UNITED STATES COURT DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

GEORGE SASSOWER, individually and on behalf of others similarly situated,	:	
Plaintiff,	:	
-against-	:	80 Civ. 1070 (MJE)
THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT and THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT,	:	
Defendants.	:	

---x

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendants
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-6770

AMY JUVILER
Assistant Attorney General
of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---------------------------------------X

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

Plaintiff, :

-against- :

THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT and THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT, :

Defendants. :

---------------------------------------X

80 Civ. 1070 (MJE)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

By his complaint in this action, plaintiff seeks another forum to litigate again all of his alleged grievances against judicial forums in which they have previously been litigated. Attached as Exhibit "A" to the affidavit is a partial list of those proceedings. The 66 page complaint is an incomprehensible rambling summary of some of those proceedings full of slanderous accusations against persons not before this Court. These would themselves be grounds to dismiss this action; but because plaintiff sues only Courts

acting in their judicial capacity, the precedents compel dismissal for lack of either subject-matter or personal jurisdiction and for failure to state a claim upon which relief can be granted.

Apparently, plaintiff (or "petitioner" as he refers to himself) is the subject of an on-going disciplinary proceeding referred by the First Department to the Second Department (p. 2, § II-1), and is also party to an appeal pending in the Second Department from an order dismissing a writ of habeas corpus and dismissing his "ten cause of action complaint against judicial defendants." (p. 2, § II.2). The complaint also alleges that plaintiff's wife, who is not a party to the present action, was also the subject of a Grievance Committee complaint which was dismissed, and that it was "unconstitutional" for the First Department to leave it for her to apply to the Second Department for "relief ... against its own appointees." (p. 3, § 3).

ARGUMENT

THE APPELLATE DIVISIONS ARE NOT PERSONS WHO CAN BE SUED UNDER THE FEDERAL CIVIL RIGHTS ACT; IN FACT, THEY ARE COURTS WITH IMMUNITY FROM SUIT AND STATE COURTS WHOSE ACTIONS ARE NOT SUBJECT TO DISTRICT COURT REVUE UNDER PRINCIPLES OF COMITY

The dismissal of this complaint is compelled under authoritative unquestioned precedent.

In Zuckerman v. Appellate Division, 421 F2d 625 (2d Cir. 1970) other pro se plaintiffs who were attorneys sought to sue the Appellate Division Second Department to anull disciplinary actions against them. Despite the fact that there had been some unusual procedures in that case, the Court held that the Appellate Division was not a person under the Civil Rights Act on which the plaintiffs relied. Judge Hays held that it was unnecessary to reach the other grounds on which the motion was based including judicial immunity the applicability of which was noted in the margin. This same result was reached when Martin Erdmann brought suit against the Judges of the First Department to enjoin on First Amendment grounds the conduct of a disciplinary proceeding against him. Erdmann v. Stevens, 458 F2d 1205 (2d Cir. 1972) Similar holdings are found in Louis v. Supreme Court of Nevada, 490 F. Supp. 1174 (D. Nev. 1980); Pettit v. Gingerich,

427 F. Supp. 282 (D. Md. 1977); Moity v. Louisiana State Bar Ass'n, 414 F. Supp. 180 (E.D. La. 1976); and County of Lancaster v. Philadelphia Elec. Co, 386 F. Supp. 934 (E.D. Pa. (1975).

Although the decisions in Zuckerman and Erdmann compel dismissal of this complaint for lack of personal jurisdiction, the existance of judicial immunity from suit also supports a dismissal for lack of subject matter jurisdiction e.g. Stump v. Sparkman, 435 U.S. 349 (1978); reh. den. 436 U.S. 951; Pierson v. Ray, 386 U.S. 547 (1967). In Stump a Judge ordered sterilization of a 15 year-old without notice or hearing. The Supreme Court held that a broad interpretation of the State Court's jurisdiction was required (435 U.S. 349 at 359-361) and that even if the State Judged rendered erroneous unconstitutional decisions he is inmune from suit.

This complaint also must be dismissed for the same reason a previous complaint by this plaintiff against the Appellate Division, Second Department was dismissed. Sassower v. Appellate Division, __ F. Supp. __ (78 Cir. 6070 SDNY , 1979), aff'd F2d # 79-7205, 2nd Cir. 10/1/79. Judge

Brieant held that principles of federal com ity precluded him from correcting alleged errors in the opinions of State Courts:

> "Our regard for the delicate fabric of federalism suggests that there would be utter chaos in the nation if the federal district courts were to undertake to expunge unfounded or unfair statements of fact in the opinions and decisions of state judges. That this has not been done in some 190 years of partially concurrent state and federal jurisdiction suggests that to do so would create more mischief than it would eliminate. I decline to initiate any such practice here."

The principles of federalism that govern the relationship between the federal and state courts have been consistently applied by the federal courts to deny the exercise of equitable jurisdiction to determine matters litigated in the state courts Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); Atlantic Coastline R.R. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 286 (1970). In Rooker the Supreme Court held that the Federal District Court did not have jurisdiction to declare null and void a judgment affirmed by the highest court in Indiana, regardless of whether that judgment contained constitutional errors. Id. at 415-416. This doctrine was applied by the Second Circuit in Tang v. Appellate Division, 487 F2d 138, 143 (2d Cir. 1973), cert. den. 416 U.S. 906 (1974). In Tang, the plaintiff having been

denied admission to the New York Bar under the residency rule, first challenged that rule in the Appellate Division before instituting a civil rights action in federal court. The Court of Appeals held:

> ".... the district court lacks jurisdiction to review state courts determinations of federal constitutional questions and on that ground we affirm the dismissal of the action." Tang, supra at 141, citing Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L. ed. 362 (1923) at 141.

With respect to the application of Rooker in the context of a civil rights action, the court stated:

> "The fact that Tang brought his action under § 1983 does not alter the Rooker principle." Tang, supra, at 142.

Here, both the procedure used by appellant and the unwarranted intrusion into the state court's authority accentuate the need to apply the doctrine of Rooker and its progeny.

CONCLUSION

THIS COMPLAINT SHOULD IN ALL
RESPECTS BE DISMISSED

Dated: New York, New York
October 22, 1982

Respectfully submitted,

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

AMY JUVILER
Assistant Attorney General
of Counsel