

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

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DORIS SASSOWER, : Index No. 29094/92
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 Plaintiff, :
 :
 - against - : AFFIDAVIT
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 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 RETRILLO, :
 :
 Defendants. :
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ROBERT M. CALLAGY, being duly sworn, deposes and
says:

1. I am a member of the firm of Satterlee,
Stephens Burke & Burke, attorneys for defendants Gannett
Company, Inc., Gannett Satellite Information Network, Inc.,
Nancy Q. Keefe, Deborah Pines, Elaine A. Ellis, Carole
Tanzer Miller, Cameron McWhirter, Thomas Anderson, Michael
Meek, Laurie Nikolski, Milton Hoffman, and "Does" 1-15,
being Gannett editors (the "Gannett defendants"). I am
fully familiar with the circumstances of this case and the
facts set forth herein.

2. I make this affidavit in further support of
defendants' motion to dismiss this action pursuant to
Section 3012(b) of the Civil Practice Law and Rules and in

opposition to the cross-motion of plaintiff Doris L. Sassower ("Sassower") for a 90-day extension of time to serve her complaint.

3. Sassower does not deny that she failed to serve the complaint within twenty days after service of the Demand for Complaint (by March 29, 1993), as provided in CPLR Section 3012(b). She does not deny that she failed to serve the complaint within the three weeks of additional time provided in the Stipulation (by April 20, 1993).

4. As discussed in the memorandum of law submitted herewith, a plaintiff who seeks to serve a complaint after the expiration of the 20-day statutory period following service of a Demand for Complaint must demonstrate that there was a reasonable excuse for the delay and make a prima facie showing of legal merit. Sassower has completely failed to make either of the required showings.

5. Instead of presenting a reasonable excuse in her Affidavit sworn to July 6, 1993 ("Sassower Aff."), Sassower offers irrelevant and baseless accusations that I engaged in "sharp practice" by denying her a second extension of time that I allegedly "had previously orally indicated would be forthcoming if needed by [her]." (Sassower Aff., ¶11.) This allegation is untrue as well as irrelevant. I told Sassower that I would extend her time only until April 20, 1993. At no time did I tell her that I would be "amenable" to any further extensions or that any further extensions would be "forthcoming." To the contrary,

I plainly told Sassower that I considered her claim to be frivolous, that she had had more than enough time to retain counsel, and that, under the circumstances, it was inappropriate to drag the matter out any further.

6. In fact, Sassower's own affidavit demonstrates that her delays have been without reasonable excuse and that she has failed to make good faith efforts to comply with the time limitations set forth in the CPLR and the Stipulation.¹ Sassower states that, having agreed, by signed Stipulation, to serve her complaint by April 20, 1993, she met with her "proposed counsel," Jonathan Lubell, Esq., for the first time on April 20, 1993. (Sassower Aff., ¶7.) Obviously, even if Mr. Lubell had discovered no conflict, it would have been utterly impossible for Mr. Lubell -- who had not yet even been retained -- to have prepared and served a complaint on April 20, 1993. Sassower, knowing full well in advance that Mr. Lubell would not serve the complaint by the stipulated time, did not call to request a second extension until after meeting with him on April 20, disingenuously

¹Characteristically, Sassower failed to serve the Sassower Aff. on July 2, 1993, seven days before the return date, as required by CPLR 2214(b) and the demand made in defendants' notice of motion. Instead, the Sassower Aff., which is sworn to July 6, 1993, was received by my office by hand-delivery on July 7, 1993. Sassower's notice of cross-motion is equally untimely, having been served two days before the return date rather than the three days required by CPLR 2215.

blaming the delay on Mr. Lubell's "last-minute discovered conflict." (Sassower Aff., ¶9.)

7. Similarly, Sassower's allegations of "diligent efforts to find unconflicted counsel" fail to offer a reasonable excuse for her delay. It is now nearly nine months since the date of Sassower's summons (October 26, 1992) and almost five months since the summons was served (February 22, 1993). The reasons Sassower gives for her inability to retain counsel during that time-period are thoroughly incredible; the records of this and other courts provide ample evidence that competent counsel is available to libel plaintiffs of all kinds. If Sassower has failed to seek out or engage appropriate counsel, or if her case has been declined by some counsel because of its obvious lack of merit, this does not constitute a reasonable excuse for her delay in serving the complaint.

8. As discussed in the accompanying memorandum of law, Sassower has also completely failed to make a prima facie showing of legal merit. Her affidavit offers no evidence or argument in this regard but merely refers to the unsworn Attachment to the Summons annexed as Exhibit A to my June 15, 1993 Affidavit. This Attachment lists four allegedly defamatory statements published by the defendants and states that they were published on October 24, 1991, November 18, 1991, February 12, 1992, and February 14, 1992. Sassower does not deny that the Summons was not served until

February 22, 1993. Therefore, as demonstrated in the memorandum submitted herewith, Sassower's action is clearly barred by the New York one-year statute of limitations for libel. It is thus, on its face, entirely devoid of merit.

9. For the foregoing reasons, and those set forth in the accompanying memorandum of law, defendants' motion should be granted and Sassower's cross-motion should be denied in its entirety.

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ROBERT M. CALLAGY

Sworn to before me this
day of July, 1993

Notary Public