

To be Argued by:  
GEORGE SASSOWER, Esq.  
30 minutes.

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : FIRST DEPARTMENT

-----X  
GEORGE SASSOWER,

Plaintiff-Appellant,

-against-

NEW YORK NEWS, INC., ERNEST L. SIGNORELLI,  
ANTHONY MASTROIANNI, JOHN P. FINNERTY,  
ALAN CROCE, and ANTHONY GRZYMALSKI,

Defendants-Respondents,

and

VIRGINIA MATHIAS,

Defendant.  
-----X

APPELLANT'S BRIEF

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EXH. A

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"I have made that absolutely clear to you. That there was no case, no authority, no anything to justify what occurred twice over in Surrogate's Court" (Former Assistant Suffolk County Attorney, Erick F. Larsen, Esq., Examination Before Trial, Sept. 18, 1984, p. 64)

APPELLANT'S BRIEF

PRELIMINARY STATEMENT

1a. This appeal is from two interrelated judgments and orders which granted summary judgment to the Suffolk County defendants, Anthony Mastroianni ["Mastroianni"], John P. Finnerty ["Finnerty"], Alan Croce ["Croce"], and Anthony Grzymalski ["Grzymalski"]; and to the defendant New York News, Inc. ["News"].

b. Leave to amend plaintiff's complaint as against the defendant Ernest L. Signorelli ["Signorelli"], was denied.

2a. The action is based on two essentially distinct, but interrelated, transactions, with the News involved only in the 1977 occurrences.

b. Factually, Hon. Martin B. Stecher, in his decisions, completely ignored the 1978 transactions, except to incorporate them as if they had occurred in 1977, not 1978.

3. An overview:

a. On Wednesday, June 22, 1977, plaintiff, an attorney, without (a) any accusation, (b) or notification of any trial or hearing, was (c) tried, (d) convicted, and (e) sentenced to be incarcerated for a period of 30 days for criminal contempt, at Surrogate's Court, Suffolk County.

The following morning, Thursday, June 23, 1977, plaintiff, without any knowledge of the preceding events, was arrested in Westchester County by Deputy Sheriffs from Suffolk County who had transgressed their jurisdictional bailiwick for that express purpose.

Plaintiff was denied every fundamental right, including his right to present his hastily prepared Writ of Habeas Corpus in Westchester County and every other county, as he was transported under arrest to Surrogate's Court, Suffolk County, where he was held incommunicado, and here once again denied all his basic rights.

Eventually he was transported to the Suffolk County Jail, where plaintiff secured his release under a writ of habeas corpus returnable on Monday, June 27, 1977.

It was not until 1983, at the first examination before trial that plaintiff was able to obtain, that it was on Friday, June 24, 1977, Art Penny ["Penny"], a stringer for the News had been affirmatively solicited for a "hot story" which was privately given him by Signorelli in his chambers or outer office for publication.

Published the morning of the commencement of the habeas corpus hearing, those hearing commenced in an orchestrated lynch mob atmosphere.

In 1984, at subsequent examinations before trial, all persons named, in either of the two published articles, denied even speaking to Penny, except Signorelli, who made no statement on the subject.

There is evidence that the story was a deliberate "plant" by Signorelli when he recognized that plaintiff was going to resist his pressures and tactics.

Disciplinary Proceedings resoundingly vindicated plaintiff, who except for a brief statement was not even called upon to testify, as each and every witness effectively confessed to the underlying hoax.

b. Plaintiff's writ was sustained after a federal judge issued a gun-to-the-head statement.



In 1978, once again criminal contempt proceedings were commenced, and the first time the matter was on, plaintiff was actually engaged in the middle of a trial before Hon. Joseph DiFede in Supreme Court, Bronx County, and so advised Suffolk County.

Nevertheless, plaintiff was (a) tried, (b) convicted, and (c) sentenced in absentia.

Learning of such conviction, plaintiff made a pre-emptive move in federal court and the federal judge while abstaining at intervention at that point clearly advised the Assistant Suffolk County Attorney, Erick P. Larsen, Esq. ["Larsen"], that the procedures employed at Surrogate's Court were constitutionally infirm.

Everyone, including the compelled recused Signorelli, knew that the conviction was constitutionally invalid, but he had in his published diatribe, committed himself to the proposition that plaintiff's remedy was to move to vacate his default in Surrogate's Court under a motion to vacate, not proceed by habeas corpus.

Advised of Signorelli's position, plaintiff wrote that he would surrender himself at anytime in Supreme, New York, Bronx, or Westchester, as suited the convenience of the arresting officers.

Suffolk County refused and instead, the Sheriff's Office of Suffolk County made numerous forays into Westchester, New York, and Brooklyn, purportedly attempting the capture plaintiff, "a fugitive from justice".

It was not an attempt to capture, but to defame and harass plaintiff and his family.

The Suffolk County Sheriff having received legal papers to restraining his deputies from entering Suffolk County, seized plaintiff in Westchester County, had him handcuffed, and kidnapped him back to Suffolk County.

When the deputies attempted to prevent plaintiff's attempt at receiving local police assistance, an altercation broke out between him and the two deputies.

Grzymalski, thereafter claimed that plaintiff, albeit handcuffed had feloniously assaulted him necessitating hospital treatment and a loss of about ten days work.



Plaintiff's wife, an attorney, secured a Writ of Habeas Corpus, releasing him on his own recognizance and presented same at the Suffolk County Jail.

The Suffolk County Sheriff refused to obey the writ, and instead incarcerated plaintiff's wife and child, without any food, toilet, or means of communication.

The criminal assault charges were dismissed on the grounds that the Sheriff and his deputies were local offices, and had no official status outside their bailiwick for the purpose of making an arrest.

4a. At the time there was considerable question as to whether §1983 actions could be brought in state courts (Brody v. Leamy, 90 Misc.2d 1, 393 N.Y.S.2d 243), thus a state action was brought for the non-federal misconduct, and the federal mirror actions brought in the Eastern District for the first transaction and the Southern District for the second transaction.

b. As a pleading proposition, the first was dismissed because plaintiff could not, at the time, comply with the specificity requirements for such actions. The second is alive and well, awaiting the outcome of the state action.

QUESTIONS PRESENTED

Q. Where Grzymalski, the Suffolk Deputy Sheriff, who was involved on behalf of his Office in every transaction herein has repeatedly refused to comply with numerous court orders and directions, including this Court and one of its Justices, and nisi prius, by order holds that his answer is "stricken without formal order of this Court unless [he] appears for examination before trial", was Mr. Justice Stecher authorized to dismiss the action against him when he refused to thereafter appear?

A. Mr. Justice Stecher stated plaintiff should have proceeded to Referee Donald Diamond, rather than move for judgment by default, and dismissed the complaint against Grzymalski.

Q. Should plaintiff's complaint have been dismissed as against the defendants, including Grzymalski for malicious prosecution on the grounds of res judicata when defendants never contended that it had been previously adjudicated, indeed conceded it had not?

A. Mr. Justice Stecher dismissed the action nevertheless.

Q. Where there was an adjudication based upon a full and fair presentation that the Sheriff of Suffolk County had no jurisdiction in Westchester County, was Mr. Justice Stecher authorized to disregard the total body of law supporting such proposition, and hold otherwise.

A. Mr. Justice Stecher did so, nevertheless.

Q. Is an adjudication based upon a peculiar pleading requirement in federal court binding on the state court, where such requirement does not exist?

A. Mr. Justice Stecher held in the affirmative.

Q. Is a subsequent adjudication by this Court, based in great part by confessions of the defendants, upon a full and fair hearing, entitled to res judicata effect, over and beyond any possible contrary adjudication by the federal court based upon a pleading insufficiency?

A. Mr. Justice Stecher ignored the effect of the disciplinary hearing adjudication and vindication.

Q. Should nisi prius have entertained the Suffolk County defendants renewed motions for summary judgement when there was outstanding numerous orders compelling pre-trial disclosure which these defendants evaded and avoided over the years?

A. Mr. Justice Stecher replied in the affirmative.

Q. Was plaintiff entitled to partial summary judgment against the Suffolk County defendants.

A. Mr. Justice Stecher replied in the negative.

Q. Was the News entitled to a Chapadeau dismissal, when it deliberately failed to plead same properly?

A. Mr. Justice Stecher replied in the affirmative.

Q. Was a dismissal based upon Chapadeau proper, when plaintiff contended that answers to his interrogatories would have entitled him to summary judgment?

A. The Court replied in the affirmative.

Q. Should the Court have ignored the prior adjudications holding that plaintiff was a private person and did not by his actions thrust himself into the public arena?

A. Mr. Justice Stecher ignored such determination (A296-A304).

Q. Could a prior determination which in effect hold that Chapadeau was not applicable, be the basis of a subsequent determination by nisi prius that it was applicable.

A. Mr. Justice Stecher ignored the prior determination.

#### STATEMENT

1. Essentially the arguments against the adjudication made by Mr. Justice Stecher are found at A258-A294 of the Appendix.

2. Essentially the arguments against the adjudication made by Mr. Justice Stecher are found at A137-A171 of the Appendix.

3. The plaintiff should have been allowed to amend his complaint to include the newly established pleading requirements of the Second Department, particularly when it was supported by probative evidence in the examination before trial of Penny.

CONCLUSION

THE JUDGMENTS AND ORDERS APPEALED  
FROM SHOULD BE REVERSED, WITH COSTS

Dated: June 24, 1985

GEORGE SASSOWER, Esq.  
Attorney for appellant