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PLAINTIFF'S AFFIDAVIT
[A65-A85]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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GEORGE SASSOWER,

Plaintiff,

Index No.
5774-1983

-against-

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

Defendants.

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

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

This affidavit is in reply to the (1) short opposing affidavit of Robert S. Hammer, Esq., of February 2, 1984, on behalf of defendant, Ernest L. Signorelli; and (2) to the affidavit of Robert M.

Calica, Esq., of January 20, 1984, on behalf of Anthony Mastroianni (his other clients are clearly without standing on plaintiff's motion to amend his second cause of action).

Ernest L. Signorelli:

1. Decisive is the fact that this defendant does not even contend that he is legally prejudiced by the requested pleading amendment.

Absent a showing of legal prejudice by this defendant, plaintiff's further arguments set forth, hereinafter are significant, but supererogatory.

The statement that this amendment is sought six years after the pleading is misleading, for Signorelli's motion and the appeal were sub judice from the middle of 1978 until July of 1983.

2a. Extensive research, partially set forth in plaintiff's moving papers, does not reveal a single case or authority which holds, states, or even indicates, that "affirmative acts" in the procurement of the publication must be "pleaded", in order set forth a cognizable cause of action.

Even very old pleading texts, where an omitted word or phrase proved fatal, do not reveal any such requirement.

Thus, in 1978, plaintiff cannot be faulted for not predicting that in 1983, the Appellate Division, would, sua sponte, adopt a special pleading requirement at odds with CPLR §3013, and about every case thereunder.

b. Apparently, the Appellate Division erroneously assumed, the initial publication was privileged, uttered as part of Signorelli's judicial function, and thus held, as a "pleading requirement", plaintiff had to "plead" affirmative acts of [re]publication, for liability to attach.

The proposed amended cause of action clearly reveals, as does the evidence in support thereof, that there was (1) actionable, non-privileged, defamation by Signorelli to the reporter for the Daily News, and (2) Signorelli affirmatively procured and solicited the republication of his private remarks in that newspaper.

The testimony of Art Penny, the reporter, as well as the date of the such solicited private interview of Signorelli, makes it eminently clear that this was not a situation, as might be assumed, of a reporter in attendance in a courtroom reporting a judicial proceeding -- it clearly was not! It was, instead, a private session by and between Signorelli, his sycophants, and the reporter.

The evidence and proposed amendment make clear that not only was the defamatory utterances by Signorelli not made as part of his official function, but was made in violation of plaintiff's constitutional and legal right to a fair non-jury trial in another court before Signorelli's colleague.

The private interview with the reporter certainly had that prejudicial effect for it took a verbal "gun to the head" edict of a federal judge for Signorelli's colleague to recognize, after a trial of several days, that where there is (1) no accusation; (2) no notification of any trial or hearing; (3) a trial; (4) conviction; and (5) and sentence, all in absentia,

the criminal contempt proceeding is plainly unconstitutional, and "shot full of error", and both Signorelli and the trial judge knew it, as would any para-legal!

3a. Even Bradford v. Pette (204 Misc. Rep. 308), the only opinion relied upon by the Appellate Division for its holding, does not stand for the proposition asserted by the Appellate Division, as a matter of pleading law.

b. Needless to say, no one at any time, prior to such opinion by the Appellate Division, even suggested that such might be a required allegation in the pleading.

c. Significantly, PJI (whose Chairman and Associate Member, are Associate Justices of the Appellate Division, Second Department) does not suggest that such an allegation is necessary as a matter of pleading or proof.

d. As set forth in the moving affidavit (p. 32):

> "Every reported case in New York, and as far as could be ascertained elsewhere, wherein the talemaker spoke to a reporter privately and his tale is published shortly thereafter, the courts have uniformly held, expressly or sub silentio, that the talemaker was liable for the published defamation."

This statement by plaintiff remains unrebutted by any citation to the contrary by anyone!

4. Signorelli's attorney states in his affidavit (p. 3):

> "As the decision of the Appellate Division shows, it is well-established rule, that a pleader must show 'affirmative acts' by a defendant in causing the publication of allegedly defamatory states (sic); and that it is not sufficient to allege that such statement was uttered in the presence of third parties, even with the intent that they should be widely circulated."

a. The Appellate Division never stated this pleading rule was "well-established".

b. This so-called "well-established" rule, was never asserted by Signorelli or his attorney at nisi prius.

c. This so-called "well-established" rule was never asserted by the nisi prius judge.

d. This so-called "well-established" rule was never asserted by either Signorelli or his attorney before the Appellate Division, as their brief to that Court confirms (Exhibit "A").

e. Except for setting forth the defamatory words, in haec verba (CPLR 3016[a], it is well-established that the only essential element of a pleading is "notice" (CPLR §3013). Everything else is superfluous!

f. The sophistry and "double talk" of Signorelli's attorney to the contrary notwithstanding, except for slander uttered by the unconscious, the act of uttering a defamatory statement, is by definition "an affirmative act". How else can one defame, except by an affirmative act!

A defamatory utterance is, unless privileged, an actionable tort. Whether the utterer is additionally responsible for the republication is a separate question, which in most instances, only affects the quantum of recovery.

5a. In any event, by means not here important, the Appellate Division, Second Department, was given the false impression that the Signorelli defamation was uttered as part of Signorelli judicial function, and so it fabricated this "new" pleading requirement in order to dismiss plaintiff's 1978 complaint on a CPLR 3211(a) omnibus, unconverted, motion.

b. Fortuitously, while sub judice at the Appellate Division, plaintiff took the examination before trial of the reporter who testified that he was "affirmatively" sought out by the Signorelli and his entourage and given a "private" story by them to be published by the Daily News, the morning plaintiff's first habeas corpus hearing was to commence.

c. Thus, in 1978, plaintiff was unable to reveal the sources of his inside information for fear of terminating information from those very sources and for fear he would also be faced with denials from the sources themselves.

Where the tortious acts are exclusively within the control of the tortfeasors, and subject to their unilateral change, tactical pleading mandates that the complaint set forth only what would pass a demurrer motion -- no more!

d. Additionally, in 1978, plaintiff was not even sure of the reliability of the information he was receiving.

Plaintiff, at the time of his complaint, rejected out-of-hand information that records were being destroyed, whose existence he could prove by stenographic minutes in his possession. Thereafter, such unbelievable information turned out to be correct.

Even the Grievance Committee rejected the idea that evidence of a judicial proceeding on a particular day would be eliminated by the Signorelli entourage, but as they found out it happened, even though prior thereto the Signorelli court gave it a stenographic copy of the proceedings of that day, and obviously forgot about that fact. When they produced those stenographic minutes, Signorelli turned on them!

e. If an "affirmative allegation" or "affirmative proof" was a "well-established" principle of liability, as Signorelli attorney contends, deponent doubts whether the reporter would have admitted to the "private solicitation" and "private interview".

But now, with the confirmatory testimony of the reporter, the affirmative evidence exists in probative form.

f. The legally significant point is that Signorelli does not and cannot claim legal prejudice by this amendment.

6a. In McLearn v. Cowan (60 N.Y.2d 686, 468 N.Y.S.2d 461), the Court recognized the conjuctive nature and interrelationship between CPLR 3211(a)[7] and (e). Thus had Signorelli or his attorney ever suggested that plaintiff's complaint was defective because he did not "plead" affirmative acts, as a precautionary measure, plaintiff would have pleaded such affirmative acts or requested leave to plead same, if nisi prius or the Appellate Division believed it a requirement.

Neither Signorelli or his attorney ever suggested that such requirement existed, as their Brief reveals, nor is there any authority in any state or federal court so holding, including New York, that anyone can find.

Thus, leave should be afforded in this Court to amend, particularly since no prejudice is claimed.

b. The policy of the courts is to have adjudications on the merits, not to defeat a litigant because he lacks the prescience to anticipate a new pleading doctrine, at odds with all rules of pleading, past and present, and probably caused because a court made an erroneous, but understandable, assumption.

7. The "Signorelli gang" knew they were in trouble when plaintiff refused to succumb to the "Signorelli Code of Star Chamber Procedures", and intended to discredit plaintiff in the eyes of the public, which they did very successfully!

After the discrediting job the "Signorelli mob" performed on plaintiff:

a. Would anyone believe that a former Assistant District Attorney, Criminal Court Judge, and Acting Supreme Court Justice would criminally try a person (a) without an accusatory instrument; (b) without notification of a trial or hearing; and then (c) try; (d) convict; and (e) sentence, all in absentia?

b. Would anyone believe that a judge with the above credentials would, without prior notice, send his local "storm troopers" through four (4) counties, hold their prisoner incommunicado, repeatedly deny him the right to present a writ of habeas corpus, and contend Fifth Amendment rights and other basic rights were unavailable to plaintiff?

c. The Suffolk County entourage, under Signorelli, as Grand Mufti, even caused to be placed against plaintiff felonious assault charges, contending that plaintiff, then 55 years of age, could and did, while handcuffed, "beat up" Deputy Sheriff Anthony [Arnold Schwarzenegger] Gryzmalski, causing him to be hospital treated and lose of eleven days work as a

result thereof? They did such a good job defaming plaintiff that he encountered some difficulty having persons believe that this "muscle bound", fully armed "gorilla", and his Deputy Sheriff partner actually "beat up" plaintiff, rather than the reverse, as they claimed!

d. Would anyone believe, after the defamation job they did, that Suffolk officials would disobey a Writ of Habeas Corpus, mandating plaintiff's immediate release, because it was their opinion that a Supreme Court Judge, from another district, who executed the writ, was "illiterate". It was only when the statement was made at the Appellate Division, did it have credibility!

Who made the Suffolk officials the ex parte arbiters of the literacy qualities of judges in other districts?

The claim that police officials need not obey orders of "illiterate" judges was rejected in Reimer v. Short (578 F.2d 621, 628-629 [5th Cir.], cert. den. 440 U.S. 947, 99 S.Ct. 1425, 59 L.Ed.2d 635).

e. In any event, even the court of Richard III would not jail plaintiff's wife and child, without food, water, or bathroom facilities, for merely presenting a Writ of Habeas Corpus directing plaintiff's immediate release, as was done by the Suffolk officials, and so admitted to the Appellate Division!

Ironically, Signorelli and sycophants were "hoisted by their own petard" when they were compelled to testify at their inspired disciplinary hearing and they all went down "like the Titanic" -- it was a massacre!

8a. Signorelli's attorney attempts to mislead this Court with its reference to the recent action by the Court of Appeals, in dismissing the matter for non-finality. It has nothing to do with the matter at hand.

b. Plaintiff claimed his right to appeal on the basis that "double jeopardy" triggered jurisdiction in the Court of Appeals, even though such claim arose while the matter was sub judice in the Appellate Division.

The entire removal as executor and failure to turn over papers was a complete fraud -- admitted to be such by the Suffolk County Attorney's own client, Anthony Mastroianni, -- as that office is very well aware!

It was based upon Mastroianni's own admissions (confession) that this "failure to turn over papers" fabrication caused the Grievance Committee to "thrown in the sponge" on this charge also.

c. In any event, the Court of Appeals apparently thought plaintiff's procedural route incorrect, and now plaintiff is proceeding traditionally by way of a formal Writ of Prohibition.

d. The other portion of the Court of Appeals disposition, will be urged by a motion for leave, now in preparation.

e. Nevertheless, plaintiff has stated that he would be willing to waive his claim of "double jeopardy" and the failure to afford him a "speedy trial", in exchange for an "open" trial in New York County, wherein the now secretive vindicating testimony possessed by plaintiff could be openly disclosed.

Thus far, the "Prince of Hell", his apostles from Styx, and their attorneys have not accepted plaintiff's offer!

Anthony Mastroianni:

1. The only client of the Suffolk County Attorney possibly affected by plaintiff's second cause of action is Anthony Mastroianni, whose motion for summary judgment was denied by nisi prius, and who did not appeal.

Since the proposed amendment does not cause Anthony Mastroianni any legal prejudice, leave should be granted.

2a. The ad hominem attack by the Suffolk County Attorney is directed to matters on which he was specifically denied leave to intervene (Exhibit "B") or on which he patently has no standing

b. Despite the reprimand the representative of the Suffolk County Attorney was given at the Appellate Division, he has refused to delete such irrelevant, but personal, remarks which he knows are false and misleading, and have been proven to be such by actual confessions, including that of his client, Anthony Mastroianni.

Despite the severe excoriation received by the representative of the Suffolk County Attorney at the Appellate Division on January 31, 1984, on February 10, 1984, deponent received the Suffolk County's alleged Memorandum of 57 pages, replete with, and more virulent than, the "sewerage" heretobefore published by that office.

The Suffolk County Attorney knows that it was complaints by those affected in his county that caused the disciplinary authorities to prohibit plaintiff from publishing the testimony of his clients and others, even in relevant judicial proceedings.

c. It is a clearly unconstitutional edict which deponent discreetly disobeys when manifestly necessary.

Thus, since (Kelly v. Sassower, 78 A.D.2d 502, 431 N.Y.S.2d 819) seems to be the Suffolk County's Attorney's favorite reference at the present time [even God does not know how it is relevant to his instant motion], deponent will quote to this Court [what the Suffolk County Attorney's Office already knows], the disciplinary prosecutors concluding remarks, when they "threw in the sponge" on these charges:

> "To attempt to catalogue and analyze every false and misleading statement to a document prepared by [plaintiff's adversary] in connection with these two trusts would be a Herculean task and would only belabor the point."

Then followed the Referee, with the following remarks:

> "I subscribe to everything you have said [by the prosecutor] ... . Now really, I find it difficult to believe anything that Mr. [adversary] said, I hate to say that, and I only do, because this is a very, very strange case. I had factually and legal difficulty emanating from the fact that there were numerous court orders where judges ordered Mr. Sassower to do certain things and they found

that they were not done. There had been a holding of Mr. Sassower in contempt on the charges made and the orders on which those contempts were predicted were not complied with.

Now, I find great difficulty -- I found great difficulty with that from a factual and legal standpoint, particularly when it is certainly true that the Justices involved here, including the Appellate Division, were all fine, eminent, able men. But, hearing the testimony, however, it is clear to me that for the most part they did not have the benefit of all that is before me. ...

I go back to my statement that I find it difficult to believe anything that Mr. [adversary] says ... . There are too many instances of this in the record to detail here and I think it is unnecessary. The conclusion is inescapable.

In addition, and as part of this whole patchquilt, we have Mr. [adversary] admitting here that in many instances there were false statements in papers submitted by him to these judges, which, indeed, would tend to excite them.

His testimony is replete with falsehoods, half truths and misleading statements, and that is true of the papers that he submitted to the various courts.

The foregoing conclusions of [the prosecutor] and myself are capsulized. The instances of deception and evasion are too numerous to chronicle here."

3. Thus, the prosecutors relieved that this pathological perjurer was out of the way quipped "at least after Mr. [adversary] things cannot be any worse".

They were clearly wrong -- Signorelli followed! -- The Acting Supreme Court Justice came and left -- tail between his legs!

Even the massive destruction or concealment of filed documents, exculpatory to plaintiff's cause, could not save him!

4a. Anytime -- Signorelli wants a rerun in New York County at an "open" hearing -- he can have it by a mere unilateral request!

b. Anytime -- Anthony [Schwarzenegger] Gryzmalski wants to openly relate again how plaintiff "beat him up" and caused his hospitalization, plaintiff never has, nor ever will, place any obstacle in his path. Plaintiff merely requests that he strip to the waist, as he relates his fairy tale.

5. Annexed is a copy of plaintiff's Certificate of Good Standing issued on February 10, 1984 (Exhibit "C"). It is not issued, if there are any disciplinary charges pending, without indication.

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WHEREFORE, deponent respectfully prays that his motion to amend be granted in all respects, with costs.

GEORGE SASSOWER

Sworn to before me this
14th day of February, 1984

KENNETH SILVERMAN
Notary Public, State of New York
No. 24-4608988
Qualified in Kings County
Commission Expires March 30, 19__