To be argued by:
GEORGE SASOWER
TIME: 30 Minutes

Supreme Court—State of New York
Appellate Division—Second Department

GEORGE SASSOWER,

Plaintiff-Appellant,

-against-

NEW YORK NEWS, INC.,

Defendant-Respondent,

-and-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI, VINCENT G. BERGER, JR., ALAN CROCE, ANTHONY GRYMALSKI, CHARLES BROWN, HARRY E. SEIDELL, and VIRGINIA MATHIAS,

Defendant.

APPELLANT'S REPLY BRIEF

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I N D E X

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

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GEORGE SASSOWER,

Plaintiff-Appellant,

-against-

NEW YORK NEWS, INC.,

Defendant-Respondent,

and

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI, VINCENT G. BERGER, JR., ALAN CROCE, ANTHONY GRYMALSKI, CHARLES BROWN, HARRY E. SEIDELL, and VIRGINIA MATHIAS,

Defendants.

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APPELLANT'S REPLY BRIEF

STATEMENT

1. Manifestly false is respondent's statement that "plaintiff commenced his action in September, 1978" (Resp. Br. p. 4), more than one year after publication of the second libelous article. The action was commenced on June 21, 1978, less than one year before the first libelous article. This is irrefutably confirmed by the fact that respondent has not pleaded the Statute of Limitations.

2. Plaintiff's assertion that respondent's answers to the first set of interrogatories were patently "false and evasive" is supported by the record (A11), and not denied in respondent's opposing papers (A15) contrary to its statement (Resp. Br. p. 4-5).

3. The record is clear concerning the refusal of respondent to "amicably resolve the alleged deficiencies in its answer" (A11), contrary to Respondent's unsupportable assertion (Resp. Br. p. 5).

4. If respondent could substantiate its published articles "on court papers and judicial proceedings", it would move for summary judgment. Obviously, it cannot!

5. Respondent's last minute withdrawal of its cross-appeal confirms plaintiff's opposing affidavit in this Court that the application for a stay based upon Civil Rights Law §79-h and attorney-client privilege was dilatory and meritless.

POINT I

RESPONDENT'S CONTENTIONS ARE MERITLESS

Interrogatory #4

1. Since respondent failed to move for a protective order, only "privilege" may be asserted by it on plaintiff's motion.

2. Relevance may not be asserted in opposition to a motion for sanctions, when no protective order has been sought.

3. Respondent's answer that it destroys material submitted by independent contractors after 13 months (A18) implies that it preserves same, if a law suit is brought within such period. An assertion that respondent destroyed material manifestly relevant is suspect.

4. Incredible is respondent's assertion that it cannot reconcile payments to its "stringer" with identifiable published articles.

5. The answers to the interrogatories reveal that respondent is in communication with the "stringer", Art Penny, and certainly it could enlist his aid by asking him to identify his published articles, and to give it copies of submitted articles which were not published.

6. The prior published articles may reveal that respondent had reason to question the bona fides of Art Penny (Karaduman v. Newsday, 51 N.Y.2d 531, 541-546, 435 N.Y.S.2d 556, 560-563; Rinaldi v. Holt, 42 N.Y.2d 369, 383, 397 N.Y.S.2d 943, 952, cert. den. 434 U.S. 969, 98 S.Ct. 514, 54 L.Ed.2d 456; Zetes v. Richman, 86 A.D.2d 746, 747, 447 N.Y.S.2d 778, 779 [4th Dept]), and consequently, is clearly relevant and material.

Interrogatory #4

1. Respondent's belated discovery on appeal that it does not have the information is suspect and reveals an absence of good faith in responding to the plaintiff's interrogatories when posed at nisi prius. Respondent should set forth in detail when and under what circumstances such material was destroyed.

2. The prior published articles may reveal that respondent had reason to question the bona fides of Art Penny (Karaduman v. Newsday, supra; Rinaldi v. Holt, supra; Zetes v. Richman, supra), and consequently, is plainly relevant and material.

3. Since respondent has pleaded Chapadeau v. Utica (38 N.Y.2d 196, 379 N.Y.S.2d 61), the application of which plaintiff disputes, since he is a private person not, even arguably, of legitimate public concern (Fitzpatrick v. Milky Way, 537 F. Supp. 165, 170), respondent itself has opened to door to plaintiff's request for disclosure.

7. Civil Rights Law §79-h merely prohibits the court from imposing a fine or imprisonment in contempt proceedings: it does not prevent the court from striking a pleading for failure to comply.

Respondent's Reservation of Right

1. Respondent desires to reserve for itself that which CPLR 3134(c) states "may be made only by order of the court on motion.

CONCLUSION

THE ORDER APPEALED FROM SHOULD BE MODIFIED, WITH COSTS

Respectfully submitted,

GEORGE SASSOWER, Esq.
Attorney for appellant.

Dated: February 7, 1983