

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

-----x  
GEORGE SASSOWER,

Plaintiff,

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,  
VINCENT G. BERGER, JR., JOHN P. FINNERTY,  
ALAN CROCE, ANTHONY GRYMALSKI, CHARLES  
BROWN, HARRY E. SEIDELL, NEW YORK NEWS,  
INC. and VIRGINIA MATHIAS,

Defendants.  
-----x

: Index No. 5774 - 1983

: MOTION #65, MAY 24, 1983

: SPECIAL TERM, PART 1- A.

CITY CLK. FROM JUSTICE BOOK  
TO RECEIVED DISP'N

JUN 22 1983

MINUTE SPECIAL TERM N. Y. LAW  
BOOK PART 1 JOURNAL

BRUCE McM. WRIGHT, J.

Counsel for the "Suffolk defendants" moves for an order pursuant to §§3103, 3104, 3107 and 3110, CPLR, vacating plaintiff's notice of deposition dated March 15, 1983, on the ground that plaintiff's Notice is vexatious and is little more than abuse and harassment. In the alternative, defendant seeks to limit, condition and regulate the scheduled deposition; for the appointment of a judge or referee to supervise all disclosure; if vacatur is declined, modification of the Notice is prayed for. It is also asked that pre-trial depositions of the "Suffolk defendants" [Sheriff John P. Finnerty, former Warden Regula and Public Administrator Mastroianni,] , be taken at the Supreme Court, Suffolk County [Riverhead].

The Notice to take the deposition does not appear on its face to be burdensome, vexatious or interposed solely for the purposes of harassment, or that it is an abuse of process. Deposing parties is a perfectly ordinary intermediate step in preparing for the trial of a claim.

Although the plaintiff is described and characterized as addicted to litigation, it also appears that he is a member of the Bar, a status not alien to being litigious. There are, of course, suggestions in his rambling 54-page affidavit that he may be so preoccupied with this case and his animus against a former party, Surrogate Signorelli, that the redress of whatever grievance he believes he has, has made him monomaniacal on that point. However, he cannot be inhibited at this point from having the depositions he seeks of persons who are parties.

It is easy to gather from the opposing papers that he also wishes to depose non-party witnesses. He has cited cases in support of that thesis. Apparently, he is aware, as well, that in the First Department, the rule is that court permission to subpoena a non-party witness is a condition precedent to examining such a person (Kurzman v. Burger, 98 Misc. 2d 244; Post v. Merrill Lynch, Pierce, Fenner & Smith, 79 App. Div. 2d 558.)

On the other hand, the opposition to the motion makes the valid point that, if the Suffolk defendants are all compelled to appear at the same time to be deposed, it will be impossible to complete all of the depositions on the same day and some of the defendants will simply be compelled to sit around all day, depriving the tax payers of their quid pro, i. e., the labor and services of public employees.

The opposition asks that the depositions be held, if at all, in Suffolk County. But it has been ordered that this case steer clear of that County on the basis of some elusive theory not entirely clear. Accordingly, the depositions cannot be held there.

Therefore, the motion is denied to the following extent:

[I] The defendant Anthony Mastroiana is ordered to appear at Special Term, Part II of this court on the 7th of July, 1983, at 10 A. M. o'clock, there to be deposed by plaintiff under oath.

[II] The defendant John P. Finnerty is ordered to appear at Special Term, Part II of this court on the 14th day of July, 1983, at 10 o'clock A. M., to be deposed under oath.

[III] The defendant Alan Croce is ordered to appear at Special Term, Part II of this court on the 21st day of July, 1983, at 10 o'clock A. M., there to be deposed under oath.

[IV] The defendant Anthony Grymalski is ordered to appear at Special Term, Part II of this court on the 28th day of July, 1983, at 10 o'clock A. M. on that day, there to be deposed under oath.

At each of the depositions, the defendants named above are ordered to produce such documents as are considered to be relevant to the issues to be explored, if such documents are not the proper subject of a claim of privilege, or relevance.

Plaintiff is directed to serve a copy of this order upon all appearing counsel forthwith.

Dated: June 20, 1983.

  
J. S. C.