

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1990
No. 92-

-----x
GEORGE SASSOWER,
Petitioner-Appellant,
-against-
UNITED STATES OF AMERICA, ex rel.,
Hon. DANIEL J. MOORE; et el.,
Appellees.
ROBERT ABRAMS, et al.,
Appellee.
-----x

x-----x
PETITION FOR A WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT
x-----x

x-----x
PETITION
x-----x

PRELIMINARY STATEMENT

1. This is the second, of several, related petitions to this Honorable Court from the Third Circuit, and reasonable effort is being made to avoid repetition, as to the facts, questions presented, and relief requested, and otherwise.

2. This Rule 11 petition will be mirrored by a Rule 20 application, since on the present posture, the issues presented will never be determined by the Circuit Court of Appeals.

PRELIMINARY STATEMENT TO QUESTIONS PRESENTED

On December 31, 1988, appellant made three (3) motions, proper in form and substance, returnable on February 3, 1989, before Chief U.S. District Judge JOHN F. GERRY ["Gerry"] of the District of New Jersey, the assigned jurist.

Before the return date, and unknown to appellant, Chief Judge Gerry's office was communicated with, ex parte, by, inter alia, Assistant U.S. Attorney SUSAN C. CASSEL ["Cassel"], who represented federal officials, who had not been "scope" certified, were being sued in their personal capacities, without any United States substitution (cf. 28 U.S.C. §2679[d]), and also the chambers of U.S. District Court Judge NICHOLAS H. POLITAN ["Politan"] of the District of New Jersey.

As a result of these ex parte conversations, according to the trial testimony of the Chief Judge Gerry's former law clerk, these three (3) motions of appellant, and his other motions, were simply placed on the Chief Judge's shelf, unattended and unadjudicated.

All efforts by appellant, by mandamus proceedings or otherwise, to have his motions adjudicated, have been denied or ignored.

QUESTIONS PRESENTED

1. Must under, inter alia, Article III, Amendment I, V and VI of the U.S. Constitution, and/or should the District Court permit appellant to make a motion for an:

"Order dismissing the contempt proceedings against [him], instituted by relators [on September 15, 1988], as a deprivation of due process, by reason of the prejudicial delay in prosecuting such proceedings." ?

2. Must under, inter alia, Article III and Amendment I of the U.S. Constitution, 18 U.S.C. §4 and/or should the District Court permit appellant to make a motion for an Order:

"enjoining and restraining anyone receiving any monies or other considerations, directly or indirectly, from HYMAN RAFFE, and enjoining and restraining HYMAN RAFFE from paying any monies or other considerations, directly or indirectly, for purported legal efforts before Hon. DANIEL J. MOORE, as being the product of criminal extortion (18 U.S.C. §1951[b][2]), except by express written permission of this Court; (2) referring this matter to the United States Attorney for investigation and prosecution; (3) together with any other, further, and/or different relief as to this Court may seem just and proper in the premises." ?

3. Must under Article III, Amendment I and V of the U.S. Constitution, Title 11 of the U.S. Code and/or should the District Court permit appellant to make a motion for an Order:

"(1) directing Hon. DANIEL J. MOORE to forward photostatic copies of the requested documents, necessary for the prosecution of appellant's appeal; (2) directing Hon. DANIEL J. MOORE to entertain on its merits appellant's Rule 60(b) motion; (3) together with any other, further, and/or different relief as to this Court may seem just and proper in the premises." ?

4. By virtue of appellant's filed notice of appeal, dated February 10, 1992, is this matter "in" the Court of Appeals within the meaning of 28 U.S.C. 1254[1]?

5. Can the Circuit Court of Appeals, ex post facto, deny appellant the right to prosecute an appeal by some subsequently issued Order?

6. Assuming, arguendo, the Circuit Court could, by some subsequently issued Order, restrict appellant's appellate rights to this Court by refusing to docket appellant's notice of appeal, does such refusal deprive this Court of jurisdiction under 28 U.S.C. §1254?

7. Does the Order of February 12, 1992 violate appellant's Amendment I rights, and is it patently retaliatory and/or overbroad?

THE PARTIES

GEORGE SASSOWER
Petitioner
16 Lake Street,
White Plains, N.Y. 10603
(914) 949-2169

ROBERT ABRAMS, Esq.
Appellee & Atty for Appellees
The Capitol,
Albany, New York 12224
(518) 474-2121

CLAPP & EISENBERG, P.C.
Attorney for Appellees
1 Newark Center,
Raymond Blvd
Newark, N.J. 07102
(201) 642-3900

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TABLE OF AUTHORITIES

Burkett v. Fulcomer 951 F.2d 1431 [3rd Cir.-1991], cert. pending, sub nom. Haberstroh v. Burkett, #91-1522 [60 USLW 3689]	2
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Hazel-Atlas v. Hartford 322 U.S. 238 [1944])	3
Milligan, ex parte 4 Wall [71 U.S.] 2 [1866]	4

OPINIONS BELOW

The District Court by letter order, dated January 31, 1992 (A-1) denied appellant permission to file motions for the relief sought herein. Appellant, on February 10, 1992 transmitted to the District Court his Notice of Appeal of that date. On February 12, 1992, the Circuit Court of Appeals, sua sponte, issued its injunctive embargo order.

JURISDICTION

- | | | |
|-------|--------------------------------|------------------|
| (i) | Letter Denial, District Court: | January 31, 1991 |
| | Circuit Court Opinion: | None |
| (ii) | None. | |
| (iii) | Not Applicable | |
| (iv) | 28 U.S.C. §1254[1] | |

CONSTITUTIONAL-STATUTORY PROVISIONS

1. Article VI[2] of the United States Constitution provides that:

"This Constitution and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land ..."

2. Article III of the United States Constitution provides:

"§1 The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. ... §2[1] The judicial power shall extend in all cases, in law and equity, arising under this Constitution and Laws of the United States"

3. The First Amendment of the United States Constitution provides that:

"Congress shall make no law respecting ... abridging the freedom of speech ... or the right of

the people peaceably to assemble, and to petition the Government for a redress of grievances."

4. The Fifth Amendment of the United States Constitution provides that:

"No person shall ... shall be deprived of ... liberty, or property, without due process of law ...".

5. The Sixth Amendment of the United States Constitution provides that:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ... "

6. 18 U.S.C. §4 provides:

"Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than \$500 or imprisoned not more than three years, or both."

7. 28 U.S.C. §1254[1] provides:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods; (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; (2) ... "

STATEMENT OF THE CASE

1. Appellant should be permitted, as a matter of constitutional right, to make a motion to dismiss, non-summary criminal contempt proceedings, where forty-four (44) months ago (cf. Burkett v. Fulcomer, 951 F.2d 1431 [3rd Cir.-1991], cert. pending, sub nom. Haberstroh v. Burkett, #91-1522 [60 USLW 3689]; Doggett v. U.S., cert. granted U.S. , 112 S.Ct. 631 [1991]), when such non-summary criminal contempt proceedings were recommended by Bankruptcy Judge DANIEL J. MOORE ["Moore"], and

where in response to such recommendation, three (3) days thereafter, appellant wrote to Chief Judge Gerry, as follows:

"Because of the prejudice already cause by the failure of Judge Moore to promptly lodge these charges, I respectfully request that Your Honor now expedite this matter to conclusion.

Since I intend to assert my constitutional right of silence, I respectfully request that Your Honor stay all other actions and proceedings, pending the completion of these criminal proceedings (see United States v. Mine Workers, 330 U.S. 258, 299-300)."

2. Where "extortion" payments must be made by HYMAN RAFFE ["Raffe"] to CLAPP & EISENBERG, P.C. ["C&E"] and their clients, at pains at incarceration for any default, which payments are correlated to appellant's activities in resisting and exposing the criminal activities of the above, appellant should be permitted, as a matter of constitutional right, to make a motion to abort these "extortion" payments, and for the investigation of the activities of these criminal transgressors (18 U.S.C. §4).

3. Where the proceedings before Bankruptcy Judge Moore were inundated with fixes, fraud and corruption, appellant's right to appellate review and Rule 60(b) relief [Bankruptcy Rule 9024] cannot be curtailed by the refusal of Bankruptcy Judge Moore's refusal "to forward photostatic copies of the requested documents, necessary for the prosecution of appellant's appeal", or the denial by Judge Politan of appellant's right to Rule 60(b) relief (cf. Hazel-Atlas v. Hartford, 322 U.S. 238 [1944])?

4. Appellant cannot be denied his right to petition the Supreme Court of the United States, by an ex post facto injunction by the Circuit Court which prevents him from being "in" the Circuit Court (18 U.S.C. §1254) (cf. Ex parte Milligan, 4 Wall [71 U.S.] 2 [1866]).

REASONS FOR THE GRANT OF THIS WRIT

This appeal presents the novel issue of whether a circuit court can prevent a matter from being "in" its court and thereby prevent appellant from presenting a petition for a writ of certiorari (28 U.S.C. §1254).

Appellant's intended motions have irresistible compelling merit, and a variant one such issue was granted certiorari and is presently before this Court (Doggett v. U.S. (supra)).

Dated: May 12, 1992

Respectfully submitted,

GEORGE SASSOWER [GS-0512]
Petitioner, pro se
16 Lake Street,
White Plains, N.Y. 10603
914-949-2169

CERTIFICATION OF SERVICE

On May 12, 1992 I served a true copy of this Petition by mailing same in a sealed envelope, first class, with proper postage thereon, addressed to U.S. Solicitor General, Kenneth W. Starr, Department of Justice, 10th & Constitution Ave., Washington, D.C. 20530; Robert Abrams, Esq., The Capitol, Albany, New York 12224; and Clapp & Eisenberg, P.C., 1 Newark Center, Raymond Blvd., Newark, N.J. 07102, that being their last known addresses.

Dated: May 12, 1992

GEORGE SASSOWER

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GEORGE SASSOWER

16 LAKE STREET
WHITE PLAINS, N. Y. 10603

914-949-2169

January 27, 1992

Hon. Nicholas H. Politan
United States District Judge
District of New Jersey
U.S. Post Office & Courthouse Bldg.
Newark, New Jersey 07101

CIV. 88-1012 (P-45)

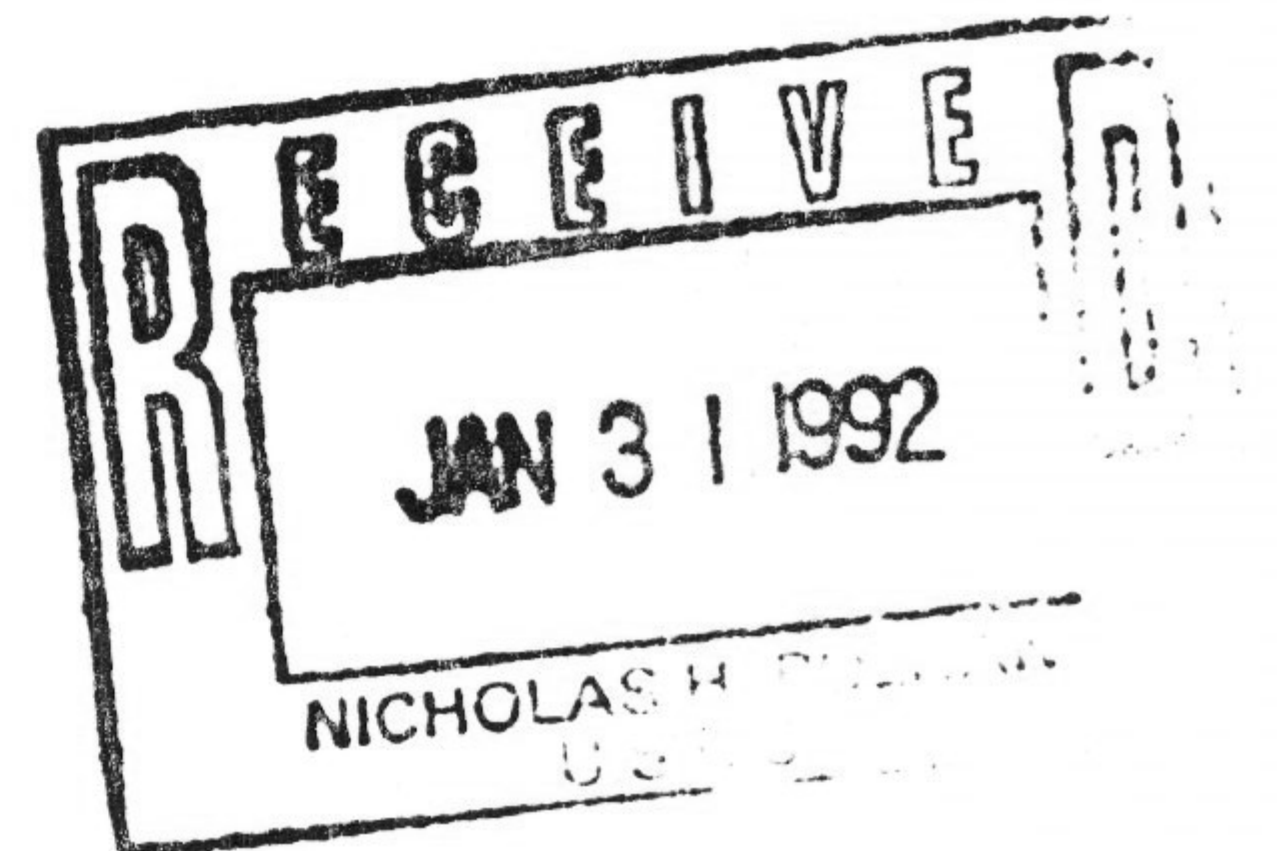
Honorable Sir:

Since motions would no longer be an appropriate vehicle, I request permission to commence a proceeding for the same relief that was requested by my motions of December 31, 1988, returnable February 3, 1989 before Chief Judge John F. Gerry, which motions were never determined.

In the absence of a written response within two weeks, I will assume that permission has been granted by Your Honor.

Most Respectfully,
George Sassower
GEORGE SASSOWER

cc: Hon. John F. Gerry
Hon. Daniel J. Moore
Ass't U.S. Atty Susan C. Cassell



Daniel J. Moore
1/31/92
Nicholas H. Politan
NICHOLAS H. POLITAN, U.S.D.J.

A-1

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 91-3063

GEORGE SASSOWER

vs.

ROBERT ABRAMS, et al.

(D.N.J. Civ. No. 88-01012)

GEORGE SASSOWER, individually and as Chapter 13 debtor,
and on behalf of Puccini Clothes, Ltd.

vs.

LEE FELTMAN, et al.

(D.N.J. No. 88-01562)

ORDER

PRESENT: Mansmann, Scirica, and Rosenn, Circuit Judges

George Sassower, a frequent litigant in this Court, has filed numerous duplicative and repetitive appeals¹, and petitions for writs of mandamus/ prohibition², derived first from cases originally heard and finally determined in the federal

¹ See, e.g., In the Matter of: George Sassower, No. 89-5843 and George Sassower v. Robert Abrams, et al., Nos. 90-5147, 91-5936, 92-5012.

² See, e.g., Nos. 89-8019, 90-8008, 80-8067, and 91-8050, all styled In the Matter of the Petition(s) of George Sassower.

Exhibit
A-2

courts of the Second Circuit³ and thereafter from related actions filed in the District of Jersey, at Civil No. 88-1012, Sassower v. Abrams, et al., and, Civil No. 88-1562, Sassower v. Feltman, et al.⁴

Furthermore, Mr. Sassower has filed in this Court numerous repetitive pleadings, motions, briefs and other submissions containing frivolous legal arguments, flagrant misstatements of fact, and scurrilous allegations in these appeals and petitions for writs of mandamus/prohibition related to or arising from D.N.J. Civ. Nos. 88-1012 and 88-1562.

In light of the foregoing, and deeming that Mr. Sassower appeared to be abusing the judicial process, this Court entered an order on September 20, 1991, addressed to Mr. Sassower, to show cause within twenty-one (21) days why he should not be enjoined from filing, without prior authorization of this Court, any future appeal or petition for writ of mandamus/

³ It appears, as well, that Mr. Sassower has filed similarly derivative suits in the Districts of Maryland and Minnesota and appeals in the Courts of Appeals of the Fourth and Eighth Circuits.

⁴ Because Mr. Sassower's numerous filings in D.N.J. Civ. Nos. 88-1012 and 88-1562 "violate[d] prior injunctions entered by the state and federal courts in the State of New York, enjoining this plaintiff from commencing any new actions based upon issues which were fully and finally litigated in those forums," the district court enjoined Mr. Sassower from future filings related to these issues without prior written order from the court. January 26, 1990 Order at 2, 3-4. By order filed on July 29, 1991, this Court affirmed the district court's January 26, 1990 injunction. After Sassower attempted to file documents in violation of the district court's injunction, he was convicted of criminal contempt, D.N.J. Crim. No. 89-103. This Court affirmed Mr. Sassower's conviction by order filed June 19, 1990, C.A. No. 89-5810.

prohibition arising from, related to or involving the parties in D.N.J. Civ. Nos. 88-1012 and 88-1562. As of the date of this Order, Mr. Sassower has made not responded whatsoever to this Court's Order to show cause.

Subsequent to the entering of this Court's show cause Order, however, Mr. Sassower filed two separate appeals from orders entered in D.N.J. Civ. Nos. 88-1012 and 88-1562, as well as another appeal arising from his conviction for criminal contempt, D.N.J. Crim. No. 89-103. In these three appeals, consolidated at Court of Appeals Nos. 91-5936, 91-5986 and 92-5012, Mr. Sassower has filed with this Court at least twelve separate, repetitive and abusive motions, supporting documents or other papers.

The All Writs Act, 28 U.S.C. § 1561(a), authorizes this Court to enjoin an appellant from filing repetitive and abusive appeals and original proceedings. As we have noted, "[o]f course, any such order is an extreme remedy, and should be used only in exigent circumstances," In Re Oliver, 682 F.2d 443, 445 (3d Cir. 1982), and "should be narrowly tailored." Matter of Packer Ave. Associates, 884 F.2d 745, 747 (3d Cir. 1989). When a litigant or appellant continually "raise[s] claims identical or similar to those that have already been adjudicated, . . . [t]he interests of repose, finality of judgments, protection of defendants from unwanted harassment, and concern for maintaining order in the court's dockets have been sufficient to warrant such prohibition." In Re Oliver, 682 F.2d at 445. See also Zatzko v.

California, ___ U.S. ___, 112 S.Ct. 355 (1991) (Applying Supreme Court Rule 39.8, the denial of a motion for leave to proceed in forma pauperis when a petition for writ of certiorari or other filing is frivolous or malicious is appropriate when "a pattern of repetitious filing . . . has resulted in an extreme abuse of the system").

Mr. Sassower's repetitive and vexatious filings in this Court have reached the point of an abuse of the judicial process of the United States Court of Appeals for the Third Circuit justifying an injunctive order issued pursuant to our powers under 28 U.S.C. § 1651(a). Furthermore, Mr. Sassower has been given notice and ample opportunity to be heard in opposition to the imposition of such an injunction. In Re Oliver, 682 F.2d. at 446. Rather than responding to this Court's Order to show cause, however, Mr. Sassower has filed further abusive and repetitive appeals arising from D.N.J. Civ. Nos. 88-1012 and 88-1562.

Accordingly, it is hereby ORDERED that George Sassower is hereby enjoined from filing in the United States Court of Appeals for the Third Circuit without prior authorization of this Court, any appeal or petition for writ of mandamus/prohibition related to the dissolution of Puccini Clothes Ltd., any further appeals or petitions for writs of mandamus/prohibition or any other motion, pleading, or brief derived from or related to District of New Jersey Civil No. 88-1012, Sassower v. Abrams, et al., and, District of New Jersey Civil No. 88-1562, Sassower v. Feltman, et al., and specifically with respect to any and all of

the following named defendants/respondents in connection with
D.N.J. Civ. Nos. 88-1012 and 88-1562:

Robert Abrams; Samuel A. Alito, Jr.; A.R. Fuels, Inc.; Jerome H. Barr; Joseph W. Bellacosa; Howard M. Bergson; Berlin, Kaplan, Dembling & Burke, P.C.; Charles L. Brieant; Cahn, Wishod, Wishod & Lamb; Susan Cassell; Michael Chertoff; Citibank, N.A.; Clapp & Eisenberg, P.C.; William C. Conner; David S. Cook; Kenneth M. Cozza; Eugene Dann; Donald Diamond; Denis Dillon; Wilfred Feinberg; Lee Feltman; Feltman, Karesh, Major & Farbman; Robert W. Gaffey; James C. Francis, IV; Ira Gammerman; David Greenberg; Matthew Ireland; Harold Jones; Bentley Kassal; Irving R. Kaufman; Daniel Kelleher; Alvin F. Klein; Kreindler & Relkin, P.C.; Theodore R. Kupferman; Hugh Leonard; J. Kenneth Littman; Anthony Mastroianni; Roger Miner; Jacob Mishler; Thomas J. Meskill; Milton Mollen; Sally Mrvos; Francis T. Murphy; Nachamie, Kirschner, Spizz & Levine, P.C.; Eugene H. Nickerson; Ira Postel; George C. Pratt; Puccini Clothes Ltd.; Hyman Raffe; Rashba & Pokart; Reisman, Peirez & Purke, P.C.; Reisman, Peirez, Reisman & Calica; Xavier C. Riccobono; Ernst H. Rosenberger; Rothbart, Rothbart & Kohn; Isaac Rubin; Matthew D. Sansveri(f)(e); Joseph J. Santacroce; Jeffrey L. Sapir; David B. Saxe; Walter M. Schackman; Schneck & Weltman; Howard Schwartzberg; John J. Scura; Ernest L. Signorelli; Sills, Cumis, Zuckerman, Radin, Tishman, Epstein & Gross, P.C.; P. Douglas Sisk; Jeffrey I. Slonim; Peter Sordi; Robert Sorrentino; Robert H. Straus; Suffolk, New York, County of; William C. Thompson; Ellsworth A. Van Graafieland; Marcia Waldron; Moses M. Weinstein; and, Charles Zangara.

By the Court,

Carol Los Handmann

Date: FEB 12 1992

A.B. pc: G.S. J.B. C.J.K. B.C.
B.C.C. D.M.C. 5 L.K. B.T.
D.A. P.D.A. E.T.P. K.D.B.
H.M.B. A.D.F. J.L.P. K.B.
A.L.G. L.S. M.J.S.