

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION - FIRST DEPARTMENT

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GEORGE SASSOWER, :  
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 Plaintiff-Appellant :  
 :  
 v. :  
 :  
 NEW YORK NEWS INC. : Index No. 5774-1983  
 :  
 Defendant-Respondent, : AFFIDAVIT IN OPPOSITION  
 : TO PLAINTIFF'S MOTION  
 and : TO ENLARGE TIME  
 :  
 ERNEST L. SIGNORELLI, ANTHONY :  
 MASTROIANNI, JOHN P. FINNERTY, :  
 ALAN CROCE, ANTHONY GRZYMALSKI, :  
 HARRY E. SEIDELL and VIRGINIA :  
 MATHIAS, :  
 Defendants. :  
 :  
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STATE OF NEW YORK )  
 : ss.:  
 COUNTY OF NEW YORK )

DIETRICH L. SNELL, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before the courts of this State and am associated with the firm of Patterson, Belknap, Webb & Tyler, attorneys for the defendant New York News Inc. (the "News"). As such, I am familiar with the facts and circumstances of the action before the Court and I make this affidavit in opposition to plaintiff's motion for an order enlarging plaintiff's time to serve and file his brief and appendix in connection with his Notice of Appeal dated September 22, 1985.

2. Insofar as it concerns the News, this pro se action arises from two news articles that were published in the Nassau-Suffolk edition of the New York Daily News on June 27, 1977 and August 17, 1977 (the "June and August articles"). These articles reported contempt proceedings instituted against plaintiff by the Hon. Ernest L. Signorelli, Surrogate of Suffolk County, in connection with plaintiff's conduct as executor of an estate, conduct that prompted the Surrogate to hold him in contempt and to remove him as executor. The June and August articles were based on actual judicial proceedings and papers contained in the Surrogate's Court's file on the estate. Copies of the articles are annexed hereto as Exhibits 1 and 2 respectively.

3. While containing a multitude of unrelated claims against the other defendants named in this action, plaintiff's amended complaint simply charges the News with publishing the allegedly defamatory material contained in the June and August articles. A copy of the amended complaint is annexed hereto as Exhibit 3.

4. On August 2, 1984--more than six years after the commencement of the action--the Hon. Martin B. Stecher granted the News' cross-motion for summary judgment, severed the causes of action asserted against the News, and dismissed those causes of action, pursuant to CPLR §3212. A copy of Justice Stecher's decision is attached as Exhibit D to plaintiff's motion papers. On September 14, 1984, the Clerk of the Supreme Court, New York

County, entered judgment with costs for the News. A copy of this judgment is annexed hereto as Exhibit 4.

5. Plaintiff's amended complaint in this action also asserted claims against defendants Mastroianni, Finnerty, Croce and Grzymalski (the "Suffolk County defendants") for false arrest. On March 18, 1985, Justice Stecher granted the Suffolk County defendants' motion for summary judgment with costs and dismissed all of plaintiff's claims against them. A copy of Justice Stecher's decision in favor of the Suffolk County defendants is annexed hereto as Exhibit 5. Judgment on this decision was entered on June 12, 1985. A copy of that judgment is attached as Exhibit A to plaintiff's motion papers.

6. Having failed to perfect his appeal of the September 14, 1984 judgment in favor of the News within the nine month grace period allowed under §600.1 of the Rules of this Court, plaintiff now seeks an enlargement of time to file his brief and appendix for that appeal. Plaintiff has provided no adequate reason why this Court should grant such extraordinary relief.

7. As the sole justification for his motion, plaintiff claims that the two judgments in this case are related and should be heard in one consolidated appeal. In truth, these judgments have nothing more in common than their caption. The September 14, 1984 judgment in favor of the News was based on Justice Stecher's application of principles governing libel law, specifically the case of Chapadeau v. Utica Observer-Dispatch, 38 N.Y. 2d 196, 379 N.Y.S. 2d 61, 341 N.E. 569 (1975). The June 12, 1985 judgment

in favor of the Suffolk County defendants, by contrast, is based on the principle of res judicata. In the latter decision, Justice Stecher found that plaintiff's claims against the Suffolk County defendants had already been dismissed in at least two Federal Court actions, and that plaintiff had "no acceptable explanation for the continuous litigation of lawsuits against defendants in both the Federal and State courts continuously and simultaneously." Sassower v. Signorelli, Index No. 5774-1983 (New York Co. March 18, 1985) Slip op. at 5, annexed hereto as Exhibit 5. Thus, there is absolutely no connection between the issues that plaintiff might raise on appeal from the September 14, 1984 and June 12, 1985 judgments.

8. Indeed, consolidation of the two appeals, as plaintiff urges, would serve no purpose other than to promote plaintiff's all too familiar practice of endlessly pursuing frivolous litigation.\* Justice Stecher's March 18, 1985 decision granting the Suffolk County defendants' summary judgment motion concluded with a paragraph that aptly illustrates plaintiff's penchant for flouting the principles of res judicata and harassing his op-

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\* In an unrelated action in the U.S. District Court for the Eastern District of New York, plaintiff recently was held jointly and severally liable in his capacity as attorney for any amount of attorneys' fees and costs awarded against his client because he "knew or should have known that his client would be precluded" from litigating in Federal Court and because of his "vexatious" manner of litigating. See "'Meritless' Suit Costs Plaintiff Costs and Fees," 192 N.Y.L.J. No. 28 August 9, 1984 at 1, col. 2, 7, col. 3, attached hereto as Exhibit 6.

ponents and the courts with repetitive and duplicative motions before different judges. In order to forestall any future use of that tactic by plaintiff, Justice Stecher concluded his opinion with the following sua sponte ruling:

No application for renewal or re-argument of this motion or resettlement of this order or any other type of application to vacate or modify its terms or which may otherwise be required to be referred to me for consideration, shall be made except pursuant to an order to show cause signed by me.

Id. at 8.

9. In this action, which was commenced on or about June 21, 1978, plaintiff has charted a tortuous course through three of the four judicial departments of the New York Supreme Court, a course much too complicated to be set forth at length here. For present purposes, it suffices to state that despite the enormous amount of paper generated by plaintiff's myriad and often duplicative motions in this action, plaintiff's case against the News is fundamentally frivolous. Accordingly, this Court should not extend to plaintiff the special dispensation that he seeks in this motion.

WHEREFORE, it is respectfully requested that this Court deny plaintiff's motion in all respects.

  
DIETRICH L. SNELL

Sworn to before me this  
1st day of July, 1985.



Notary Public

EMILY R. REMES  
Notary Public, State of New York  
No. 31-4797925  
Qualified in New York County  
Commission Expires March 30, 1987

## 'Meritless' Suit Costs Plaintiff Costs and Fees

By Alan Kohn

What a judge termed an "already long and tortured history of litigation" in state courts will not continue in a Federal forum, Judge Eugene H. Nickerson, of the U.S. District Court for the Eastern District of New York, has decided.

Not only did Judge Nickerson dismiss a civil rights complaint last week in *Raffe v. Citibank*, 84-305, Aug. 1, but he also assessed attorneys' fees and costs against the plaintiff and his lawyer, finding the complaint "entirely without merit and duplicative" of litigation in state courts.

In his eighteen-page opinion, the judge described a tangled series of events that began in 1979 when the president of Puccini Clothes, Milton Kaufman, died. At the time, Hyman Raffe, the plaintiff in the Federal suit, was a quarter owner of the company, which imported men's clothing. A series of suits ensued in state courts involving the former owners, lawyers and accountants. Puccini was ordered dissolved in 1980.

Mr. Raffe's Federal suit was against his former partners, estate executors, receivers, lawyers and accountants. He sought \$50 million in damages for alleged violations of his civil rights, removal of the receiver for Puccini and transfer of a pending state suit to Federal court.

Judge Nickerson found the plaintiff "can hardly claim that he has not

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## 'Meritless' Suit

*Continued from page 1, column 2*

had a full and fair opportunity" to litigate his claims in state courts against eight of the Federal defendants, having brought "duplicative motions and appeals, over seventy-five in the last two years, in the same unsupported manner and seeking the same relief."

In ordering defendants to submit affidavits of hours spent, fees sought and costs incurred in defending the Federal suit, the judge ruled Mr. Raffe's lawyer, George Sassower, would be held jointly and severally liable for any amount awarded because the attorney "knew or should have known" his client would be "precluded" from litigating in Federal court and because of his "vexatious" manner of litigating.

Lawyers for defendants in the suit included Donald B. Relkin, Michael J. Gerstein and Edward Weissman, of Kreindler & Relkin; John I. Karesh, Donald F. Schneider, Ave Maria Brennan and Lee Feltman, of Feltman, Karesh & Major; Robert E. Meshel and Timothy P. Butler, of D'Amato & Lynch; Edward S. Weltman and Jonathan I. Price, of Schneck Weltman & Ives; Kenneth Kirschner, of Arutt, Nachamie, Benjamin, Lipkin & Kirschner; Charles T. Lee, of Webster & Sheffield; and David S. Cook, an Assistant Attorney General.