

Second Circuit Rule 27(a) governing use of this form is reprinted on reverse. Note requirement that lower court opinion or agency decision be attached.

77 7511

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket Number

GEORGE SASSOWER, Plaintiff-Appellant, -against- ERNEST L. SIGNORELLI, et al., Defendants-Appellees. Use short title

NOTICE OF MOTION state type of motion for Vacate Disposition of District Court (without affirming or reversing) and remanding same with other relief.

MOTION BY: (Name and tel. no. of attorney in charge)

GEORGE SASSOWER, Esq. 212-962-5757 Has opposing counsel consented? [] Yes [X] No Has service been effected? [X] Yes [] No Is oral argument desired? [X] Yes [] No (Substantive motions only)

OPPOSING COUNSEL: (Name and tel. no. of attorney in charge) LEONARD J. PUGATCH, Esq.-212-488-3014 VINCENT G. BERGER, JR. 516-864-6443

Requested return date: (See Second Circuit Rule 27(b)) Feb. 14, 1978

Date of argument of appeal, if scheduled: February 27, 1978.

Judge or agency whose order is being appealed: Hon. Chief Judge JACOB MISHLER.

EMERGENCY MOTIONS, MOTIONS FOR STAYS SANFORD L. & INJUNCTIONS PENDING APPEAL DAVIDOW, Esq. Has request for relief been made below? 516-475-2800 (See F.R.A.P. Rule 8.) [] Yes [] No Would expedited appeal eliminate need for this motion? [] Yes [] No If no, explain why not:

Brief statement of the relief requested: Vacate disposition of District Court (without affirming or reversing), remanding same for disposition in light of subsequent events, alternatively permission to file a Supplemental Appendix containing all papers on subsequent proceeding in Dist. Court. Previous requests for similar relief and disposition: None.

Statement of the issue(s) presented by this motion:

Has subsequent events rendered the First and Second Causes of action moot? Has subsequent events caused the Third Cause of Action to become a non-final disposition and realistically only part of a bifurcated proceeding? Alternatively should there be filed with this Court copies of all papers submitted and emanating from the District Court subsequent to this appeal?

Brief statement of the facts (with page references to the moving papers):

Based on subsequent facts the First and Second Causes of Action have been refiled in the District Court, with some modification, which plaintiff believes may render the appeal on such causes "moot" (pp 1-2). Based on subsequent facts the Third Cause of Action has been refiled (Seventh Cause of Action in subsequent Complaint) which seems to mandate a remand so that the matter might be disposed of as a whole (pp.2-7).

Summary of the argument (with page references to the moving papers):

Remand, without affirming or reversing, will avoid "unnecessary judicial rulings (and) prevent redundant legal proceedings" (Robinson v. Richardson, 556 F 2d 332, 336-5th Cir) (p. 1), and under the circumstances at bar seems mandated by the Federal Rules of Civil Procedure which requires (generally) only appeals from final dispositions.

Feb. 1, 1978 Date

GEORGE SASSOWER The name signed must be printed beneath

ORDER

IT IS HEREBY ORDERED that the motion

Kindly leave this space blank.

be and it hereby is granted denied

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
GEORGE SASSOWER,

Plaintiff-Appellant,

Index No.
77-7511

-against-

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

Defendants-Appellees.
-----x

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

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

I am the plaintiff-appellant in the within proceeding
and make this motion to vacate the Judgment and Orders of the
District Court in view of the subsequent events, which will avoid
"unnecessary judicial rulings (and) prevent redundant legal
proceedings" (Robinson v. Richardson, 556 F2d 332, 336-5th Cir.).

Alternatively, deponent prays that he be permitted
to file a*Supplemental Appendix or submit to this Court copies
of the papers filed in the District Court.
-----x

* With respect to the document omitted in the Joint Appendix,
plaintiff requests that he be permitted to file a Supplemental
Appendix or tender copies of same to this Court on oral argument
as a matter of right (Exhibit 4).

1. As my Brief states (p. 27):

"The complaint (on which this appeal is based) was filed shortly after plaintiff's release from incarceration and the acts complained of in many respects were of a continuing nature."

By reason of subsequent acts by most of the defendants, your deponent reinstated an action against these defendants (and others) in the Eastern District of New York (File # 78Cl24); deponent has moved in that action to stay (the three main defendants) "from harassing plaintiff and those with whom he has business, professional and social engagements", and deponent has been served with an Order (State) to Show Cause to Punish me for Criminal Contempt.

Accordingly, your deponent believes that the dismissal of plaintiff's First and Second Causes of Action, because, as stated by the District Court of a failure to set forth "a case or controversy" and for "mootness", and which has been reasserted in the new action, has become "academic and moot". This is not to infer that your deponent believes that the disposition of the District Court was correct. On the contrary, the subsequent events seem to bear out plaintiff's contentions.

Consequently, if this Honorable Court is in agreement with the reasoning of your deponent, then insofar as the First and Second Causes of Action are concerned, the disposition of the District Court should be vacated (without affirming or reversing) and the matter remanded in light on the subsequent

events.

Naturally, this would not preclude the District Court from dismissing the First and Second Causes of Action in the pending complaint on the same or different grounds.

2. The Third Cause of Action, for money damages, reasserted with many other wrongs committed by defendants, is contained in plaintiff's "Seventh Cause of Action" in the most recent filed complaint. Many of the allegations are based on acts subsequent to the filing of the original complaint.

Still more recent is the Order to Show Cause signed by Chief Judge JACOB MISHLER returnable on February 3, 1978 based on further acts of terror by some of the defendants.

Cognizant that the original District Court papers, a voluminous Appendix, and Briefs by all parties are before this Court, a very brief summary may be in order.

Because of claimed illegal and irregular conduct of the defendant, ERNEST L. SIGNORELLI, Surrogate of Suffolk County, plaintiff commenced a proceeding against him.

Two weeks later, in plaintiff's absence, this defendant charged deponent with criminal contempt, took testimony, rendered a verdict, and imposed the maximum jail sentence of thirty days in the Suffolk County Jail.

Early the following morning, two members from the Office of the Sheriff of Suffolk County, came to plaintiff's home in Westchester County, placed him under arrest and transported him

to Suffolk County.

Plaintiff was unaware of these "mock proceedings" wherein he had been found guilty and sentenced until his arrest.

From the time of plaintiff's arrest and for five (5) hours thereafter, plaintiff was prohibited from presenting his quickly prepared Writ of Habeas Corpus to any Court or Judge (State or Federal) or to communicate with counsel for aid in securing his release from this patently illegal arrest.

In fact when this arresting party arrived in Suffolk County, plaintiff insisted that he be taken to the Suffolk County Jail (as mandated by the Contempt Order) rather than to the defendant, ERNEST L. SIGMORELLI, since plaintiff was of the opinion, proved correct, that he had a better chance of obtaining his constitutional right of access to the courts to present his Writ of Habeas Corpus while in the custody of Sheriff-Jailor than with the Judge-Jailor, ERNEST L. SIGMORELLI.

Plaintiff's Writ of Habeas Corpus was eventually signed and plaintiff released on bail.

Prior to the trial on the Writ of Habeas Corpus (which was obviously sustained), plaintiff filed this action, which is the subject of this appeal, plaintiff claiming that the aforementioned acts by defendant, ERNEST L. SIGMORELLI, and several others were not the subject of any immunity doctrine.

Based upon further alleged acts of misconduct, plaintiff filed another action, as hereintofore stated, which plaintiff

claims no immunity exists.

Albeit the existence of all this litigation, the defendant, ERNEST L. SIGNORELLI, has refused to recuse himself in litigation involving your deponent in his Court and his conduct has been such that your deponent has gone to District Court for injunctive relief.

As the supporting affidavit to the Order to Show Cause reveals some of the more recent actions against your deponent are as follows:

a. On January 25, 1978, deponent telephoned an attorney for some advice, and as a result thereof the defendant, ERNEST L. SIGNORELLI, "directed" ^{that attorney} (over whom he has no jurisdiction) to appear before him (in Riverhead) the following morning at 9:30 a.m.

b. A Subpoena Duces Tecum had been served on deponent's wife returnable on January 24, 1978 in Riverhead, when in fact there was no proceeding pending in that Court for that day.

c. Telephone calls to deponent's wife, with threats to her about your deponent, causing her emotional concern.

d. On January 26th, 1978, a telephone call to deponent's wife, with a "direction" from defendant, ERNEST L. SIGNORELLI, that she appear before him the next day (albeit the complete absence of jurisdiction to make such "direction").

e. On January 26th, 1978, at least five (5) telephone calls to the Appellate Division concerning plaintiff's presence in that Court that day in the argument of an appeal

f. On January 25, 1978, the defendant, VINCENT G. BERGER, JR., the attorney for the Public Administrator, an appointee of the defendant, ERNEST L. SIGNORELLI, admitted on the record that for several months four (4) investigators have been "staked out" against your deponent, two of them at deponent's home and two of them at the office out of which deponent operates professionally.

As the complaint alleges, spurious badges and shields have been exhibited, which resemble badges and shields of the Police Department or Sheriff's Office of Suffolk County. Understandably your deponent has been greatly embarrassed and professionally damaged by such acts.

g. On January 25th, 1978, deponent was "trailed" by the Surrogate Court Attendant which prevented your deponent on checking on some matters.

Naturally at the appropriate time your deponent intends amend his present complaint to include the aforementioned acts done under "color of state law" and violative of the United States Constitution and laws.

Assuming arguendo, that this Honorable Court affirms the disposition of the District Court, the present action pending in District Court will still be extant and viable.

In effect, in the event this Court affirms, it will be disposing only a portion of a cause of action, contrary to the Federal Rules of Civil Procedure.

Deponent believes that under the circumstances at bar, the disposition of the District Court should be vacated (without affirming or reversing) and remanded so that the entire matter may be disposed of as one proceeding and not in a bifurcated fashion.

Annexed hereto is the verified complaint (File No. 78 C 124) (Exhibit 1); the Order to Show Cause dated January 27, 1978 and returnable February 3, 1978 (Exhibit 2); the Order to Show Cause to Punish (plaintiff) for Contempt (Exhibit 3), all with affidavits and exhibits which are annexed thereto.

With respect to the Order to Show Cause to Punish Plaintiff for Contempt (Exhibit 3), your deponent expects to have a response ready within a few days and begs leave to submit such response at such time.

With respect to the Order to Show Cause pending in the District Court, your deponent has not received any responding papers thus far.

The Joint Appendix, prepared by the Attorney General, omitted an Exhibit (which deponent will assume was inadvertent), which plaintiff believes is the most important document in attempting to fasten liability on the Assistant Attorney General.

It is only a two page letter (exhibit 4) for which plaintiff requests permission to tender to the Court on oral

argument rather than incorporate just such document in a Supplemental Appendix, which your deponent is willing to do if this Court so desires.

Such request is of course academic in the event the disposition is vacated on motion as suggested by your deponent.

WHEREFORE, your deponent respectfully prays that relief be granted in accordance with this affidavit together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

GEORGE SASSOWER

Sworn to before me this
1st day of February, 1978.

DUDLEY GAFFIN
Notary Public, State of New York
No. 31-4620888
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30 1978