

STATE OF NEW YORK ; COURT OF CLAIMS

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In the Matter of the Claim of ;
GEORGE SASSOWER, : NOTICE OF MOTION
-against- : Claim No. 67058
THE STATE OF NEW YORK, ROBERT :
ABRAMS and STEPHEN M. JACOBY, :
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S I R :

PLEASE TAKE NOTICE, that upon the claim and the annexed affirmation of SETH D. CORWIN, Assistant Attorney General, dated October 15, 1982, in support of the State's motion, and upon all the proceedings had in the above-entitled matter, the defendants, will move this Court at a Regular Term thereof, to be held at the Court of Claims, 44 South Broadway, 15th Floor, White Plains, New York 10601, on the 9th day of November, 1982 at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order, pursuant to Section 3211(a) subds. 2, 5, 7 & 8 of the Civil Practice Law and Rules and Sections 8 & 9 of the Court of Claims Act, dismissing the claim on the grounds that the Court does not have jurisdiction of the subject matter of the claim; that the claim fails to state a cause of action; that the Court does not have jurisdiction of the persons of the defendants, ROBERT ABRAMS And STEPHEN M. JACOBY, and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, must be served upon the undersigned at least five (5) days prior to the return date of this motion, pursuant to CPLR 2214(b).

Dated: New York, New York
October 15, 1982

Yours, etc.,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendant
State of New York
Office & P.O. Address
Two World Trade Center
New York, New York 10047
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TO: GEORGE SASSOWER, ESQ.
283 Soundview Avenue
White Plains, NY 10606

STATE OF NEW YORK : COURT OF CLAIMS

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In the Matter of the Claim of :

GEORGE SASSOWER, :

AFFIRMATION IN SUPPORT

-against- :

Claim No. 67058

THE STATE OF NEW YORK, ROBERT :
ABRAMS and STEPHEN M. JACOBY, :

-----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 and circumstances relating thereto.

This affirmation is submitted in support of defendants' motion for an order dismissing the above claim.

The claim, a copy of which is annexed hereto as Exhibit "A", seeks damages for the use of allegedly defamatory language in a memorandum submitted by an Assistant Attorney General of the State of New York in defending a Judge in a matter entitled Doris L. Sassower and Carey A. Sassower v. Ernest L. Signorelli, et al. Insofar as claimant has complied with Rule 3016(a) C.P.L.R., the specific defamatory language has been pleaded in paragraph 13 of the claim.

It is submitted that the claim must be dismissed for the following reasons:

1. As can be seen from the State's memorandum, incorporated by claimant herein by reference at paragraph 12 of the claim and annexed hereto as Exhibit "B", the language complained of has its foundation in Surrogate Signorelli's February 24, 1978 opinion published in the Law Journal of March 3, 1978. Thus these standards must be deemed to be established unless reversed, modified, or expunged by an appellate court and cannot be collaterally attacked in this court. Under these circumstances, it is submitted, there can be no defamation.

2. The issue of the truthfulness or falsity of the Surrogate's opinion was directly at issue in the underlying lawsuit instituted by claimant's wife and child as can be seen by their complaint, a copy of which is annexed hereto as Exhibit "C". Particularly to be noted is the quotation from the Surrogate's opinion at paragraph 32 where the same language is alleged to be applicable to plaintiff Doris Sassower rather than claimant herein George Sassower. It is submitted that the opinion was at the very heart of the underlying litigation and thus pertinent to the judicial proceedings therein and thus the Attorney Assistant General defending the Surrogate was absolutely privileged in the writing of his memorandum.

3. The State has not waived its immunity for the acts complained of. Since the Attorney General and the Assistant Attorney General were acting in a quasi-judicial capacity in defending the Surrogate, their actions cannot form the basis for liability against the State, Instalment Department Inc. v. State, 21 A D 2d 211, 250 N.Y.S. 2d 124. Moreover their actions as litigators in a matter entrusted by

Statute is absolutely privileged so long as they relate to the matter at hand, Gautsche v. State, 67 A D 2d 167, 415 N.Y.S. 2d 280 and Levy v. State, 86 A D 2d 574, 446 N.Y.S. 2d 85.

4. This Court has no jurisdiction over the individual named defendants.

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

Dated: New York, New York
October 15, 1982

/s/

SETH D. CORWIN
Assistant Attorney General