

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

GEORGE SASSOWER,

Plaintiff

-against-

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

Defendants

NOTICE OF MOTION
TO DISMISS COMPLAINT
AND FOR A PRELIMINARY
INJUNCTION

CV-84-2989

-----x

S I R S:

PLEASE TAKE NOTICE that upon the annexed affirmations of DEWEY LEE, ESQ. and the HONORABLE ERNEST L. SIGNORELLI, the undersigned will move this Court at the United States Courthouse, Eastern District of New York, Uniondale, New York on the 17th day of September, 1984 at 9:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b)(6) of the Rules of Civil Procedure dismissing the action on the ground that the plaintiff fails to state a claim upon which relief can be granted; additionally, the undersigned will move this Court for an order assessing costs and disbursements against the plaintiff, and for further relief that the Court may deem just and proper. Finally, the undersigned will move this Court pursuant to Rule 65 of the Rules of Civil

Procedure for a preliminary injunction.

PLEASE TAKE FURTHER NOTICE that if the Court denies the motion to dismiss, the undersigned requests leave of this Court to serve and file an answer to the complaint within twenty (20) days thereafter.

Dated: Mineola, New York
August /6 1984.

Yours, etc.,

DEWEY LEE
Assistant Attorney General
Of Counsel to
ROBERT ABRAMS
Attorney General
190 Willis Avenue
Mineola, N.Y. 11501
(516) 742-3053

TO:

GEORGE SASSOWER, ESQ.
2125 Mill Avenue
Brooklyn, N.Y. 11234

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

GEORGE SASSOWER,

Plaintiff

-against-

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

Defendants

AFFIRMATION IN SUPPORT
OF MOTION TO DISMISS
COMPLAINT AND FOR A
PRELIMINARY INJUNCTION

CV-84-2989

-----x

DEWEY LEE, an attorney duly admitted to practice law in the Federal and State Courts in New York State, affirms under penalty of perjury that:

1. I-am an Assistant Attorney General in the Nassau County office of the New York State Attorney General ROBERT ABRAMS, and as such, I am the attorney for the named defendants, ERNEST L. SIGMORELLI and HARRY SEIDEL.

2. Upon information and belief, the source being the law secretaries to the named defendants, the above proceeding was commenced by service of a summons and complaint by mail on the offices of the defendants on or about July 26, 1984.

3. This affirmation is made in support of the motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Rules of Civil Procedure on the ground that it fails to state a claim upon which relief can be granted.

4. Further, this affirmation is made in support of the motion to assess costs and disbursements against the plaintiff, and for further relief that the Court may deem just and proper.

5. Finally, this affirmation is made in support of the motion for a preliminary injunction pursuant to Rule 65 of the Rules of Civil Procedure, enjoining plaintiff from commencing any further lawsuits arising from the Estate of Eugene Paul Kelly.

ALLEGATIONS IN SUPPORT OF MOTION TO
DISMISS COMPLAINT

6. This Court needs no recitation of the tortured history and background of this case since this Court has already written three opinions regarding this matter. Exhibit A.

7. This action is no different from the multitude of lawsuits plaintiff has filed in the various state courts and this Court. All arise from his handling of the Estate of Eugene Paul Kelly.

8. It is crystal clear that defendants SIGNORELLI and SEIDEL have absolute judicial immunity. Stump v. Sparkman, 435 U.S. 349 (1978); Imbler v. Pachtman, 424 U.S. 409 (1976); Pierson v. Ray, 386 U.S. 547, 555-57 (1967); Sassower v. Signorelli, 594 F. 2d 852 (2d Cir. 1978) (decision without published opinion - see Exhibit B for opinion). Thus, plaintiff fails to state a claim upon which relief can be granted.

9. Additionally this lawsuit is barred by res judicata and collateral estoppel principles. Fed. Rules Civ. Proc. Rule 41(b); Hyman v. Hillelson, 55 N.Y. 2d 624; O'Brien v. City of Syracuse, 54 N.Y. 2d 353, 357-58; Sassower v. Signorelli, 99 A.D. 2d 358 (2d Dept. 1984).

10. Finally, this lawsuit is barred by the statute of limitations. The acts complained of occurred in 1977, well after the three year limitation for §1983 actions. Pauk v. Board of Trustees of City University of New York, 654 F. 2d 856 (2d Cir. 1981).

11. The only new fact, since this Court's last dealing with this case, is that the Appellate Division, Second Department of the Supreme Court of the State of New York has permanently enjoined plaintiff from filing any more lawsuits regarding this matter. Sassower v. Signorelli, 99 A.D. 2d 358 (2d Dept. 1984). For all of the above stated reasons, the complaint herein must in all respects be dismissed pursuant to Rule 12 (b) (6).

ALLEGATION IN SUPPORT OF AN ORDER
ASSESSING COSTS AND DISBURSEMENTS

12. Since plaintiff has abused the judicial process and pressed one frivolous and vexatious claim after another, this Court should assess costs and disbursements against plaintiff. Raffe v. Citibank, NYLJ, 8/9/84 p. 1 c. 2 (EDNY J. Nickerson) (costs and attorneys' fees assessed against plaintiff and his

attorney, George Sassower, for "having brought 'duplicative motions and appeals, over seventy-five in the last two years, in the same unsupported manner and seeking the same relief.'" (See Exhibit C).

ALLEGATIONS IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

13. The HONORABLE ERNEST L. SIGNORELLI has been sued approximately 12 times in New York, Kings, Westchester, Suffolk Counties, and in the Southern and Eastern Districts of New York over a period of seven years, all arising out of an incident in 1977. See Judge Signorelli's affirmation. This Court should not countenance such a continuing drain on the judicial system and on the defendants.

14. A preliminary injunction requires four elements:

(a) Movants will probably prevail on the merits.

It is respectfully submitted that judicial immunity, res judicata and collateral estoppel, and the statute of limitations, are impenetrable defenses.

(b) Irreparable harm. The waste of judicial resources has been enormous both at the trial and appellate levels. If unchecked, this will continue ad infinitum and ad nauseum.

(c) Movants need substantial protection and the damage to the movants outweigh the foreseeable harm to plaintiff.

One must balance the rights of the respective parties. State and federal judges throughout the New York metropolitan area have ruled on this case. Plaintiff cannot redress his supposed injuries through our judicial system. Yet he continues to sue. Thus substantial protection is needed in the form of an injunction. Plaintiff cannot be harmed by this since it is respectfully submitted that any further lawsuits regarding this case will undoubtedly be dismissed.

(d) Serve the public interests. Again, the scarcity of judicial resources should not be squandered on frivolous claims.

15. The best reasons for the issuance of an injunction were eloquently stated in Sassower v. Signorelli, 99 A.D. 2d 358 (2d Dept. 1984):

This appeal is the latest in a series of frivolous and repetitious claims, motions, petitions, collateral proceedings and appeals arising from the rulings of the defendant, the Surrogate of Suffolk County, which required plaintiff George Sassower to account for his activities as a fiduciary. We affirm the order insofar as appealed from, and utilize the opportunity to caution these plaintiffs, as well as others, that this court will not tolerate the use of the legal system as a tool of harassment.

To be sure, public policy mandates free access to the courts and zealous advocacy is an essential component of our legal system (Board of Educ. v. Farmingdale Classroom Teachers Assn., 38 NY2d 397, 404; Burt v. Smith,

181 NY 1) and, ordinarily, the doctrine of former adjudication will serve as an adequate remedy against repetitious suits.

Nonetheless, a litigious plaintiff pressing a frivolous claim can be extremely costly to the defendant and can waste an inordinate amount of court time, time that this court and the trial courts can ill afford to lose (see Harrelson v. United States, 613 F2d 114). Thus, when, as here, a litigant is abusing the judicial process by hagridding individuals solely out of ill will or spite, equity may enjoin such vexatious litigation (e.g., Matter of Hartford Textile Corp., 681 F2d 895, 897, cert den sub. nom. Shuffman v. Hartford Textile Corp., ___ US ___, 103 S Ct 1195; Muka v New York State Bar Assn., 120 Misc 2d 897, 903-905, and authorities cited therein; see, also, Wood v Santa Barbara Chamber of Commerce, 705 F2d 1515, 1524-1525; Pavilonis v King, 626 F2d 1075, cert den 449 US 829; Heritage Hills Fellowship v Plouff, 555 F Supp 1290, 1298; Martin-Trigona v Brooks & Holtzman, 551 F Supp 1378 [Weinfeld, J.]).


That plaintiffs are attorneys does not bar the issuance of an injunction (Matter of Hartford Textile Corp., supra). Indeed, attorneys who participate in such manipulation of the legal process are subject to strong disciplinary sanctions (see Code of Professional Responsibility, DR 7-102, subd [A], par [1]; Matter of Lee, 816 AD2d 131).

In short, Special Term acted properly in putting an end to plaintiffs' badgering of the defendant and the court system. For the reasons stated, the order should be affirmed insofar as appealed from, with costs.

Just as plaintiff has been enjoined from filing any more lawsuits arising from the Estate of Eugene Paul Kelly in the state courts, it is respectfully requested that this Court bar any future federal lawsuits arising from this matter.

WHEREFORE, defendants SIGNORELLI and SEIDEL respectfully request that the complaint be dismissed; that the costs and disbursements should be assessed against plaintiff; that the preliminary injunction should be issued, and for such other and further relief that the Court may deem just and proper.

Dated: Mineola, New York
August 16, 1984.



DEWEY LEE
Assistant Attorney General
ROBERT ABRAMS
Attorney General
190 Willis Avenue
Mineola, N.Y. 11501
(516) 742-3053

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
GEORGE SASSOWER,

Plaintiff,

-against-

CV-84-2989

AFFIRMATION

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

Defendants
-----X

STATE OF NEW YORK)
 : ss:
COUNTY OF SUFFOLK)

ERNEST L. SIGNORELLI, hereby affirms, under the penalty of perjury, as follows:

I am an attorney duly admitted to practice law in the State of New York and have served as Surrogate of Suffolk County since January 1, 1976.

This affirmation is being made in support of the Attorney General's application for an order enjoining the plaintiff, George Sassower, from commencing any further actions against your affirmant pending a resolution of the instant action before this court.

Over the last seven (7) years, the functioning of the Suffolk County Surrogate's Court has been repeatedly undermined by this plaintiff who was removed by your affirmant as executor of the Estate of Eugene Paul Kelly in 1977. Within these seven

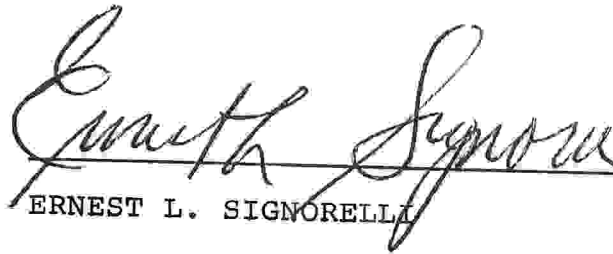
(7) years, this plaintiff has commenced twelve (12) actions or proceedings against your affirmant in the Eastern and Southern Districts of U.S. District Court, the U.S. Circuit Court of Appeals, as well as the Supreme Court of the State of New York, Counties of Westchester, Suffolk, Nassau and Kings, and the Appellate Divisions of the First, Second and Fourth Judicial Departments. Including the damages sought in the instant action, this plaintiff has sued your affirmant for an aggregate of \$105,000,000. The foregoing does not include an action for \$7,000,000 commenced by the plaintiff's wife and daughter in 1979 in the Supreme Court of Westchester County. All of the foregoing actions and proceedings have resulted in a complete vindication of your affirmant.

The cost of this to the Surrogate's Court and to the Attorney General of the State of New York, as well as the burden to the numerous forums in which these suits have been instituted, is immeasurable. Each action has necessitated numerous communications between the Surrogate's Court and the Assistant Attorneys General. The very preparation of this affirmation was procured at the expense of numerous hours. The foregoing damage does not, of course, include the baseless and scurrilous accusations against your affirmant's character and conduct as a member of the judiciary.

Your affirmant verily believes that, upon a determination of the instant action by this court, your affirmant will be totally

vindicated. Irreparable harm would result to your affirmant and to the Suffolk County Surrogate's Court should this application for a preliminary injunction be denied. Inasmuch as the plaintiff herein has consistently failed to sustain any cause of a action against your affirmant to date, no damage will result to the plaintiff by the granting of the relief requested.

Accordingly, your affirmant seeks on behalf of the Suffolk County Surrogate's Court and himself, the protection of this court in the granting of the preliminary injunction sought herein.


ERNEST L. SIGNORELLI

DATED: Riverhead, New York

August 15, 1984

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
GEORGE SASSOWER,

No. 77-C-1447

Plaintiff,

- against -

Memorandum of Decision
and Order

ERNEST L. SIGNORELLI, ANTHONY
MASTROIANNI, VINCENT G. BERGER,
JR., JOHN P. FINNERTY, ALLEN
KROOS, ANTHONY WISNOSKI, and
LEONARD J. PUGATCH,

Defendants.

-----x September 20, 1977

A P P E A R A N C E S :

GEORGE SASSOWER, ESQ., Plaintiff Pro Se
30 Mildred Parkway
New Rochelle, New York 10804

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorney for Defendants LEONARD J. PUGATCH
and ERNEST L. SIGNORELLI
2 World Trade Center
New York, New York 10047
Leonard J. Pugatch, Deputy Attorney
General - Of Counsel

DAVIDOW and DAVIDOW, ESQS.
Attorneys for Defendants JOHN P. FINNERTY,
ALLAN KROOS and ANTHONY WISNOSKI
110 North Ocean Avenue
Patchogue, New York 11772

MISHLER, CH. J.

Plaintiff, proceeding pro se, brings this civil
rights action pursuant to 42 U.S.C. §1983. Defendant Berger

EXHIBIT "A"

moves to dismiss the action under Rule 12(b)(6) of the F.R. Civ.P. on the ground that the complaint fails to state a claim. Defendants Pugatch and Signorelli move under Rule 12(c) of the F.R.Civ.P. for a judgment on the pleadings.

Plaintiff, in turn, moves for a judgment on the pleadings with respect to his second cause of action; for a "formal decree pro confesso"^{/1} against defendants Mastroianni, Kroos and Finnerty; and for an order enjoining the Surrogate's Court of Suffolk County ("Surrogate's Court") from prosecuting him for criminal contempt.

In 1972, plaintiff was appointed executor of the estate of Eugene Paul Kelly. By order of the Surrogate's Court dated March 9, 1976, plaintiff was removed as executor for failure to render an accounting. The Surrogate's Court appointed defendant Mastroianni, Public Administrator of Suffolk County, as temporary administrator to replace plaintiff. On April 28, 1977, plaintiff was ordered by the Surrogate's Court to transmit to defendant Mastroianni all books, papers and other property of the estate of Kelly. For his repeated refusal to comply with this order, on June 22, 1977, the Surrogate's Court adjudged plaintiff in criminal contempt.

/1 Translated into its modern-day English equivalent, plaintiff seeks a default judgment pursuant to Rule 55(b) of the F.R.Civ.P.

The following day, pursuant to the order of contempt and warrant of commitment, defendants Allen Kroos and Anthony Wisnoski,¹² employees of the Sheriff's Office of Suffolk County, brought plaintiff before the Surrogate's Court. Again, plaintiff refused to submit to the turnover order, whereupon he was remanded to the county jail. That same day, plaintiff filed a petition for a writ of habeas corpus in the Supreme Court of the State of New York, County of Suffolk. On July 28, 1977, the writ was granted and the adjudication of contempt annulled. It is these facts which presumably induced plaintiff to file his pro se complaint.

DEFENDANTS' MOTIONS

Plaintiff's first cause of action is directed against defendant Signorelli, the Surrogate of Suffolk County; defendant Mastroianni, the Public Administrator of Suffolk County;¹³ and defendant Berger, the attorney for defendant Mastroianni.¹⁴

-
- ¹² Defendants' proper names are Allan Croce and Anthony Grzymalski.
- ¹³ The U.S. Marshal's Service Process Receipt and Return indicates that defendant Mastroianni was never served. Thus, he is not a party to this action.
- ¹⁴ In January, 1977, defendant Berger was retained by defendant Mastroianni pursuant to the Surrogate's Court Procedure Act, §1206(3), to represent him with regard to certain duties in the administration of estates. (Berger Affidavit in Support of Motion to Dismiss, p. 2, ¶4).

The claim consists of a broad attack upon the powers granted to, and exercised by, the Surrogate of Suffolk County. More specifically, plaintiff alleges that the multitude of powers conferred upon defendant Signorelli (i.e., to appoint employees, fix fees and disbursements, adjudicate cases) renders him an impartial judicial officer in adjudications between his appointees and others; that the appointees of defendant Signorelli, to secure future appointments and favorable fees, ". . . subserve their obligations towards their clients in favor of defendant, Ernest L. Signorelli . . ." (Complaint, p. 5, ¶21); and that, as a result of this system, the Surrogate's Court is not constitutionally administered. Plaintiff seeks to enjoin defendant Signorelli from, inter alia, hiring any further employees and awarding any fees except as mandated by statute, and defendant Berger from acting as attorney for the Public Administrator and from receiving any fees from the Surrogate's Court.

This cause of action fails to satisfy the threshold requirement imposed by Article III of the Constitution that those who seek to invoke the power of federal courts must allege an actual case or controversy. Flast v. Cohen, 392 U.S. 83, 94-101, 88 Sup. Ct. 1942, 1949-53 (1968). "[P]laintiffs must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction." Linda R.S. v. Richard D. and Texas et al.,

410 U.S. 614, 617, 93 S.Ct. 1146, 1148 (1973). Abstract injury is not enough. It must be alleged that the plaintiff ". . . has sustained or is immediately in danger of sustaining some direct injury" as the result of the challenged statute or official conduct. O'Shea v. Littleton, 414 U.S. 488, 494, 94 S.Ct. 669, 675 (1974), citing Commonwealth of Massachusetts v. Mellon, 262 U.S. 447, 488, 43 S.Ct. 597, 601 (1923).

Plaintiff fails to demonstrate how he has been injured by the alleged partisan administration of the Surrogate's Court. Nowhere in his claim does plaintiff show how he was injured by the impartial adjudications of defendant Signorelli or by the misconduct of defendant Signorelli's appointees. This omission is fatal to plaintiff's claim and mandates its dismissal.

In O'Shea v. Littleton, supra, the Supreme Court based its dismissal of plaintiff's civil rights action upon the same grounds. There, a class action was brought against several defendants, including a magistrate and a judge. The named plaintiffs, seventeen black and two white residents of Cairo, Illinois, alleged that the magistrate and the judge deprived them of their constitutional rights by illegal bond-setting, sentencing, and jury-fee practices. The Supreme Court held that none of the named plaintiffs had established a case or controversy against the judicial officers since the complaint failed to identify any one of the individual plain-

55, 87 S.Ct. 1213, 1217-18 (1967); Economou v. U.S. Dept. of Agriculture, et al., 535 F.2d 688, 695 (2d Cir. 1976).

Defendants Finnerty (Sheriff of Suffolk County), Kroos and Wisnoski (employees of the Sheriff's Office) are also immune from suit. The affidavits filed by the moving parties disclose that defendants' sole participation consisted of taking plaintiff into custody pursuant to the validly-issued order of contempt and warrant of commitment. It is a well-grounded principle that immunity is extended to police and other court officers for acts performed pursuant to court order. Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir. 1969), aff'd, 546 F.2d 797 (8th Cir. 1976); Hevelone v. Thomas, 423 F. Supp. 7, 9 (D.Neb. 1976); Meyer v. Curran, 397 F. Supp. 512, 519 (E.D.Penn. 1975). ¹⁵

¹⁵

Defendants' application for a judgment by default against defendant Kroos and Wisnowski is denied. Defendant has failed to enter his default with the clerk in accordance with Rule 55(a). Furthermore, since it appeared at oral argument that some confusion existed with respect to defendants' representation, their failure to answer constitutes excusable neglect under Rule 6(b)(2). On September 6, 1977, defendants Wisnoski and Kroos filed an answer, demanding judgment dismissing the complaint.

Plaintiff's conclusory charges against defend-
 ant Pugatch, ¹⁶ Deputy Attorney General of the State of
 New York, relate to his defense of defendant Signorelli
 in the habeas corpus proceeding. For the reasons stated
 in Imbler v. Pachtman, ___ U.S. ___, 96 S.Ct. 984, 990-
 95 (1976), defendant Pugatch is absolutely immune from
 suit under §1983.

Finally, as for defendant Berger, when plain-
 tiff was asked at oral argument to specify the charges
 against him, plaintiff stated that this defendant made a
 remark to the effect that, "[w]e ought to put him [plain-
 tiff] in jail and throw away the keys." Verbal outbursts
 of this sort are hardly tantamount to a denial of plain-
 tiff's constitutional rights.

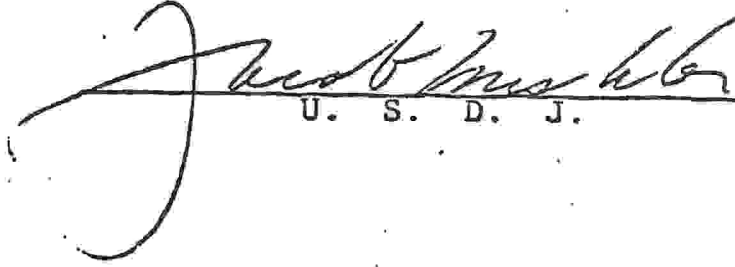
For the foregoing reasons, the complaint is
 dismissed as against all defendants, ¹⁷ and it is

¹⁶ Plaintiff accuses defendant Pugatch of failing to
 disclose to the court that the order of contempt
 was "jurisdictionally and constitutionally invalid
 . . ." (Complaint, p.10, ¶35).

¹⁷ Plaintiff's motion for an order enjoining the contempt
 proceeding pending in the Surrogate's Court is denied.
Huffman v. Pursue, Ltd., 420 U.S. 592, 95 S.Ct. 1200;
Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971).

SO ORDERED.

The Clerk is directed to enter judgment in favor of defendants and against plaintiff dismissing the complaint.



U. S. D. J.