

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GEORGE SASSOWER,
Plaintiff,

-against-

NOTICE OF MOTION

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

Docket No. 84 Civ. 2989
(Mishler, J.)

Defendants.

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S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Robert M. Calica, sworn to September 19, 1984, and exhibits thereto, and upon the prior determinations of this court in prior litigation brought by plaintiff George Sassower against these defendants and others under Docket No. 77 Civ. 1447 (Mishler, J.) and 78 Civ. 124 (Mishler, J.), and the order of the United States Court of Appeals for the Second Circuit, affirming the dismissal of both of those actions (Docket No. 77-7511), and upon the basis of other prior pending actions brought by plaintiff George Sassower against the defendants here and others, including, inter alia, an action in the Supreme Court of the State of New York, County of New York, under Index No. 5774/83, and before the United States District Court, Southern District of New York (Goettel, J.), under Docket No. 78 Civ. 4989,

and upon the papers submitted in support of the separate dismissal motion on behalf of defendants Ernest L. Signorelli and Harry Seidell, the undersigned will move before Hon. Jacob Mishler, United States District Judge, at the United States Courthouse, Uniondale, New York at 9:15 a.m. on the 24th day of September, 1984 for an order:

a. Pursuant to Rule 12(b) of the Fed. R. Civ. P., dismissing the complaint herein upon the ground that the claims asserted therein are barred by the res judicata effect of prior determinations in litigation among these parties and others;

b. Pursuant to Rule 12(b) of the Fed. R. Civ. P., dismissing the complaint herein as time-barred by the applicable statute of limitations;

c. Alternatively, dismissing such of the claims herein as may be determined not to be barred by the res judicata effect of those prior determinations or to be time-barred, upon the further ground that there are prior pending actions by George Sassower against these defendants and others, asserting the same, or substantially the same claims;

d. Awarding the moving defendants reasonable counsel fees in an amount to be determined by the court upon the ground that this action is palpably baseless, entirely frivolous and vexatious, and has been brought unreasonably and in bad faith, (on authority of Raffe, etc. v. Citibank


N.A., et al., U.S.D.C., E.D.N.Y., Nickerson, J., Docket No. 84 Civ. 0305 and Brady v. Chemical Construction Corp., et al., United States Court of Appeals, Second Circuit, Docket No. 84-7097, decided July 31, 1984); and,

e. Granting the moving defendants such other and further relief as to the court may seem just and proper.

Dated: Garden City, New York
September 19, 1984

Yours, etc.

REISMAN, PEIREZ & REISMAN
Of Counsel to Martin Bradley Ashare
County Attorney of Suffolk County

By: 
Robert M. Calica
(A Member of the Firm)
Attorneys for Defendants
Anthony Mastroianni, John P. Finnerty,
Alan Croce, Anthony Grzymalski
and the County of Suffolk
1301 Franklin Avenue
Garden City, New York 11530
(516) 746-7799

TO: George Sassower, Esq.
Plaintiff Pro Se
2125 Mill Avenue
Brooklyn, New York

Robert Abrams, Esq.
Attorney General of the State of New York
Attorney for Defendants Ernest L. Signorelli
and Harry Seidell
190 Willis Avenue
Mineola, New York 11501
Attn: Dewey Lee, Esq.

and justices, attorneys for the various parties herein, the media, and others. These proceedings arise out of Mr. Sassower's efforts to set aside a judgment of the Surrogate's Court, Suffolk County (Hon. Harry Seidell, Acting Surrogate) which convicted Sassower of criminal contempt of that court. That criminal contempt judgment, which has never been overturned, determined that Sassower had interfered with the administration of the estate of one Eugene Paul Kelly, of which Sassower was formerly the executor, by failing to comply with a turnover order of Surrogate Signorelli (a defendant here), requiring the transfer of all estate documents to Public Administrator Anthony Mastroianni. Mr. Mastroianni had been designated the temporary administrator by Surrogate Signorelli in Sassower's stead, so that an accounting could be had. Other defendants in this case are Suffolk County Acting Surrogate Harry Seidell, Suffolk County Sheriff John P. Finnerty, and two of his deputies, and the County of Suffolk.*

Prior Proceedings

2. Plaintiff, an attorney, was adjudged to be in criminal contempt by judgment of the Surrogate's Court, Suffolk County, dated March 8, 1978 (Hon. Harry Seidell,

* No civil rights claim against the County of Suffolk, as permitted under Monell v. Department of Social Services, 436 U.S. 658, is even purportedly asserted. Its joinder as a defendant is unfathomable, and dismissal is sought for failure to state a claim.

Acting Surrogate), granted following an evidentiary hearing held on March 7, 1978, at which the plaintiff, despite written notice of the charges, and written notice of the hearing date, defaulted in appearing. His subsequent habeas corpus petition to collaterally attack the lawfulness of that conviction was thereafter dismissed by order and judgment (one paper) of the Supreme Court, Suffolk County, dated February 10, 1981 (Hon. James Gowan, J.). Neither the dismissal of Sassower's habeas corpus proceeding, nor the underlying conviction and judgment of criminal contempt, have ever been overturned. However, the Appellate Division, Second Department (People ex rel. George Sassower v. Sheriff of Suffolk County, 96 A.D.2d 585, 465 N.Y.S.2d 543, leave den. 61 N.Y.2d 985), has ordered Sassower's appeal therefrom "held in abeyance", pending a remand to the trial justice for further proceedings to determine whether or not Sassower's default in appearing at his contempt trial was excusable. Sassower, the petitioner in that civil habeas corpus proceeding, governed by the provisions of N.Y. CPLR Art. 75, has never availed himself of the ordered remand. But technically, at least, his appeal from the dismissal of his state habeas corpus proceeding is still pending, "in

abeyance", before the Appellate Division, Second Department.*

3. In the intervening years following his conviction for criminal contempt, Sassower brought no fewer than three separate actions in the United States District Court under the Civil Rights Act (42 U.S.C. §1983), seeking, inter alia, to recover damages against Suffolk County Surrogate Signorelli and Acting Surrogate Seidell, Sheriff Finnerty, his deputies (defendants Croce and Grzymalski), and Suffolk County Public Administrator Anthony Mastroianni. Two of those actions were brought before this court (docket No. 77 Civ. 1447 [Mishler, J.] and 78 Civ. 124 [Mishler, J.]). Both actions were flatly dismissed by the district court (Hon. Jacob Mishler, J.). Moreover, Sassower's application to further amend his complaint in the second of those

* Of interest, in view of Sassower's repeated claims of improper in absentia conviction, are the facts that, as found by the Appellate Division: (a) Sassower's purported "affidavit of actual engagement" was mailed by him so late that it was actually received by the Surrogate's Court after his contempt trial; and (b) the so-called "affidavit of actual engagement" (Exhibit "A" hereto) was barely that at all. It consisted mostly of a broadside objection to the Surrogate's jurisdiction over Sassower, with only a passing reference that Sassower would be engaged elsewhere in an unspecified proceeding in Brooklyn, not the Bronx, as he has sworn here, and repeatedly before. Small wonder then, that Sassower has declined to avail himself of the ordered remand of his state habeas corpus proceeding to Justice Gowan for an evidentiary hearing. Such an evidentiary hearing would no doubt expose his duplicity.

dismissed actions, so as to raise allegations going to the lawfulness of the second contempt proceeding before Acting Surrogate Seidell, was denied with prejudice. All of the aforesaid dismissals were affirmed by the the United States Court of Appeals for the Second Circuit (594 F.2d 852).

4. In those dismissed civil rights actions, Sassower asserted, among other things, that the criminal contempt proceedings against him in Suffolk County, initiated on the complaint of the Public Administrator (defendant Anthony Mastroianni), were tainted with gross illegality, and violative of his constitutional rights. He charged the Sheriff, and the Sheriff's deputies, with unlawfully arresting and imprisoning him in pursuance of assertedly illegal court mandates, and otherwise acting in excess of their lawful jurisdiction, seeking to recover millions of dollars in compensatory and punitive damages. As aforesaid, these proceedings were dismissed "with prejudice", which dismissals were thereafter affirmed by the United States Court of Appeals for the Second Circuit.

5. Sassower also brought a virtually duplicative action in the Southern District (78 Civ. 4989), which was ordered stayed by former District Judge Pierce to abide the determination of related and duplicative state court litigation. The Southern District action is presently on the "suspense" calendar before District Judge Goettel, to whom the that matter has been reassigned. The initiation of that

prior Southern District action, we later show, additionally requires dismissal here.

6. Sassower has also brought virtually identical claims against the Suffolk County defendants (with the exception of the County of Suffolk) in a state court action, originally instituted in Supreme Court, Westchester County, and then removed to Supreme Court, Suffolk County, because of the mandatory venue provisions of N.Y. CPLR 504 concerning actions against municipal parties and public officials. Venue was thereafter changed again, to New York County, upon Sassower's application, and that action is now pending in New York County under Index No. 5774/83. A motion on behalf of the Suffolk County defendants for summary judgment, dismissing the amended complaint there based upon the res judicata effect of the prior dismissal of the nearly identically based federal actions, is now pending, upon renewal, before Justice Martin B. Stecher, and is returnable in that forum on October 1, 1984. We point out that Justice Stecher declined to pass upon the Suffolk County defendant's prior summary judgment dismissal motion sooner, solely because of uncertainty as to whether or not Sassower had availed himself of an opportunity to respond fully to that motion on the merits. Instead, Sassower had engaged in his now familiar tactic of fragmentation and confusion, by making no fewer than five separate cross-motions for assorted relief before Justice Stecher, some of which were so ill-founded

and bizzare (including seeking habeas corpus relief in New York County upon unarticulated grounds) as to defy description. Justice Stecher therefore directed the Suffolk County defendants to renew their summary judgment motion in the New York County Supreme Court action for a date certain, at which time all papers in opposition thereto are to be submitted, and no further extensions or adjournments are to be granted. As aforesaid, that motion is returnable October 1, 1984.

7. Our summary judgment motion in the state court action is, like the present dismissal motion, essentially res judicata based. It was predicated, among other things, upon a fifty-seven page memorandum of law, which contains a detailed analysis of Sassower's pleadings and amended pleadings in the prior Eastern District federal actions, an analysis of Judge Mishler's decisions dismissing those prior pleadings and amended pleadings with prejudice,* an analysis of the Second Circuit's affirming memorandum, and an analysis of the virtually identical claims asserted in the state Supreme Court action. Our memorandum there also contains a full discussion of the issue preclusion and claim preclusion principles applicable alike to common law tort proceedings (Matter of Reilly v. Reid, 45 N.Y.2d 24, 407 N.Y.S.2d 645),

* This court's prior dismissals, "with prejudice", operate as adjudications on the merits, Fed. R. Civ. P. 41(b).

and to federal civil rights actions under 42 U.S.C. §1983 (Allen v. McMurry, 449 U.S. 90; Zarcone v. Perry, 55 N.Y.2d 782, 447 N.Y.S.2d 248 [affirming 78 A.D.2d 70, 434 N.Y.S.2d 437], cert. den. 456 U.S. 979), mandating the dismissal of the virtually identical claims asserted in the state action.

8. It would be a totally unwarranted burden to require the Suffolk County defendants to repeat that exhaustive pleading analysis and extended legal discussion here. Instead, we respectfully request leave of this court to submit herewith an Appendix of the exhibits which the Suffolk County defendants have already submitted to the state court in connection with our renewed motion for partial summary judgment there. That appendix contains a copy of our memorandum of law, which analyzes the prior federal pleadings, the corresponding prior decisions and orders of dismissal, as well as copies of our state court motion papers, to which are annexed as exhibits, copies of the dismissed federal pleadings themselves, and the federal decisions and orders of dismissal. That volume, consisting of filed papers which this court may judicially notice (Richardson on Evidence, 10th ed., §30), forms the documentary basis of this motion.

The Complaint Herein

9. It is difficult to discern any substantive difference between Sassower's new complaint here, and the dismissed allegations contained in his original amended and

proposed amended pleadings in 77 Civ. 1447, in 78 Civ. 124 (Mishler, J.), or for that matter, his amended complaint in the pending state action (and Southern District action as well). Nevertheless, for the court's convenience, the pertinent allegations of the present complaint, and their prior assertion and dismissal, are summarized below:

a. Sassower alleges that after he timely turned over all papers and documents to Public Administrator Mastroianni, as ordered by Surrogate Signorelli, on June 22, 1977, the Surrogate, without accusation or notice, tried and convicted Sassower for criminal contempt in failing to turn over such books and documents, and sentenced him to jail for thirty days, in absentia. During such time, it is claimed that Surrogate Signorelli had actual knowledge that he did not have jurisdiction over plaintiff for conviction and sentencing (complaint ¶5).

We point out that Sassower's 1977 civil rights action before this court (77 Civ. 1447) alleged the same facts against Surrogate Signorelli and Sheriff Finnerty in his second cause of action (¶28 thereof). He also alleged, as his original third cause of action, that Surrogate Signorelli and the Suffolk defendants "had orders made and entered in which the court patently did not have jurisdiction ... [and] unconstitutionally orchestrated a criminal proceeding" (¶35). That complaint was dismissed by Judge

Mishler (with prejudice) for failure to state a claim and upon immunity grounds.

In his 1978 civil rights action (78 Civ. 124), Sassower alleged the same acts in paragraphs 33 through 35 of his second cause of action against Surrogate Signorelli, and against defendants Mastroianni, Finnerty and the County of Suffolk. Judge Mishler rejected Sassower's motion to enjoin his arrest and detention pursuant to Acting Surrogate Seidell's second warrant of commitment, and the court also dismissed Sassower's eighth cause of action there against surrogate Signorelli and the Suffolk County defendants (containing virtually identical allegations, see ¶¶82-86);

b. In the present complaint, Sassower alleges that Surrogate Signorelli, and persons acting on his behalf, requested Sheriff Finnerty to immediately execute a facially invalid warrant of arrest in Westchester County, all defendants knowing that the Sheriff had no official police status in Westchester. It is alleged that defendants agreed that deputies Croce and Grzymalski would abduct plaintiff from Westchester County, deny plaintiff access to local police or courts, and bring him before Surrogate Signorelli, and not to the County jail as the law allegedly provided (¶6). It charges that deputies Croce and Grzymalski illegally arrested and abducted Sassower from Westchester County, without local police assistance, (and assertedly contrary to standard police practice), and that in so doing, Croce and Grzymalski

prevented Sassower from exercising his fifth amendment rights, his right to counsel, and to obtain a writ of habeas corpus, all pursuant to Surrogate Signorelli's alleged instructions. It is also charged that the Surrogate communicated with the Appellate Division, conveying a false story, in reliance upon which that court refused to release plaintiff (¶¶7-8).

Notably, these claims were contained as part of the third cause of action of Sassower's dismissed civil rights action brought in 1977, where he alleged that the Suffolk County defendants caused him to be improperly detained and imprisoned by obstructing his right to a writ of habeas corpus. He also charged them with illegally detaining him against his wishes at places other than the Suffolk County jail (¶35), which claim this court dismissed for failure to state a claim, and upon judicial immunity grounds.

In his 1978 civil rights action, as part of his eighth cause of action against Surrogate Signorelli and the Suffolk defendants, Sassower alleged the same conspiracy and abduction (¶¶86-88, and ¶¶89-96), which this court dismissed "with prejudice".

Furthermore, Sassower's 1977 civil rights action alleged, as part of his third cause of action, that the Suffolk County defendants caused him to be improperly detained and imprisoned by obstructing his right to a writ

of habeas corpus, and that he was detained against his wishes at places other than the Suffolk County jail (¶35). That claim was also dismissed, with prejudice, for failure to state a claim. The same violations were also alleged as part of his eighth cause of action in his 1978 civil rights action, and dismissed (¶¶89-103);

c. Sassower's complaint here charges that upon his release, the defendants solicited the appearance of a New York Daily News reporter, and caused the publication of a false story in order to deprive him of a fair hearing (¶9).

Notably, in his dismissed 1977 action, as part of his third cause of action, Sassower alleged that the Suffolk County defendants caused plaintiff to be "disparaged and defamed through the public press" (¶35), which claim was dismissed, with prejudice, for failure to state a claim and upon immunity grounds. Likewise, in his 1978 action, as part of his eighth cause of action against Surrogate Signor-elli and the Suffolk County defendants, Sassower alleged the same facts in paragraph 106(g), which complaint was dismissed with prejudice;

d. The complaint here further charges that the defendants harassed plaintiff upon the hearing of his writ of habeas corpus, by prolonging that hearing, and by filing various complaints against him in order to deprive him of his right to a fair trial (¶10). Sassower charged that

defendants also harassed him and his family in and out of the judicial forum, for example, by retaining a former police officer to travel to Westchester and New York Counties to make inquiries regarding Sassower in the vicinity of his home and business, while displaying a "spurious police badge", implying that Sassower was being investigated for criminal activities (§11).

Notably, in his 1977 civil rights action, Sassower alleged, as part of his third cause of action there, that the Suffolk defendants harassed him in "time, money and effort" (§35), which claim was dismissed, with prejudice, for failure to state a claim and on immunity grounds. As part of the third cause of action of his 1978 civil rights action against Suffolk County, Sassower alleged that the defendants caused one Charles Brown to act as an apparent police officer to harass and embarrass plaintiff, using the very same "spurious shield" (§50), which claim was dismissed with prejudice. Sassower also alleged, as part of the sixth cause of action, that Surrogate Signorelli and Public Administrator Mastroianni used the funds of Suffolk County to annoy, harass, embarrass and investigate plaintiff, his family and associates, in retaliation for plaintiff's actions in other courts (§66), which claims were dismissed with prejudice;

e. In the present complaint, Sassower charges that on February 24, 1978, Surrogate Signorelli caused to be

published and distributed a false and deceptive "diatribe" against him and his wife, which did not, and was not, intended to decide or order anything, and that the "over-publication" of such "diatribe" expressly violated statutory mandate (§12).

A like claim was contained in his 1977 civil rights action where, as part of his third cause of action there, he charged that Surrogate Signorelli and the Suffolk defendants "made and permitted to be made false statements and certification on the records of the court" (§35). In his 1978 civil rights action, as part of his eighth cause of action against Surrogate Signorelli and the Suffolk defendants, Sassower alleged the exact same "diatribe" in paragraphs 124 through 126, which claims were dismissed with prejudice;

f. The complaint here charges that in Sassower's absence, Acting Surrogate Seidell, due to influence allegedly exerted by Surrogate Signorelli, tried, convicted and sentenced plaintiff for criminal contempt, in absentia, knowing that he did not have jurisdiction over plaintiff and knowing that, at such time, plaintiff was engaged in trial in the Supreme Court, Bronx County (§13).*

* See discussion contained in footnote at p. 4, and exhibit "A", which flatly dispel this allegation.

These same exact matters were embraced by Judge Mishler's refusal to enjoin Sassower's arrest and detention pursuant to Acting Surrogate Seidell's warrant of commitment in the 1978 civil rights action. In addition, Judge Mishler denied Sassower's application for leave to serve a second amended complaint there so as to add Acting Surrogate Seidell as a party, and so as to include claims concerning the conduct of the second contempt proceeding, before Acting Surrogate Seidell, upon the basis that such claims would be barred by the doctrine of judicial immunity;

g. The complaint here also charges that Acting Surrogate Seidell, acting in an enforcement capacity, directed execution of a warrant, knowing it to be jurisdictionally defective and constitutionally infirm (§13). It is further charged that the defendants subsequently harassed and defamed plaintiff by repeated "forays" into Westchester and New York Counties, knowing that said conviction and warrant were defective, telling "everyone" that plaintiff was being sought as a convicted person, thereby causing emotional strain and embarrassment to plaintiff and his family. Sassower claims that this was all done in spite of his offer to be arrested "properly" (§13). Again, these claims are effectively dispelled by Judge Mishler's dismissal, with prejudice, of Sassower's application for leave to serve a second amended complaint in his 1978 civil rights action, so as to assert the same claims concerning the

contempt proceedings before Acting Surrogate Seidell, and the implementation thereof;

h. The remaining allegations of the complaint here concern Sassower's apprehension in Westchester County by Deputy Sheriff Grzymalski, (and an unidentified partner), in implementation of Acting Surrogate Seidell's warrant of commitment, alleging denial of Sassower's rights of habeas corpus, denial of his rights as a prisoner, and that other constitutional wrongs were committed against him. In addition, the complaint charges Deputy Sheriff Grzymalski, in language virtually identical to that contained in the state court amended complaint (and in the Southern District action), with assault, with malicious prosecution, and with similar alleged acts of misconduct.

Apart from relying upon the preclusive effect of Judge Mishler's dismissal of Sassower's application for leave to further amend the complaint in his 1978 action to assert claims concerning the Seidell criminal contempt proceedings, we also take this opportunity to quote the following salient holding by the U.S. Court of Appeals for the Second Circuit in its opinion affirming Judge Mishler's prior dismissals:

"In particular, the sheriff and deputy sheriffs acted with reasonable grounds to believe that they were authorized to execute the arrest warrant pursuant to its terms in Westchester County. The process of the Suffolk County Surrogate's Court including an arrest warrant ... extends statewide ... and the sheriff and deputy sheriffs are

obligated to execute the mandate issued by the Surrogate of Suffolk County according to its command"

Also dispositive against Sassower's attempt to assert tort charges stemming from his apprehension and jailing, in pursuance to Acting Surrogate Seidell's conviction of criminal contempt and warrant of commitment, is the additional fact that the contempt conviction has never been overturned (see People ex rel. Sassower v. Finnerty, 96 A.D.2d 585, 465 N.Y.S.2d 533). Thus, unless modified or reversed upon appeal or a re-trial, that conviction is legally conclusive upon the efficacy of the facts necessarily found therein, additionally mandating dismissal of Sassower's claims here. See Matter of Amica Mutual Insurance Co., 85 A.D.2d 727, 445 N.Y.S.2d 820.

Dismissal Upon Statute of Limitations Grounds

10. We fully adopt the argument contained in the companion motion, made on behalf of defendants Signorelli and Seidell, that all of the claims contained in the complaint here are barred by the three year statute of limitations applicable under New York law to actions commenced under 42 U.S.C. §1983, on authority of Pauk v. Board of Trustees, etc., 654 F.2d 856 (2d Circuit, 1981).

Dismissal of Claims Arising Subsequent to the Dismissal of Sassower's Civil Rights Action Brought in 1978

11. As discussed in Point II of our memorandum of law, submitted in connection with our summary judgment

motion in state Supreme Court (Appendix hereto), we contend that the claims in the complaint here of malicious prosecution against Deputy Sheriff Grzymalski, and other claims which arose subsequent to the dismissal of Sassower's prior civil rights actions brought in 1977 and 1978, are nevertheless dismissible under the "transaction" or "factual grouping" test of claim preclusion adopted by the New York Court of Appeals in Matter of Reilly v. Reid, 45 N.Y.2d 24, 407 N.Y.S.2d 645. That case authorizes the dismissal of all claims which arise out of the same "transaction or series of connected transactions" under the policy that "the claims extinguished include all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction or series of connected transactions out of which the action arose" (see discussion at pp. 46-47 of memorandum, citing Matter of Reilly v. Reid, supra, the Restatement of Judgments, 2d, and Zarcone v. Perry at 78 A.D.2d 70, 434 N.Y.S.2d 440-441).

Alternative Request for Stay of Proceedings Of Any
Allegations Not Deemed Dismissible Upon
Res Judicata or Statute of Limitations Grounds

12. It is settled law that the pendency of a prior action in a federal District Court is a ground for dismissal of the same action when subsequently brought in another District Court, United States v. The Haitian Republic, 154 U.S. 118; Lowenschuss v. Kane, 520 F.2d 255 (2d Circuit, 1975); Mississippi Valley Barge Company v. Bulk Carriers

Ltd., 249 F.Supp. 744 (S.D.N.Y., 1965). As we have demonstrated, all of the claims here are also the subject of Sassower's action brought in the Southern District of New York, now on the "suspense calendar" before District Judge Goettel (Docket No. 78 Civ. 4948), pending the disposition of Sassower's state court tort action. As aforesaid, that state court action is itself the subject of a renewed motion for summary judgment by the Suffolk County defendants, who seek its dismissal. The state action has already been dismissed against Surrogate Signorelli, and summary judgment has also been granted in favor of defendant New York News upon the defamation claims against it.

Counsel Fees

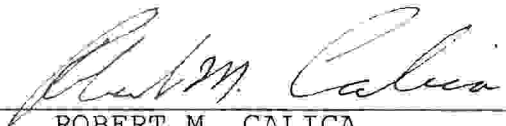
13. We fully adopt the argument made in the companion motion on behalf of Surrogate Signorelli and Acting Surrogate Seidell seeking the recovery of counsel fees against plaintiff George Sassower, on authority of Raffe, etc. v. Citibank, N.A., et al., U.S.D.C., E.D.N.Y., Nickerson, J., Docket No. 84 Civ. 0305, and Brady v. Chemical Construction Corp., et al., United States Court of Appeals, 2d Circuit, Docket No. 84-7097 (dec. July 31, 1984).

14. This and the related cases brought by Sassower are virtually without legal precedent. They all involve the defense of public officials and employees, all acting within the scope of the performance of their governmental duties,

against the single-minded and vexatious assaults of a litigious attorney-plaintiff. It is a burden that has strained the budgets of municipal attorney's offices, taxed the legal and manpower resources of defense counsel beyond all reasonable limits, and has imposed a virtual "reign of terror" upon the courts. Sassower has sued repeatedly, in multiple forums, asserting duplicative and reasserting dismissed claims, as part of his unrelenting assault against judges and justices of the courts, public officials, his lawyer-adversaries, and the reporters of the contempt proceedings against him. Sassower's unceasing, vexatious litigation arising out of his conviction, and subsequent jailings for criminal contempt, has resulted in an outright injunction by the Appellate Division, Second Department, flatly enjoining him from instituting any further proceedings based upon the incident relating to the Suffolk County Surrogate's Court matter in which he is the removed executor. See Sassower v. Signorelli, 99 A.D.2d 358, 472 N.Y.S.2d 702. The pertinent language from that opinion is quoted in the moving affidavit of the Assistant Attorney General, submitted in support of the companion dismissal motion made on behalf of defendants Signorelli and Seidell, and will not be repeated here.

15. As there is ample authority in this Circuit (Brady v. Chemical Construction Corp., supra) and in this District (Raffe, etc. v. Citibank, N.A., et al., supra), for

an award of reasonable counsel fees where, as here, the plaintiff is unreasonably pursuing baseless, frivolous and vexatious litigation, without any legal basis, and in bad faith, an award of counsel fees, in an amount to be fixed by the court, should be imposed against the plaintiff in conjunction with this court's order of dismissal herein.



ROBERT M. CALICA

Sworn to before me this
19th day of September, 1984.



Notary Public

IDA M. COMMINS
Notary Public, State of New York
No. 30-0718810
Qualified in Nassau County
Commission expires March 30, 1985

SURROGATE'S COURT: SUFFOLK COUNTY

In the Matter of the Accounting of

GEORGE SASSOWER,

as Preliminary Executor of the Estate of

EUGENE PAUL KELLY,

Deceased.

File No.
736-P-1972

SURROGATE'S COURT
SUFFOLK COUNTY

MAR 08 1978

ROBERT J. CIRIANO
CHIEF CLERK

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

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

This affidavit is with respect to the Criminal
Contempt proceedings scheduled for March 7, 1978.

Obviously this proceeding is intended to harass
rather than convict since it proliferates with egregious
defects (procedural and substantive) so that one could not
conclude otherwise.

Furthermore any conviction and incarceration may
risk publicity that may expose the chicanery of this Court
under the stewardship of ERNEST L. SIGNORELLI, a result not
intended by ERNEST L. SIGNORELLI.

1. This proceeding has been brought by ANTHONY MASTROIANNI
in his own name. Clearly a criminal proceeding may only be
brought by or on behalf of the sovereign or The People.

As set forth in Blackstone's Commentaries (Book
IV, Chapter 1 (Of the Nature of Crimes and their Punishment):

"The distinction of public wrongs
from private ... (is that) publick
wrongs ... are a violation
of the public rights and duties due

SAJ

to the whole community in its social aggregate capacity ...".

In the case at bar the said ANTHONY MASTROIANNI is an usurper of the public right in his attempt to bring this criminal proceeding in his own name and consequently any such process is a nullity.

That such lack of authority was known to the attorney for ANTHONY MASTROIANNI since the opinion of Hon. GEORGE F.X. MCINERNEY of July 28, 1977 states:

" The differences between a punitive and remedial contempt are described in Samuel Gompers, et al, v. Buck's Stove & Range Co., 221 U.S. 418, 31 S. Ct. 492."

The cited case reveals that ANTHONY MASTROIANNI may not bring a criminal proceeding in his own name.

2. This Court is further advised that by Order to Show Cause returnable March 3, 1978, a motion was made in the United States District Court for the Eastern District of New York to

"restrain ... ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI, and VINCENT G. BERGER, JR. from prosecuting plaintiff for criminal contempt pending the determination of the appeal of ERNEST L. SIGNORELLI from the Judgment and Order which sustained plaintiff's Writ of Habeas Corpus."

Certainly a reversal of the Order of Mr. Justice MCINERNEY would of necessity cause a dismissal of this proceeding because of the constitutional prohibition against "double-jeopardy".

3. As part of the same Order to Show Cause, your

