

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

-----X
GEORGE SASSOWER,

Index #
5774-1983

Plaintiff,

-against-

Notice of
Cross-
Motion
[#2]

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

Defendants.

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S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of GEORGE SASSOWER, Esq., duly sworn to on the 26th day of September, 1984, and upon all the pleadings and proceedings had heretofore herein, the undersigned will cross-move [#2] at a Special Term Part I of this Court, held at the Courthouse thereof, 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 October, 1984, at 9:30 o'clock in the forenoon of that day or as soon thereafter as defendant can be heard for

an Order (a) striking out the answer of the Suffolk County defendants (other than defendant, ANTHONY GRYZMALSKI, whose answer has now been automatically stricken, by virtue of Order dated January 24, 1984, for the wilful and deliberate refusal of their attorney, despite numerous orders and directives of the Court, including the Appellate Division, to submit to pre-trial disclosure; (b) imposing draconian sanctions upon the Suffolk County Attorney for crowning himself, despite the aforementioned Orders and directives, with the unilateral authority to terminate pre-trial disclosure before completion by stating that "we will consent to no further pre-trial discovery in this case, unless further ordered by the court to do so" [moving affidavit p. 8], and acting accordingly; (c) for generally aborting meaningful pre-trial disclosure, including that of Erick F. Larsen, Esq.; (d) 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 at least (1) day before the return date of this cross-motion [or five days, if such cross-motion is adjourned], with an additional five days if service is by mail.

Dated: September 26, 1984

Yours, etc.,

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

To: Martin B. Ashare, Esq.
c/o Reisman, Peirez & Reisman, Esqs.
Attorney for defendants.

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GRYZMALSKI, HARRY E. SEIDELL, NEW YORK NEWS,
INC., and VIRGINIA MATHIAS,

Defendants.

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
COUNTY OF KINGS)

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

1a. This affidavit is made in support of a cross-motion [#2] an Order for an Order (a) striking out the answer of the Suffolk County defendants (other than defendant, ANTHONY GRYSMALSKI, whose answer has now been automatically stricken, by virtue of Order dated January 24, 1984), for the wilful and deliberate refusal of their attorney, despite numerous orders and directives of the Court, including the Appellate Division, to submit to pre-trial disclosure; (b) imposing draconian sanctions upon the Suffolk County Attorney for crowning

himself, despite the aforementioned Orders and directives, with the unilateral authority, for stating that "we will consent to no further pre-trial discovery in this case, unless further ordered by the court to do so" [moving affidavit p. 8], and acting accordingly; (c) for generally aborting and frustrating pre-trial disclosure, including that of Erick F. Larsen, Esq.; (d) together with any other, further, and or different relief as to this Court may seem just and proper in the premises.

b. This cross-motion is related to, but not identical with, deponent's cross-motion #1.

c. Simultaneously there is being served and submitted, as of right, an ex parte Order, on notice, severing the action against ANTHONY GRZYMALSKI and permitting an assessment of damages against that defendant.

2a. The Suffolk County Attorney now apparently recognizes that any further pre-trial disclosure will almost certainly produce summary judgment in favor of plaintiff against his clients on all causes of actions and will only increase the amount of the damages awarded. He has thus opted at the unilateral and arbitrary decision to terminate same.

b. The Suffolk County Attorney also now recognizes that any further pre-trial disclosure would probably trigger a 60(b) motion in the federal forum.

c. Thus, his instant motion meritless motion for partial summary judgment, with the statement contained therein p. 8):

"we will consent to no further pre-trial discovery in this case, unless further ordered by the court to do so."(emphasis supplied)

d. Deponent spoke to Robert Calica, Esq., the Assistant Suffolk County Attorney, yesterday and today, September 25th and 26, 1984, and he refuses to change his position.

Robert Calica, Esq., is so adamant about terminating pre-trial disclosure that he will not adjourn his motion or wait until the transcript of the pre-trial examination before trial of Erick F. Larsen, Esq., held on September 18, 1984, is completed, so that it may be included herein.

3. The Suffolk County Attorney's statagem, over the years, may be summarized as follows:

a. For about five (5) years his office made every attempt to stonewall any and all pre-trial disclosure -- and was singularly successful in these attempts.

b. During 1983-1984, despite numerous Orders and directives, the Office of the Suffolk County Attorney, refused to obey or abide by such judicial Orders and directives.

c. During 1984, the Suffolk County Attorney made some "mock" compliance with such Orders, with his mini or micro-sessions. In reality, both he and his clients, have made every attempt to frustrate the spirit and intent of the examinations before trial, as will be shown hereinafter.

When, the Suffolk County Attorney was told and recognized that plaintiff's patience was inexhaustable, he made his fourth motion for partial summary judgment, clearly violating the mandates and directives of the Courts that same could not be made until completion of pre-trial disclosure!

The Suffolk County Attorney has attempted, by this present motion, to overtly evade the Order of Hon. MARTIN B. STECHER of August 2, 1984, by unilaterally halting any and all further pre-trial disclosure!

4a. Particularly, in view of the numerous judicial orders and directions issued for such pre-trial disclosure, who deponent asks the Suffolk County Attorney, crowned him and his office with the unilateral authority to terminate same?

It is the same office which previously advised the Appellate Division that its office, in the plaintiff's case, had decided not to obey a writ of habeas corpus because the Supreme Court Justice who signed it was "illiterate", and it was that office who crowned itself with the authority to determine the literacy qualifications of justices in other judicial districts!

b. Has this Court, with all due respect, the right and/or jurisdiction to modify or vacate prior orders and directions of this Court and the Appellate Division regarding pre-trial disclosure based upon the showing, vel non, of the Suffolk County Attorney herein?

c. Are Orders and directions of this Court, for pre-trial disclosure by the Suffolk County Attorney, to be like bus transfers -- "good for one day only"?

5a. Prior to such unilateral decision to unilaterally terminate disclosure, the Suffolk County Attorney, his statements notwithstanding, commenced a wilful charted course of obstruction!

b. Their files and records were carefully pruned, and vital records secreted or destroyed; available documents were not produced; examination before trial sessions were terminated shortly after they began; repeatedly, sessions were cancelled, etc.

c. Thus, for example, the two sessions of the examination before trial of Sheriff John P. Finnerty were terminated shortly after they began because of excuses tendered by Sheriff Finnerty and the Suffolk County Attorney.

* * *

6. A brief summary will reveal, beyond a reasonable doubt, the determination of the Suffolk County Attorney's to resurrect its charted course of wilful defiance of numerous Court Orders and directions, including that of the Appellate Division, in order to prevent certain disaster by pre-trial disclosure.

a. Plaintiff, since 1977, has attempted to obtain pre-trial disclosure of the Suffolk County defendants, in Federal and State courts, without any success.

b. Finally, by Order dated June 20, 1983 -- after six (6) years of effort, Mr. Justice BRUCE McM WRIGHT ordered such Suffolk County defendants to appear on July 21, 1983 at Special Term Part II in order to be deposed.

c. On application of the Suffolk County Attorney, Mr. Justice BRUCE McM WRIGHT, modified the aforementioned order so as to stagger the scheduled examinations of the Suffolk County defendants.

d. As a result of the default of the Suffolk County defendants, Mr. Justice BRUCE McM WRIGHT, on August 10, 1983 ordered (Exhibit "A"):

"... I have directed that all of the Suffolk defendants ordered to be deposed, submit to deposition taking within 90 days of the date of this order If the defendants fail to cooperate again, their answers will be stricken. This is ancient litigation and it should be sped to an end. It is noted that no excuse is advanced for the failure of Messrs. Mastroianni and Finnerty's failure to appear and be deposed. ... Should there be any default by any defendant after a

date has been set by stipulation of counsel [within 90 days from today's date], for the deposition of any defendant, the answer of the defaulting defendant will be stricken upon motion for that relief by plaintiff." (emphasis supplied)

e. On October 25, 1983, Mr. Justice BRUCE

MCM WRIGHT, stated:

"The plaintiff's motion is denied, upon condition that the defendants Croce and Gryzmalski both report to Special Term, Part II of this Court on the 30th day of November, 1983, at 10 o'clock A.M. there to be deposed under oath and to produce at that time the documents relevant to this dispute, if any.

Unless the Appellate Division stays the ordered examinations, they are to go forward as directed."

f. Still the Suffolk County Attorney would not would not comply and again plaintiff made another motion to strike, which was returnable on January 24, 1984 in Special Term Part IA.

In open court, in haec verba, the representative of the Suffolk County Attorney's Office stated it would not obey the aforementioned orders nor would it comply with pre-trial disclosure.

Mr. Justice IRA GAMMERMANN, stated that the aforementioned remarks and position authorized him to enter an unconditional order striking the Suffolk County Attorney's answer, but because His Honor entertained some serious doubts as to whether the representative of the Suffolk County Attorney had the authority, or should assume the authority, to make such an important decision, absent a clear writing to that effect, he was going to give the Suffolk County Attorney another chance to deliberate on the wisdom of his announced position.

In a handwritten Order, Mr. Justice GAMMERMANN, ordered (Exhibit "B"):

"Upon the foregoing papers this motion is granted and the answers of defendants Alan Croce and Anthony Gryzmalski are stricken without further of this court unless those defendants appear for examination before trial at 10AM on 2/1/84 at Special Term Part II. Defendants Croce and Gryzmalski advised by court of date for EBT".

By separate Order of this Court, on notice, plaintiff is making application for a severance against the defendant, ANTHONY GRYZMALSKI, and an inquest and judgment based thereon.

f. Instead of submitting to any examination before trial as Ordered by Mr. Justice IRA GAMMERMANN, the Suffolk County Attorney, frustrated same by filing a notice of appeal thus possibly triggering an automatic stay (CPLR §5519[a]).

Because the Suffolk County Attorney was not certain, under the peculiar situation herein, whether he was entitled to an automatic stay, he made formal application, on January 30, 1984, for such stay at the Appellate Division.

The plaintiff and Robert Calica, Esq. appeared before Hon. ARNOLD L. FEIN at the Appellate Division, First Department, where the Suffolk County Attorney's application for an interim stay was denied (Exhibit "C").

On such application, in the Appellate Division, Robert Calica, Esq., was deservedly excoriated, in the most dramatic terms, by Hon. ARNOLD L. FEIN, not only for the manifest lack of merit in his application and the patent attempt to further prevent pre-trial disclosure, but also for the contents of the affidavit of Robert Calica, Esq.

Mr. Calica's moving affidavit was nothing less than a vicious, distorted, misleading, ad hominem, attack on the plaintiff, having absolutely nothing to do with the merits of his intended appeal -- which he thereafter abandoned.

The clear and unequivocal direction to Mr. Calica by Mr. Justice FEIN was that he was to submit his clients to pre-trial disclosure on February 1, 1984 and same was to be expeditiously continued until conclusion.

The denial of such application was subsequently adhered to by the full court.

g. Still refusing to comply, the day following the conference with Mr. Justice FEIN, the Suffolk County Attorney moved for partial summary judgment, now triggering a CPLR 3214(b) stay.

Rather than submit to pre-trial disclosure, Mr. Calica had amassed, prepared, and served, in one day, a monumental and massive submission, which Mr. Justice MARTIN B. STECHER described, in his opinion of April 6, 1984, as "one of the most frustrating set of papers submitted to me in a considerable period of time".

The CPLR 3214(b) automatic stay was dissolved on April 6, 1984 when Mr. Justice MARTIN B. STECHER, denied the Suffolk County Attorney's motion stating (Exhibit "D"):

"If the motion seeking stay of disclosure heretofore ordered is related to the summary judgment motion and insofar as disclosure has heretofore been ordered by other Judges with a denial of a stay by the Appellate Division, the stay requested of me is likewise denied."

7a. ANTHONY GRYZMALSKI:

The Suffolk County Attorney has not, will not, and refuses to produce the defendant, ANTHONY GRYZMALSKI, for pre-trial disclosure.

Consequently, his answer is automatically stricken, pursuant to Order dated February 1, 1984, of Mr. Justice IRA GAMMERMAN (Exhibit "C").

As heretofore noted, Mr. Justice ARNOLD L. FEIN, of the Appellate Division, refused to stay such disclosure, the Appellate Division, also refused to stay such disclosure, as did Mr. Justice MARTIN B. STECHER on April 6, 1984.

The only reason which prevented plaintiff from taking a default on February 1, 1984, was the CPLR 3214(b) automatic stay triggered by the Suffolk County Attorney's motion for partial summary judgment following the action of Mr. Justice FEIN.

The refusal of the Suffolk County Attorney, written and oral, to comply warrants a severance, inquest, and judgment, for which separate application is being made.

b. The summary adjudication of liability against such defendant is compelling:

Such defendant, on numerous occasions went beyond his jurisdictional bailiwick to harass and embarrass, not only plaintiff, but also his wife and children, as will elsewhere be shown.

Twice, this defendant unlawfully arrested plaintiff in Westchester County, where it has already been adjudicated he had no legal authority.

On the first arrest, plaintiff's fundamental rights were denied him, including the right to a writ of habeas corpus, the right to communicate with counsel and family, the right to remain silent, the right not to be assaulted and abused while under arrest, etc.

On the second arrest in Westchester County, an altercation broke out when plaintiff attempted to obtain the attention of the local police. Defendant, Gryzmalski, by physical force was successful in preventing same.

Annexed is a portion of the Suffolk County records (Exhibit "E"), which reveals that even under defendant's version, Gryzmalski was plainly wrong, his actions illegal.

Subsequently, plaintiff was charged with felonious assault by defendant, Gryzmalski, but on a preliminary hearing the matter was dismissed because Gryzmalski had no official status in Westchester County, and had no authority to prevent plaintiff from seeking the aid of the police.

The aforementioned points were thoroughly argued, on the law, since there was no question that Gryzmalski showed sufficient evidence to hold plaintiff over for the Grand Jury action. Gryzmalski testified that albeit handcuffed, plaintiff had, by his assaults, caused him injury, hospitalization and eleven days loss of work.

8. JOHN P. FINNERTY:

a. The Sheriff of Suffolk County, examined at a mini-session and micro-session, both aborted, because of, according to Mr. Calica, other matters that necessitated Finnerty's personal attention.

b. Nevertheless, the little testimony of this defendant reveals a personal involvement in this matter.

c. He, personally, received the telephone call from Surrogate Signorelli, or another on his behalf, to execute the first warrant of commitment, which on its face, was invalid, irregular, and contrary to statute, custom, and practice.

d. He, personally, gave instructions to Sgt. Alan Croce, regarding such warrant, including to personally go to Surrogate's Court to receive same on the day it was issued.

e. He, personally, read and executed a false and misleading affidavit to the federal court, obviously relied upon by Judge Mishler.

f. Except for plaintiff, George Sassower, could not show a single instance wherein he or his deputies made an arrest under a warrant of commitment outside of Suffolk County.

g. He, personally, as a seasoned law officer was aware of the practice of communicating with defendants, especially on non-serious crimes, and requesting that they voluntarily surrender themselves, of having local police officials make the arrest and then the distant police officials merely come to transport the prisoner [even when there is jurisdiction to make an arrest in a distant county].

h. He, although part of the transactions, could not explain, rationalize, or justify the reason that under an invalid warrant, very early the following morning, before regular duty hours, Sgt. Alan Croce and Deputy Sheriff Anthony Gryzmalski went on a long trip to Westchester County [beyond his jurisdictional bailiwick], on the chance that they would find plaintiff at home, without first adopting the alternate and usual procedures.

i. Admitted plaintiff was, at all times, entitled to certain basic rights, including right to communicate with counsel [which was denied plaintiff]; right to access to the courts for the purpose of obtaining a writ of habeas corpus [which was denied plaintiff]; 5th Amendment rights while in the custody of his deputies [which was denied plaintiff], etc.

j. He, the Sheriff of Suffolk County, could not explain, rationalize, or justify, the numerous forays into Westchester, New York, or Kings Counties in order to apprehend plaintiff, when at all times plaintiff was willing to surrender himself at Special Term, New York, Bronx, or Westchester County, at a time convenient to his office.

k. Very evasive about all events, particularly concerning June 10-11, 1978 -- the "Saturday nite massacre" -- when he and others, personally, came to the Suffolk County jail because a writ of habeas corpus had been served by plaintiff's wife.

9. ALAN CROCE:

a. The examinations before trial of Sgt. Alan Croce are also incomplete, but thus far he testified that he was in charge of the Internal Affairs Section of the Suffolk County Sheriff's Office, went to Surrogate's Court on instruction of Sheriff Finnerty to personally receive the first warrant of commitment, which admittedly was irregular, if not wholly invalid, on its face.

b. Although very experienced, had never before or since seen such warrant of commitment, which was inherently inconsistent in its instructions and mandate.

c. He, with Deputy Sheriff Gryzmalski, executed same the next morning in Westchester County, and, sub silentio, confirmed the constitutional outrages alleged by plaintiff.

d. He also admitted reading and executing a false and misleading, if not perjurious, affidavit submitted to the federal court, obviously relied on by Judge Mishler.

e. He, personally, was involved in the many transactions that took place under the second warrant of commitment.

f. His explanations, vel non, for the numerous and expensive forays outside of Suffolk County in order to apprehend plaintiff, when plaintiff was, as stated in his "nuts" letter, willing to surrender voluntarily himself, is left for another affidavit.

g. He, while ready to enjoy a Saturday nite steak dinner with his wife, was summoned to immediately come to the Suffolk County Jail, when plaintiff's wife produced a writ of habeas corpus directing plaintiff's release on his own recognizance.

10. ANTHONY MASTROIANNI:

a. Anthony Mastroianni, the Public Administrator, has suddenly and conveniently become amnestic.

b. The essential records are with his present attorney, but he does not know who that is.

c. The actions of his former attorney, Vincent G. Berger, Jr., the former campaign manager for Ernest L. Signorelli, were authorized by him.

Such actions included retaining Charles Brown. Charles Brown was, according to Mr. Mastroianni, to serve plaintiff with process [which he failed to do], and billed the estate \$1,500 for his services.

\$1,500 for purportedly serving plaintiff with process [and failing in the attempt], can anyone believe this? The examination before trial, as this Court ordered, of Mr. Charles Brown will reveal that he was retained to harass plaintiff and his family.

d. The examination of Mr. Mastroianni is also incomplete. Some documents which should have been in his possession, are now, according to him, in the possession of his "phantom" attorney.

e. Fortunately, available is Mastroianni's testimony, together with the testimony of Signorelli and Berger, at the disciplinary proceedings, which reveals the underlying factual assertions, given to Judge Mishler and others were false and contrived.

The factual findings resulting from such confessions and admissions are thus, *res judicata*.

f. Because these findings were made after a full and fair hearing, made as a result of confessions and admissions by the culprits, they stand on a higher level than those arrived at pursuant to Rule 12(b) or a CPLR 3211(a) motion, or so plaintiff contends.

11. VINCENT G. BERGER, JR.:

Thus far, pursuant to Order of this Court, there has been only a mini-session for the examination before trial of Vincent G. Berger, Jr.

The continuation of this examination is dependent, in great part, on the production of the documents which, Mr. Mastroianni stated was with his "phantom" attorney.

The continuation of this examination is also dependent on a ruling regarding the production and exhibition of a "log" being used by Mr. Berger in testifying.

12. CHARLES BROWN:

The examination of Charles Brown, pursuant to this Court's order has not taken place thus far.

His involvement will be discussed in plaintiff's main affidavit in opposition to the Suffolk County Attorney's motion for partial summary judgment and for partial summary judgment in favor of plaintiff.

13. ERICK F. LARSEN, Esq.:

a. The examination before trial of Mr. Larsen, the former Assistant Suffolk County Attorney, on September 18, 1984, pursuant to Order of this Court, was crucial, particularly with the Suffolk County Attorney's present motion pending.

b. Prior to such examination Mr. Larsen had made it eminently clear both to deponent and to Mr. Calica that he would not submit to any examination unless he had available at such examination his extensive files on the matter.

To assure that such examination of Mr. Larsen would take place as scheduled and properly, your deponent reminded Mr. Calica twice to make sure that Mr. Larsen's files were brought to him for the purpose of such examination.

c. Those files were important, not only to aid Mr. Larsen in testifying, but independently, for plaintiff's case.

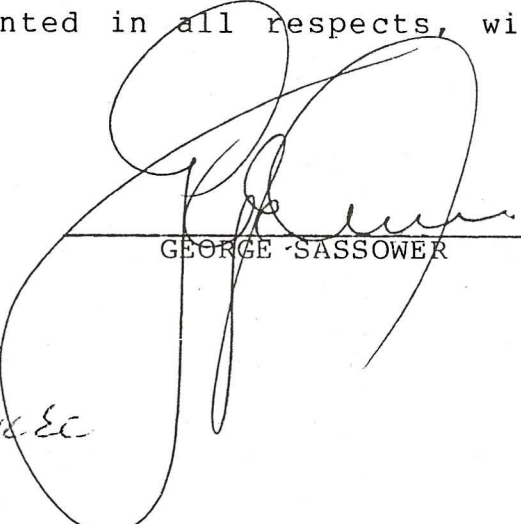
Mr. Calica assured your deponent that these files would be produced at such examination, as well as the exhibits, and deponent also understands that he made the same assurances to Mr. Larsen.

d. Mr. Calica, intentionally and without forewarning, did not produce such files at the examination before trial of Mr. Larsen, which took place on September 18, 1984, at Hauppauge, New York, thus obstructing a major portion of the purpose of such examination.

The transcript of such examination should be received within a few days, and will be commented upon in subsequent affidavits.

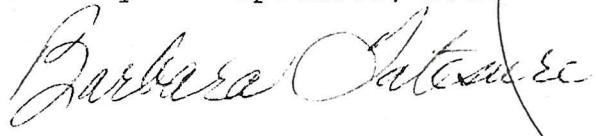
e. Nevertheless, from the testimony of Mr. Larsen, it appears that such files, turned over to Mr. Calica on or about January 1, 1984 have been destroyed or are being secreted.

WHEREFORE, it is respectfully prayed that this cross-motion be granted in all respects, with costs.



GEORGE SASSOWER

Sworn to before me this
26th day of September, 1984



BARBARA TATURES
Notary Public State of New York
No. 24-4760746
Qualified in Kings County
Commission Expires March 30, 1986