

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
GEORGE SASSOWER,

Plaintiff-Appellant,

-against-

APPELLATE DIVISION OF THE SUPREME
COURT, THE SECOND JUDICIAL
DEPARTMENT OF THE STATE OF NEW YORK,

Defendants-Appellees.
-----X

jean bright
: AFFIDAVIT IN OPPOSITION
TO PLAINTIFF-APPELLANT'S
: MOTION TO VACATE DIS-
MISSAL

Docket No. 79-7205

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

KATHLEEN GILL MILLER, being duly sworn, deposes and
says:

1. I am an Assistant in the office of ROBERT ABRAMS,
Attorney General for the State of New York and Attorney for
defendants-appellees herein. I make this affidavit in opposition
to plaintiff-appellant's motion to vacate the order of dismissal
dated April 18, 1979.

2. On March 27, 1979, your deponent received a copy
of the scheduling order herein of the United States Court of
Appeals for the Second Circuit which directed that a pre-argument
conference had been scheduled for April 6, 1979 at 10:00 a.m.
One day prior to this conference your Department was advised by
the office of staff counsel to the Court that that conference
had been adjourned at plaintiff-appellant's request and was
rescheduled for April 17, 1979 at 3:30 p.m.

3. On April 17, 1979, your deponent appeared at Room 1603 at 3:30 p.m. for the scheduled conference. Plaintiff-appellant did not appear or telephone or otherwise communicate with your deponent that he would not be present. Staff counsel's office told your deponent that plaintiff-appellant was expected for the appointment.

4. The scheduling order of March 27, 1979 further provided that the record on appeal, in the above-mentioned case, be filed on or before April 9, 1979. On April 17, 1979 the record on appeal had still not been filed.

5. This appeal is from judgment of the United States District Court of the Southern District of New York (Brieant, J.); dismissing plaintiff-appellant's complaint. The complaint, brought pursuant to 42 U.S.C. § 1983, requested that the Federal Court order the Appellate Division Second Department expunge certain statements from its decision of November 6, 1978. That decision affirmed the granting of a writ of habeas corpus to plaintiff-appellant and annulment of his adjudication of contempt. The statements sought to be expunged are obiter dicta.

6. Plaintiff's complaint was dismissed on motion of the defendants by order dated February 9, 1979. The decision of Judge Charles L. Brieant was based on the doctrine of Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and Tang v. Appellate Division, 487 F. 2d 138 (2d Cir. 1973).

7. This appeal should not be restored since this case is essentially frivolous. Shaw v. Harnett, Docket No. 78-7254 (2d Cir., November 13, 1978).

WHEREFORE, this appeal should not be restored since plaintiff-appellant has not diligently pursued the filing and conferencing requirements of this Court.


KATHLEEN GILL MILLER

Sworn to before me this
20th day of April, 1979


Assistant Attorney General
of the State of New York