully submitted in reply to the affidavit of George Sassower, dated October 25, 1982, and the so-called cross-motion served with it. To the extent that it attempts to oppose the motion to dismiss the complaint, the affidavit serves only to support it. Moreover, the affidavit demonstrates conclusively the identity of issues among the various pending actions brought by the Sassowers against Surrogate Signorelli. Finally, the cross motion -- to disqualify the Attorney General from performing his statutory responsibility to defend the officials and agencies which the Sassowers persist in suing -- is seen to fall of its own weight.

Although Mr. Sassower swears, in his affidavit, to strings of citations appearing to stand for general principles of pleading, he makes no effort to relate those cases to the matter at hand. Rather, he merely uses those cases as a pad from which to launch his latest repetition of the same facts, a tirade which somehow is supposed to show that this is a new case. It merely proves the contrary.

The present affidavit of George Sassower is identical in its material respects to that of his wife and co-plaintiff, Doris, submitted by her in a prior action in this Court. That earlier affidavit is annexed to the October 15, 1982 affidavit of Jeffrey I. Slonim, submitted in support of the motion to dismiss the present action, as part of Exhibit "H". In particular, pages 15 through 39 of the present 43-page affidavit may be compared with pages 38 through 61 of the earlier Doris Sassower affidavit in the earlier case (Exhibit "H"), with the conclusion that, except for cosmetic details, they are identical.*

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* Apparently, the Sassowers use an electronic word-processor to enable them to mass-produce their litigation. This is evident not only from the virtually identical content of their papers, but occasionally also from the errors which occur when they forget to adapt their epic to its latest context. For example, in setting forth part of a transcript (affid. p. 37), Mr. Sassower parenthetically comments upon a statement made in the transcript by Judge Signorelli by remarking, supposedly in the words of George Sassower:

> "[the Court transcript reveals that my husband told it to Judge Signorelli himself in open court the previous day]" (emphasis added)

Doris Sassower made exactly the same comment in her own affidavit (p. 59), where it might, presumably, have had more reasonable relation to its context.

Thus, Mr. Sassower's present contention that the cases are different flies straight in the teeth of his and his wife's affidavits, which demonstrate that the facts being litigated in each of those cases are nothing short of identical.

Mr. Sassower also seeks to disqualify the Attorney General from representing the various defendants whom the Sassowers regularly sue. That unlikely result is somehow necessary, Mr. Sassower vacantly argues, because the Attorney General represents all of them and might, therefore, learn something from each about the cases brought by the Sassowers. The very statement of Mr. Sassower's contention betrays it as nothing more than bootstrapping at its worst.

The Attorney General has an obligation, imposed by the Legislature, to represent agencies and officers of the State when they are sued. Exec. Law § 63; Public Officers Law § 17. Mr. Sassower cannot override that Legislative mandate by suing a variety of courts, judges, agencies and officers, and then complaining that the Attorney General represents each of the defendants he has sued. The statutes have controlled since before the Sassowers embarked on their course of judge-suing, and they should not now be heard to complain of its required result.

CONCLUSION

BASED UPON THE FOREGOING, IT IS RESPECTFULLY SUBMITTED THAT THE MOTION SHOULD BE GRANTED, THE COMPLAINT SHOULD BE DISMISSED AND AN INJUNCTION SHOULD ISSUE AS REQUESTED.

Dated: New York, New York
October 27, 1982

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendant

JEFFREY I. SLONIM
Assistant Attorney General
Of Counsel

Affidavit of service of defendant's
reply memorandum of law (RA - 5) RA - 5

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

JEFFREY I. SLONIM , being duly sworn, deposes and says that he is an Assistant Attorney General in the office of the Attorney General of the State of New York, attorney for Defendant herein. On the 27th day of October , 1982, he served the annexed upon the following named person :

GEORGE SASSOWER
DORIS L. SASSOWER
Plaintiffs Pro Se
283 Soundview Avenue
White Plains, New York 10606

Plaintiffs Pro Se
~~Attorney~~ in the within entitled action. By depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at ~~Two World Trade Center~~, New York, New York 10047, directed to said Plaintiffs Pro Se ~~Attorney~~ at the address within the State designated by them for that purpose.

Jeffrey Slonim

Sworn to before me this
27th day of October , 1982

Arnold Fleischer

Assistant Attorney General
of the State of New York