

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x

GEORGE SASSOWER,

Index No.
5774-1983

Plaintiff,

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,
JOHN P. FINNERTY, ALAN CROCE, ANTHONY
GRYMALSKI, HARRY E. SEIDELL, NEW
YORK NEWS, INC., and VIRGINIA MATHIAS,

Defendants.

-----x

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF KINGS)

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

This affidavit replies to the Suffolk County's
Attorney's affirmation in oppositon and in opposition to
his cross-motion for a protective order (one paper)
dated June 21, 1983.

1. "County" having failed to timely [10 days] move with respect to plaintiff's demand for Discovery and Inspection (CPLR 3122), or tendered any legal excuse for not timely moving (DePaolo v. Wisoff, A.D.2d , 461 N.Y.S.2d 893, 894 [2d Dept.]), a conditional order against "County" should be entered, since no claim is made that plaintiff seeks disclosure of privileged material.

The law is clear that a party, failing to move for a protective order, forecloses itself from later questioning the propriety of plaintiff's demand unless the demand is "palpable improper", which generally is defined as requesting privileged material (Blessin v. Greenberg, 89 A.D.2d 862, 453 N.Y.S.2d 249 [2d Dept.]; 9H v. Zurich, 89 A.D.2d 584, 452 N.Y.S.2d 245; Mangiaracina v. Abatemarco, 87 A.D.2d 585, 447 N.Y.S.2d 770 [2d Dept.]; Silva v. County of Nassau, 86 A.D.2d 864, 447 N.Y.S.2d 314 [2d Dept.]; Hassell v. Nassau County, 86 A.D.2d 859, 447 N.Y.S.2d 322 [2d Dept.];

Galvan v. County of Nassau, 85 A.D.2d 620, 449 N.Y.S.2d 638 [2d Dept.]; Caveney v. Sorrano, 84 A.D.2d 557, 443 N.Y.S.2d 275 [2d Dept.]; Leissner v. Ford, 79 A.D.2d 700, 434 N.Y.S.2d 268 [2d Dept.]; Lane v. Ziv, 76 A.D.2d 902, 429 N.Y.S.2d 246 [2d Dept.]; Wood v. Sardi's, 47 A.D.2d 870, 871, 366 N.Y.S.2d 150, 152 [1st Dept.]).

2. This is an action based upon a unique, if not bizarre, series of events, warranting substantial damages, requiring pre-trial disclosure of many employees of "County", as well of the New York News, Inc., and witnesses, wherein, thus far, almost every attempt at pre-trial discovery has been stonewalled.

Ordinarily, but not necessarily, discovery and inspection should follow despositions (Rios v. Donovan, 21 A.D.2d 409, 414, 250 N.Y.S.2d 818, 823 [1st Dept.]). But in the instant case, a document production prior to further depositions, would save time, expense, and monies, for all parties, since it would target and identify those persons whose despositions are necessary and those whose depositions might be dispensed with or dealt with by way of written interrogatories.

3. The unsupported and unspecified conclusions by the "County" attorney (and not the client) that the documents requested are "an exercise in harassment", "vexatious", and "burdensome", "null", "void", and "defective", is meaningless rhetoric.

4. While facially plaintiff's request for:
"records regarding the execution of warrants outside of Suffolk County for a period of 15 years prior to June 1978",
may seem burdensome, I respectfully submit that "County" can answer same by simply stating that there were:

"none, except circumstances irrelevant to this law suit such as, in 'hot pursuit' or where the arrested party was already in custody, and transportation to Suffolk County was only needed, or where made in conjunction with local peace officials".

Similar extensive disclosure requests were permitted in State v. Monarch (Misc.2d , 462 N.Y.S.2d 118 [Supreme: Broome]).

This Court must certainly be aware that where the Sheriff desires to have another arrested four (4) counties away, as here, he does not make repeated forays in such distant county, but instead, for legal, pragmatic, and economic reasons, authorizes and requests the local sheriff to effectuate such arrest.

This Court must certainly be aware that where the Sheriff desires to have another arrested, and the party intended to be arrested, agrees to submit to such arrest at Special Term in Manhattan, Bronx, or Westchester [so that a Writ of Habeas Corpus may be immediately secured], the Sheriff does not turn such offer down when the alternative is repeated and needless forays 100 miles away.

Certainly contempt of court is not such heinous crime that requires the Sheriff's Office of Suffolk County to plan to surround the federal courthouse in order arrest the alleged contemnor.

Clearly, this was a unique situation wherein the Suffolk County Sheriff at the behest of others went to unusual lengths, employed unusual means, in order to arrest plaintiff.

It should be reasonably evident to this Court, and as the "County" knows, even without searching its records that its Sheriff's Office never engaged in the procedures followed herein.

Contrary to the contention made by "County" the legality of this issue was never determined by any Court. The only issue determined was that a Sheriff transgressing his bailiwick does not violate plaintiff's federal constitutional rights. Plaintiff's non-federal rights in this respect still remain to be adjudicated (Hines v. City of Buffalo, 79 A.D.2d 218, 436 N.Y.S.2d 512 [4th Dept.]).

5. The attorney for "County" states granting of this motion would result:

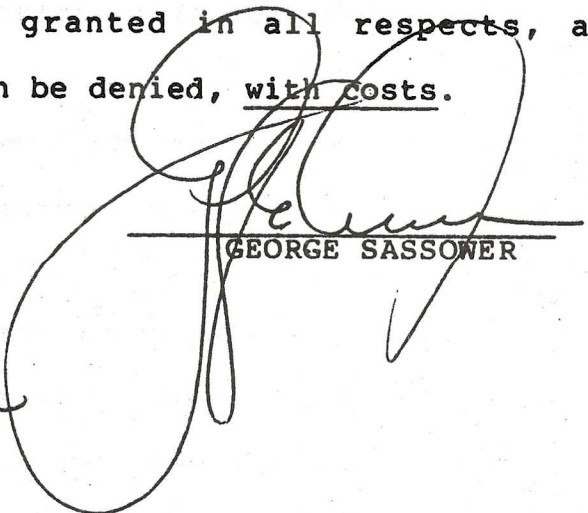
"in production of hundred if not thousands of pages of documents, most of which copies are already in Plaintiff's possession ..." :

a. Initially, I know of no documents requested that are already in my possession. In any event, in such instances the "County" need only identify same.

b. Even if such document production requires the duplication of "hundreds if not thousands of pages", would not such reproduction be less expensive and more convenient than the production of several additional employees of "County" in New York City for an oral deposition and requiring them to produce as part of such examination, the very same documents?

I respectfully submit, the persistent refusal to comply by the County with plaintiff's disclosure demands is all part and parcel of a stonewalling "dance" by all the defendants herein.

WHEREFORE, it is respectfully prayed that plaintiff's motion be granted in all respects, and defendant's cross-motion be denied, with costs.



GEORGE SASSOWER

Sworn to before me this
29th day of June, 1983

Barbara Tatures

BARBARA TATURES
Notary Public State of New York
No. 24-4760746
Qualified in Kings County
Commission Expires March 30, 1984