SUPREME COURT : COUNTY OF NEW YORK
SPECIAL TERM PART I

GEORGE SASSOWER,

Index No. 5774-1983

Plaintiff,

-against-

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

Defendants.

MARTIN B. STECHER, J.

The defendants Mastroianni, Finnerty, Croce and Grzymalski, pursuant to permission granted in my prior order, seek summary judgment dismissing the complaint upon the grounds of res judicata and other relief, as well. In three separate cross-motions, plaintiff seeks sanctions for the failure to disclose; disclosure; denial of the motion-in-chief; interim injunctive relief staying movants from making summary judgment motions until disclosure is completed; and for summary judgment. The motion-in-chief is granted and the cross-motions are denied with motion costs of $40.00 awarded movants on each of the cross-motions, for total of $120.00, as total motion costs.

The plaintiff, an attorney, was the executor of an estate when he was adjudged in contempt for failure to obey an order of the Surrogates Court, Suffolk County and defendant Mastroianni, a movant, was appointed Temporary Administrator of the Estate. A warrant for plaintiff's arrest was issued and plaintiff was taken into custody, by the Sheriff of Suffolk County and his employees, the co-movants.

These events have generated a plethora of lawsuits, and none has resulted in a final determination resolving a disputed issue in favor of plaintiff.

In the causes of action asserted against the moving defendants, the plaintiff alleges causes of action for false arrest asserting his arrest was procured pursuant to a legally insufficient warrant and was improperly executed.

In opposing the motion, plaintiff's claims, for the most part, are expressed in conclusory terms. He asserts that the moving sheriff and employees of the sheriff's office, improperly detained him pursuant to a warrant that they knew to be void and that the arrest was made outside the geographic jurisdiction of that sheriff's office.

The defendants assert that these issues were resolved adversely to plaintiff in a Federal Court action between the same

parties and that the order granting summary judgment dismissing the complaint in the Federal action is bar to asserting the causes of action pleaded in the complaint.

In granting summary judgment dismissing the complaint, the District Court Judge held, in a Memorandum of Decision and Order, dated September 20, 1977:

> "Defendants Finnerty (Sheriff of Suffolk County) Kroos and Winoski (employees of the Sheriff's Office) are also immune from suit. The affidavits filed by the moving parties disclose that defendants' sole participation consisted of taking plaintiff into custody pursuant to a validly-issued order of contempt and warrant commitment. It is a well grounded principle that immunity is extended to police and other court officers for acts performed pursuant to court order."

After the grant of summary judgment in favor of the defendants and adversely to plaintiff in that action, plaintiff commenced a second Federal lawsuit and in a Memorandum of Decision and Order, dated April 20, 1978, the District Court granted summary judgment holding:

> "So too, defendant Mastroianni, serving as public administrator * * * are immune from damage claims for their actions respectively taken in prosecuting and appealing the contempt citation. * * * Defendant Croce and Grzymalski, deputy sheriffs acting pursuant to a facially valid warrant in arresting plaintiff, are as well immune from suit."

The United States Court of Appeals, Second Circuit in affirming the order of April 20, 1978, granting the movants' motion for summary judgment held:

"In particular the sheriff and deputy sheriff acted with reasonable grounds to believe that they were authorized to execute the arrest warrant in Westchester County."

The identity of issues in the Federal Court actions and this action were acknowledged by plaintiff in affidavits submitted to the Eastern and Southern Districts of the United States District Court, in actions where this plaintiff is also suing the movants.

In the affidavit of the plaintiff, sworn to November 17, 1984, submitted in support of an application made in the Southern District of New York, the plaintiff on page 4, in paragraph 3, admits that the issues in the Federal Court actions are identical to the issues in this action, as follows:

"a. The actionable events giving rise to these lawsuits took place when there was some question as to whether a state tribunal had jurisdiction in §1983 actions.

"Consequently, actions were commenced in the state, as well as, the federal courts.

"b. There was, and is, a specificity pleading requirement in the federal courts in §1983 actions, which does not exist in the state tribunals CPLR §3013.

"Consequently, the same coterie of transactional facts, as here was the situation, might meet state pleading requirements, but not the federal."

In another action commenced by plaintiff against movants in the Eastern District of New York, plaintiff admits that the issues on the Federal Court actions are identical to those raised in this action, on page 5 of his affidavit, sworn to September 21, 1984, as follows:

> "2a. Separate federal and state court action were simultaneously brought, at a time when it was questionable whether the state could adjudicate §1983 actions (Brody v. Leamy (90 Misc.2d 1, 393 N.Y.S.2d 243)(sic)."

This action was the State Court action referred to in that affidavit. Nowhere in defendant's papers is there an evidentiary showing there is any difference between any material fact in the Federal actions and the facts upon which recovery is sought in this action.

In opposing this motion, plaintiff fails to demonstrate a single issue which can survive the defense of res judicata. The plaintiff has admitted that he was duplicating lawsuits when he commenced tandem actions in the Federal and State Courts and he has continued that burdensome tactic to the time of making of this motion. He offers no acceptable explanation for the continuous litigation of lawsuits against defendants in both the Federal and State courts continuously and simultaneously.

It is the plaintiff who charted the procedural course of prosecuting parallel litigation in different courts. The determinations made in the Federal Courts resolve the issues sought to be raised in this action adversely to plaintiff and are dispositive of the causes of actions asserted against defendants.

The orders of a Federal Courts, under theories of res judicata and collateral estoppel operate as a bar to successive litigation . The test for applying rule are identity of the issues and the party's full and fair opportunity to litigate them (Vavolizza v. Krieger, 33 NY2d 351).

There can be no question that plaintiff had such an opportunity to establish the existence of a triable issue against the movants in the Federal Court. It is clear that the facts of plaintiff's arrest and the events that flowed therefrom are identical in both actions. The orders granting summary judgment demonstrate that the issues are identical and plaintiff has acknowledged in his discussion of the availability of a remedy in the State courts.

The conclusory and unsupported claims asserted by plaintiff that summary judgment was granted upon false affidavits and similar claims of illegality do not establish that a triable issue exists. The plaintiff may not, in this action, collaterally challenge the validity of the orders and judgments of the Federal Courts.

The plaintiff's acknowledgment in the Federal Courts that this action is identical to the Federal lawsuit is so inconsistent with plaintiff's opposing papers asserting that there are different issues in both actions, that the claim does not meet the threshold for a factual showing that a triable issue exists.

The plaintiff also opposes this motion for movant's failure to provide disclosure. There is, however, no demonstration of likelihood that there are facts that may exist that would allow plaintiff to recover in this action.

At this stage of the action, whose inception was in 1978, plaintiff should have been in a position to make a factual showing of the kind of facts available which are necessary to oppose the summary judgment motion. No such showing is attempted in any of the three sets of cross-moving papers submitted by plaintiff.

The three cross-motions also seek to impose sanctions upon movants for failure to provide disclosure. In making the cross-motions, plaintiff has ignored my prior order appointing Hon. Donald Diamond, Special Referee, to supervise disclosure pursuant to CPLR 3104 and the direction that all further applications with respect to disclosure are to be made to the Special Referee.

Plaintiff makes no effort to show he made any application to the Special Referee with respect to disclosure issues sought to be raised in the three cross-motions. The imposition of sanctions was within the powers of the Special Referee and plaintiff may not seek to impose sanctions outside the supervised disclosure.

The granting of summary judgment renders the need for disclosure from the defendants moot for no triable issue survives.

The movants may enter judgment dismissing the complaint and awarding them the costs and disbursements of this action.

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.

This memorandum is the decision and order of the court. The Clerk is directed to enter judgment accordingly.

Dated: March 18, 1985

J.S.C.