

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
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,

**REPLY
AFFIDAVIT**

Defendants.

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

GEORGE FREEMAN, being duly sworn, deposes and says:

1. I am 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 Reply Affidavit in further support of the Motion of
Defendants, The New York Times Company, et. al., to Dismiss the instant Complaint,
and in opposition to a cross-motion of plaintiffs.

Cross-Motion for Sanctions and Disqualification

3. Plaintiffs' cross-motion seeks \$10,000 sanctions against me and The New
York Times Company Legal Department and an order referring us to "appropriate

disciplinary authorities". As can be seen from my resume set forth in ¶ 4 of Ms. Sassower's Affidavit in Opposition, I have been an attorney doing litigation for about 30 years. Since 1977, when I became a member of the Bars of New York and Florida, until Ms. Sassower's cross-motion, I have never been accused of any unethical conduct, never been threatened with any sort of sanctions, never had anyone suggest that I should be referred to a disciplinary authority, never been charged with violation of the Code of Professional Responsibility, and never been alleged - - let alone on a paragraph by paragraph basis - - to have committed a fraud on any court or to have engaged in deceitful conduct. That Ms. Sassower charges all of the above with respect to a rather routine Motion to Dismiss is all the more remarkable - - and tends to underscore the lack of a substantive response to The Times's dispositive motion. These charges against me are as inappropriate and unwarranted as they are offensive, and should not be condoned by this Court.

4. Likewise, Ms. Sassower's attempt to disqualify me and my New York Times Company Legal Department colleagues as attorneys on conflict of interest grounds should be rejected. We routinely handle the few New York libel suits filed against The Times such as this. In particular, contrary to Ms. Sassower's contention, my colleagues and I certainly do not have adverse interests from our clients (Plaintiffs' Memo of Law at 52). Nor would we be witnesses at any trial since, as Ms. Sassower acknowledges, (Sassower Aff., ¶ 21) we had nothing to do with the Fuchs column and had not reviewed it (or even been aware of it) at the time of publication.

The Times' Motion to Dismiss Should Be Granted

5. In the end, despite Ms. Sassower's more than thorough critique of our moving papers, she has given the court no reasons to deny The Times's Motion to Dismiss. Indeed, the bulk of her memorandum deals less with the allegedly libelous materials in the relatively short column itself, but more on how The Times's Memorandum in Support of the Motion does not adequately rebut her "nothing less than...most breathtaking of contextual examinations" analyzing the article. (Sassower Aff., ¶25) But plaintiffs' burden is to show that a viable cause of action for libel exists, not to show that I have not rebutted each line of her contextual analysis.

6. The basic libel theories which dictate dismissal of the claims remain untouched by the opposition papers. Thus, for example, as The Times pointed out in its opening Memorandum in Support, the allegations regarding the Senate hearing and the court hearing resulting in plaintiffs' incarceration are not actionable because of the privilege for fair and accurate reports of official proceedings.* Columnist Fuchs' account unmistakably, and as a matter of law, is a fair rendition of those official proceedings: what plaintiffs quarrel with is not his account, but the underlying statement and positions of members of the U.S Senate and Judge Holeman, who decided her case. This is made clear from her argument (Memo in Opposition at 26) that "Fuchs" column is not a 'fair and accurate' account of official proceedings in that it completely covers up governmental misconduct readily disclosed by the records of the Senate Judiciary

* As set forth in our opening memo at 12, footnote 6, reliance on transcripts of these hearings on a motion to dismiss is perfectly proper.

Committee's proceedings on Judge Wesley's confirmation and by the records of judicial proceedings before Judge Holeman." (Emphasis added)

7. It is clear that much of what plaintiff disapproves in the column is the depiction and characterization of her; while I would submit that the column is not nearly as unfavorable as plaintiff makes it out to be, neither of our interpretations matters -- the subjective portrait of Ms. Sassower in the column is protected opinion. Plaintiffs' attack on the opinion privilege is without merit. First, plaintiffs decry the characterization of her because they claim that the sources of the depictions "are fictions" (Memo in Opp. at 23, 32); however, whether the sources are confidential or not, and even if they were "fictions" (which they are not), such depictions of Ms. Sassower as "something of a handful", "relentless" and "delivering her views with a subtlety of a claw hammer" are protected opinion -- colorful, perhaps vituperative, hyperbolic and subjective depictions perfectly appropriate for a column such as this. Moreover, these clearly are opinions, and are not dependent on undisclosed facts.

8. Ms. Sassower complains that in our moving papers, we do not give adequate space to her purported cause of action for "journalistic fraud". That is simply because no such cause of action exists, and, indeed, plaintiff has cited no case recognizing it in our jurisprudence. Her basis for creating such a claim appears to be a law review article about Jayson Blair, which obviously has no legal precedent or applicability. It concerns putative claims (none were ever filed) against a disgraced reporter who admittedly fabricated a series of news articles, something not remotely at issue here. Further underscoring the emptiness of this claim are the paragraphs in the Complaint supporting it (¶¶163- 175): nothing in those paragraphs focuses on the Westchester

column; rather, all the allegations for this purported cause of action deal with corruption in federal judicial selection, New York political leaders, judicial corruption, and the lack of Times coverage about these matters.

Corrected Exhibit A

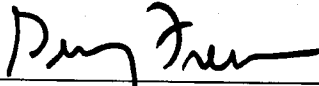
9. Ms. Sassower is correct that I mistakenly attached the wrong transcript as Exhibit A to my earlier affidavit in this case. As she correctly assumed, I took the wrong exhibit from her website, attaching two pages of the Senate Judiciary Committee's June 25, 1996 confirmation hearing rather than the transcript of the May 22, 2003 Senate Judiciary Committee hearing at which she was arrested, leading to her conviction and incarceration and, ultimately, to the article at issue in this case. I apologize to the court for this innocent error, and attach herewith as Exhibit A (also taken from her website) the transcript of the May 22, 2003 Senate Judiciary Committee hearing regarding the nomination of Judge Richard Wesley which she disrupted.

Conclusion

10. At bottom, what the Court must consider on this motion is not the voluminous submissions of the parties, but simply whether anything in the 17-paragraph column is actionable as a legal matter. We believe that it is clear that there are no false and defamatory statements of fact in the article and that, hence, no cause of action may lie. A review of all the submissions herein (as well as the 300 letters she has written The Times) convinces us that Ms. Sassower would have sued on any article The New York Times would have written about her - - save for one which would have adopted her views on pervasive judicial corruption and conflict of interest. However, Ms. Sassower's disapproval or dislike of the column may not cause defendant and the court system to be

further burdened with this lawsuit. The column contains no unprotected false and defamatory factual statements. For all these reasons, it is respectfully submitted that the complaint be dismissed with prejudice.

Further affiant sayeth not.



George Freeman

Sworn and subscribed before me
this 9 day of June 2006.



Rosie Cubero

Notary Public

ROSIE CUBERO
Notary Public, State of New York
No. 31-5005506
Qualified in New York County
Commission Expires Dec. 7, 2006