

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
GEORGE SASSOWER, individually and as trustee
of the trusts created by EUGENE PAUL KELLY,
and by his Estate, and those similarly
situated, or to be benefited thereby,

Plaintiff

NOTICE OF MOTION

CV-86-3797

(JM)

-against-

VINCENT G. BERGER, JR.; ANTHONY MASTROIANNI;
Surrogate ERNEST L. SIGNORELLI; CHARLES Z.
ABUZA; Hon. HARRY SEIDELL; RICHARD C. CAHN;
ROBERT M. CALICA; MARTIN B. ASHARE; THE
SURROGATE'S COURT OF THE STATE OF NEW YORK,
COUNTY OF SUFFOLK; THE SHERIFF OF SUFFOLK
COUNTY; Hon. SOL WACHTLER; Hon. JOSEPH W.
BELLACOSA; Hon. MILTON MOLLEN, individually
and on behalf of the APPELLATE DIVISION OF
THE SUPREME COURT, SECOND JUDICIAL
DEPARTMENT; Hon. MOSES M. WEINSTEIN; Hon.
ISAAC RUBIN; and Hon. BURTON S. JOSEPH,

Defendants.

-----x
TO: GEORGE SASSOWER, Esq.
Plaintiff pro se
51 Davis Avenue
White Plains, NY 10605

ROBERT M. CALICA, Esq.
Reisman, Pieroz & Reisman, Esqs.
1301 Franklin Avenue
Garden City, NY 11530

MARTIN BRADLEY ASHARE
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, NY 11788


PLEASE TAKE NOTICE, that the undersigned will bring on
a motion:

1. To dismiss the action because the complaint fails to state a claim against the judicial defendants upon which relief can be granted.

2. To dismiss the action because this Court lacks jurisdiction over the subject matter.

This motion is returnable December 1, 1986 before JUDGE JACOB MISHLER, United States Courthouse, Uniondale Avenue and Hempstead Turnpike, Uniondale, New York, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: November 28, 1986


DEWEY LEE
Assistant Attorney General
ROBERT ABRAMS, Attorney General
of the State of New York
Attorney for Judicial Defendants
190 Willis Avenue
Mineola, NY 11501
(516) 742-3053

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
GEORGE SASSOWER, individually and as trustee
of the trusts created by EUGENE PAUL KELLY,
and by his Estate, and those similarly
situated, or to be benefited thereby,

AFFIDAVIT
CV-86-3797

Plaintiff,

(JM)

-against-

VINCENT G. BERGER, JR.; ANTHONY MASTROIANNI;
Surrogate ERNEST L. SIGNORELLI; CHARLES Z.
ABUZA; Hon. HARRY SEIDELL; RICHARD C. CAHN;
ROBERT M. CALICA; MARTIN B. ASHARE; THE
SURROGATE'S COURT OF THE STATE OF NEW YORK,
COUNTY OF SUFFOLK; THE SHERIFF OF SUFFOLK
COUNTY; Hon. SOL WACHTLER; Hon. JOSEPH W.
BELLACOSA; Hon. MILTON MOLLEN, individually
and on behalf of the APPELLATE DIVISION OF
THE SUPREME COURT, SECOND JUDICIAL
DEPARTMENT; Hon. MOSES M. WEINSTEIN; Hon.
ISAAC RUBIN; and Hon. BURTON S. JOSEPH,

Defendants.

-----x
STATE OF NEW YORK)
) s.s.:
COUNTY OF NASSAU)

DEWEY LEE, being duly sworn, deposes and says:

1, I am an Assistant Attorney General in the Nassau
County office of New York State Attorney General ROBERT ABRAMS
and am assigned to represent the judicial defendants:

- a. Surrogate Ernest L. Signorelli,
- b. Honorable Harry Seidell,
- c. The Surrogate's Court of the State of
New York, County of Suffolk,
- d. Honorable Sol Wachtler,
- e. Honorable Joseph W. Bellacosa,
- f. Honorable Milton Mollen, individually and
on behalf of the Appellate Division of
the Supreme Court, Second Judicial Department,

- g. Honorable Moses M. Weinstein,
- h. Honorable Isaac Rubin, and
- i. Honorable Burton S. Joseph.

2. This affidavit is submitted in support of the annexed motion to dismiss the complaint.

3. Pursuant to Sassower v. Signorelli, Nos. CV 84-2989, 78 C 124, 77 C 1447 (EDNY), a memorandum of decision and order dated March 4, 1986 (memorandum annexed), the plaintiff has failed to pay any of the \$2,661.25 as attorney's fees and costs entered in those actions.



DEWEY LEE
Assistant Attorney General

Sworn to before me this
28th day of November, 1986


Notary Public

SHIRLEY BEDOR ORTEGO
NOTARY PUBLIC, State of New York
No. 4809430
Qualified in Nassau County
Term Expires 10/31/88

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
GEORGE SASSOWER, individually and as trustee
of the trusts created by EUGENE PAUL KELLY,
and by his Estate, and those similarly
situated, or to be benefited thereby,

CV-86-3797

(JM)

Plaintiff,

-against-

VINCENT G. BERGER, JR.; ANTHONY MASTROIANNI;
Surrogate ERNEST L. SIGNORELLI; CHARLES Z.
ABUZA; Hon. HARRY SEIDELL; RICHARD C. CAHN;
ROBERT M. CALICA; MARTIN B. ASHARE; THE
SURROGATE'S COURT OF THE STATE OF NEW YORK,
COUNTY OF SUFFOLK; THE SHERIFF OF SUFFOLK
COUNTY; Hon. SOL WACHTLER; Hon. JOSEPH W.
BELLACOSA; Hon. MILTON MOLLEN, individually
and as a member of the JUDICIAL DEPARTMENT OF
THE SUPREME COURT, SECOND JUDICIAL
DEPARTMENT; Hon. MOSES M. WEINSTEIN; Hon.
ISAAC RUBIN; and Hon. BURTON S. JOSEPH,

Defendants.

JUDICIAL DEFENDANTS'
MEMORANDUM OF LAW

Respectfully submitted,

ROBERT ABRAMS

Attorney General of the State of
New York

Attorney for Judicial

Defendants

190 Willis Avenue

Mineola, New York 11501

(516) 742-3053

Of Counsel:

THOMAS J. ...

...

FACTS

The plaintiff has once again filed another lawsuit arising out of his handling of the estate of Eugene Paul Kelly. It is respectfully submitted that this Court needs no recitation of the underlying facts.

POINT I

SINCE THE PLAINTIFF HAS
FAILED TO PAY ATTORNEY'S
FEES AND COSTS AS DIRECTED
BY THIS COURT, THE COMPLAINT
SHOULD BE DISMISSED

In Sassower v. Signorelli, Nos. 77 C 1447, 78 C 124, CV 84-2989, memorandum of decision and order dated November 29, 1984 (see annexed), this Court directed "Sassower to refrain from filing any further suits ... until Sassower pays the attorney's fees and costs." Id. at 14. On March 4, 1986, this Court awarded \$2,661.25 as costs. (See annexed.) Plaintiff has failed to pay any of the moneys.

Having failed to pay the costs, Sassower is barred from the filing of further lawsuits, and thus, the complaint should be dismissed.

POINT II

**THE JUDICIAL DEFENDANTS ARE
ABSOLUTELY IMMUNE FROM
LIABILITY UNDER SEC. 1983**

This Sec. 1983 lawsuit seeks to sue eight (8) judges and one (1) court. However, Pierson v. Ray, 386 US 547 (1967) absolutely bars Sec. 1983 actions against judges.

The complaint should be dismissed since the judges and the court are absolutely immune from liability.

POINT III

**THE ELEVENTH AMENDMENT
BARS FEDERAL COURT
JURISDICTION OVER PLAINTIFF'S
CLAIMS**

The Eleventh Amendment deprives federal courts of subject matter jurisdiction over actions against States. It is immaterial whether the State is actually named as a party. If the action includes as defendants individual State officials but the State is the real party in interest, the action is against the State. Pennhurst State School & Hospital v. Halderman, 104 S. Ct. 900, 908-909 (1984).

The Plaintiff is, therefore, absolutely barred from maintaining this action.

POINT IV

THE COMPLAINT FAILS
TO STATE A CLAIM
UPON WHICH RELIEF CAN
BE GRANTED

The plaintiff asks this Court to order the judicial defendants to bring to an "expeditious conclusion" a contempt proceeding, to take "administrative steps as may be necessary to prohibit the unbridled control of con-summary criminal contempt proceedings by civil adversaries", and to shield the plaintiff from "retaliatory action".


This plaintiff has brought numerous actions in both federal and state courts and he has been rebuffed by every court and by every appellate forum. He simply does not have a claim upon which relief can be granted.

To the extend that the plaintiff brings any new claims, they all concern a pending state court action in which his appropriate remedy is to appeal the matter. The judicial defendants respectfully request this Court dismiss the complaint.

CONCLUSION

THE COMPLAINT SHOULD
BE DISMISSED IN ALL
RESPECTS, AND FEES
AND COSTS ASSESSED
AGAINST PLAINTIFF

Dated: November 28, 1986



DEWEY LEE

Assistant Attorney General

UNITED STATES DISTRICT COURT:
EASTERN DISTRICT OF NEW YORK

GEORGE SASSOWER, individually and as trustee of the trusts created by EUGENE PAUL KELLY, and by his Estate, and those similarly situated, or to be benefited thereby,
Plaintiff,

-against-
VINCENT G. BERGER, JR.; et. al.,
Defendants.

NOTICE OF MOTION
CV-86-3797
(JM)

ROBERT ABRAMS,
Attorney General
DENEY LEE, Of Counsel
Attorney for..... Defendants.....

Office And Post Office Address
190 Willis Avenue, Mineola, N.Y. 11501
Tel. (516) 742-3053
Personal service of a copy of

within.....
is admitted this.....day of
.....19

Please take notice that the within is a true and correct copy of the original and entered in the office of the Clerk of the County, on day of , 19

Yours, etc.,
ROBERT ABRAMS,
Attorney General,

Attorney For
Office And Post Office Address
190 Willis Avenue, Mineola, N.Y. 11501
, Esq.

Attorney for
Please take notice that the within

will be presented for settlement and signature herein to the Hon. one of the judges of the within named Court, at

in the Borough of
City of New York, on the 19 , at M. day of , 19

Dated, N.Y.,
Yours, etc.,
ROBERT ABRAMS,
Attorney General,

Attorney For
Office And Post Office Address
190 Willis Avenue, Mineola, N.Y. 11501
, Esq.

Attorney for