UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GEORGE SASSOWER,

Plaintiff,

-against-

Docket No.
84 Civ.2989
(JM)

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI, JOHN P. FINNERTY, ALAN CROCE, ANTHONY GRYZMALSKI, HARRY SEIDELL, and THE COUNTY OF SUFFOLK,

Defendants.

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STATE OF NEW YORK)
CITY OF NEW YORK)ss.:
COUNTY OF KINGS)

GEORGE SASSOWER, Esq., first being duly sworn, deposes, and says:

1a. This affidavit is submitted, for all purposes, in the above and related actions and proceedings, and relates only to the March 17, 1978 conference before Hon. JACOB MISHLER.

b. Almost all of the social amenities recited, are of course, omitted in this affidavit.

2a. Deponent never had any problem communicating with ERICK F. LARSEN, Esq. [hereinafter "Larsen"], nor did he ever have any problem communicating with your deponent.

b. In short -- we always spoke the same language and clearly understood each other.

3a. While waiting to confer with His Honor, deponent immediately confirmed, what he had already knew, to wit., the Attorney General's Office had no intention of being present, absent a direct request from Hon. ERNEST L. SIGNORELLI [hereinafter "Signorelli"] or Hon. HARRY E. SEIDELL [hereinafter "Seidell"], for such representation on plaintiff's application.

b. Mr. Larsen, who did not directly represent Signorelli or Seidell, was confident that federal intervention on plaintiff's application was not warranted, and would almost certainly be denied.

c. Mr. Larsen was well prepared to authoritatively support his proposed argument against federal intervention.

4a. Deponent admitted to Mr. Larsen that he was aware of the fact that he had, at that time, a slim chance of obtaining federal intervention, if strong opposition were made, as Mr. Larsen obviously intended to assert.

b. Deponent suggested to Mr. Larsen that federal intervention, even if it meant only a strong "off the record" statement by Hon. JACOB MISHLER, as were previously made by His Honor, would, in fact, benefit both his office and his clients.

5. Deponent's analysis was expressed to Mr. Larsen, at the time, as follows:

a. Deponent, not having any other business in Suffolk County, had no intention of "setting foot in that county".

b. His office represented the Sheriff, who was under severe pressure from the "Signorelli entourage" [an euphemism, for the purpose of this affidavit], to execute the "Seidell warrant" [as Larsen candidly admitted].

c. This, second in absentia conviction, was even more egregious then the first in absentia conviction, and any hearing outside of Suffolk County, would surely result in its nullification.

Such hearing was bound to take place outside of Suffolk County, if deponent was arrested in a foreign county.

d. Consequently, the only viable option remaining for the "Signorelli entourage" was to have deponent arrested in a foreign county and abducted to Suffolk County by his client, the Sheriff of Suffolk County, as was done under the first warrant, which would mean another lawsuit against his client.

6a. Immediately, Mr. Larsen recognized that his client, the Sheriff, was caught in the "cross-fire" between the pressure from the "Signorelli entourage" to execute, and a lawsuit, if the Sheriff of Suffolk County did execute, particularly if said "Seidell Warrant" was executed outside of Suffolk County.

b. Mr. Larsen admitted general familiarity with the opinion of Hon. GEORGE F.X. McINERNEY; deponent's memorandum of law, submitted to Judge McINERNEY; and with the fact that one of the reasons the Attorney General's Office did not wish to attend this conference, without direct request, was that they believed the Seidell conviction was invalid and could not be justified.

c. In fact, it was Mr. Larsen who stated that even Signorelli and Seidell were not claiming the criminal conviction had validity, but Signorelli was of the opinion that deponent's remedy was to move to vacate his "default", as he shortly before had published in his sua sponte "diatribe", against both deponent and his wife.

d. Emphatically your deponent rejected the suggestion, and told Mr. Larsen we were dealing with criminal constitutional law and by being engaged in the middle of a trial in another court, the word "default", by mere absence, was an inappropriate operative term.

Clearly resolved by the first habeas corpus hearing, was that the issue is one of constitutional waiver, not whether plaintiff did or did not appear!

7a. Mr. Larsen did not seem very familiar with the jurisdictional limits of his client's authority. Consequently, deponent handed him much of his material on the subject, which Mr. Larsen glanced at, and made some notes on the sources of the material tendered.

b. Mr. Larsen then overtly recognized and expressed the dilemma his client faced if the contestants stood fast on their positions, and federal intervention did not take place.

* * *

8a. Deponent, in a summary of about two minutes, explained the situation to His Honor.

Deponent attempted to convey the fact that deponent had little reason to doubt, even in a state tribunal, with a member of the judiciary as an antagonist, that this in absentia conviction would be vacated, but was concerned with the "gauntlet he would be compelled to run" in order to obtain such vindication.

b. His Honor in substance stated that deponent should know that His Honor could not intervene, even if the criminal contempt conviction was unconstitutional, based upon some burdens that your deponent speculatively anticipated.

c. Deponent thanked His Honor and was about to leave, when Mr. Larsen sought His Honor's aid.

8a. Mr. Larsen stated that he represented the Sheriff of Suffolk County and that he, his office, and his client was in the middle of this battle.

Mr. Larsen related to Your Honor that on one hand his client, the Sheriff, had an obligation to obey judicial mandates, and on the other hand "Sassower was sure to sue" his client if he executed this warrant, especially if his client had his deputies execute it outside of Suffolk County.

b. His Honor asked Mr. Larsen if there was any doubt that "Sassower was actually on trial" before Hon. Joseph DiFede, in Supreme Court, Bronx County at the time this in absentia trial, conviction, and sentencing took place?

c. Mr. Larsen said he personally did not verify that fact, but no one doubted it, and he believed, but was not certain, that someone on behalf of Seidell or Signorelli checked and found it to be true and correct.

d. His Honor then stated that both of us were needlessly apprehensive because if it were true that deponent was actually engaged, as deponent stated, the state judges were well aware of the underlying infirmities of such conviction, under state law, as well as federal law, and federal intervention was clearly not needed or warranted.

At this point, the matter seemed to be at an end -- when:

9a. Mr. Larsen stated there was no question on anyone's part that the in absentia criminal conviction, under the present circumstances was invalid, but that the Surrogate's Court wanted deponent to directly appeal to the Appellate Division or move to vacate deponent's default.

b. At this point, Larsen showed His Honor, the relevant portion of the Signorelli "diatribe" of February 24, 1978 [published in the New York Law Journal on March 3, 1978], which read:

> "It is the contention of the undersigned [Signorelli], that the Supreme Court Justice [Hon. George F.X. McInerney] preempted the function of the Appellate Division in choosing to act as an appellate court [under a writ of habeas corpus] and reviewing the order of the Surrogate, a judge of coordinate jurisdiction. Since a proper and complete record has been, in fact, the contemnor's sole recourse was to seek review of the contempt order by the Appellate Division." [emphasis supplied]

c. While His Honor gave [what both deponent and Mr. Larsen thereafter agreed was a facial expression of deep disapproval, if not absurdity], deponent exploded, and emphatically stated that:

> "this is sheer nonsense, and Signorelli knows it! Signorelli knows that you cannot appeal a 'default' conviction, and even if you could, was I supposed to sit in jail until the Appellate Division made its determination? That was what my second cause of action was all about -- there is no bail provision pending an appeal from Surrogate's Court [Criminal Procedure Law §460.50]! Even it there was, was I supposed to sit in jail waiting for such application to be approved when this in absentia conviction was known by all to be manifestly unconstitutional? Was I supposed to make an application to vacate this 'default', and give Signorelli another chance to put in print some more of his gratuitous garbage, under the guise of an 'opinion'?

d. His Honor tried, without much success, to calm and restrain your deponent, during the above, and then stated:

> "I believe you are both needlessly apprehensive, the Surrogate's Court knows if 'Sassower was actually engaged', as he says, his mere absence on account of same does not permit a trial and conviction in his absence. The Surrogate's Court will vacate this conviction! Consequently, Sassower does not have to worry about being arrested under this conviction, and the Sheriff will not have to worry about any potential liability for making an illegal arrest."

10a. At this point, it was Mr. Larsen who was practically pleading for His Honor to write something officially, for he stated:

> "Your Honor, I do not have any doubt that Your Honor's opinion of the invalidity of this criminal conviction is correct, but how am I, a recent graduate of law school, supposed to tell Judge Signorelli, Judge Seidell, and Mr. Berger, that what they did was invalid, if Your Honor could write something on the matter, it would be very helpful to me and my client."

b. At which His Honor stated, in effect, that it would be improper for him to tell the state courts what the federal and state law is or should be.

c. At which point Mr. Larsen asked, if Signorelli and Seidell did not wish to withdraw the warrant, "could the Sheriff go into Westchester County and arrest Sassower".

d. His Honor stated that he could not give advisory opinions to his client, but again if Sassower was actually engaged on trial, he did not believe the issue would arise. While His Honor could appreciate Mr. Larsen's concern, His Honor was not anticipating this situation would occur. By some means, this criminal conviction would be vacated prior to the execution of this warrant, His Honor assured Mr. Larsen.

e. His Honor then turned to his law secretary, and said something, which deponent did not hear completely, but reconstructed by subsequent events, was probably "take them into the library and show Mr. Larsen In re Oliver", or words to that effect.

* * *

11a. After both sides thanked His Honor, the law secretary took both of us into His Honor's library, and his secretary showed Mr. Larsen In re Oliver (333 U.S. 257), which Mr. Larsen glanced at, and was told by His Honor's secretary to "shepherdize it", and give Judge Signorelli and Seidell his opinion.

b. This incident was, ante litem motam recorded in several documents, each time without being controverted, including plaintiff's Brief to the Circuit Court of Appeals, which reveals the following (p. 11):

> "MARCH 17, 1978
> Law Secretary of Hon. JACOB MISHLER, took Assistant County Attorney ERIC LARSEN to the District Court Law Library, showed him In re Oliver (333 U.S. 257), as proof that the proceedings before Hon. HARRY E. SEIDELL were constitutionally null and void (472).
>
> MARCH 22, 1978.
> Despite the aforementioned, the County Attorney instructed the Sheriff of Suffolk County to execute the Warrant of Commitment dated March 8, 1978 ((471)."

c. Again, Mr. Larsen set forth his difficult position as a young, newly appointed Assistant Suffolk County Attorney, telling seasoned judges and lawyers that they are wrong!

d. His Honor's secretary suggested that Mr. Larsen merely set forth what happened in His Honor's Court that day, do his research on the subject, and give it the the Suffolk County Attorney for presentment to Judges Signorelli and Seidell.

e. "What happens is if Judges Signorelli and Seidell do not wish to withdraw the Warrant? ", asked Mr. Larsen.

"Then leave it up to the Sheriff to determine what he should do, all you or the County Attorney can do is give the Sheriff your opinion as to the law", replied His Honor's secretary.

* * *

12a. After leaving the library, your deponent again spoke at length with Mr. Larsen and we were in full agreement as to what had transpired and the opinion of His Honor, both expressed and unexpressed.

b. In numerous other subsequent conversations with Mr. Larsen, the occurrences and statements of His Honor were referred to and there was never any disagreement as to His Honor's opinion as to the invalidity of the criminal conviction (assuming deponent was actually engaged).

c. The thrust of the events in Court, and His Honor's opinion was discussed by your deponent with defendant, Sgt. Alan J. Croce in our conversation of April 6, 1978, who was aware of same, and His Honor's opinion as to the invalidity of the criminal conviction.

d. Deponent's letter of March 24, 1978 -- the "nuts" letter -- would never have been written in the form or manner in which it was written, if His Honor had in any form said or implied that the criminal conviction was valid, or that the Sheriff was obligation to executed that warrant.

13a. Your deponent absolutely rejects any contention or assertion by Mr. Larsen that His Honor told, advised, and/or implied that His Honor "gave [the Suffolk County Attorney and Sheriff] the okay to go ahead and use [their] best efforts to execute"; and/or "the Sheriff had not only jurisdiction, but the duty to execute outside of Suffolk County and in Westchester County on that particular Warrant of Commitment"; and/or "there was no impediment whatsoever to [the Sheriff] executing the Warrant" and/or the the Warrant was "at least partially valid".

b. Additionally, deponent does not believe His Honor even saw the Warrant or Order of Criminal Contempt, but merely assumed it was valid on its face.

14a. Your deponent does agree with Mr. Larsen that His Honor clearly distinguished between refusing to stay a state proceeding or warrant and passing on the validity thereof.

His Honor said and did nothing at such conference, or at any other time, to pass on the validity, vel non, of such second warrant. His Honor only passed on the propriety of federal intervention! Any implied assertion that His Honor authorized or approved or encouraged the execution of such warrant, in or out of Suffolk County, is emphatically rejected by your deponent.

b. Where all the cases and authorities held that the Sheriff could not execute such warrant beyond his bailiwick, deponent finds Mr. Larsen's statement that "Judge Mishler's position [was] that the Sheriff had not only jurisdiction, but the duty to execute outside of Suffolk County and in Westchester County", completely incorrect, to say the least!

* * *

15a. There is some evidence that ERICK F. LARSEN, Esq., at this conference of March 17, 1978, with His Honor, may have himself been the victim of a ploy by his own office.

b. There is no doubt in deponent's mind that Mr. Larsen, at such conference, believed himself to be representing the Sheriff of Suffolk County.

c. Nevertheless, the examination before trial of Sheriff John P. Finnerty, held on July 31, 1984, reveals the following:

> "Q Did you receive the Warrant of Commitment on March 30, 1978?
> A Yes, according to this report.
> Q Your office did not receive that Warrant prior to March 30, 1978?
> MR. CALICA: If you know
> MR. SASSOWER: If you know
> A I have no knowledge.
> Q Personal knowledge?
> A No personal knowledge.
> Q Is there anything in your file, and I am saying this with the permission of, I hope, your attorney, any aid that Sergeant Croce can give you in this respect, as far as I am concerned, he is invited to participate.
> MR. CALICA: We will follow that procedure.
> Q Is there anything in the Sheriff's file that would indicate that that Warrant of Commitment was received before March 30, 1978?
> A Not that I can see in the sequence, no.
> Q Or anything else in your file?
> A No.
> MR. CALICA: The letter of Mr. Pachman, then the Suffolk County Attorney, dated March 22, 1978 addressed to Sheriff Finnerty refers to a prior letter of the Suffolk County Attorney evidently addressed to the Sheriff's office dated March 9, 1978 and makes reference to a delay of execution of acting Surrogate Seidell's Warrant. ..." (F-SM90-92/23-6).

d. The significance of the the transmittal of the 1978 Warrant to the County Attorney's office, instead of the Sheriff's office, and the contents of the letter of March 9, 1978, will appear elsewhere.

GEORGE SASSOWER

Sworn to before me this
8th day of October, 1984