SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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DORIS L. SASSOWER,

Plaintiff,

Index #
29094/92

-against-

Notice of
Motion

GANNETT COMPANY, INC., GANNETT SATELLITE INFORMATION NETWORK, INC., NANCY Q. KEEFE, DEBBIE PINES, ELAINE A. ELLIS, CAROLE TANZER MILLER, CAMERON McWHIRTER, TOM ANDERSON, MICHAEL MEEK, LAURIE NIKOLSKI, MILTON HOFFMAN, DOES 1-15, being Gannett Editors, EVELYN BRESLAW and ABBIE PETRILLO,

Defendants.

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S I R S:

PLEASE TAKE NOTICE that upon the annexed Affidavit of the Plaintiff, DORIS L. SASSOWER, verified November 29, 1993, and the exhibits annexed thereto, the Decision of Honorable Burton S. Sherman dated October 22, 1993, and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court at the Courthouse located at 60 Centre Street, New York City, Motion Support Courtroom (Room 130) on December 13, 1993, at 9:30 a.m. in the forenoon or as soon thereafter as counsel can be heard, for an Order granting Plaintiff's motion for:

(1) Reconsideration and recall of the Decision dated October 22, 1993, granting the motion of the Gannett Defendants to dismiss the above-entitled action for Plaintiff's failure to serve a complaint and denying her cross-motion for an extension of time to serve the same;

(2) Reargument and renewal of Plaintiff's cross-motion

to extend her time to serve a complaint; and upon such reargument and renewal, denying the Gannett Defendants' motion to dismiss and granting Plaintiff's aforesaid cross-motion;

(3) Such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR §2214(b), answering papers, if any, are required to be served on the undersigned at least seven (7) days before the return date of this motion.

Dated: White Plains, New York
November 29, 1993

Yours, etc.

DORIS L. SASSOWER, Plaintiff
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

TO: Robert Callagy, Esq.
SATTERLEE, STEPHENS, BURKE & BURKE
230 Park Avenue
New York, New York 10169-0079
(212) 818-9200

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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DORIS L. SASSOWER,

Plaintiff,

Index No. 29094/92

Affidavit in Opposition to Gannett's Notice of Settlement and in Support of Plaintiff's Motion to Recall, Reconsider, Reargue, and Renew

-against-

GANNETT COMPANY, INC., GANNETT SATELLITE INFORMATION NETWORK, INC., NANCY Q. KEEFE, DEBBIE PINES, ELAINE A. ELLIS, CAROL TANZER MILLER, CAMERON McWHITRTER, TOM ANDERSON, MICHAEL MEEK, LAURIE NIKOLSKI, MILTON HOFFMAN, DOES 1-15, being Gannett Editors, EVELYN BRESLAW and ABBIE PETRILLO,

Defendants.

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

DORIS L. SASSOWER, being duly sworn, deposes and says:

1. I am the Plaintiff in the above-entitled action and fully familiar with the case and all of the facts set forth herein.

2. This Affidavit, including herein my "Affidavit of Merit", and the exhibits annexed hereto are submitted in opposition to the proposed Order, noticed for settlement on November 29, 1993, based on the Decision annexed thereto and incorporated herein by reference, of Hon. Burton S. Sherman,

dated October 22, 1993 (herein "the Decision"), granting the motion of the Gannett Company Defendants (herein "Gannett") dismissing the above-entitled libel action for failure to serve a complaint and denying my cross-motion for an extension of time to do so. This Affidavit is also submitted in support of my motion to recall and reconsider the aforesaid Decision and to reargue and renew my aforesaid cross-motion because the Court has overlooked or misapprehended a number of material facts.

3. The proposed order based on the Decision is erroneous in several respects. As shown by its first and last paragraphs, it incorrectly grants dismissal of the complaint, which it directed in favor of all Defendants. Plainly, there is no complaint to be dismissed--such fact being the basis on which Gannett's motion was grounded. Additionally, while Gannett's Notice of Motion broadly requested dismissal of the action, the supporting Affidavit of Gannett's counsel, Robert Callagy, Esq., made clear that the dismissal relief sought was limited--as it properly had to be. Indeed, his paragraph 7 explicitly asks that "this action be dismissed as against the Gannett defendants" only. Gannett's motion was thus not made on behalf of the co-Defendants Breslaw and Petrillo, who have not appeared and hence are in default. Under such circumstances, dismissal of the action against all Defendants is clearly erroneous.

I. The Action Is Not Time-Barred

4. In the penultimate paragraph of its Decision, the Court states:

> "Moreover, plaintiff does not dispute defendant's contention that the summons was served one week after the expiration of the one-year statute of limitations."

In fact, Plaintiff does dispute such contention, albeit not in my opposing cross-motion papers submitted on this motion, since I did not deem a statute of limitations defense relevant to my motion for extension of time under CPLR 3012(b). It was, and is, my understanding that a motion to dismiss for failure to serve a complaint requires a plaintiff to establish the substantive merit of the action--not to rebut affirmative defenses, such as the statute of limitations, which are raisable by motion under CPLR 3211(5), after a complaint is filed.

5. In prematurely adopting Gannett's argument that my action was time-barred, which Gannett raised only in its opposition to my cross-motion, the Court effectively denied me due process, since it gave me no notice that it would adjudge the merits of an affirmative defense to a cause of action not yet pleaded. Such dictum in the Decision deprived me of my right to be heard with respect thereto. As hereinafter shown, my action is <u>not</u> time-barred in that I have, in fact, complied with the applicable one-year statute of limitations.

6. The official records of the County Clerk show that I filed my Summons with Notice in this action on Monday, October 26, 1992. Such filing thereby tolled the statute in accordance with CPLR 203(c)(1) as amended by Chapter 216 of the Laws of 1992 prior to the expiration of the one year Statute of Limitations.

7. CPLR 203(c)(1), as amended, provides that "In an

action which is commenced by filing [as this one was], a claim asserted...against the defendant..is interposed when: 1. the summons...with notice is filed with the Clerk of the Court". Such provision was designed to toll the statute to permit an extension of the short limitation period by 120 days.

8. It was pursuant to said statutory provision that the required Summons with Notice was filed on October 26, 1992--within the one year statute of limitations. Annexed hereto as Exhibit "A-1" is a photocopy of my Summons With Notice, bearing the date stamp of October 26, 1992. Such documentary proof and the index number assigned to this action, #29094/92, upon the filing on that date, (which appears on the Summons With Notice served upon Gannett, as shown by Exhibit "A" to Gannett's motion), are conclusive evidence that the Summons With Notice was filed with the Clerk of the Court within one year after Gannett's defamatory publications.

9. It was further pursuant to the above that service on Gannett and the Gannett-employed Defendants was thereafter effected on February 22, 1993--which was within the 120 days in which service had to be effected. A copy of the Summons with Notice bearing Gannett's hand-written admission of service by Lucy Codella is annexed hereto as Exhibit "A-2", as is her admission appearing on Exhibit "A" to Mr. Callagy's own Affidavit in support of Gannett's motion.

II. The "Attachment" Gave Gannett Notice Of The Required Particulars

10. The Court's ruling that the "unsworn allegations"

of the "Attachment" to the Summons with Notice do "not fulfill the requirement" for an affidavit of merit implies that but for their being unsworn it would have. I assure the Court that the fact that I did not swear to the allegations of the "Attachment" (Exhibit "A-1") was not because I had any reluctance to do so. It simply did not occur to me at the time that any verification of same was called for. Mr. Callagy cited no statutory provision that requires the Summons with Notice to be sworn--nor does the Court in incorporating his argument in its Decision. However, I respectfully submit that by verifying my July 6, 1993 Affidavit in Opposition and in Support of Cross-Motion--specifically attesting at paragraph "2" to the "Attachment" as evidencing "that I have a good and meritorious action"--I effectively swore to the truth of the facts alleged by me in that "Attachment". Such interpretation is sustainable under basic rules of construction, as reflected, inter alia in CPLR 104:

> "[t]he civil practice law and rules shall be liberally construed to secure the just, speedy and inexpensive determination of every civil proceeding".

11. The "Attachment to the Summons with Notice" sets forth with particularity specific newspaper articles which were defamatory and included within such notice "the particular words complained of", as required by CPLR 3016(a). That statutory provision expressly permits the application of the aggrieved party to "be stated generally".

12. Since I was unrepresented by counsel at the time, the usual and customary latitude given to pro se defendants

should be afforded. Notwithstanding I am an attorney, I have never practiced in the field of libel law, and stated my desire to be represented by counsel, as is my right under the law--the availability of which is severely limited, a fact attested to by me in my Affidavit in Opposition and in Support of my cross-motion. Additionally, as indicated at paragraph "15" of my aforesaid Affidavit, I have been under a succession of exigent deadlines due to the continuing catastrophic consequences of Defendants' wrongful actions.

III. The Action Is Meritorious in Light of the Defamation Committed and the Defendants' Indisputable Actual Malice

(A) Defendants Breslaw And Petrillo's Statements Concerning Plaintiff Constituted Defamation Per Se And Evinced Actual Malice

13. As reflected by the "Attachment to the Summons with Notice" (Exhibit "A-1"), on October 22, 1991, Defendants Breslaw and Petrillo stood up at a much publicized public gathering, at which I was not present to defend myself, and falsely represented that, as Mrs. Breslaw's attorney in her matrimonial action, I "did nothing for six-months" and "for another 18 months refused to give Breslaw's papers to a third lawyer".

14. Such statements were defamatory per se. They were not only false--but they were known to be false by Defendant Breslaw, against whom I then had pending a cross-motion dated September 17, 1991 to punish her for contempt of court for not paying my Judgment against her for expert fees my firm had paid

on her behalf and for punitive costs and sanctions under §130.1-1 for her and her attorneys' "frivolous, abusive and dishonest" motion practice. My contempt papers, as well as my October 11, 1991 Reply Affidavit, were served personally upon her, as well as on her former counsel, Harvey Landau, Esq., of the law firm of Bender & Bodner, Esqs., who had participated in such oppressive tactics on her behalf. My aforesaid moving and reply papers unequivocally documented my entitlement to the relief I sought. They detailed the utterly malicious, unjustified, and spurious nature of the accusations Defendant Breslaw thereafter made against me on October 22, 1991.

15. Indeed, Defendant Breslaw's own awareness that she could be subjecting herself to a defamation suit for her October 22, 1991 statements was reflected by her prefatory remarks to her public statements on that date, to wit, that to avoid defamation she was not going to "name any names"[1]. Defendant Breslaw then proceeded to make her outrageous and defamatory public statements about me--omitting my name in the belief that that would exonerate her from future liability--leaving it for her less affluent friend, Defendant Petrillo, to then stand up and publicly announce that the lawyer so-described by Mrs. Breslaw was "Doris L. Sassower".

16. By Supplemental Affidavit dated October 27, 1991, submitted by me in further support of my cross-motion for

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[1] See paragraph 5 of Elena Sassower's October 27, 1991 Affidavit, annexed as part of Exhibit "B".

contempt/sanctions against Defendant Breslaw, I specifically asserted that Defendant Breslaw knew her public statements concerning me at the October 22, 1991 gathering to be false. Said Affidavit is annexed in its entirety as Exhibit "B", together with the exhibits thereto. Such exhibits not only include my firm's itemized time records detailing the dates and nature of the substantial and valuable legal services performed for Defendant Breslaw over the six-month period of its representation of her, but an Affidavit of an eye-witness, Elena Sassower, who was present at the public gathering,

17. My aforesaid October 27, 1991 Affidavit was wholly uncontroverted by Defendant Breslaw[2], including my assertion at paragraph 2 thereof that at the time she made her October 22, 1991 public statements, she knew them to be false.

18. As fully known to Defendant Breslaw, my firm had appropriately and assiduously taken all steps possible to protect her rights from the very outset of its representation. At the time Defendant Breslaw retained my office, she was the defendant in a divorce action commenced against her by her wealthy husband, who she, in turn, was countersuing for divorce. Defendant Breslaw had discharged her first attorney, Raoul Felder, Esq., refusing to pay him approximately $17,000 in fees, which she disputed. Within 30 days from its retention, my firm achieved a consented-to substitution, after negotiating a

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[2] The Affidavit of Service reflecting service of my October 27, 1991 Affidavit upon Defendant Breslaw is annexed as part of Exhibit "B".

payment agreement with Mr. Felder, whereby he agreed to take half the fees claimed by him, and to wait for such reduced payment, without interest, until the conclusion of the case. My firm, thereby, immediately saved Defendant Breslaw thousands of dollars represented by Mr. Felder's agreed reduction, not to mention the substantial litigation costs that would have been entailed in defending her against Mr. Felder's lien proceeding which was already at the hearing stage, as well as the delay and prejudice that would doubtless have caused to her case in chief. As part of the settlement stipulation, Mr. Felder turned over his entire divorce files in the matter, the result being a smooth transition without disruption of her pending matrimonial action.

19. At such point, there were discovery orders outstanding against both Defendant Breslaw and her husband that had to be immediately addressed, since no depositions pursuant thereto had yet been taken. Inasmuch as an interim support order was already in place, Defendant Breslaw was informed by my office that the first priority was to proceed with the depositions so that she would not be prejudiced by a claimed default. My office, therefore, set such arrangements in motion.

20. Additionally, since there had been no appraisals or valuations of Mr. Breslaw's considerable realty holdings, as well as of his plumbing supply business--as to all of which Defendant Breslaw was ignorant--Defendant Breslaw was also informed that my firm would engage an expert appraiser and a tax lawyer/CPA to do the necessary evaluations. Based on my

excellent professional reputation and creditworthiness achieved over my thirty-five years of practice (Exhibit "C"), I was able to arrange with both the appraiser and tax lawyer/CPA to undertake such evaluations without their customary initial retainer fees paid in advance. We likewise engaged a court reporting service to conduct the deposition of her husband, who was deposed by my office.

21. These efforts resulted in my establishing a valuation for the marital assets of approximately ten million dollars by experts whose credentials were unassailable.

22. As reflected by paragraphs 4 and 5 of my October 27, 1991 Supplemental Affidavit in support of my then pending motion to have Defendant Breslaw held in contempt, as well as paragraph 11 of my eye-witness' Affidavit (Exhibit "B"), Defendant Breslaw told the audience at the October 22, 1991 public gathering that the first thing a wife should do when she sues for divorce is to find out the value of the marital estate. What she did not identify, however, was that I had taken precisely those steps on her behalf--and done so expeditiously and inexpensively in the six months in which I had represented her.

23. Defendant Breslaw's further statement at the October 22, 1991 public gathering that I "refused to give her papers to [her] third lawyer" for 18 months was also false and defamatory--and known to be such by her.

24. Defendant Breslaw did not disclose the fact that I

had an attorney's lien on her files for unpaid fees, including those of the two experts, I had retained on her behalf. Nonetheless, as shown by my uncontroverted statements in the 1988 lien hearings brought on by successor counsel, Harvey Landau, Esq., at which his then client, Defendant Breslaw, was present, I offered to turn over the matrimonial files for only a "paper promise" and to defer my own entitlement to additional fees until the conclusion of Defendant Breslaw's divorce action, provided she agreed that at such conclusion, she would pay the $3,650 fees owing to the experts retained by my firm and who had rendered services for her without requiring their usual advance retainer--and whom she had refused to pay after she retained Mr. Landau and, prematurely and without cause[3], discharged my office.

25. My October 11, 1991 Reply Affidavit--which was served upon Defendant Breslaw prior to her October 22, 1991 public statements[4]--annexed as exhibits "5" and "7" the transcript pages from the April 20, 1988 and June 16, 1988 lien hearings. Indeed, said Affidavit also retyped my testimony at those hearings into the body of the Affidavit itself. A copy of the aforesaid exhibits, as well as the pertinent pages of my Affidavit are annexed hereto as Exhibit "D".

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[3] The lien hearings established that my discharge by Mrs. Breslaw was without cause and that Mrs. Breslaw's refusal to pay the expert fees incurred by my office on her behalf was without basis--there being an explicit provision in the written Retainer of my firm authorizing retention of such experts.

[4] A copy of the Affidavit of Service for my October 11, 1991 Reply Affidavit is annexed as part of Exhibit "D".

26. Neither Defendant Breslaw nor her attorney made any sur-reply to my October 11, 1991 Reply Affidavit or otherwise controverted the facts therein set forth, thereby admitting that it was their intransigent, unjustified "refusal" to pay less than $4,000 for experts' fees on Mr. Landau's retention or to agree to the generous arrangements I offered for such payment to be made at the conclusion of the case, which stood in the way of an immediate turnover of the Breslaw divorce files.

(B) Gannett's October 24, 1991 Publication of Defendants Breslaw and Petrillo's Slander of Plaintiff Evinced Actual Malice

27. As reflected by the "Attachment to Summons with Notice" (Exhibit "A-1"), on or about October 24, 1991, Gannett published Defendant Keefe's column (Exhibit "E"), thereby widely circulating Defendant Breslaw and Petrillo's publicly uttered slander of me and my professional conduct, characterizing the audience as having "growled" at Defendant Petrillo's mention of my name. Defendant Keefe's column also added what was not publicly stated by Defendants Breslaw or Petrillo--to wit, that I had been "indefinitely suspended in June from practicing law", omitting therefrom the reason therefor, as well as any identification of the fact that my suspension was interim, not final, or any other fact or circumstance in mitigation--including the failure of the Court to accord me any hearing or make any findings that I was guilty of any professional misconduct. Keefe's aforesaid addition had no relationship to the balance of the column, but was designed to have the reader believe that

there was some connection between my suspension and Mrs. Breslaw's case, which, in fact, there was none.

28. Prior to publication of the October 24, 1991 column vilifying me as a prototype of matrimonial lawyers who exploit women in divorce, neither Defendant Keefe nor any other Gannett Defendant attempted to contact me for comment--although Gannett knew that I was a pioneer in the women's movement and had championed women's rights causes for many years, resulting in countless awards for my dedicated service[5]. This includes a special award I received in 1981 at the state-wide convention of the New York Chapter of the National Organization for Women (Exhibit "C-3"), recognizing my

> "outstanding achievements on behalf of women and children in the area of Family Law...and for her intensive work to obtain a just law governing divorce and property distribution in the State of New York".

29. Moreover, Defendant Gannett also knew--through my prior communications with it--that I had not only denied Mrs. Breslaw's accusations, but was challenging the legality of the Appellate Division's June 14, 1991 Order interim suspension order--same having been rendered without any prior written charges, a hearing, or findings of misconduct, all as required by law as a matter of basic due process. Indeed, Defendant Gannett

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[5] Annexed as Exhibit "C" is a copy of my biographic listing as it appeared in the 1989 edition of Martindale-Hubbell's Law Directory, which was furnished to Gannett prior to the subject libelous publications (Exhibit "F"), as well as thereafter (Exhibit "H").

further knew that I was contending that my suspension was not only unlawful, but a retaliation against me for my ongoing involvement as pro bono counsel to the Ninth Judicial Committee, a citizens' group working to remove the influence of politics on the judiciary. In that capacity--and as known to Gannett--I had represented the Petitioners in the case of Castracan v. Colavita, in which I was suing as Respondents, Anthony Colavita, Chairman of the Westchester Republican County Committee and former Chairman of the New York State Republican Party, as well as his Democratic counterpart and other leaders of the two major parties in the Ninth Judicial District. The lawsuit challenged a "Three-Year Deal", by which the party leaders cross-endorsed seven judgeships over a three-year period and conducted judicial nominating conventions violative of the New York State Election Law.

30. The retaliatory nature of my suspension was discussed by me in a "Letter to the Editor" (Exhibit "F-1") which I sent to Defendant Gannett on June 25, 1991 for publication. That letter was also sent to the Publisher and President of Gannett Suburban Newspapers, Gary Sherlock, (Exhibit "F-2"), with supporting documents showing that Gannett had deliberately suppressed any and all reporting of the improper political ties existing in the Westchester courts between judges and lawyers, particularly, the political connections between Justice Samuel

Fredman[6], the reputed architect of the Three-Year Deal, before whom Mr. Landau, my aforementioned successor in the Breslaw case, had brought on a baseless contempt proceeding against me.

31. On October 24, 1991, immediately following publication of Defendant Keefe's column, I notified her and other Gannett Defendants named herein that said column was false and defamatory as it concerned me. In a telephone conversation with Defendant Keefe on that date, she admitted that she had not called me prior to publication to verify the truth of Defendant Breslaw's statements, that she was not interested in whether Defendant Breslaw's statements were true or false, and that she would not review documentary evidence showing such statements to be deliberate lies nor review documentary evidence establishing that my suspension was unfounded and retaliation for my work as counsel to the Petitioners in the ground-breaking case of Castracan v. Colavita, in which case she said she had no interest whatsoever.

32. As reflected by my October 28, 1991 letter to the Vice-President and Executive Editor at Gannett Suburban Newspapers, Lawrence Beaupre (Exhibit "G"), Gannett refused to retract or correct Defendant Keefe's defamatory story, and hung up on when I asked that Gannett "review documentation regarding the Breslaw case".

33. That same day, I had hand-delivered to Mr.

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[6] See, particularly, my daughter's January 31, 1990 letter to Defendant Nikolski, which is part of Exhibit "F"

Beaupre, a copy of my October 24, 1991 letter to Governor Cuomo (Exhibit "H"), calling for appointment of a special prosecutor and outlining the Castracan v. Colavita case (at pp. 1-6) and the political influences operating in the courts, specifically describing the Breslaw case and the political ties existing between Justice Fredman and Harvey Landau, (at pp. 7-8), which neither of them had disclosed at the time I made a motion to Justice Fredman for his recusal based on his pre-existing animus toward me, harking back to the days when he was a matrimonial practitioner and as such, my professional competitor as well as my adversary, whose viciously-expressed hostility toward me my motion documented.

The concluding statement of my letter to the Governor was as follows:

> "...I was privileged to act as pro bono counsel to the Petitioners in the case of Castracan v. Colavita from its inception until June 14, 1991, the date on which the Appellate Division, Second Department, issued an Order suspending me from the practice of law--immediately, indefinitely, and unconditionally--without any evidentiary hearing ever having been held, and notwithstanding the proceeding was jurisdictionally void for failure to comply with due process and other procedural requirements. The Order was issued less than a week after I announced in a New York Times "Letter to the Editor" that I was taking Castracan to the Court of Appeals, and, likewise, only days after I transmitted to you my sworn and documented affidavit concerning the political relationship between Justice Fredman and Harvey Landau, Esq. and their other unethical conduct in the Breslaw case.
>
> The Court of Appeals denied my application to

> have my suspension Order reviewed--particularly shocking in view of the fact that my counsel raised the serious issue that my suspension was retaliatory in nature. Review of the underlying papers would show there was no other legitimate explanation for the suspension by the Court. I would waive my privilege of confidentiality in connection with that application so that you can determine for yourself the complete corrosion of the rule of law where issues raised touch upon vested interests able to draw upon the power and protection of the courts." (at pp. 9-10)

34. Notwithstanding such extraordinary letter, which proffered files to support the serious allegations made therein, Gannett refused to publish any report of my October 24, 1991 letter to the Governor, let alone undertake any investigation of my claims involving the corruption of judges and lawyers in the Ninth Judicial District. As reflected by Mr. Beaupre's letter to me dated October 31, 1991 (Exhibit "I"), Gannett's told me that I could write a "Letter to the Editor" to give my "viewpoint".

(C) Gannett's Publication Of Its Edited Version Of Plaintiff's Letter To The Editor On November 18, 1991 And Editor's Note Thereto Evinced Actual Malice

35. As reflected by the "Attachment to Summons with Notice" (Exhibit "A-1"), on November 18, 1991, Gannett published, in unauthorized expurgated form, my "Letter to the Editor", to which it added the following "Editor's note" (Exhibit "J"):

> "Writer Sassower was ordered suspended from the practice of law on June 14, 1991 by the Appellate Division, 2nd Department of state Supreme Court for failure to cooperate with a previous order of the court. That suspension is still in force. Additionally, Justice Samuel Fredman found Sassower in contempt of court for not returning papers to her former client, Breslaw, and fined Sassower the costs

> incurred by Breslaw in retrieving her file." (emphasis added)

36. As reflected by the coverletter accompanying my "Letter to the Editor" when it was faxed to the Gannett Defendants seven days earlier, on November 11, 1991 (Exhibit "K-1"), I stated as follows:

> "Please call if you are interested in setting up an appointment to review my documentation and let me know when we can expect to see this letter in print.
>
> I do <u>not</u> consent to any editing changes without my consent." (emphasis in the original)

37. At no time prior to publication of the unauthorized expurgation of my "Letter to the Editor" did Gannett inform me of its intention to delete the two paragraphs in which I discussed my suspension and the political manipulation of judgeships in the Ninth Judicial District.

38. The actual malice behind Gannett's deletion of those two paragraphs and its inclusion of its "Editor's note" is evident from examination of the paragraphs Gannett excised from my aforesaid "Letter to the Editor", which read as follows:

> "Ms. Keefe tellingly omitted any reference to a major cause of the women's suffering st forth at that meeting by a member of the audience: the 1989 Three Year Cross-Endorsements Deal. That Deal, of which Samuel Fredman was identified as the architect, traded seven judgeships, including the one to which he himself was elected without contest. As one of its terms, the Deal created protracted vacancies through required judicial resignations. Neither Justice Fredman nor the other parties to the Deal were concerned about the chaotic effect that treating judgeships as 'musical chairs'

> would have on the courts in the Ninth Judicial District--or on the lives and fortunes of litigants such as those present at the program who rightfully complained of the long delays in the trials of their divorce actions and of the attendant expense.
>
> Ms. Keefe's gratuitous reference to my suspension was not balanced by my documentable contention that it was not only unjustified, but a retaliation for having brought the lawsuit to challenge the Deal, which I handled pro bono for the Ninth Judicial Committee." (Exhibit "K-2")

39. Gannett did not contact me to authenticate the veracity of its "Editor's note" concerning my suspension, which it falsely purported was based on my alleged "failure to cooperate with a previous order of the Court". That this was untrue could have been seen from the June 14, 1991 suspension Order itself--a copy of which was available to Gannett, if not then in its possession--which does not set forth that or any other basis for my suspension--contrary to law, requiring that the basis for suspension of a lawyer's license be stated in the order of suspension.

40. The "Editor's note" was also defamatory in stating that Justice Fredman had found me "in contempt of court for not returning papers", since, in fact, Justice Fredman's June 24, 1991 Decision--in the possession of Gannett--did not find me "in contempt of court". Such fact is further reflected by my Notice of Appeal from Justice Fredman's June 24, 1991 Decision/Order (Exhibit "L"), filed on August 9, 1991--three months prior to Gannett's publication of its "Editor's note", describing Justice

Fredman's Decision as having "denied contempt relief"[7].

(D) Gannett's February 12, 1992 News Article Concerning Plaintiff Evinced Actual Malice

41. As reflected by the "Attachment to Summons with Notice" (Exhibit "A-1"), on or about February 12, 1992, Gannett published the following statement concerning Plaintiff in an article by Defendant Ellis (Exhibit "M"):

> "The settlement was made December 13, 1991, after a seven-week trial in which Sassower's former client, Kathleen C. Wolstencroft, sued to get documents involving her case."

42. Such statement is untrue, since the seven-week trial in the Wolstencroft case had absolutely nothing whatever to do with my former client's lawsuit against me, which did not involve getting "documents involved in her case". Prior to publication of said statement, late in the afternoon of February 11, 1992, the author telephoned me, stated she was then writing a story and made the foregoing statement to me--which I unequivocally and repeatedly denied.

43. In the course of my telephone conversations with Defendant Ellis on February 11, 1992, I informed her that Justice Colabella's February 10, 1992 Decision and February 11, 1992 Warrant of Commitment were legally and factually unsupported and that they were the product of a biased judge, who had been hand-picked to preside over the Wolstencroft case, notwithstanding he

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[7] My perfected appeal, detailing that Justice Fredman's legally and factually baseless Decision not only made no contempt finding, but that none was possible, is presently pending in the Appellate Division, Second Department under docket number 92-00562/4.

was ethically disqualified from doing so by reason of his close personal and political relationship with Westchester Republican Party Chairman, Anthony Colavita, who I had been suing in the Castracan v. Colavita case.

44. Also on February 11, 1992, I sent a fax not only to Defendant Ellis, but to her editors, reflecting my telephone conversations with Defendant Ellis (Exhibit "N-1"). In pertinent part I stated:

> "This is to memorialize a conversation with you about an hour ago wherein you stated that you are writing a story without benefit of the documentary evidence offered you as to the facts and law--neither of which are reflected by Judge Colabella's purely retaliatory Decision and Commitment Order..."

45. Said fax detailed the aforesaid personal and professional relationship between Justice Colabella and Mr. Colavita. As set forth in my February 11, 1992 fax (Exhibit "N-1"):

> As you were informed, I served as pro bono counsel for the past two years in litigation in which Anthony Colavita was a named defendant, based on the Three Year cross-endorsements deal struck by him and his Democratic counterpart back in 1989, trading seven judgeships of the Ninth Judicial District, including the Surrogate position. Mr. Colavita's first choice for Surrogate was Nicholas Colabella. Indeed, Judge Colabella's long and close friendship with Mr. Colavita got him on the bench in the first place. Judge Colabella had been Mr. Colavita's law partner up until then, they had been childhood chums, gone to school together, and their families had been friends from childhood on.
>
> Judge Colabella was hand-picked by Administrative Judge Ingrassia to preside

> over the Wolstencroft case[8]--a fact which he acknowledged 'on the record', as well as the fact that Judge Ingrassia told him that he 'could have some fun' with this case."

46. As indicated by my aforesaid fax, I also transmitted to Gannett--in addition to another copy of my October 24, 1991 letter to Governor Cuomo (Exhibit "H")--pertinent pages from the 1990 report of the New York State Commission on Government Integrity (Exhibit "N-2") describing Anthony Colavita as a "de facto official" of Westchester County government:

> "The Commission's investigation revealed a case study in the relationship between party politics and government in a county dominated by a powerful local political party and its leader. The investigation disclosed that the local Republican Party and its leader, Anthony Colavita, wield considerable power and influence...and that Colavita is perceived by people both in and out of government as able to influence the processes of Westchester County government..."

47. My February 11, 1992 fax complained that Gannett's reporting of the Breslaw case, had been marked by "protection of certain judges and political interests", inquiring whether Gannett would, likewise, be suppressing "the facts relative to the relationship between Justice Colabella and Anthony Colavita", just as it had suppressed the facts relative to the relationship

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8 Such assignment by Administrative Judge Ingrassia was made following his denial of my motion for change of venue. Said motion was based upon the animus against me by Judges in the Ninth Judicial District as a result of the Castracan v. Colavita case, as well as Gannett's deliberate and on-going "smear campaign" against me.

between Justice Fredman and Harvey Landau.

48. As demonstrated by the Gannett's February 12, 1992 article (Exhibit "M") and all its subsequent reporting on the subject, Gannett continued its "cover-up" of judicial misconduct and the disqualifying political connections between lawyers and judges in the Ninth Judicial District. It did not report the story of Justice Colabella's grotesque misconduct in the Wolstencroft case. It omitted any report of my contentions that Justice Colabella was ethically disqualified from presiding over my case by virtue of his relationship with his friend and political benefactor, Anthony Colavita, and that he was using his judicial office to retaliate against me for having sued Mr. Colavita and exposing his illegal judge-trading deal.

(E) Gannett's February 14, 1992 News Article Repeating The False and Defamatory Information In Its February 12, 1992 Article And Suppressing Material Facts Evinces Actual Malice

49. As shown by the "Attachment to Summons with Notice" (Exhibit "A-1"), on or about February 14, 1992, the Gannett Defendants published an article by Defendant Miller (Exhibit "O"), repeating the false and defamatory statement contained in its February 12, 1992 Ellis article (Exhibit "M"), as follows:

> "The court did not overturn his order that she pay Wolstencroft $700,000 under a December 13, 1991 settlement after a seven-week trial in which Wolstencroft sued to get documents in her case."

50. Said false statement by Defendant Miller, repeating the false statement of Defendant Ellis that the seven-

week trial involved Mrs. Wolstencroft's suing to get documents, was written with actual knowledge of its falsity.

51. Prior to publication, on February 13, 1992, I had returned a call from Defendant Miller and discussed with her the issues relative to the post-trial proceedings before Justice Colabella, as distinct from the trial. I further specifically detailed that the stay I was seeking from the Appellate Division, Second Department of Justice Colabella's Warrant of Commitment, was part of an Article 78 proceeding, Sassower v. Colabella, A.D. #92-01093, challenging Justice Colabella's as without jurisdiction and a monstrous denial of due process. In support thereof, transcripts of the proceedings before Justice Colabella were annexed, dispositively showing, inter alia, that there was absolutely no legal or factual basis for his Warrant of Commitment directing my incarceration.

52. Following my telephone conversation with Defendant Miller--and as promised to her in that conversation--I delivered a copy of a complete set of papers in my Article 78 proceeding to Defendant Gannett's headquarters, addressed to Defendant Miller's attention.

53. As reflected in my faxed letter to Defendant Miller, dated February 19, 1992 (Exhibit "P"), upon instructions of her editors, my telephone comments were deliberately omitted from her February 14, 1992 article (Exhibit "O"). Nor did Defendant Miller's article report that the stay I had obtained was part of a special proceeding brought by me to challenge

Justice Colabella's egregious judicial misconduct--a full copy of which she had received[9].

54. On February 20, 1992, I faxed a "Letter to the Editors" (Exhibit "Q"), again complaining about Gannett's false, misleading, defamatory malicious stories about me and its deliberate cover-up of misconduct by judges in the Ninth Judicial District, as shown by court transcripts and other documents. Once again, I sought retraction and correction.

55. As reflected by the ensuing correspondence between Gannett, dated February 25, 1992 (Exhibit "R-1") and myself dated March 3, 1993 (Exhibit "R-2"), Gannett wholly refused to address the serious issues which I was raising.

IV. The "Attachment To Summons With Notice" Was Meant To Be Illustrative--And Not By Any Means Comprehensive Or Complete

56. Due to the severe time constraints I was then under as a result of the snow-balling repercussions of Gannett's defamation of me, the "Attachment to Summons with Notice" (Exhibit "A-1") referred to only four defamatory articles. Insofar as its reportage of the Wolstencroft case, Gannett continued its vicious vendetta against me by publication of additional maliciously defamatory and false stories about me,

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[9] Thereafter, when, as a result of my Article 78 proceeding, Justice Colabella was forced to vacate his February 11, 1992 Warrant of Commitment, Gannett--which was informed of that fact--did not report same, notwithstanding it continued to publish articles about the Wolstencroft case. By contrast, said vacatur made the front page of the March 24, 1992 issue of the New York Law Journal, in which was also printed a "Letter to the Editor" by me.

simultaneous with its suppression of the newsworthy aspects of the case and my comments relating thereto concerning Justice Colabella's documented perversion of the judicial process, which became the subject of two Article 78 proceedings[10], and his refusal to recuse himself by reason of his close personal and political affiliations with Anthony Colavita.

57. Gannett's subsequent articles on the Wolstencroft case appeared on April 2, 1992, April 4, 1992, May 6, 1992, and May 7, 1992. The relevant correspondence between myself and Gannett evinces not only its disregard for documentary proof presented by me, but its desire to inflict harm upon me by wanton incitement of hostility in the community against me and my family by its unfair, negative reporting--reaching a point where I actually received calls from readers threatening physical injury (Exhibit "S-1", "S-2").

58. The pattern of sensationalized, negative reportage by Gannett of matters involving me goes back many years before Wolstencroft, most egregiously with the Breslaw matter. Although that case involved an inconsequential, private fee dispute between myself and Mrs. Beslaw[11], it received front-page

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10 Gannett suppressed report of either article 78 proceeding. Each entitled Sassower v. Colabella, they were filed by me in February and May 1992 in the Appellate Division, Second Department, under docket numbers 92-01093 and 92-03248, respectively. It may also be noted that two notices of appeal were filed by me in the Wolstencroft case, on March 11, 1992 and June 1, 1992, which were consolidated in a single appeal under docket number 92-00459.

11 See, inter alia, my daughter's January 31, 1990 letter to Defendant Nikolski, which is part of Exhibit "F".

treatment and banner headlines, clearly the further result of the fact that Defendant Milton Hoffman, political editor of Gannett Suburban Newspapers, is a long-time personal friend of Justice Samuel Fredman, who in the summer of 1989 was seeking election to a full term, following his appointment by Governor Cuomo earlier that year.

59. On the other hand, because of Justice Fredman's involvement as both the principal architect and a beneficiary of the Three-Year Deal I challenged in Castracan v. Colavita, that case was given minimal coverage by Gannett--although it was a landmark case which, had it been given proper media attention, had the potential to revolutionize the judicial nominating process.

60. Any objective analysis of the coverage given and withheld by Gannett where I was concerned over the past five years would dramatically show that matters that did not have any public significance were blown up, sensationalized, and falsely and unfairly reported by Gannett, whereas matters which genuinely concerned the public and showed me as a heroic leader speaking out against the politicization of the judiciary and corruption of the judicial process, were minimized, if not suppressed entirely.

61. This suppression will, likewise, be the subject of my intended complaint against Gannett--because it so clearly highlights Gannett's spiteful coverage in matters relating to me, further reinforcing my contention that Gannett has acted knowingly and with actual malice. By reason of its vicious

vendetta against me, Gannett has subverted its journalistic duty to report newsworthy events of public interest, where to do so would require it to place me in a positive light.

Indeed, simultaneous with its defamatory coverage of the Wolstencroft case, Gannett was aware that, as Director of the Ninth Judicial Committee, I was engaged in an investigative project as to the qualifications of Westchester County Executive Andrew O'Rourke for the lifetime District Court judgeship in the Southern District of New York to which, with the backing of Anthony Colavita, he had been nominated by President Bush. That six-month project culminated in my submission of a report to the Senate Judiciary Committee and the Senate leadership in May 1992, documenting Mr. O'Rourke's gross unfitness for judicial office, as well as the deficiencies of the screening process that produced such unworthy nomination. Notwithstanding Gannett received a full set of the relevant papers comprising our breath-taking submission, it totally suppressed all coverage thereof.

While my file of correspondence with Gannett complaining of its suppression of my aforesaid report on Andrew O'Rourke's lack of judicial qualification and criticism of the federal judicial screening process is voluminous, for present purposes I annex the July 6, 1992 letter signed by Elena Sassower, as coordinator of the Ninth Judicial Committee as illustrative (Exhibit "T"). Said letter put the "Gannett mothership" on notice of Gannett Suburban Newspaper's:

> "pattern and practice of disregarding documentary evidence in: (a) suppressing

> major new stories; and (b) running stories which it knows to be false and defamatory in reckless disregard of the truth." (Emphasis in the original)

Notwithstanding such letter to the Gannett "mothership", Gannett continued to suppress any mention of our report for another three months. Thereafter, after a vigorous correspondence and a meeting with Gannett, including Defendant Hoffman, a superficial article appeared on November 2, 1992. Said article incorporated the investigative findings that formed the centerpiece of our report, but made it appear that same were the product of Gannett's own investigation. For present purposes, my daughter's proposed "Guest Column"--which Gannett refused to publish--is annexed hereto as Exhibit "U".

V. There Was A Reasonable Excuse for Not Filing A Complaint

62. Despite the fact that my files document that I can readily establish a prima facie case, as is apparent from the foregoing, that fact alone does not guarantee success in obtaining a skilled lawyer able to commit himself to a case against a major media giant such as Gannett. Needless to say, my efforts have been further complicated by Gannett's successful besmirchment of my good name, resulting from its relentless character assassination of me.

63. It may be noted that before commencing this litigation, I offered Mr. Callagy the same opportunity I have always offered to Gannett--to meet with me and review my documentary proof of the truth of my statements exposing the lies

Gannett has published about me and its deliberate suppression of facts so as to put me in a false and unfair light. As reflected by paragraph 5 of my Affidavit in Opposition and in Support of my Cross-Motion, Mr. Callagy rejected that offer out of hand.

64. In view of Mr. Callagy's rejection of my offer to review the documentary evidence, he has no basis on which to state that I do not have a meritorious cause of action--which, as shown hereinabove and by my documentary exhibits annexed hereto, I clearly do. By reason of the difficulties described herein and in my Affidavit in Opposition and in Support of my Cross-Motion, and the oral understanding had with Mr. Callagy that a second extension would be forthcoming[12] if I still did not have counsel in place, there is a reasonable excuse for not having served a complaint prior thereto.

WHEREFORE, Plaintiff respectfully requests that this Court reconsider and recall its October 22, 1993 Decision granting Gannett's motion to dismiss pursuant to CPLR 3012(b), and further that it grant reargument and renewal thereof, and that upon such reargument and renewal, deny Gannett's said motion

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[12] The Code of Professional Responsibility specifically enjoins a lawyer to "accede to reasonable requests" for adjournments, and to give "timely notice" of his intention not to follow local customs of courtesy or practice. EC7-38. A second extension would normally be granted as a matter of courtesy and practice in my experience as a practitioner, and would not be refused without advance notice of such intention. Mr. Callagy does not claim that he advised me when he granted my first extension request that he would not grant a further one. In fact, as reflected by paragraph 6 of my Affidavit in Opposition and in Support of my Cross-Motion, he led me to believe the exact opposite.

and grant Plaintiff's cross-motion for an extension of time to serve her complaint and permit Plaintiff to do so within 30 days from service upon her of the Order of the Court, with Notice of Entry, granting her motion for an extension of time to file and serve a complaint.

DORIS L. SASSOWER

Sworn to before me this
29th day of November, 1993

Notary Public

RICHARD SUSSMAN
Notary Public, State of New York
No. 31-4881904
Qualified in New York County
Commission Expires May 19, 199..