

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

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GEORGE SASSOWER,

Plaintiff,

-against-

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

Defendants.
-----X

Index No. 5774 - 1983

MOTIONS NUMBERED 33, 78
AND 79.

RETURNABLE ON THE 15th
OF JULY, JUNE 13th AND
AUGUST 5th, RESPECTIVELY.

SPECIAL TERM, PART 1=A

BRUCE McM. WRIGHT, J.

In a case that may well be the judicial equivalent of the musical composition Continuous Motion, plaintiff, in a state of perpetual agitation has made three motions, each returnable on a different date. Motion #33 seeks reargument of two orders entered on June 27th, 1983. A non-party witness, Mr. Harry Schlegel, was ordered to be deposed on the 21st of July. Apparently, and through some oversight, Irving N. Nelkin was first excused from being deposed and then, in the last sentence of the order, it is made to appear that Mr. Nelkin will be deposed. That is clarified immediately and it was only Mr. Schlegel who was to be deposed by plaintiff. If the deposition taking of Art Penny has not been continued by stipulation, it is ordered to be continued at Special Term, Part II of this court on the 31st day of August, 1983, at 10 A. M.

The other arguments advanced here have all been carefully considered by the court's original ruling and no necessity is found to

alter the views there expressed, except for the corrections made and referred to. While reargument is granted and the corrections noted have been made, the motion is otherwise denied.

The defendants Mastroianni, Finnerty, Croce and Grymalski have cross-moved for reargument as well. They object to denial of their wish to be isolated and protected from discovery; they ask for another order re-scheduling the depositions of the named defendants; they ask, also, that I vacate an order of Mr. Justice James J. Brucia, that directed a change of venue from Suffolk County to New York County. Naturally, it would be improper for me to entertain such an application and that branch of the motion for reargument is denied. It is not, technically, a proper subject for reargument in any event, as it is nothing that I decided.

Apparently, there is some direction that the defendants be deposed and a question has arisen concerning the order in which they are to be questioned. The simplest resolution of that problem, it is suggested can be the setting of an outside date during which all depositions are to be had and completed.

Accordingly, within 90 days from the date of this order, all defendants who have not been deposed and who have been directed to submit to examination before trial, are ordered to be deposed in the order in which their names appear in the caption of this case.

While reargument is granted, the court clings to its original determination, except with respect to the changes and amendments here noted.

Counsel for the cross-moving defendants expresses the optimistic view that he and plaintiff are able to stipulate the respective dates on which the Suffolk defendants are to appear and where.

Counsel for the Suffolk cross-moving defendants is directed to serve forthwith a copy of this order upon the plaintiff, with notice of entry thereof.

MOTION #79: In this motion, plaintiff moves for an order striking the answers of the defendants Mastroianna and Finnerty, for their failure to appear at Special Term, Part II of this court and there be deposed, as per the June 20, 1983 order of this court.

In opposition to the motion, counsel for the defaulting defendants points to a cross-motion made with respect to another application by the plaintiff, in which the defendants ask that the Suffolk defendants be scheduled to appear and be deposed within a fixed period of time, with counsel being left to stipulate when and where the various defendants are to appear.

Accordingly, I have directed that all of the Suffolk defendants ordered to be deposed, submit to deposition taking within 90 days of the date of this order, pursuant to stipulated arrangements between counsel. If no schedule can be amicably arranged, the court will set separate dates for each defendant. If the defendants fail to cooperate again, their answers will be stricken. This is ancient litigation and it should be sped to an end. It is noted that no excuse is advanced for the failure of Messrs. Mastroianna and Finnerty's failure to appear and be deposed.

8th
Motion #79, on the Aug. calendar of Special Term, Part
1-A, is denied, with leave to renew, should any defendant default in
the future in submitting to examination before trial.

MOTION #78: This motion, seeking the striking of the
answer of ^{the clients of} David J. Gilmartin, Esq., is denied for the reasons set forth
above. Should there be any default by any defendant after a date has
been set by stipulation of counsel [within 90 days from today's date],
for the deposition of any defendant, the answer of the defaulting defend-
ant will be stricken, upon motion for that relief by the plaintiff. Counsel
for plaintiff is directed to serve copies of this order forthwith upon adversary counsel.
Dated: August 10, 1983.

