

DEFENDANT'S NOTICE OF MOTION  
STATE OF NEW YORK : COURT OF CLAIMS

-----X  
In the Matter of the Claim of :  
GEORGE SASSOWER, :  
Claimant. :  
-----X

NOTICE OF MOTION  
TO DISMISS CLAIM

Claim No. 62894

S I R :

PLEASE TAKE NOTICE that upon the claim verified on the 5th day of March, 1979, Exhibit "A" attached, and upon the annexed affirmation of SETH D. CORWIN, Assistant Attorney General, dated March 21, 1979, in support of the State's motion, and upon all the proceedings had in the above-entitled matter, the State will move this court at a Regular Motion Term thereof, to be held at the Court of Claims, Two World Trade Center, 84th Floor, New York City, on the 17th day of April, 1979, at 10:00 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order pursuant to Rules 3016(a) and 3211(a), subds. 2, 5, 7 and 8 of the CPLR, and the Court of Claims Act Sections 8 and 10, dismissing the claim on the grounds that the claim was untimely filed, and that the claim fails to state a cause of action against the State of New York, that the State is immune from suit and that the acts complained of are privileged, and for such other and further relief as the court may deem just and proper.

Dated: New York, New York  
March 21, 1979

Yours, etc.,

ROBERT ABRAMS  
Attorney General of the  
State of New York  
Attorney for the State  
of New York  
Office & P. O. Address  
Two World Trade Center  
New York, NY 10047  
Tel. No. (212) 488-4594

FOR GEORGE SASSOWER, LSQ.  
Attorney for Claimant - Pro se  
30 Mildred Parkway  
New Rochelle, NY 10804

SETH D. CORWIN, ESQ. -AFFIRMATION-DEFENDANT  
STATE OF NEW YORK : COURT OF CLAIMS

-----X

In the Matter of the Claim of :  
GEORGE BASSOWER, :  
Claimant. :

AFFIRMATION IN SUPPORT

Claim No. 62894

-----X

STATE OF NEW YORK )  
                          : SS. )  
COUNTY OF NEW YORK)

SETH D. CORWIN, an attorney at law, admitted to practice in the State of New York, duly affirms the following under the penalties of perjury:

I am an Assistant Attorney General of the State of New York assigned to the defense of the above-captioned claim and am fully familiar with the facts as alleged in the claim.

The claim, a copy of which is attached as Exhibit "A", seeks damages as a result of statements termed, variously, "irrelevant", "gratuitious" and "libelous". The statements, it is alleged, were issued on November 6, 1978, and, thus, the claim filed on March 9, 1979, is untimely, pursuant to § 10, subd. 3, of the Court of Claims Act.

Rule 3016(a) of the CPLR requires that in a claim for libel, the words complained of must be set forth with particularity. Such was not done herein and, therefore, mandates a dismissal.

Additionally, the State seeks dismissal of the claim for failure to state a cause of action. Assuming, without conceding, that some of the statements in the Appellate Division decision were gratuitous or irrelevant, this cannot be the basis of liability and, thus, no cause of action is stated. So far as any statements alleged to be libelous, it is submitted that such categorization cannot be the case. The Appellate Division of the Supreme Court is a court of intermediate appellate jurisdiction. Its findings and statements in its decisions must be considered to be true unless reversed by a court of superior authority. Until such findings or statements have been reversed or vacated, they must be deemed true. A collateral attack on an Appellate Division decision cannot be maintained in this court.

Further grounds for dismissal are urged in that the Appellate Division and its Justices are absolutely immune insofar as their judicial duties are concerned. Also, the State is not liable for any alleged torts committed by a judge.

WHEREFORE, it is respectfully requested that the State's motion be granted in all respects and the claim be dismissed.

Dated: New York, New York  
March 21, 1979

/s/ Seth D. Corwin  
SETH D. CORWIN  
Assistant Attorney General