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PLAINTIFF'S NOTICE OF MOTION

[A243-A244]

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,  
ALAN CROCE, ANTHONY GRYZMALSKI, HARRY E.  
SEIDELL, NEW YORK NEWS, INC., JOHN P.  
FINNERTY and VIRGINIA MATHIAS,

Defendants.

-----x  
S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of GEORGE SASSOWER, duly sworn to on the 16th day of July, 1984 and upon all the pleadings and proceedings had heretofore had herein, the undersigned will move this Court at a Special Term Part IA of the Supreme Court of the State of New York, County of New York, held at the Courthouse thereof, 60 Center Street, in the Borough of Manhattan, City and State of New York, on the 1st day of August, 1984, at 9:30 o'clock in the forenoon of that day or as soon thereafter can be heard

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for an Order granting plaintiff leave to have pre-trial disclosure of witnesses (a) SIBEN & SIBEN, Esqs.; (b) CHARLES Z. ABUZA, Esq.; (c) ERNEST G. WRUCK, Esq.; (d) the DISTRICT ATTORNEY'S OFFICE OF SUFFOLK COUNTY; and (e) ERNEST L. SIGNORELLI, together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE, that opposing papers, if any, are to be served upon the undersigned at least five (5) days before the return date of this motion with an additional five (5) days if service is by mail.

Dated: July 16, 1984

Yours, etc.,

GEORGE SASSOWER, Esq.  
Attorney for plaintiff  
2125 Mill Avenue,  
Brooklyn, New York, 11234  
212-444-3403

To: Martin B. Ashare, Esq.  
Paterson, Belknapp, Webb & Tyler, Esqs.  
Robert Abrams, Esq.

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PLAINTIFF'S AFFIDAVIT

{ A245-A255 }

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

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GEORGE SASSOWER,

Index No.  
5774-1983

Plaintiff,

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,  
ALAN CROCE, ANTHONY GRYZMALSKI, HARRY E.  
SEIDELL, NEW YORK NEWS, INC., JOHN P.  
FINNERTY, 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:

1a. This affidavit is submitted in support of a motion by plaintiff to have pre-trial disclosure of the witnesses (a) SIBEN & SIBEN, Esqs. ["Siben"]; (b) CHARLES Z. ABUZA, Esq. ["Abuza"]; (c) ERNEST G. WRUCK, Esq. ["Wruck"]; and (d) the DISTRICT ATTORNEY'S OFFICE OF SUFFOLK COUNTY ["D.A."].

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b. Since there is some ambiguity as to whether a formal request was made for the Examination before Trial of ERNEST L. SIGNORELLI ["Signorelli"], as witness, such examination is now requested.

c. Furthermore, if there is any question regarding the scope of the continued examination before trial of defendant, ANTHONY MASTROIANNI ["Mastroianni"], or of witnesses (a) VINCENT G. BERGER, JR. ["Berger"]; ERICK F. LARSEN, Esq. ["Larsen"]; and (c) CHARLES W. BROWN, JR. ["Brown"], as set forth in the Order of June 22, 1984, (Exhibit "A"), it should be set forth here and now.

It is plaintiff's position that both Mastroianni and Berger have testimonial knowledge of matters related to the defamation action, having been explicitly named in the defamatory publications, as well as testimonial knowledge of the other alleged torts complained of herein.

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To draw a line of demarcation between the testimony which is stayed as a result of the NEW YORK NEWS', INC. ["News"] cross-motion for summary judgment (CPLR 3214 [b]) and that portion which is not stayed, is virtually impossible.

Furthermore, the conduct of News in not opposing the Order of June 22, 1984, is inconsistent with and waives any stay regarding such testimony.

2. This is a multi-tort action commenced by plaintiff, including a libel action, as a result of two (2) articles published by the defendant, News, which is the only subject of this motion.

3a. Defendant, Mastroianni, on his uncompleted examination before trial on May 25, 1984, repeatedly denied, ad nauseum, making the statements attributed to him, testifying as stated therein, or ever even speaking to the reporter for the News on the subject matter of the articles, all contrary to the published articles (Exhibits "B" and "C").

As far as Mastroianni is concerned, the publications are false and contrived in all and every respect.



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b. Thereafter, by consent, plaintiff obtained an Order of this Court permitting the examination of three (3) witnesses, including BERGER, (Exhibit "A"), who is also a named informant in the said articles.

c. Later that day, at about 5:00 p.m. of June 22, 1984, after the aforementioned Order was signed, deponent received a Notice of (Cross) Motion and papers annexed thereof, from the attorneys for the News requesting summary judgment, triggering an automatic statutory stay pursuant to CPLR 3214[b].

d. These various motion and cross-motions have been referred to Hon. MARTIN B. STECHER for disposition, including motions to vacate a stay of the News to respond to various interrogatories of plaintiff.

e. At the time these various motions and cross-motions were made the attorneys for the various parties were unaware, or at least plaintiff was, that Hon. MARTIN B. STECHER had sustained an accident and not expect to return to active duty until September 1984.

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In any event, informal letter application was made to His Honor, through his legal secretary, to have such statutory stay vacated, in addition to the formal motion application.

It is deponent's understanding that such motion to vacate the statutory stay will be determined with the principal motions.

4a. All the accusations against plaintiff in such published articles by the News are wholly false and/or misleading.

Except for pleading truth [justification], the News makes no attempt to rely on same, obviously because to again assert such plea would only serve to increase the damages.

b. It is plaintiff's contention that the published false articles were "planted" by the defendants, including News, in the News, whose purpose was for the sole purpose of defaming plaintiff (Williams v. Williams, 23 N.Y.2d 592, 298 N.Y.S.2d 473), and to deny him a fair and constitutional trial.

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5a. Plaintiff further contends that News' motion is a dilatory tactic, intended to further delay this seven (7) year old action, and contrary to the express or implied directions from various jurists of this Court and Mr. Justice ARNOLD L. FEIN, at the Appellate Division, First Department, on January 30, 1984, that pre-trial disclosure should proceed expeditiously, without any further delays.

b. Thus, unless News is willing to stipulate that the testimony of the witnesses, were they to be examined, would be as Mastroianni's, that they never spoke to its reporter and gave the information reported in the published articles (Oak Beach v. Babylon, 62 N.Y.2d 158), then the examination should proceed accordingly, and the stay vacated.

In any event, it is plaintiff's position that the News' cross-motion for summary judgment cannot be granted unless the News' stipulates, as above, or pre-trial disclosure is first afforded to plaintiff.



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The aforementioned statement should not be construed as an admission that based on the present record, the News' cross-motion should not be denied. On the contrary, there is sufficient evidence in the present record, plaintiff contends, to cause a denial of such cross-motion.

c. Plaintiff asserts it is his constitutional right to examine witnesses before trial, in order to defeat a defendant's motion for summary judgment, and the witnesses sought herein to be examined, including Signorelli, have no standing to object (Cynthia B. v. New Rochelle Hospital, 60 N.Y.2d 452).

The right to have these witnesses examined before trial should be co-extensive with plaintiff's right to have them subpoenaed at the actual trial.

d. In Exhibit "B", the News published the following:

"the judge [Signorelli] explained that he allowed Sassower [plaintiff] to purge himself of the contempt charges by giving Mastroianni a complete account of the estate. Mastroianni never received the accounting and finally Judge Signorelli ordered Sassower jailed."

Without conceding the truth thereof, deponent's information is to the effect that if Signorelli were to testify, he would dispute the above, as did Mastroianni.

e. In Exhibit "C", the News published the following:

"Meanwhile, the Suffolk district attorney's office is investigating Sassower's handling of the estate, including allegations that he tried to sell Kelly's Bay Shore home last December although he had been removed as executor several months earlier."

As His Honor may recall from the other papers, this was the house that Signorelli "ordered" plaintiff to sell "on the record" and immediately before closing he aborted the transaction on the grounds that plaintiff was unauthorized to enter into such contract, when everyone admitted, including Signorelli, that they recognized at all times plaintiff to be the executor.

All the documents support such unanimous assertion, including Surrogate Court documents, and documents signed by Signorelli himself.

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This was all set forth in the extensive hearings before Hon. ALOYSIUS J. MELIA, confirmed by the Appellate Division, and thus issue precluded.

It was also disclosed that after Signorelli aborted this transaction, this non-income producing property could not be sold, and finally it was sold to the same party for the same price!

In any event, when plaintiff stood fast, resisted, and would not submit to the "Signorelli Code of Star Chamber Procedures", which including incarceration without charges being made, notification of any trial, trial, conviction, and sentence, all in absentia, no 5th Amendment rights, no right to habeas corpus, no right to communicate with counsel, etc., complaints were filed against plaintiff with the Suffolk and Westchester District Attorney's Office, and the Grievance Committee.

Think of it, Signorelli and his entourage, filing complaints against plaintiff because plaintiff would not abandon those basic rights which are stations in the long and hard march of civilization from the cave!

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Plaintiff does know that the Westchester District Attorney's Office responded that they do not go on "fishing expeditions".

It is plaintiff's understanding, that despite pressure the Suffolk County D.A., he took a substantially similar position, but plaintiff needs an examination before trial to obtain the evidence for same.

In any event, plaintiff's position is that these ingenious methods to defame, with impunity, are not legally cognizable (Williams v. Williams, supra).

f. In Exhibit "B", the News publication states:

"Attorneys for the beneficiaries claim mishandling of the estate, which includes bank accounts and properties, including an allegation that Sassower after his removal as executor, tried to sell Kelly's home at ... last Dec. 2. The courts halted this sale."

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The attorneys for the "beneficiaries" were Siben, Wruck, and Abuza, and plaintiff believes that they would testify not only did they not make such allegations, but that they never spoke to the News' reporter.

WHEREFORE, plaintiff respectfully prays that this motion be granted in all respects.

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GEORGE SASSOWER

Sworn to before me this  
16th day of July, 1984