

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
GEORGE SASSOWER, individually and as trustee etc.,

Plaintiff,

-against-

VINCENT G. BERGER, JR.; et al.,

Defendants.
-----x

File #
86Civ3797
[JM]

PLAINTIFF'S MEMORANDUM

GEORGE SASSOWER, Esq.
Attorney for plaintiff,
pro se.
51 Davis Avenue,
White Plains, N.Y. 10605
(914) 949-2169

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
GEORGE SASSOWER, individually and as trustee etc.,

Plaintiff,

File #
86Civ3797
[JM]

-against-

VINCENT G. BERGER, JR.; et al.,

Defendants.

-----X
PLAINTIFF'S MEMORANDUM

STATEMENT

1. Plaintiff, by this motion, (1) seeks to compel the defendants to bring to an expeditious conclusion, on the merits, under a constitutional scheme, a ten (10) year old non-summary criminal contempt proceeding, wherein the charge is that he "wilfully failed to turn over the books and records of the Estate of Eugene Paul Kelly; (2) compel the state judicial powers to take such administrative steps as may be necessary to prohibit the unbridled control of non-summary criminal contempt proceedings by civil adversaries in all such proceedings; and (3) to insure that plaintiff is not made the subject of retaliatory action by state officials, judicial or otherwise, for resorting to the federal forum for relief.

2a. Once again, after a ten (10) day trial, plaintiff has been resoundingly vindicated on the (civil) accusation that "he failed to turn over the books and records of the Estate of Eugene Paul Kelly", nevertheless collateral, bad faith, and harassing proceedings pend on such criminal charge in a distant forum.

b. Previously, after a twenty (20) day (quasi-criminal) hearing, plaintiff was resoundingly vindicated on the (quasi-criminal) same accusation.

c. These sham, harassing, bad faith, collateral proceedings, continue, while the defendants avoid and refuse to proceed on the main charge against plaintiff, for which he has been, as heretofore noted, resoundingly vindicated in civil and quasi-criminal extensive hearings.

d. The central problem is that in the state forum, non-summary criminal contempt, is initiated, prosecuted, and completely controlled by adversarial civil litigants and their attorneys.

e. Particularly egregious, is that these self-styled public prosecutors, operating contrary to the code of professional and constitutional ethics, resort to the media; conceal exculpatory material; and indeed, rely, as here, on perjurious allegations; in order to criminally harass for civil, and other, improper ends.

b. The time has come for the state judiciary system to recognize that non-summary criminal contempt comes under the protective umbrella of the XIV Amendment, and basic federal constitutional guidelines must be followed (Polo Fashions v. Stock Buyers, 760 F.2d 696 [6th Cir.], amicus invited, U.S. , 106 S.Ct. 565, 88 L.Ed2d 550; cf. U.S. ex rel. Vuitton v. Klayminc, 780 F2d 179 [2d Cir.]).

c. The criminal prosecuting authorities have consistently refused to prosecute plaintiff, on the aforementioned, or any other charges, and unquestionable they have been motivated, in some part, by the information disclosed in the recently concluded trial before Acting Surrogate BURTON S. JOSEPH, which information had heretofore been concealed from plaintiff.

d. At the just concluded hearings before Hon. BURTON S. JOSEPH, by happenstance, not only was a document which heretofore VINCENT G. BERGER, JR., Esqs. contended was never turned over to him, found in his files, but also it was disclosed that since 1977, ANTHONY MASTROIANNI, has been in possession of the books and papers of ALBERT BARANOWSKY, deceased, who was the accountant for EUGENE PAUL KELLY during his lifetime, and such books and records were given to him at that time by the District Attorney's Office of Suffolk County.

The conscious concealment of such fact, from all judges and courts, outside of the Surrogate's Court, Suffolk County, was a blatant fraud upon them and the plaintiff.

e. In any event, after ten (10) years, plaintiff is entitled to a voluntary disclosure of all exculpatory evidence (Brady v. Maryland, 373 U.S. 83); relevant information that may be demanded (United States v. Agurs 427 U.S. 97, 106), to be prosecuted by constitutionally appropriate person (Polo Fashions v. Stock Buyers, supra; U.S. ex rel. Vuitton v. Klayminc, supra), and an expeditious proceeding.

4. Additionally, to protect its own jurisdictional bailiwick, this federal court must clearly state that no retaliatory action can be taken in the state tribunals for resorting to the federal forum.

POINT I

STATE NON-SUMMARY CRIMINAL CONTEMPT PROCEEDINGS MUST BE PROSECUTED WITH DUE REGARD TO FEDERAL CONSTITUTIONAL MANDATE.

1a. State non-summary criminal contempt proceedings clearly comes under the protective umbrella of the XIV Amendment in Bloom v. Illinois (391 U.S. 194), the state practice of having such criminal proceedings being placed within the unbridled control of adverse civil litigants, deprives the accused of due process, equal protection, and other fundamental federal constitutional rights.

b. Nevertheless in the state courts, they are invariably prosecuted solely by the civil adversaries, whose end, almost invariably, is civil, rather than criminal.

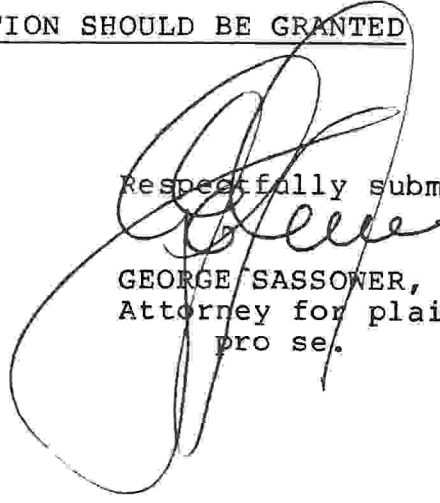
c. These criminal proceedings can no longer remain in the unbridled control of civil adversaries, or under the control of a judiciary which employes such proceedings to conceal, as here, judicial misconduct.

2. The twenty (20) days of testimony before Hon. ALOYSIUS J. MELIA, and his finding, as well as the ten (10) hearing before Mr. Justice BURTON S. JOSEPH, clearly reveals that about \$1,000,000 of governmental, estate, and plaintiff's funds were expended on this Captain Ahab pursuit of plaintiff and his family, in order to conceal the "plundering", "blundering", and "barbaric" practices of Surrogate ERNEST L. SIGNORELLI, and that of his entourage.

CONCLUSION

PLAINTIFF'S MOTION SHOULD BE GRANTED

Respectfully submitted,


GEORGE SASSOWER, Esq.
Attorney for plaintiff,
pro se.