

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

-----x
GEORGE SASSOWER,

Plaintiff-Appellant,

-against-

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

Defendants-Respondents.

-----x
S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of GEORGE SASSOWER, Esq., duly sworn to on the 23rd day of August, 1985, the undersigned will cross-move this Court at a Stated Term of the Appellate Division, First Judicial Department, 25th Street & Madison Avenue, in the Borough of Manhattan, City and State of New York, on the 3rd day of September, 1985, at 10 o'clock in the forenoon of that day vacating the sua sponte dismissal of appellant's appeal against the respondent New York News, Inc., by order dated July 25, 1985; denying the motion of the Attorney General for dismissal against his client, together with any other,

further, and/or other relief as to this Court may seem
just and proper in the premises.

Dated: August 23, 1985

Yours, etc.,

GEORGE SASSOWER, Esq.
Attorney for appellant,
2125 Mill Avenue,
Brooklyn, New York, 11234
(718) 444-3403

To: Robert Abrams, Esq.
Reisman, Peirez & Reisman, Esqs.
Patterson, Belknap, Webb & Tyler, Esqs.

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

-----x
GEORGE SASSOWER,

Plaintiff-Appellant,

-against-

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

Defendants-Respondents.

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

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

This affidavit is in support of (a) a cross-motion to vacate and/or modify the Order of July 25, 1985 (Exhibit "A"), insofar as it sua sponte dismissed the appeal against the defendant, New York News, Inc.; (b) in opposition to the motion by the Attorney General; (c) adjourning the appeal of this matter until resolution of these motions, as agreed upon; (d) such incidental relief as this Court deems warranted in this matter.

1a. Deponent's appeal from the Order and Judgment dismissing deponent's action against the News was timely served and filed in accordance with the rules of this Court, were accepted by this Court as proper, and noticed for the September 1985 Term of this Court.

In view of the motion by the Attorney General, deponent consented to the adjournment to the October 1985 Term.

b. Such timely service and filing is undisputed, and thus any "sua sponte" dismissal was and is unwarranted, unlawful, and indeed unconstitutional.

c. Upon the timely filing of deponent's Brief and Appendix, deponent assumed his motion for an enlargement of time, would be adjudicated "moot", or because of the special circumstances -- not of deponent's doing, an appropriate non-prejudicial order would be entered.

d. Sua sponte dispositions are, in deponent's view, presumptively unconstitutional and unfair (Hecht v. City, 60 N.Y.2d 57, 467 N.Y.S.2d 187) since the Court may be unaware of all the operative facts for an appropriate disposition.

2a. Mr. Justice Martin B. Stecher, in rendering his determinations in this matter, essentially trifurcated the proceedings, although many of the motions and affidavits were interrelated.

b. Thus, the only practical approach, for appellate purposes, was to wait until the entire matter was disposed of before perfecting the appeal.

c. Deponent entertains no doubt that this Court or any other appellate court would prefer to entertain one entire appeal rather than three separate appeals, particularly when the matter is interrelated.

It made no sense to reproduce the same affidavits two or three times, and have three judicial appellate panels!

d. With time running out in order to perfect a single appeal, deponent had no other choice but to subpoena the necessary papers from the County Clerk's Office and perfect his appeal from the order and judgment of those other than the Suffolk County defendants.

In the process, deponent found that a few days earlier the Suffolk County defendants had filed their judgment.

e. As a convenience and economy to everyone, including this Court, deponent reconstructed his entire appendix and was prepared to completely redraw his brief in this last minute attempt to file one brief and appendix rather than two.

f. Uncertain whether he could meet such deadline for one appeal rather than two, deponent moved for an enlargement of time, recompiled his appendix accordingly, but then ran into problems with his brief, including its size.

g. There were some problems with some missing papers and documents related to the Suffolk County defendants, but finally deponent was able to resolve that matter.

h. Since there was not sufficient time to obtain permission to file an oversized brief, deponent resolved that problem in a manner that conformed to the rules of this Court.

i. In any event, deponent was able to timely serve and file one appendix and one brief that conformed to the rules of this court for all three related matters.

j. Whether this Court had actual knowledge that deponent's brief and appendix had been time filed and accepted at the time it rendered its decision of July 25, 1985, deponent does not know!

3a. Now comes the Attorney General and seems to argue that because the appeal against the New York News was dismissed on June 25, 1985 (Exhibit "A"), the timely perfected appeal against his client, should also be dismissed.

b. Deponent fails to understand the rationale for such contention, in view of the fact that there is no question deponent timely served and filed his appendix and brief as against his client.

c. Depoonent's motion for an enlargement of time was only made as against the News because that was the only appeal wherein time was running out when he discovered that a judgment had been filed by the Suffolk County defendants a few days earlier!

d. The request by the Attorney General for dismissal based on what he perceives to be a lack of substantive merit, should await the filing of his brief, and is not a ground for a "motion dismissal".

4a. The Attorney General complains about deponent's incorporation into his Brief by reference, matters which are included in the Appendix.

b. This is an objection made months after he was served with deponent's brief, is untimely and not prejudicial. Nevertheless, as part of the disposition herein, deponent requests an opportunity to amend his Brief to comport with the active respondents, even if the Order of July 25, 1985 is vacated and/or amended.

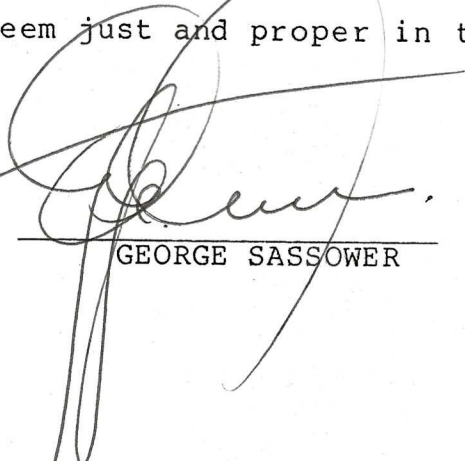
On such amended brief, deponent believes that he will be able to satisfy the objections of the Attorney General although he believes them meritless.

5a. Deponent has no objection to the Attorney General having 30 days from the entry of an order herein to serve and file his Brief or for 30 days after appellant files his amended brief.

b. In view of the aforementioned, as agreed upon by your deponent with the Attorney General's Office, deponent consents to the adjournment of the argument of this appeal to such term of this Court as may meet with the aforementioned.

6. In the event the Order of July 25, 1985 is not modified and/or vacated, and/or the Attorney General's motion is granted, deponent raises the constitutional issues of equal protection and due process.

WHEREFORE, it is respectfully prayed that the motion be denied, and the cross-motion granted, together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.



GEORGE SASSOWER

Sworn to before me this
23rd day of August, 1985



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

