791-0107

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

REPLY AFFIDAVIT

Docket No. 79-7205

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

GEORGE SASSOWER, Esq., first being duly sworn, deposes and says:

This affidavit is in reply to the affidavit of KATHLEEN GILL MILLER, Esq., sworn to on April 20, 1979 and received on Monday, April 23, 1979.

1. With respect to the pre-argument conference scheduled for April 6, 1979 at 10:00 A.M., I advised the Office of Staff Counsel that I was scheduled to appear in Supreme Court, Westchester County, in the matter of Thiessen v. Thiessen and, in fact, was in such court on that day from about 9:30 in the morning until about 3:00 in the afternoon.

At the time that I advised the office of Staff Counsel of the aforementioned conflicting engagement, I was told that I would be advised of the adjourned date, if such conference was to be rescheduled. I never was advised of any such rescheduled date.

2. On April 17, 1979, I received a telephone call from the office of Staff Counsel inquiring as to my non-appearance. I then advised such office that I had never been informed that a conference was scheduled for that date and consequently, was unaware of same.

As a result thereof, I was advised that said conference would take place the following day, to which I was agreeable and made other plans for New York City to fill out the day there.

Sometime later, I received another telephone call from the office of Staff Counsel advising me that such conference was being cancelled because this action had been dismissed for failure to timely file the Record in this Court.

3. I immediately, on April 17, 1979, made the instant motion and filed it with the Court the following morning.

On filing of such motion, the Docket Sheet was examined and at that time this action had not been dismissed as I had been advised the previous day. I made inquiry respecting same inasmuch I had been advised by the office of Staff Counsel the day before that same had been dismissed and I was advised to telephone that afternoon.

I telephoned at about 2:45 and I was advised that no order of dismissal had been received but when I called still later that afternoon, I was advised that such order of

dismissal dated April 18, 1979 was received subsequent to the filing of my motion.

4. Annexed hereto is a copy of the Docket Sheet of the District Court which reveals that the District Court Reporter filed the minutes on April 16, 1979.

5. Although I have requested the Attorney General to advise me what additional material it desires in the Joint Appendix, I have received no response.

6. I am ready with two business days notice and prepared to file my Appendix and Brief.

7. Contrary to the argument of the Attorney General, it is my view that Rooker and Tang support the legitimacy of my complaint particularly in light of Winters v. Lavine, (574 F.2d 46-2nd Cir.).

I believe that it is inappropriate at this juncture to argue at length the merits of my appeal. I desire the opportunity to present my arguments before the Court so that such merits can be appropriately determined.

8. There has been no lack of diligence on my part in prosecuting this appeal.

WHEREFORE, it is respectfully prayed that my motion be granted in all respects.

GEORGE SASSOWER

Sworn to before me this
24th day of April, 1979

MURIEL GOLDBERG
Notary Public, State of New York
No. 60-4515474 Westchester County
Commission Expires March 30, 19.