

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

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In the Matter of the Application of :
HYMAN RAFFE, GEORGE SASSOWER, ESQ., :
and SAM POLUR, ESQ., :

Petitioners, :

-against- :

HON. ALVIN F. KLEIN and HON. DAVID B. :
SAXE, :

Respondents. :

Pursuant a Writ of Prohibition and a :
Bill in Equity (Sic.) :

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

DAVID S. COOK, being duly sworn, deposes and says:

1. I am a Senior Attorney in the office of ROBERT ABRAMS, Attorney General of the State of New York, attorney for respondents herein.

2. I make this affidavit in opposition to this, the twenty-fourth Article 78 proceeding brought by the same petitioners arising from the litigation related to the dissolution of Puccini Clothes, Ltd.

3. The position of respondents is amply set forth in the affidavits of Donald Schnider, sworn to August 5, 1985 and Michael J. Gerstein, sworn to August 12, 1985 previously filed with this Court. Respondents adopt the statements contained therein.

4. Respondents would add to those affidavits only to point out the following:

a. The "Writ of Prohibition" and "Bill in Equity" are unknown to practice under the Civil Practice Law and Rules. To the extent that they survive the enactment of the Civil Practice Law and Rules (see CPLR § 103), they survive in Article 78 of the CPLR.

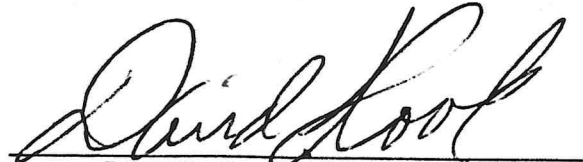
b. Petitioner Sassower and Polur, attorneys knew or should have known that an Article 78 proceeding in the nature of prohibition will not lie when a petitioner has an adequate remedy at law, such as an appeal. See State v. King, 36 N.Y.2d 59 (1975).

c. That petitioners had such remedy is clear from the facts that their appeal of the Orders which are the subject of this appeal is pending before this Court, and this Court has already denied their application for an interim stay (July 25, 1985).

d. In addition, although the petition should have

been served in the same manner as a summons, see CPLR § 403(c), respondents have not been so served.

5. The petition should be dismissed with costs.


DAVID S. COOK

Sworn to before me this
16th day of August, 1985


Assistant Attorney General
of the State of New York