

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
GEORGE SASSOWER,

Plaintiff,

Docket No.  
84 Civ.2989  
(JM)

-against-

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

Defendants.  
-----x

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of GEORGE SASSOWER, Esq., duly sworn to on the 21st day of September, 1984 and on all papers and proceedings had heretofore herein, the undersigned, will cross-move this Court before Hon. Jacob Mishler, United States District Judge, at the United States Courthouse, Uniondale, New York, on the 5th day of October, 1984, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as Counsel may be heard for an Order dismissing and/or denying the Suffolk County Attorney's Notice of Motion, dated September 19, 1984, without prejudice to a proper re-submission, containing a clear and accurate statement of probative facts and contentions, with the supporting documents and

affidavits, and/or denying his motion pending completion of pre-trial disclosure, together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, are to be served upon the undersigned at least three (3) days before the return date of this motion, with an additional five (5) days if such service is made by mail.

Dated: September 21, 1984

Yours, etc.,

GEORGE SASSOWER, Esq.  
Attorney for plaintiff  
pro se  
2125 Mill Avenue,  
Brooklyn, New York, 11234  
(212) 444-3403

To: Reisman, Peirez & Reisman, Esqs.  
Att: Robert M. Calica, Esq.  
Robert Abrams, Esq.  
Att: Dewey Lee, Esq.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
GEORGE SASSOWER,

Plaintiff,

Docket No.  
84 Civ.2989  
(JM)

-against-

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

Defendants.  
-----x

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

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

This is a cross-motion for an Order  
dismissing and/or denying, the Suffolk County Attorney's  
Notice of Motion, dated September 19, 1984, without  
prejudice to a re-submission, containing a clear and  
accurate statement of probative facts and contentions,  
with the supporting documents and affidavits, and/or  
denying his motion pending completion of pre-trial  
disclosure, together with such other, further, and/or  
different relief as to this Court may seem just and  
proper in the premises.

1a. This is factually an involved action, spanning many years, wherein there is a special duty to the Court for counsel to be accurate and clear, as heretofore noted by Hon. MARTIN B. STECHER (Exhibit "A").

b. The Suffolk County Attorney's Notice of Motion, dated September 19, 1984, a Rule 12(b) motion, is supported by his third submission to Hon. Martin B. Stecher, of the State Supreme Court, for partial summary judgment, pursuant to CPLR 3212[e], the state's analogue to Rule 56.

c. The Post Office sets the weight of the submitted bound volume alone, as more than four (4) pounds, and it does not contain a single -- not one -- probative affidavit.

Nor is there even a quoted word of his clients examination before trial -- not a single word -- of his clients' testimony from almost 1,000 pages of transcript.

Nor does the Suffolk County Attorney even attempt to submit to His Honor a single document one of his false, misleading, if not perjurious, documents or affidavits that was submitted in support of the defendant's Rule 12(b) motion, which led to Your Honor's decisions of September 20, 1977 and April 20, 1978 -- not a single one!

It is all Calica [who entered this matter on or about January 1, 1984], on Calica -- ex cathedra!

d. On a much less voluminous, and a clearer submission, Mr. Justice Stecher stated (Exhibit "A"):

"The county attorney of Suffolk County ... moves for an order ... granting partial summary judgment in favor of defendants dismissing those portions of the amended complaint herein detailed ... upon the ground that said claims are barred by the res judicata effect of prior determinations in certain litigation among these parties and others in the U.S. District Court Eastern District of New York. ... [emphasis in original]

This is one of the most frustrating sets of papers submitted to me in a considerable period of time. ... The moving papers, several pounds in weight, contain a single 14-page attorney's affidavit which fails to identify the issues. The second paragraph reiterates that this is ... It is followed by four pages entitled ...; three pages entitled ...; four pages involving ... and the balance of the affirmation is entitled ... . A memorandum of law, 57 pages in length, not only makes reference to the relief sought in the notice of motion for .... but also makes reference to relief requested for pleading defects ... .

At page 13 of the memorandum, the author writes of a 'detailed analysis of the pleading in each of the dismissed Federal actions ... A careful reading of all 57 pages fails to identify which causes of action in the complaint under attack should be dismissed; which causes of action in the Federal pleadings they duplicate; and which portions of the Federal judgment necessarily make final decisions with respect to the present complaints' allegations..

I have no doubt that at some point all of these items are covered in the affidavit and memorandum of law; and I appreciate the confidence in me demonstrated by the moving attorney in his assurance that if I look carefully enough I will be able to discover the grounds for dismissal of the yet to be identified portions of the present complaint.

Nonetheless, I find it to be the attorney's obligation to make that analysis, first, so that the Court may be informed of the precise claims made and second, so that the adversary may be in a position to respond. [emphasis supplied]

If the motion seeking stay of disclosure heretofore ordered is related to the summary judgment motion and insofar as disclosure has heretofore been ordered by other Judges with a denial of a stay by the Appellate Division, the stay requested of me is likewise denied."

c. It would serve no purpose for this Court to engage in a similar waste of judicial effort, only to come to the same conclusion -- denial, without prejudice!

d. Since it is generally asserted that one must set one hundred words to correct a single false word, plaintiff's submission would probably inundate Your Honor's office.

2a. Separate federal and state actions were simultaneously brought, at a time when it was questionable whether the state could adjudicate §1983 actions (Brody v. Leamy (90 Misc.2d 1, 393 N.Y.S.2d 243)).

b. Submitted to this Court is Mr. Calica's "Memorandum of Law" for this Court's consideration in the State Court.

c. Thus, the Suffolk County Attorney has imposed upon your deponent the burden of determining which remarks apply only to the state action and which apply to both state and federal.

Then, deponent has to hope and pray that His Honor agrees with deponent, for if His Honor does not, plaintiff will have failed to respond to material which he could have.

d. Even the alleged facts have to be sifted in order to determine, which are federal, which are state, and which are both -- which clearly exist at bar (e.g., the solicitation by Signorelli of the reporter for the New York News, for the publication of a false story, the morning plaintiff's habeas corpus trial was to commence).

3a. The Suffolk County Attorney's (as well as the Attorney General's) motion state that it is pursuant to Rule 12(b), but the more than four (4) pound set of papers were prepared the the state's CPLR 3212(e) motion, the analogue of Rule 56.

b. Thus, at the threshold, plaintiff is uncertain whether to respond to the Suffolk County Attorney's motion, as one under Rule 12(b)6 or Rule 56?

c. Plaintiff has no objection to Rule 56 treatment, if so requested by defendants' attorneys and/or if so desired by His Honor.

d. Whether it be "fish or fowl", "12(b) or 56", plaintiff believes he is entitled to know beforehand.



e. If it is Rule 12(b)6, then deponent respectfully requests that the Suffolk County Attorney resubmit his motion, with all documents and statements not relevant to his motion -- pruned, deleted, and omitted!

4a. As your deponent will show this Court in following papers, there were good, valid, even compelling reasons, for deponent not requesting Rule 56 treatment in the prior actions, and Your Honor simply assumed certain representations made by the Suffolk County Attorney and Attorney General to be true, when in fact, as later admissions and confessions reveal, they were false, if not outright perjurious.

b. This is stated without any incrimination whatsoever, because it was just impossible, even outside the judicial forum to have friends believe that a former Assistant District Attorney and County Court Judge would incarcerate anyone without any accusatory instrument, without notification of a trial or hearing, and then try, convict, and sentence, in absentia.

At the time it was plainly impossible for anyone to believe that Signorelli had "ordered" deponent to enter into a contract of sale; that everyone, in every respect, including Signorelli himself, had always recognized deponent as the executor of the estate; and then aborted the contract of sale, as unauthorized.

In later affidavits, deponent will show, from this Court transcript, that not only did His Honor doubt what the Suffolk County Sheriff's Office was doing, but even deponent could not believe what was happening to him. Nevertheless, the documents from the Suffolk County Sheriff's Office, prove that it actually happened.

c. In short -- it is either "fish or fowl", "Rule 12(b) or Rule 56", and deponent believes that "fundamental fairness" mandates crystal clear notice, so that he may respond accordingly.

5a. Under a "quasi-law of the case" approach, where the same judicial problems has arisen, the state courts, have ordered, directly and/or indirectly that the Suffolk County's motions for summary relief not be made until the completion of pre-trial disclosure.

b. That was the mandate of several jurists in the Supreme Court, New York County system, including the Appellate Division, recognized by Mr. Justice Stecher in his decision of April 6, 1984 (Exhibit "A").

c. Nevertheless, prior to completion of pre-trial disclosure, the Suffolk County Attorney moved again.

Again, Mr. Justice Stecher, denied without prejudice, the Suffolk County Attorney's motion in an Order dated August 2, 1984, stating in part:

"The [Suffolk County] motion-in-chief is denied with leave to renew the motion at which time all [after completion of all pre-trial disclosure] the papers to be considered are submitted upon the call of the Special Term, Part I calendar."

d. Then why, has once again, the Suffolk County Attorney, for the third time, moved for partial summary judgment before Hon. Martin B. Stecher?

The Suffolk County Attorney has again moved, before a single witness has completed his examination?

The Suffolk County Attorney has again moved, before a court ordered examination before trial of one witness has not even commenced?

A reading of the pre-trial disclosure reveals the Suffolk County defendants are being hurt badly, as further papers by deponent will reveal, and it is an obvious attempt by the Suffolk County Attorney, to abort further disclosure.

6a. In order to understand the elements of this action it is necessary to know and understand (a) the attempt by Signorelli to suppress the underlying facts; (b) the "off the record" discussion between His Honor, Erick F. Larsen, Esq. and your deponent; (c) the two, probably unintentional blunders by Presiding Justice Milton Mollen; and (d) why the defendants refused or failed to obey the writ of habeas corpus, directing plaintiff's release, and the incarceration of plaintiff's wife and child, on Saturday, June 10, 1978.

b. As will later be shown, the in absentia hearing, conviction, and sentence of plaintiff to be incarcerated, and the actions of Judge Harry Seidell with respect thereto, who had actual knowledge that his actions were unconstitutional and illegal can only be understood and appreciated by the "off the record" discussions with His Honor hereinbefore mentioned.

c. The point is -- with the examination of Erick F. Larsen, Esq., on September 18, 1984, only a few days ago, and the "off the record" discussion with Your Honor, the nucleus of understanding is being reached, and further disclosure will make that manifestly clear.

In short -- expeditious disclosure should come before summary treatment applications.

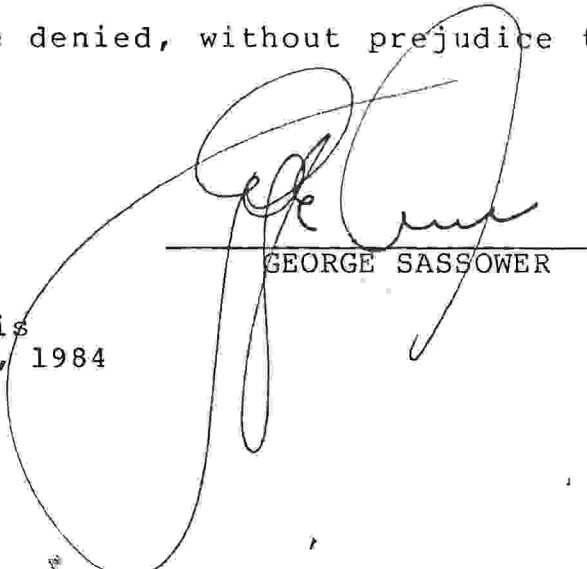
7a. Deponent desires to make it manifestly clear that the "off the record" discussions with His Honor were proper in every respect.

b. There was nothing in the examination before trial of Erick F. Larsen, Esq., on September 18, 1984, either by words or expression to indicate that he did not also believe such discussions by Your Honor were proper and appropriate in every manner.

c. While there may be a differences in the testimony, initially, on what His Honor stated in such "off the record" discussions, deponent believes that it was laudatory in every respect in everyone's views.

Furthermore, deponent believes that some further examinations before trial will dissolve any substantial conflict on what His Honor stated.

WHEREFORE, it is respectfully prayed that this cross-motion be granted, and the Suffolk County Attorney's motion be denied, without prejudice to a re-submission.



GEORGE SASSOWER

Sworn to before me this  
21st day of September, 1984

BARBARA TATESURE  
Notary Public State of New York  
No. 24-4760746  
Qualified in Kings County  
Commission Expires March 30, 1985

SUPREME COURT : COUNTY OF NEW YORK  
SPECIAL TERM : PART I

(387)

-----X  
GEORGE SASSOWER,

Plaintiff,

- against -

Index 5774/83

ERNEST L. SIGNORELLI, ANTHONY  
MASTROIANNI, JOHN P. FINNERTY,  
ALAN CROCE, ANTHONY BRYMALSKI, ET AL.

Defendants.

APR 5 1984

-----X  
STECHEER, J.:

The county attorney of Suffolk County acting on behalf of defendants who are for the most part employees of the County moves for an order "pursuant to CPLR 3212(e), granting partial summary judgment in favor of defendants... dismissing those portions of the amended complaint herein detailed... upon the ground that said claims are barred by the res judicata effect of prior determinations in certain litigation among these parties and others in the U.S. District Court Eastern District of New York." An order also is sought staying disclosure.

This is one of the most frustrating sets of papers submitted to me in a considerable period of time. Quite obviously it is not the complaint which is being attacked but "those portions" claimed to be barred by the doctrine of issue preclusion. The moving papers, several pounds in weight, contain a single 14-page attorney's affidavit which fails to identify the issues. The second paragraph reiterates that this is a motion "dismissing those portions of the amended complaint... which are barred by the res judicata effect..." It is followed by four pages entitled "Background and Prior Proceedings;" by three pages entitled "Collateral Litigation by Sassower;" four pages involving application for a stay of proceedings and the balance of the affirmation is

entitled "Disclosure Proceedings" and "Conclusion." The memorandum of law, 57 pages in length, not only makes reference to the relief sought in the notice of motion for partial summary judgment but also makes reference to relief requested for pleading defects, another action pending and a determination to be made based on the Second Department decision other than the Federal determinations.

At page 13 of the memorandum, the author writes of a "detailed analysis of the pleadings in each of the dismissed Federal actions and the present amended complaint." A careful reading of all 57 pages fails to identify which causes of action in the complaint under attack should be dismissed; which causes of action in the Federal pleadings they duplicate; and which portions of the Federal judgment necessarily make final decisions with respect to the present complaints' allegations.

I have no doubt that at some point all of these items are covered in the affidavit and the memorandum of law; and I appreciate the confidence in me demonstrated by the moving attorney in his assurance that if I look carefully enough I will be able to discover the grounds for dismissal of the yet to be identified portions of the present complaint.

Nonetheless, I find it to be the attorney's obligation to make that analysis, first, so that the Court may be informed of the precise claims made and, second, so that the adversary may be in a position to respond.

If the motion seeking stay of disclosure heretofore ordered is related to the summary judgment motion and insofar as disclosure has heretofore been ordered by other Judges with a denial of a stay by the Appellate Division, the stay requested of me is likewise denied.




Denial of these motions is, of course, with leave to renew on proper papers and on such renewal the Justice presiding in Special Term, Part 1, may, in his discretion, refer this submission to me. I do not require that the moving attorneys again reproduce all of the exhibits and the affidavit contained herein. They may be incorporated by reference in whatever additional papers are to be submitted.

What is missing here is an identification of the causes of ~~action~~ action under attack; their correlation, if any, to the causes of action contained in the dismissed complaint or complaints; their correlation, if any, to the judgment of dismissal; and their correlation, if any, to the opinion or opinions in the Federal action.

Plaintiff's cross-motion is denied. There is no such thing as a motion to dismiss a motion. Motions are either granted or denied.

This memorandum constitutes the decision and the order of the Court.

Dated: April 6, 1984



J.S.C.

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

ELENA R. SASSWER, first being duly sworn,  
deposes, and says:

I am over the age of 21, reside at 2125 Mill  
Avenue, Brooklyn, New York, 11234 and not a party to  
this action.

That on the 22nd day of September, 1984, I  
served the within Notice of Cross-Motion and Affidavit  
by enclosing a true copy thereof in a sealed envelope  
with sufficient postage in a mail box in the State of  
New York, addressed to Reisman, Peirez & Reisman, Esqs.  
and Hon. Robert Abrams at their last known addresses.

*Elena R. Sasswer*  
ELENA R. SASSOWER

Sworn to before me this  
22nd day of September, 1984

*[Handwritten signature]*  
*John Phillip J. [unclear]*  
*Quail in the City*  
*City of New York*  
*22/9/84*