

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X

GEORGE SASSOWER, individually and on
behalf of others similarly situated,

Plaintiff,

-against-

ERNEST L. SIGNORELLI, SURROGATE'S COURT
OF THE STATE OF NEW YORK, COUNTY OF
SUFFOLK, and NEW YORK LAW PUBLISHING
COMPANY,

Defendants.

-----X

MEMORANDUM IN SUPPORT OF MOTION
TO DISMISS BY THE NEW YORK
LAW PUBLISHING COMPANY

book review

and Law Publishing; and

that there is no pending controversy between the plaintiff

Publishing, the complaint fails to state a cause of action in

1. Insofar as relief is sought against Law

complaint fails to state a cause of action on the grounds that:

dismissing the complaint herein on the grounds that the

support of its motion pursuant to CPLR §3211(a)(7) for judgment

The New York Law Publishing Company ("Law Publishing") in

This memorandum is submitted on behalf of defendant

-----x

Defendants.

ERNEST L. SIGMORELLI, SURROGATE'S COURT
OF THE STATE OF NEW YORK, COUNTY OF
SUFFOLK, and NEW YORK LAW PUBLISHING
COMPANY,

-against-

GEORGE SASSOWER, individually and on
behalf of others similarly situated,
Plaintiff,

-----x

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Index No. 20987-1982

MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS
BY THE NEW YORK LAW
PUBLISHING COMPANY

This is one of a growing number of actions commenced by the plaintiff and members of his family against Surrogate Signorelli of the Surrogate's Court, Suffolk, County, and other law enforcement officials. 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 New York Law

Preliminary Statement

arguments made on behalf of the Suffolk Defendants. 1982, and Law Publishing adopts all of the statements and pursuant to a Notice of Motion to Dismiss dated September 16, York, County of Suffolk (the "Suffolk Defendants"), made Signorelli and the Surrogate's Court of the State of New dismiss the complaint made on behalf of defendants Ernest L. Law Publishing has also joined in the motion to

freedom of the press. the Constitution of the State of New York, with respect to the Constitution of the United States and Article I, § 8 of Publishing guaranteed to it under the First Amendment to in that such relief would be violative of the rights of Law Publishing, the complaint fails to state a cause of action 2. Insofar as relief is sought against Law

Journal ("Law Journal"), of what appears as a decision and order of Surrogate Signorelli (the "Decision") filed and entered in a probate proceeding pending in the Surrogate's Court, Suffolk County. In various of the pending actions, the plaintiff has already brought claims bottomed on the contention that certain of the words contained in the Decision, to the effect that the Surrogate was directing the Chief Clerk of the Court to forward a copy of the Decision to the presiding justices of the Appellate Division, Second Judicial Department, for such disciplinary action as he may deem appropriate with regard to the conduct of the plaintiff, violates his rights under Judiciary Law §90(10). In this action, plaintiff, purportedly acting individually and on behalf of others similarly situated, seeks to restrain Law Publishing, as publisher of the New York Law Journal, from publishing any material violative of Judiciary Law §90(10), except when such information comes from sources other than judicial employees or their agents. It is the position of defendant Law Publishing that the verbatim publication of decisions of courts of record within applicable Judicial Districts of the First and Second Judicial Departments of the State of New York is an intrinsic part of the judicial function performed by it as an

The plaintiff seeks an injunction prohibiting the Law Journal from publishing court decisions which contain any material violative of Judiciary Law §90(10), unless such information comes from sources other than court employees or agents. We request the Court to take judicial notice of the fact that judges in this State, from time to time,

NO INJUNCTION CAN BE GRANTED IN THE ABSENCE
OF A PRESENT CASE OR CONTROVERSY

POINT I

"10. Any statute or rule to the contrary notwithstanding, all papers, records and documents * * * upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney or attorneys, shall be sealed and be deemed private and confidential. However, upon good cause being shown, the justices of the appellate division having jurisdiction are empowered, in their discretion, by written order, to permit to be divulged all or part of such papers, records and documents. * * *

Judiciary Law §90(10) reads, in part, as follows:

Applicable Statutes

official reporter designated under Judiciary Law §91(2), and that this Court cannot broadly interfere with the performance of this function.

include in their opinions reprimands of attorneys with direction that the opinion or other records in the action be submitted

to the Appellate Division for investigation of possible breaches of the canons of ethics. See, for instance, Matter of Justin Myers, NYLJ., p. 18, col. 6, April 12, 1982, (Family Ct., Westchester Co.). It is the position of Law Publishing that

although the discipline of members of the Bar, under Judiciary Law §90, is directed to the Justices of the Appellate Division, it remains the intrinsic power and duty of each judge to

maintain judicial discipline within his court. When a judge, in his sound discretion, determines that a matter should be

properly referred to the Appellate Division for investigation as to the taking of disciplinary action, it appears logical and in the interests of justice that the judge so indicate

on the public record and in an appropriate decision. Such position is supported by logic and common practice.

If the position of defendant Law Publishing is in

error, and should it be ultimately determined that judges

should not use such words in their decisions and that the

Law Journal should not republish such words, then this Court logically should assume that the current practice will

cease.

The plaintiff and his wife, in two actions pending

in the Supreme Court, State of New York, County of Westchester

It is the position of the plaintiff that the current practice of judges, when circumstances warrant, to include

GRANTING OF THE REQUESTED INJUNCTIVE RELIEF WOULD CONSTITUTE A PRIOR RESTRAINT ON PUBLICATION AND DEPRIVE LAW PUBLISHING OF ITS CONSTITUTIONAL RIGHTS OF FREEDOM OF PRESS

POINT II

"[C]oncrete legal issues, presented in actual cases, not abstractions, are an absolute requisite for adjudication of legal disputes. United States v. Appalachian Electric Power Co., 311 U.S. 377, 423, 61 S.Ct. 291, 306, 85 L.Ed. 1143 (1940). See also Golden v. Zwickler, 394 U.S. 103, 110, 89 S.Ct. 956, 960, 22 L.Ed.2d 113 (1969); Electric Bond & Share Co. v. Securities and Exchange Commission, 303 U.S. 419, 443, 58 S.Ct. 678, 687, 83L.Ed. 936 (1938)."

F.Supp 1371, 1380, (S.D.N.Y. 1982):

As recently stated in Time, Inc. v. Regan, 539

concern.

opinions as to which he has no legislative interest or future basis, concerning as yet to be issued decisions and a determination of a question of law, on a hypothetical, not entitled, and the law does not accord him the right, to of law will be made. That should suffice. The plaintiff is that, in due course, a judicial determination of the point to an actually published decision and it can again be assumed issue under Judiciary Law §90(10) asserted here with respect (Civil Action Nos. 3607 and 3608-79), have raised the precise

"* * * Both the history and language of the First Amendment support the view

any precedents, at page 717:

713, 91 S.Ct. 2140 (1971), stated without the need to cite

decision of New York Times Company v. United States, 403 U.S.

The United States Supreme Court in the landmark

only to its later responsibility at law for its own acts.

it will print without prior restraint by the courts, subject

Legal or illegal, defendant Law Publishing must decide what

Article I, § 8 of the Constitution of the State of New York.

Amendment to the Constitution of the United States and

right of freedom of press guaranteed to it under the First

upon publication without impinging upon the Law Journal's

this Court does not have the power to create a prior restraint

The plaintiff ignores the simple proposition that

employees or their agents.

information is derived from sources other than judicial

publishing any such violative material, except when such

such practice, the Law Journal should be enjoined from

protect lawyers who might, in the future, be affected by

§90(10). Therefore, he appears to argue, that in order to

investigation, constitutes a violation of Judiciary Law

matters are to be referred to the Appellate Division for

in decisions a reference to the effect that disciplinary

that the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraints."

See, Near v. Minnesota ex rel. Olsen, 238 U.S. 697, 51 S.Ct.

625 (1931).

We are aware that, in the view of the plaintiff,

the New York Law Journal is not entitled to First Amendment privileges of freedom of press insofar as it is engaged in the verbatim publication of judicial decisions. We reject such viewpoint out of hand, and call upon this Court to do so as well.

Be that as it may, it is inconceivable that this

Court would consider issuing an injunction as broad and in-

definite so as to cover "any material violative of Judiciary

Law §90(10)". Such an injunction would place upon the

defendant the unconstitutional burden of deciding whether

any material contained in a judicial opinion does or does

not violate Judiciary Law §90(10), and to do so at the risk

of contempt of court.

On the basis of the foregoing, it is respectfully

submitted that the motion for judgment dismissing the

complaint herein should be granted in all respects,

together with such other and further relief as the Court
may deem necessary and proper in the premises.

Dated: New York, New York
September 17, 1982

Respectfully submitted,

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