SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
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GEORGE SASSOWER, individually and on behalf of others similarly situated,

Index No. 20987-1982

Plaintiff,

-against-

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

Defendants.

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S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of GEORGE SASSOWER, Esq., duly verified the 28th day of September, 1982, and upon all pleadings and proceedings had heretofore herein, the undersigned will cross-move this Court at a Special Term Part I of the Supreme Court of the State of New York, County of Nassau, at the Courthouse thereof, Supreme Court Drive, Mineola, New York, 11501, on the 4th day of October, 1982, at 9:30 o'clock in the forenoon of that day or as soon thereafter as Counsel may be heard for an Order

transferring this action/proceeding from the Tenth Judicial District in order to dispose of the pending motions by defendants and all future proceedings, together with such other, further, and/or different relief as to this Court may seem just and proper in the premises.

Dated: September 28, 1982

Yours, etc.,

GEORGE SASSOWER, Esq.
Attorney for plaintiff
283 Soundview Avenue,
White Plains, N.Y. 10606
914-328-0440

To: Robert Abrams, Esq.
Attorney for defendants (except for Law Journal) & pursuant to CPLR 1012(b)

Abrams & Sheidlower, Esqs.
Attorneys for Law Journal

SUPREME COURT OF THE STATE OF NEW YORK
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Defendants.

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

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

I am the plaintiff in the within action and submit this affidavit in support of my cross-motion for a change of venue to a county outside the Tenth Judicial District for the disposition of defendants' motions and all future proceedings.

1. Plaintiff's summons designated venue as "Nassau-Subject to application to change venue".

Plaintiff's verified complaint, states (¶61):

> "By reason of the adverse publicity generated by ERNEST L. SIGNORELLI against plaintiff, and ERNEST L. SIGNORELLI's association with the judicial district which includes Suffolk County, the mandate of CPLR §506, does not constitute a constitutional venue under federal and state law."

2. Plaintiff complaint requests relief [other than against New York Law Journal] as follows:

> "(a) adjudging and declaring the statement of February 24, 1978 in the Estate of EUGENE PAUL KELLY null and void; (b) mandating that ERNEST L. SIGNORELLI and SURROGATE'S COURT, SUFFOLK COUNTY cause to be imprinted on every page of the filed February 24, 1978 statement a notice to the effect that such statement is personal, unauthorized and the unofficial statement of ERNEST L. SIGNORELLI; (c) that SURROGATE'S COURT, SUFFOLK COUNTY be restrained from certifying any copies of such February 24, 1978 statement of ERNEST L. SIGNORELLI, except with such notation; (d) appointing a receiver, at the cost and expense of ERNEST L. SIGNORELLI, charged with the duty of reconstructing all documents, minutes, and transcripts that should be in the file entitled 'Matter of Eugene Paul Kelly, deceased', and thereafter certifying said file as complete, or is it cannot be completed, qualifying such certification; ... (f) together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

3. The receipt of the Attorney General's Notice of Motion dated September 16, 1982 constitutes the first opportunity that plaintiff has had to make this motion (CPLR 511[a]).

4. In this unusual action, deponent's belief was that subject to constitutional principles and CPLR §510(2), the instructions contained in CPLR §§504-506, were controlling in the first instance.

An action or proceeding is what the complaint is, and is not controlled by a particular headnote on a venue provision of the CPLR, as contended by the Attorney General.

5. All parties have a right to litigate their claims in a constitutional constituted tribunal (Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 S.Ct. 749). The judicial officer making the determination is often the product of or has had some association with the same political organization as the official being sued. Compelling litigants outside the judicial district to bring their suit in the judicial district of the official, may serve governmental convenience, but often at the expense of the constitutional requirement of a neutral and detached tribunal (Sharkey v. Thurston, 268 N.Y. 123, 126).

Plaintiff contends that CPLR §§504-506 is, on its face, violative of the due process clauses of the Constitutions of the United States (Amendment XIV) and State of New York (Art. 1 §6).

6. Alternatively, plaintiff contends that CPLR §§504-506 is unconstitutional as applied to cases wherein local judicial officials are sued and, as here, they have a strong personal interest.

The unconstitutionality of the situation becomes more pronounced when, as here, the suit is personally against and reflective of the integrity of the Surrogate and Acting Supreme Court Justice of the very same judicial district in which the case is to be decided, and the entire judiciary has been inundated with publicity at the instance of the judicial defendant. Impartiality, under such circumstances, becomes temporized with the realities of human frailties (Gibson v. Berryhill, 411 U.S. 564, 575, 93 S.Ct. 1689, 1696, 36 L.Ed.2d 488, 497-498). At best, to the reasonable objective person, any decision by this Court, becomes suspect and subjects itself to cynical evaluation.

In 16A Am Jur 2d, Constitutional Law, §855, 1074, 1076, it states:

> "a statute which compels a litigant to submit his controversy to a tribunal of which his adversary is a member does not afford due process of law."

7. Unquestionably there is social intercourse and professional cross-pollenation between members of the judiciary, particularly those of the same judicial district.

If judicial disqualification, mandatory or discretionary, is dependent on the availability of alternatives, New York County, the home county of defendant, New York Law Journal, and its attorney, could serve as an alternative venue for this action. New York County also being one of the two counties wherein the Attorney General has his principal office.

Westchester County, the county in which the related action specifically mentioned by the Attorney General is pending, could also serve as an alternative situs.

Any one, of the two aforementioned counties, as the venue of this action, has plaintiff's consent.

The feasibility of alternatives renders specious any assertion of a "duty to sit" by any member of this Court in this case (Laird v. Tatum, 409 U.S. 824, 837, 93 S.Ct. 7, 15, 43 L.Ed.2d 50, 60). The duty

in this case is clearly one of recusal and disqualification (Burstein v. Greene, 61 A.D.2d 827, 402 N.Y.S.2d 227 [2d Dept.]; Seifert v. McLaughlin, 15 A.D.2d 555, 223 N.Y.S.2d 18 [2d Dept.]; Arkwright v. Steinbugler, 283 App. Div. 397, 128 N.Y.S.2d 823 [2d Dept.]).

Where, as here, a judicial officer is being sued in his own judicial district, it is an unconstitutional burden to place the onus on the non-judicial litigant in order to change the venue. Prima facie the Tenth Judicial District is and should be an improper and unconstitutional venue with the burden of showing otherwise on the judicial defendant.

8. The Attorney General annexes the Judgment and Order of Mr. Justice JAMES A. GOWAN (Exhibit #3), which substantiates plaintiff's assertion of actual bias.

Mr. Justice GOWAN's judgment and order is presently sub judice at the Appellate Division, Second Department. Significantly, none of the respondents' attorneys, which included the Attorney General and the Suffolk County Attorney could or did, in any way, defend the egregious determination of Mr. Justice GOWAN when he dismissed, without a hearing, plaintiff's Writ of Habeas Corpus.

Appellant's "Questions Presented" at the Appellate Division reveals the obvious reason for the total lack of opposition by all respondents' attorneys:

> " 2. Could appellant be constitutionally and legally tried, convicted, and sentenced for criminal contempt, all in his absence, the first time the matter was on for a hearing, and while he was legally engaged in the midst of a trial in a higher court?
> The Court below held in the affirmative.
>
> 3. Was appellant's legal engagement in a higher court a conscious, voluntary, and deliberate waiver of his constitutional and legal right to be present at a trial, conviction, and sentence for criminal contempt, as a matter of law, so as to dispense completely with the necessity of a habeas corpus hearing?
> Special Term impliedly held in the affirmative.
>
> 4. Could appellant be legally sentenced immediately upon conviction without affording him his right to allocution and without inquiry whether an adjournment was desired before sentencing?
> The Court below impliedly held in the affirmative.
>
> 5. Was appellant supposed to risk contempt in Supreme Court, Bronx County by abandoning a pending trial in its midst and prejudice his client's cause in order to appear in Surrogate's Court?
> The Court below impliedly held in the affirmative."

I submit that no attorney nor any judge outside the Tenth Judicial District could or even attempt to defend the holding of Mr. Justice GOWAN, even with the contrived facts set forth by the Court in its opinion (adopted in large part from the Signorelli diatribe, which is the subject of this proceeding).

I further suggest that a fairly objective person could reasonably come to the conclusion that this holding, by Mr. Justice GOWAN was inspired, inter alia, by the fact that there were and are legal proceedings pending against Ernest L. Signorelli, a colleague of Mr. Justice GOWAN, arising out of this transaction. Nevertheless, it is a decision after months of pondering, which is manifestly suspect, if not intellectually corrupt.

If the aforementioned aspect of Judge Gowan's judgment was in any way defensible, why did not the Attorney General in any way argue to affirm? The Attorney General delayed filing his Brief for months after it was due, then gave a patently false excuse for its late filing, and even then, still could not defend the aforesaid aspect of Judge Gowan's decision, even with a frivolous or specious assertion.

A reason justifying judicial immunity is the need for fearless decision making, nevertheless, as exemplified by the aforementioned exhibit -- the Gowan Judgment -- of the Attorney General himself, the immunity does not necessarily produce fearless decisions.

There are similar decisions by other justices of the Tenth Judicial District in cases involving, directly or indirectly, Ernest L. Signorelli, which are equally indefensible and reprehensible, but it would only belabor the obvious. A judge may not and should not adjudicate his own cause or a cause of his full blooded brother residing under the same roof, as is the present posture of this matter.

9. ERNEST L. SIGNORELLI, without any pretence of due process, labelled plaintiff a pariah in the New York Law Journal and Nassau and Suffolk County editions of the New York Daily News. ERNEST L. SIGNORELLI's diatribe of February 24, 1978 is constantly being republished, particularly in the Tenth Judicial District. A change of venue for all purposes is, under this circumstances, constitutionally mandated (Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600).

It is manifestly contrary to basic judicial philosophy and ethics to have Ernest L. Signorelli pollute the Tenth Judicial District with his contrived defamatory assertions (which he has refused to verify) and then insist that the matter be adjudicated in that very same district. It is the epitome of gall to so contend.

10. Any question regarding the extent of official misconduct in Suffolk County (a part of the Tenth Judicial District) finds expressing in the Third Cause of Action in the Attorney General's Exhibit No. 1. I leave to imagination the obvious reaction of the Appellate Division, Second Department, when its essential allegations were confirmed by the Assistant Suffolk County Attorney on June 24, 1982, exacerbated by the excuse tendered, to wit, the Supreme Court jurist who signed the Writ of Habeas Corpus was "illiterate".

The Suffolk County officialdom should be taught that the law does not require that only directions from "literate" judges be obeyed, nor does it empower them to be the ex parte arbiters of the literacy of the judiciary in another district of their department.

WHEREFORE, it is respectfully prayed that prior to any adjudication of any motions herein, that this matter be transferred to a constitutionally based venue, together with such other, further, and/or different relief as to this Court may seem just and proper in the premises.

GEORGE SASSOWER

Sworn to before me this
28th day of September, 1982

BARBARA TATESURE
Notary Public State of New York
No. 24-4760746
Qualified in Kings County
Commission Expires March 30, 84