SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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ELENA RUTH SASSOWER, individually, and as Coordinator of the Center for Judicial Accountability, Inc., CENTER FOR JUDICIAL ACCOUNTABILITY, INC. and The Public as represented by them,

Index No. 05-19841

Plaintiffs,

-against-

THE NEW YORK TIMES COMPANY, The New York Times, ARTHUR SULZBERGER, JR., BILL KELLER, JILL ABRAMSON, ALLAN M. SIEGAL, GAIL COLLINS, individually and on behalf of THE EDITORIAL BOARD, DANIEL OKRENT, BYRON CALAME, MAREK FUCHS, and DOES 1-20,

AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR DISQUALIFICATION, REARGUMENT, RENEWAL AND VACATUR

Defendants.

-------------------------------------x

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

GEORGE FREEMAN, being duly sworn, deposes and says:

1. I am Vice President and Assistant General Counsel of The New York Times Company and am a member of the bar of the State of New York. I am fully familiar with the facts set forth herein.

2. I submit this Affidavit in opposition to the various motions of plaintiffs Elena Ruth Sassower and Center for Judicial Accountability, Inc. ("Ms. Sassower") which seek, on a wide host of grounds, to vacate the Decision and Order of Justice Loehr dated July 5, 2006 granting Defendants' motion to dismiss the instant complaint, and the subsequent judgment.

3. The thrust of Ms. Sassower's Moving Affidavit is its energetic argument that the Decision and Order of Judge Loehr be vacated, alternatively because he should have been disqualified for "demonstrated actual bias" (Notice of Motion at 1) and/or because it was somehow wrong legally as having "conceal[ed] the threshold issue before the Court" (Plaintiffs' Memo of Law at 2) and "falsifi[ed] the law and appli[ed] law inapplicable to the actual pleaded allegations." (Id.at13). Plaintiff also vehemently objects to the judgment which was entered.

4. The nub of Ms. Sassowers's Moving Affidavit regards her disqualification motion and attempts to argue that the appointment of Justice Loehr was the result of a 16 year old pattern of judicial corruption in Westchester County (Moving Aff't, ¶ 4-24), culminating in the "brazen fraud" (Id. at ¶ 14) inherent in the Court's decision. See also Pltfs' Memo of Law at 28-29: "the Court's July 5, 2006 decision and order is not just factually and legally insupportable but is, in every respect, a fraud by the Court."

5. Your affiant does not believe there was anything the slightest bit inappropriate or improper, let alone fraudulent or corrupt, in the appointment of Justice Loehr to sit on this matter. However, because your affiant has no material information as to how this Court was given this case, and because Ms. Sassower has, at bottom, showed no basis whatsoever for her claims of bias and corruption, it is unnecessary for affiant to discuss this primary contention further.

6. Ms. Sassower also vehemently attacks the legal sufficiency of the Court's decision. Indeed, to obtain reargument she has the burden of identifying specifically "matters of fact or law allegedly overlooked or misapprehended by the court."

CPLR §2221(d). While plaintiffs' Memo of Law goes on at great length to repeat many of the same contentions she argued in her original papers on the motion to dismiss as well as at oral argument, in the end, she fails to point to any omissions or misapprehensions by the Court. And, indeed, there were none. The Court very ably condensed the facts and the legal arguments of a 173 paragraph complaint and voluminous motions papers into a cogent eleven-page decision which fully and deftly dealt with all of the material issues raised. Ms Sassower's contention that not all the facts and legal argument in her over 100 pages of submissions were responded to at sufficient length cannot possibly be availing. Nor is her argument that the Court somehow failed by not repeating all the pleadings and arguments made by both sides in their papers. On the contrary, the Court did a superb job of focusing on the key aspects of both plaintiffs' and defendants' submissions and succinctly, but with solid support, coming to its legal conclusions.

7. At the same time, Ms. Sassower seeks renewal of the Court's decision even though she offers no new fact nor demonstrates any change in the law, the standard she must meet. CPLR § 2221(e). Indeed, as is typical of her entire effort, she spends pages (Plaintiffs' Memo at 17-20) rearguing her claim of journalistic fraud, notwithstanding that as The Times argued in its motion to dismiss and the court correctly concluded, "no jurisdiction has embraced such cause of action"; the facts of the Jayson Blair case have nothing at all to do with the facts of the instant case; and, in any event, "decisions concerning the extent that a newspaper will or will not cover a story are editorial, necessarily subjective and are protected under the First Amendment." (Decision and Order at 9).

8. Finally, Ms. Sassower seeks vacatur of the judgment entered, insofar as it dismissed her claim " with prejudice", for two reasons. First, she claims that affiant did not give her notice of the judgment he filed with the Court. However, even the authorities cited by Ms. Sassower (Plaintiffs' Memo at 31-32) confirm that where a decision and order is "uncomplicated", there is no reason or requirement for the prevailing party to serve his adversary. Indeed, the common practice and the procedure outlined by the commentator David Siegel, which was followed here, is that "the judgment, which is usually drafted by the winner, is brought to the clerk for signing and entry." (Siegal, New York Practice, 3rd Ed. §418 at 680). Other than that it was mailed to the clerk, this practice and procedure, which does not call for service on the adversary, was followed here.

9. Second, Ms. Sassower objects to that part of the judgment which dismisses her claims "with prejudice in their entirety." The Decision and Order was silent as to whether it was to be with or without prejudice. However, inasmuch as the reasons why the claims were dismissed were uncorrectable – no amount of repleading or additional facts could save them – entering a judgment with prejudice seemed entirely appropriate and consistent with the Court's decision. Thus, the Court dismissed the libel claims because it held that the words sued upon were "not reasonably susceptible of a defamatory meeting, and were, in any event merely rhetorical hyperbole constituting pure opinion. They are therefore constitutionally protected." (Decision and Order at 8) Since that determination is based on the words of The Times column itself, and obviously cannot be changed, the claims about them cannot be restructured in any way. It, therefore, follows directly that the dismissal on these grounds should be with prejudice.

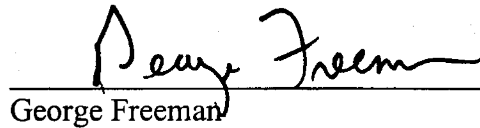
Likewise, a second ground for dismissal with respect to some other passages of the column is that they were "a fair and substantially accurate description of the official proceedings it purported to cover." (Decision and Order at 8) This basis, under NY Civil Rights Law § 74, also cannot be changed or restructured by new pleading: the column, when looked at side-by-side with government reports and transcripts, is seen to be a fair description, and thus, on this ground too dismissal with prejudice is fully appropriate. And as set forth above, since no cause of action for journalistic fraud can exist, no amount of repleading can make such a claim cognizable.

10. Finally, plaintiffs make a claim that somehow the oral argument on June 14, 2006 was improper in that the Court allowed affiant to argue his dismissal motion first. (Plaintiffs' Moving Affidavit at ¶ 24.) That is totally customary and proper. Indeed, the only unique aspect of oral argument was that affiant had to wait six hours to present it: the first time the Court was prepared to hear argument, Ms. Sassower's co-counsel Mr. Vigliano was in the hallway and thus the matter was put off to the next call. When the case was ready to be heard on the next call, immediately after the lunch break, Ms. Sassower had not returned from her lunch, later explaining that since it was Flag Day she had brought some flags for the Court. As a result of her lateness, argument was delayed another 90 minutes.

11. For all the reasons set forth above, it is respectfully submitted that the current motions of Ms. Sassower be dismissed and that the decision, order and judgment already entered in this case be affirmed. Further, at oral argument, affiant requested, in light of Ms. Sassower's litigation history of repetitive motion practice, including routine motions to recuse and disqualify --as she now has filed here --that before she be allowed

to file any new motions or claims against these defendants, permission from the Court be first sought. The Court did not respond to that request. Especially in light of the current motion papers, that request is renewed.

Further affiant sayeth not.



George Freeman

Sworn and subscribed to before me
this 19th day of September 2006.

Notary Public

DEBORAH BESHAW
Notary Public, State of New York
No. 01BE5076617
Qualified in Kings County
Certificate on file in New York County
Commission Expires April 21, 2007

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George Freeman, Esq.

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LEGAL DEPARTMENT

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