Order Appealed From (9-15)

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

----------x

GEORGE SASSOWER,

Plaintiff,

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANA, ALAN CRCOE, ANTHONY GRYMALSKI, HARRY E. SEIDELL, NEW YORK NEWS, INC. and VIRGINIA MATHIAS,

Defendants.

----------x

Index No. 5774 - 1983

MOTION #9 , MAY 24, 1983

SPECIAL TERM, PART 1-A

BRUCE McM. WRIGHT, J.

Plaintiff moves for an order accelerating the return date of the motion of "David J. Gilmartin, Esq., dated April 15, 1983;" vacating or denying said motion with $10,000.00 costs; striking the answer of Mr. Gilmartin's clients, unless they appear and be deposed; disqualifying the firm of Patterson, Belknap, Webb & Tyler from representing Arthur Penny; overruling any objection of Arthur Penny based upon §79-h of the Civil Rights Law; permitting plaintiff to have pre-trial disclosure of Patterson, Belknap, Webb & Tyler; Townley & Updike, Ernest L. Signorelli; Vincent G. Berger, Jr.; Erik F. F. Larsen; Harry Schagel, as witnesses; Mr. Justice Milton Mollen; Mr. Justice Frank A. Gulotta; Anthony J. Ferraro; and Irving N. Selkin.

After reading some 54 pages of the plaintiff's screaming style of expression, plus many pages of exhibits, I had innocently believed that he had exhausted for the nonce, his supply of pejorative expressions. I was wrong. Now that one appeal is pending in this dis-

pute, plaintiff threatens to "find some appealable issue," so as to compel other appellants to hasten to perfect their appeal. Plaintiff obviously is possessed of demons of enthusiasm for litigating, for he has completed another 37 pages of zesty commentary under oath, plus numerous annexed exhibits. Interspersed throughout the affidavit of plaintiff are little mentions and tips on how to practice, including a definition of an adjournment and what should be concluded from such a circumstance.

A part of the motion has already been decided in another motion, where a protective order was sought to annul plaintiff's proposed pre-trial deposition of the defendants, or, at least, the Suffolk County defendants. The moving papers could have been much more restrained and briefer. There are accusations that the Suffolk County Attorney, "contrary to law and common decency," has "been directed by Suffolk County Officials." Added, for spice, is allegiance to the Blaise Pascal thesis of self-sympathy and something of Professor Robert Olson's morality of self-interest, for plaintiff commends himself as a knowledgeable professional and he then moves on apace to conclusions of law, and personal accusations of criminal conduct against Surrogate Signorelli [no longer a party to this action].

The moving affidavit goes on and on and recites a Kafkaesque series of misadventures, with the plaintiff as a captice being transported across various county lines from Westchester to Suffolk, all the time being denied the right to present his writ of habeas corpus to a justice. The firm of Patterson, Belknap, Webb & Tyler is accused of having solicited Arthur Penny as a client, placing that firm in conflict with repre-

sentation of its newspaper client. Intensifying the drama and what Mr. Sassower describes as the evil of corruption and traduced justice, a bill of attainder finds Mrs. Sassower and her daughter arrested.

Special circumstances within the meaning of Kurzman v. Burger (98 Misc. 2d 244) and Post v. Merrill Lynch, Pierce, Fenner & Smith (79 App. Div. 2d 558), are clearly made out in the plaintiff's extended affidavit, fully justifying the examination of some of the non-party witnesses. There are several other branches to the plaintiff's omnibus motion and they will be disposed of in the order of their mention in plaintiff's Notice, as follows:

[a] There is no need to accelerate the return date of the motion by the Suffolk defendants dated April 15, 1983. That motion sought a protective order to prevent depositions of parties. It was denied and a schedule has been set forth for the depositions of those defendants.

[b] In view of the character this litigation has assumed, and the apparent bitterness between plaintiffs and defendants, the effort to avoid being deposed cannot be called frivolous or without some professional justification. That branch of the plaintiff's motion seeking costs of $10,000.00 is denied as without merit.

[c] Striking the answers of the clients of David J. Gilmartin, Esq., is denied. Examination dates have now been set.

[d] The firm of Patterson, Belknap, Webb & Tyler will not be disqualified. There is no apparent conflict of interest.

[e] The overruling of any objections on behalf of Arthur Penny is denied.

[f] The application for an order directing the pre-trial deposition of Patterson, Belknap, Webb & Tyler, Esqs. and of Townley & Updike, Esqs. as non-party witnesses is denied. Such special circumstances as the plaintiff has shown, clearly do not apply to those two law firms. Their status as counsel to other non-parties is privileged. There is an announced conclusion, but no evidentiary detail to sustain the plaintiff's charge that the Patterson firm "solicited" Arthur Penny as a client. What does appear is that the Patterson firm was freely chosen by Mr. Penny, after being informed that The News would provide counsel to him if he wished. He did so wish.

[g] The application for leave to depose Vincent G. Berger, Jr. is denied. No special circumstance is shown as to him. He appears to be no more than counsel to the Public Administrator for Suffolk County, Anthony Mastroiana, and no factual data suggests that he is a necessary witness for the justiciable resolution of this case.

[h] Formerly a party here, Surrogate Signorelli is now a non-party. It would appear that his rulings as surrogate, if they are to be questioned at all, must be challenged by way of appeal. There can be no question concerning his immunity from suit as a judicial officer. The allegations that would make him an arch-fiend of kidnapping and skullduggery and a master mind of a plot to have Mr. Sassower arrested and jailed, or to deprive Mr. Sassower of his habeas corpus rights, is simply not made out by the conclusory language employed by Mr. Sassower.

[i] Erick F. Larsen, Esq. may not be examined as a non-party witness, unless he elects to do so voluntarily. He does not. The

exchange of correspondence between plaintiff and Mr. Larsen appears to be more civilized and professional in tone than much of this litigation. There is no suggestion that Mr. Larsen has been personally involved in any of the alleged machinations against Mr. Sassower. That branch of the plaintiff's motion seeking to depose Erick F. Larsen is denied.

[j] Concededly, Harry Schlegel [named as "Schagel" in plaintiff's papers], "may have edited the June and August articles" that form the basis for plaintiff's suit. That would appear to be a circumstance special enough to justify the taking of his deposition as a non-party witness. That branch of the motion will, accordingly, be granted.

[k] The allegations of necessity to examine the Presiding Justice of the Appellate Division of the Supreme Court, Second Department, and those urging that permission be granted to depose Justices Anthony J. Ferraro and Frank A. Gulotta, and Hon. Irving N. Selkin, Clerk of the Appellate Division, Second Department, all rest upon the most conclusory of claims.

= C O N C L U S I O N =

The motion is granted to the extent of ordering that non-party Harry Schlegel [cited as "Schagel" by plaintiff], appear at the office of the clerk of Special Term, Part II of this court on the 21st day of July, 1983, at 10 A. M. o'clock, there to be deposed under oath by the plaintiff with respect to whether or not [a] he edited the stories written by Art Penny that were published in The News during June and August, 1977 of and concerning the plaintiff and what Mr. Shlegel did, if anything, by way of checking the accuracy of said stories.

There is obviously a great deal of emotional involvement on the part of the plaintiff in this bitterly waged dispute. This is understandable, in view of his status as a member of the Bar. But, the tenor of his expression; the repetitious length of his papers and their sometimes disjunctive style, are signs of his necessity to retain counsel who will bring more objectivity and clarity to his papers.

The opposing affidavit of Erick F. Larsen has annexed to it an exhibit indicating that the plaintiff is no stranger to the Appellate Division (Kelly v. Sassower, 78 App. Div. 2d 502). That officially reported writing does not aid plaintiff's cause.

Mr. Larsen also frames his opposition in a manner that suggests he is making a cross-motion. He says that this action should never have been transferred to New York County. The transfer, however, is the law of this case. The litigation involving the plaintiff and various defendants, Mr. Larsen says, has become an "unmanageable webb" [sic] and it belongs, he says, in Suffolk County, or perhaps in Westchester. True it is, that plaintiff's litigation has accumulated the "mountains" of papers mentioned by Justice Coppola, of the Supreme Court, Westchester County. Plaintiff has been enjoined from generating further and new litigation over the Eugene Paul Kelly estate, lest plaintiff be responsible for what Mr. Justice Coppola described as "judicial gridlock."

In any event, the subtle request that this action be transferred back to Suffolk County is denied. To grant it would be to vacate the default of those whose duty it was to oppose the transfer motion when it was made.

As indicated, the motion is denied, except as to the non-party Nelkin, who has been ordered to appear and be deposed.

Counsel for the plaintiff is directed to serve a copy of this order on all appearing counsel for the various parties, so that they may be present, if so advised, when Mr. Nelkin is deposed.

Dated: June 20, 1983.

J. S. C.