SUPREME COURT : COUNTY OF NEW YORK

SPECIAL TERM : PART I

GEORGE SASSOWER.

Plaintiff.

- against

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI, ALAN CROCE, A N THONY GRYMALSKI, HARRY E. SEIDELL, NEW YORK NEWS, INC., and VIRGINIA MATHIAS,

Defendants.

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STECHER, J .:

Plaintiff moves for leave to serve a further amended complaint, and for an order directing defendant Signorelli to answer plaintiff's interrogatories.

In a companion motion, Mastroianni moved to dismiss plaintiff's second cause on the basis of the decision of the Appellate Division in Sassower v Signorelli (96 AD 2d, 585] that plaintiff's claim did not state a cause of action in the absence of an allegation that defendant procured the allegedly defamatory publication by affirmative acts. Plaintiff now seeks to supply this missing allegation in a second amended complaint.; However, the "privilege of serving an amended pleading rests not only upon formal corrections in the deficient pleading, but also upon an evidentiary showing that the cause of action can be supported" [Harry Levine Corp. v K. Gimbel Accessories. Inc., 41 AD 2d, 637.638].

No such evidentiary showing is made in plaintiff's affidavits in support of the motion. Conclusory allegations are not enough.

Plaintiff also seeks an order directing Surrogate Signorelli to answer plaintiff's interrogatories for the purpose of serving a further amended complaint. There is no complaint

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left to amend since the action against Signorelli has been dismissed [Sassower v Finnerty, 96 AD 2d, 585]. The motion is denied. Plaintiff also "cross-moved" for an order disqualifying the attorney general of the State of New York from representing Signorelli. The 'cross-motion' is denied.

The foregoing constitutes the decision and order of the Court.

Dated: April 6 , 1984

J.S.C.

